

STATE OF NEW YORK
BOARD ON ELECTRIC GENERATION SITING AND THE ENVIRONMENT

Application of Cape Vincent Wind Power, LLC, for a
Certificate of Environmental Compatibility and Public Need to
Construct an Approximately 200-285 Megawatt Wind Electric
Generating Facility in the Town of Cape Vincent, New York.

Case 12-F-0410

**SUMMARY OF COMMENTS ON
PRELIMINARY SCOPING STATEMENT**

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SUMMARY OF COMMENTS

Pursuant to Section 1000.5(g) of the New York State Board on Electric Generation Siting and the Environment's ("Siting Board") rules (16 NYCRR § 1000.5[g]), on March 29, 2013, Cape Vincent Wind Power, LLC ("CVWP"), filed its Preliminary Scoping Statement ("PSS"). The Siting Board's rules provide that any person, agency or municipality may submit comments on the PSS within twenty-one (21) days after filing, or by April 19, 2013.¹ By April 19, seven (7) parties had filed written comments with the Secretary to the Siting Board.

- NYS Department of Public Service;
- NYS Department of Environmental Conservation;
- NYS Department of Agriculture and Markets;
- Town of Cape Vincent;
- Town of Lyme;
- Development Authority of the North Country; and
- Lyme Central School District.

¹ On April 10, 2013, the Siting Board issued a *Notice of Deadline to Comment on Preliminary Scoping Statement* advising that comments were due by April, 19, 2013.

Within twenty-one days after closing of the comment period, the Siting Board's rules require that CVWP "prepare a summary of the material comments and its reply thereto, and file and serve its summary of comments and its reply in the same manner as it files and serves the [PSS]...." (16 NYCRR § 1000.5[g])

In accordance with the Siting Board's rules, following is a summary of the comments received by each of the aforementioned parties. Contained within the attachments to this document are the parties' comments themselves and the corresponding reply by CVWP.

In addition to those parties filing comments with the Secretary to the Siting Board in compliance with the requirements of 16 NYCRR § 1000.5[g], 13 individuals posted comments on the PSS to the DPS website, and one party, Save the River, sent comments to CVWP and posted comments to the DPS website. A summary of these comments is also included in this document and responses to material comments are provided in an attachment.

1. NYS Department of Public Service – (See, Tab 1 For Comments and Responses)

DPS Staff provided general comments to the PSS suggesting that CVWP be prepared to take serious consideration of the comments provided on the PSS and be prepared to address changes to the PSS as a result of the comments of DPS, as well as other interested parties. DPS Staff offered that CVWP should be prepared to work diligently with other parties to develop a greater level of specificity with respect to the protocols associated with the studies and methodologies to be employed for the application. DPS Staff (as well as other commenters) requested GIS shapefiles to better evaluate the Project. DPS Staff asked for an explanation regarding the future of BP Wind Energy in light of recent reports regarding the potential sale of that division of BP.

With respect to the proposed facility, DPS Staff's comments were focused mainly on the proposed size of the facility and the range of turbine sizes under consideration, and the fact that data and information for the range of turbine sizes will complicate the review of the impacts associated with the Project. DPS Staff also requested additional pictorial and engineering drawings of overhead and underground connectors as well maps showing the location of Project components in relation to the Coastal Area boundary. DPS also requested additional information regarding ownership of the proposed interconnection line between the Proposed Switching Station and Point of Interconnection Substation.

DPS Staff had a number of comments regarding the organization and information contained in the overview of public involvement as well as several suggestions for additional information to be added to the PSS. DPS Staff found deficiencies in the formatting of tables and information contained in the tables tracking public involvement.

DPS Staff took issue with the USGS topographic maps used by CVWP in the PSS, as well as several other issues relating to mapping including the labeling of detail and arrangement of facility components included on the maps provided. DPS Staff also suggested a land classification scheme or methodology for inclusion on the mapping to be provided in the Article 10 Application. DPS Staff suggested that the Project area be extended beyond 5 miles as appropriate to address viewshed resources. DPS Staff offered suggestions regarding the content of the Coastal Zone Policy consistency evaluations including several items relating to the Chaumont River. DPS Staff noted an airport and heliport that should be evaluated as part of the Article 10 Application. DPS Staff highlighted several recreational resources to be included in the evaluation of recreational resources. DPS Staff suggested that CVWP provide a detailed assessment of local municipal comprehensive plans – and note if they are specifically referenced and incorporated into municipal laws or land use regulations.

DPS Staff asked for an explanation regarding differences between the scope of system reliability impact studies previously performed and requested copies of the NMPC facility studies as well as several other electrical system studies. DPS Staff noted the requirements of the regulations with respect to third party certification of the wind turbine to be installed and the standards the facility must meet and the need for a plan to meet those standards. DPS Staff had comments regarding setbacks and recommendations regarding noise, infrasound, shadow flicker and visual issues to be included in the Article 10 Application.

DPS Staff had a number of recommendations with respect to the alternatives analysis that will be part of the Article 10 Application, including a request to evaluate a reduced Project footprint, alternative arrangements resulting from differently sized turbines, an alternative that would comply with the Town of Cape Vincent Zoning law, and a 24.9 megawatt sized project. DPS Staff also requested consideration of alternative Project substation locations and associated transmission infrastructure.

With respect to consistency with the Energy Planning Objectives, DPS Staff had recommendations with respect to reliability impacts, compliance with reliability criteria, regional impacts on capacity, and impacts during normal operation and outages.

DPS Staff had suggestions regarding the content, format, and details to be included in the Article 10 Application preliminary design drawings, including foundation detail and grading and erosion control plans. DPS Staff had comments regarding lighting plans, the content of architectural drawings as well as construction layout detail.

DPS Staff highlighted the requirements regarding the contents of the Article 10 Application regarding mapping of real property ownership and land use, as well as the detail

required for detailing cost estimates for the cost of the Project facilities to be included in the Application.

With respect to health and public safety, DPS Staff had comments regarding mapping, turbine collapse, icing, blade throw, lightning, spill control, public water supply, noise, vibration and shadow flicker. DPS Staff provided comments on the safety and security of the Project including suggestions regarding methodologies needed to adequately determine security risks and threats as well as emergency response plans.

DPS Staff included comments regarding noise and vibration, including a request to provide more detail on criteria relating to background noise measurement, tonal noise, construction noise, and low frequency noise.

DPS Staff provided advice on cultural and visual resource content including the need to specifically address scenic tourism as part of the visual and cultural analysis. DPS Staff also advised that the assessment of Project visibility from, and visual impacts on historic resources include identification of specific turbines that affect such resources.

DPS Staff had comments on geology, seismology and soils information, including a request for specifications for structural fill and crushed stone, a preconstruction invasive species plan, and recommendations on minimization of the introduction and/or spread of invasive species present in spoil materials. DPS Staff also requested the inclusion of certain details in the Article 10 Application regarding access roads and transportation routes. DPS Staff asked for the identification of the source of all backfill materials, and the locations where excavated materials not reused as backfill will be disposed. DPS Staff requested information on directional boring, constraints to underground installation of transmission infrastructure, and geotechnical investigations. DPS Staff recommended additions to the blasting plan and asked for a description

of possible dewatering activities. Further suggestions on mapping included a request for maps showing post-construction drainage and flow patterns, as well as existing natural and manmade surface water drainage features.

DPS Staff commented on terrestrial, ecology, and wetlands issues including suggestions on how CVWP should report agency consultations, how CVWP should evaluate and report plant communities, post-construction avian and bat mortality tracking, additions to the invasive species control plan, evaluation of potential impacts to rare, threatened and endangered species, and specific recommendations regarding avoidance and minimization analysis relating to the Silver Maple-Ash Swamp.

With respect to water resources and aquatic ecology, DPS Staff made comments regarding pre- and post- construction well monitoring, maps identifying all classified and field delineated surface water bodies with access road crossings and transmission line interconnects, downstream surface water drinking-water supply intakes, and the layout of all permanent stormwater management and erosion control measures.

DPS Staff had comments on visual impacts including recommendations to include landscape similarity zones in the Application, using user group interviews as part of background studies to identify important landscape characteristics, providing a preliminary viewshed analysis, expansion of the 5 mile viewshed analysis to include certain areas, and suggestions on the contents of the viewshed analysis and mapping.

DPS comments on the transportation effects related to the Project included expansion of the proposed study area for the Project, an analysis of road capability for deliveries and capital improvements, as well as road closures and detours during construction. DPS Staff requested an explanation as to why informal FAA review is more appropriate for CVWF given its proximity to

Fort Drum Military Installation and further details regarding consultation with airport and heliport facilities.

DPS Staff had comments relating to possible effects on communications, including more specific identification of existing telecommunications infrastructure, including border control communications systems. DPS Staff requested further explanation regarding using gap-filler radar to mitigate unavoidable impacts and asked that the NTIA be consulted on impacts to telecommunication systems. DPS Staff requested specific details regarding notification and communication channels with Canadian Forces and Transport Canada Civil Aviation. DPS Staff also requested the methodology of assessments that will be used to determine the adverse impacts relating to wireless systems identified in the PSS. DPS Staff requested AM/FM broadcast radio and off-air Television studies as well as complaint resolution procedures for dealing with impacts to reception of these broadcasts.

DPS Staff recommended that CVWP provide an analysis of the consistency with the economic development strategy for the Jefferson County region, as well as job creation numbers for the Project. DPS Staff recommended addressing the comments on socioeconomic impacts on the community and the region beyond possible visual impacts.

DPS Staff identified some missing citations from the Environmental Justice analysis. DPS Staff also identified some additions to the proposed methodology and plan relating to decommissioning.

DPS Staff identified issues relating to the identification of applicable local laws and regulations including the suggestion that CVWP needs to consult with local municipalities regarding compilation of an exhaustive list of applicable laws and regulations. DPS Staff suggested that CVWP should review each existing identified law to determine whether they are

procedural or substantive in nature. DPS Staff requested clarification regarding comments made by CVWP regarding pre-emption of local zoning laws and greater clarification on the rationale for not applying certain local laws. DPS Staff had suggestions regarding additional state permitting requirements and approvals that CVWP will need to comply with as well as additional consultations with federal entities and federal permitting requirements.

DPS Staff requested a single line drawing or three line drawing of the collection and interconnection substations. DPS Staff advised that CVWP should provide additional electric magnetic field and electrostatic studies, as well as additional drawings and photos identifying details required for the Application.

DPS Staff commented on water use and interconnection for the Project, including requesting the results of the hydrology study for the project area, suggesting notification procedures for nearby well owners and a contact for complaints for such owners, an assessment of any known contaminant plumes, water chemistry requirements and water treatment methods.

DPS Staff suggested additional information to be included in the Article 10 Application for wastewater treatment facilities, including design details and permitting requirements.

DPS Staff advised that the telecommunications information for the Project should include detailed descriptions of the design capabilities and criteria for system communications with NMPC and the NYISO. DPS Staff suggested that CVWP provide maps regarding fiber optic equipment and other communications infrastructure as well as a description of any agreements with outside vendors providing communications services or infrastructure.

DPS Staff offered suggestions regarding the monthly tracking report associated with the Public Involvement Program, including updates to the stakeholder list, modifications to the table

format, clarifications regarding consultations that have taken place, and formatting of public comments and the responses of CVWP to those comments.

2. NYS Department of Environmental Conservation - (See, Tab 2 For Comments and Responses)

The Department of Environmental Conservation (“DEC”) general comments criticized the format of the PSS as well as the labeling system for the exhibits to the PSS. DEC commented that the PSS lacked the requisite specificity and did not contain as much information as is reasonably available. DEC commented that many of CVWP’s responses to comments and questions raised during the consultation period remain unanswered.

DEC asked for an explanation regarding the future of BP Wind Energy in light of recent reports regarding the potential sale of that division of BP. DEC commented that the overall rotor swept area for the Project is significantly larger than what was proposed for the two former projects and that the layout is similar but altered from the two previous projects.

DEC pointed out that they have yet to receive a Project layout that would depict facilities in relation to known locations and associated habitat of endangered, threatened and species of special concern, as well as GIS data. DEC commented that the lack of specificity in the PSS creates a high degree of variability in the estimate of potential adverse impacts or benefits. DEC commented that further studies should be conducted and those studies should not begin without input, acceptance and approval from DEC and other involved agencies.

DEC commented that the Article 10 Application should include detailed information regarding the storage and use of on-site fuels, oils, or other potentially petroleum based fluids during

construction, operation, maintenance, and potential decommissioning after the projects life span of the proposed Cape Vincent Wind Farm.

DEC suggested that The Article 10 Application should take into account that the previous studies for the SLWF and the original CVWEP projects, were for two separate projects and were designed to assess the potential impacts of each separately and with markedly smaller turbines and layouts.

DEC recommended that CVWP design and conduct new studies to be included in the Article 10 Application, in consultation with local state and federal agency personnel who have extensive expert knowledge of the resources in this region.

DEC recommended including information from studies that have been and are being conducted at the nearby Canadian wind power project on Wolfe Island which has similar social, economic, and environmental conditions as Cape Vincent, NY. DEC also recommended that the study area for the project be increased beyond the US/Canadian border and not be limited to 5 miles for facilities in areas of significant resource concerns. DEC commented that the Article 10 Application should include a detailed discussion on the potential impacts to rare communities that are present in the Project area which were not discussed in the PSS. DEC recommended that the Article 10 Application include detailed information regarding the fish communities within the streams and rivers located in the Towns of Cape Vincent, Lyme, and the Village of Chaumont. DEC commented that the term “extensive fish communities” should be defined.

DEC commented that for the DEC and/or other involved agencies to begin a valid review of any potential impact or benefit from the Project, the turbine model and specifications, along with the layout and entire footprint of the Project should be determined because the lack of this information creates a high degree of variability in the estimate of the potential adverse impacts or benefits.

DEC suggested that data regarding the proposed site development and planned operational layout of the Project should be provided to the DEC and other involved agencies in the form of shapefiles, coverages, geodatabases, and/or geometric networks for use in Geographical Information Systems (GIS) software via ESRI's ArcGIS suite of software (e.g. ArcMap).

DEC suggested that the Article 10 Application should be corrected to provide consistency in the usage of the term "Exhibit" and the associated nomenclature in referencing each "Exhibit". DEC commented that the the PSS fails to mention if and what type of back-up power will be used to maintain electrical systems when the CVWF is not generating its own electricity.

DEC commented that he Article 10 Application should include maps and a detailed discussion regarding the adjustments that were made in the Project layout to first avoid, and then reduce or minimize potential impacts to, E/T/SC species occupied habitat, wetlands, waterbodies, public access sites, public and state lands such as state Wildlife Management Areas (WMAs); and, other unique natural resources like rare and significant communities such as a silver maple-ash swamp, alvar grasslands, limestone woodlands, calcareous pavement barrens, sinkhole wetlands, waterfowl winter concentration areas (the Atlantic flyway), and raptor winter concentration areas.

DEC commented that the Article 10 Application should provide a Vegetation Management Plan, including an Invasive Species Control Plan that would first, avoid potential impacts during annual or semi-annual clearing of vegetation for overhead transmission lines, and second minimize and reduce impacts to wetlands, their associated adjacent areas, as well as rare and significant plant communities.

DEC commented that the Article 10 Application should contain a specific plan describing the added precautions and best management practices that will be used for working in the identified steep

sloped areas as well as an additional assessment ensuring that turbine site selection has been properly evaluated in relation to the identified steep sloped areas.

DEC commented that the Article 10 Application should include detailed specifications for the proposed crusher unit and noted that it may require an air permit depending on its specifications. DEC commented that the DEC's Bureau of Mineral Resources guidance for blasting should be followed in developing a blasting plan. DEC suggested that the Article 10 Application include a discussion regarding the potential for the disturbance of the soil hydraulic conductivity along with proposed mitigation measures to ameliorate the effects of groundwater interception.

DEC commented that the Article 10 Application should include a detailed local geotechnical investigation on all proposed turbine locations to ensure that the stability of the bedrock is compatible with the additional load of concrete base pads and wind turbines. DEC commented that the installation of culverts should follow DEC guidance and that the design of stream crossings should be informed by a US Fish and Wildlife document.

DEC commented that the Article 10 Application should include a detailed discussion on the potential impacts to rare communities that are present in the Project area and that were missed in the PSS, including a silver maple-ash swamp, alvar grasslands, limestone woodlands, calcareous pavement barrens, sinkhole wetlands, waterfowl winter concentration areas, and raptor winter concentration areas.

DEC commented that the Article 10 Application should provide specific detail as to the avoidance measures to be used to minimize the removal or disturbance of 149.2 acres of Eastern North American Flooded & Swamp Forest, and recommended that CVWP consult with local state and federal habitat/wetland biologists to develop improvements of planned avoidance measures.

DEC recommended that the Article 10 Application include details of the timing and duration of all pre- and post-construction monitoring studies for the Project as well as the steps that were taken to avoid and minimize both the direct and indirect effects of construction and operation of the CVWF.

DEC commented that no estimate of the total acreage of wetlands that may be removed or disturbed was included in the PSS and noted that a change in wetland type will be considered a loss of functions and values of wetlands. DEC commented that wetland delineations are only valid for 5 years and that all delineations performed prior to 2008 should be re-delineated. DEC also commented that the Article 10 Application should provide specific details regarding the DEC wetland compatibility and value tests. DEC commented that the Article 10 Application should include language which will ensure the development of mitigation plan(s) by making the best use of the expert knowledge local state and federal habitat/wetland biologists have of the Project area.

DEC also commented that the proper name for Gap Analysis Program is the National Gap Analysis Program and that the National GAP Land Cover data uses Landsat 1999-2001 imagery and the CVWF Project will need to supplement this information with on the ground field collection of recent data through pre-constructions studies.

DEC commented that the Article 10 Application should provide specific detail on additional studies that will be conducted in relation to the new Project layout and that the studies should be designed in consultation with local state and federal biologists who have extensive knowledge regarding the natural resources in the Project area.

DEC commented that the Article 10 Application should reflect the correct construction avoidance window for Blanding's turtles as from May 28th through July 9th.

DEC requested that the Article 10 Application include a section that would detail the potential for habitat replacement through fee acquisition/conservation easement/active management as possible mitigation for the loss of habitat.

DEC commented that the Article 10 Application should provide the correct information for referencing the New York code of rules and regulations governing endangered and threatened species of fish and wildlife; species of special concern and incidental take permits.

DEC commented that there are several economically important sportfish species within or adjacent to the Project area and recommend the use of the general warmwater construction avoidance window to ensure protection of these species during their spawning and rearing periods. DEC also commented that the Article 10 application should include proposed mitigation measures to be used if construction activities result in adverse impacts on aquatic species. DEC recommended that the Article 10 Application should include Blanding's turtle discussions in a section for endangered, threatened, or species of special concern. DEC commented that the Article 10 Application should extend the assessment of potential Blanding's turtle habitat to include habitat within 1000 meters of disturbed areas. DEC commented that the methodology for conducting the assessment of potential Blanding's turtle habitat should fully describe what is meant by expanding the survey to encompass the radial extent of the habitat cover type.

DEC commented that the Article 10 Application should provide a detailed description of CVWP's plan for responding to a tower collapse, nacelle/hub fire or other catastrophic event and the subsequent mitigation measures that would be employed to ameliorate any adverse impacts to surface waters of the State.

DEC commented that CVWP failed to propose mitigation measures should there be adverse impacts to aquatic species even if they are unanticipated to occur. DEC commented that the Article 10 Application should provide clarification as to the actual geographic location of where the studies/surveys were conducted. DEC noted that Carlton Island is a significant habitat for wintering bald eagles, and that there are two bald eagles nests located 10.5 and 11.5 miles from the nearest turbine as laid out in the Project map submitted with the PSS.

DEC commented that the owners of record of all parcels included in the Project site and adjacent properties, easements, grants and related encumbrances, public and private roads planned for use as access, properties leased or subject to easement and those which have not been acquired must presently be reasonably available to CVWP and therefore should have been made part of the PSS.

3. NYS Department of Agriculture and Markets - (See, Tab 3 For Comments and Responses)

The New York State Department of Agriculture and Markets ("Ag & Mkts") commented that the compaction of topsoil along the sides of the roads in agricultural areas will be extremely difficult to mitigate sufficiently and compaction is not consistent with this Department's Guidelines for Agricultural Mitigation for Wind Power Projects ("Department Guidelines"). Ag & Mkts also commented that the list of impacts to soil resources and agriculture productivity should include topsoil and subsoil mixing. Ag & Mkts commented that grading and compaction of the topsoil in cultivated areas, particularly when the soils are wet, will lead to severe damage to the soil resource and would not be consistent with the Department Guidelines. Ag & Mkts commented that topsoil must be removed from all construction areas in agricultural fields, prior to any grading or compaction and no construction equipment or

vehicles should be allowed to drive or park on the topsoil in agricultural areas. Ag & Mkts commented that a Notice of Intent under the Agriculture and Markets Law is not required for this Project.

4. Town of Cape Vincent - (See, Tab 4 For Comments and Responses)

The Town of Cape Vincent ("TOCV") commented that CVWP must make a determination of the model/size of the turbines that will be utilized and provide accurate and up-to-date maps depicting Project layout. With respect to location of project facilities, TOCV commented that Wolfe Island should be included in the study area, that CVWP should map every home in the municipality and that the Siting Board should apply TOCV's setback requirements.

On the issue of alternatives, TOCV commented that CVWP must provide a comparative assessment of its Project with a no-build alternative and substitution of a solar project or an option that considers and respects Cape Vincent's comprehensive plan and zoning law. TOCV further commented that CVWP should provide at least two project designs for its 200 and 290 MW project options.

TOCV commented that the Siting Board should require a review of any emergency response plans related to CVWP's Project by the county EMO (Emergency Management Office) and that CVWP provide ongoing training to all of the emergency personnel in the towns of Cape Vincent, Lyme and Clayton.

With respect to noise TOCV commented that its laws should remain in place and not be waived by the Article 10 Siting Board. TOCV requested a comparative assessment of TOCV's against CVWP's universal ground absorption coefficient, that predicted C-Weighted levels be included in predictive noise impacts, comprehensive modeling of sound generated by industrial wind turbines at property lines as well as residences as required under local law. TOCV commented that another scenario be included for

the record based on 33.5 dBA to provide an interim measure of protection from infrasound. TOCV requested that CVWP provide a comprehensive analysis of the scientific literature, including the studies mentioned, to describe the negative health impacts associated with sleep disturbance and other direct and indirect health effects that could be associated with wind turbine noise.

TOCV commented on cultural resources include an analysis of alternatives that considered eliminating turbines, reducing the size of turbines, moving the turbines to other locations, other changes to eliminate or mitigate the agreed upon adverse impacts. TOCV further commented that CVWP should remove turbines from the background along the major site lines between the frontage roads and the historic sites and propose an alternate project layout that would remove turbines from the viewshed of the village historic district.

TOCV requested that CVWP complete a detailed and comprehensive geological and hydro geological assessment of the project area, including a karst assessment using guidelines proposed by NY DEC.

With respect to terrestrial ecology, TOCV commented that additional work is required by CVWP to understand the variability of the biological systems especially nocturnal radar and raptor migration studies suggesting that two more years of marine radar study of nocturnal migrants are needed to address these deficiencies. TOCV further commented that CVWP should consider alternative project layouts that provide a wide buffer for the special, significant wildlife habitats. TOCV suggested a protocol similar to that suggested by Old Bird, Inc.

TOCV commented that CVWP should provide epidemiological evidence that shadow flicker caused by wind turbines of the model chosen by BP does not and will not induce photosensitive seizures and that, for residences, the zone for predicting shadow coverage should cover the area within a 100-

foot radius of the center of the residence and not the one meter square receptor used by the wind industry. TOCV further suggested that evidence be presented that the navigation lights it intends to use on its wind turbines does not and will not result in photic-induced seizures in individuals who have physical disorders and that existing alternative technologies be explored.

TOCV commented on socioeconomic issues included contacting the Town assessor for details for the Town's business PILOT, suggesting that CVWP should recast its project with 2-mile setbacks from the river and lake waterfronts, as required in the Town's current zoning law and requested that CVWP clarify the point of property devaluation, especially for communities that have a high influx of summer, seasonal residents. TOCV commented that a Certificate should not be issued without a detailed decommissioning plan that has been accepted by the Siting Board and Financial Assurance decommissioning coverage must be in place and in force before construction is allowed to begin.

The TOCV requested an explanation of CVWP's reference to a general preemption in Article 10. TOCV requested that, in the Application, CVWP provide a rational, substantive explanation as to why a local law should be waived by the Siting Board. TOCV requested that Project noise be evaluated at every residence within 1.5 miles of a turbine. TOCV further requested that its plan for complaints should be controlling. TOCV further commented that transmission lines should be underground, a 2-mile setback from the Town's shorelines should be applied, and that CVWP provide an explanation why its Project is incompatible with the Town's vision.

The TOCV requested the Siting Board require all interconnections to be underground. TOCV commented that CVWP should be required to investigate the impact of stray voltage on livestock and other animals.

5. Town of Lyme - (See, Tab 5 For Comments and Responses)

The Town of Lyme ("TOL") commented that the majority of the issues noted are related to outdated information, incomplete analysis and research, failure to research alternative options that are more environmentally friendly; and failure to address the community's health and safety concerns.

The TOL commented that the PSS fails to mention that the county is the fastest growing county in the state. TOL commented that further study needs to be completed on how the Generator Interconnect line will affect the town's development, tax base and over all long term economic health.

TOL commented that CVWP does not recognize that unoccupied homes in the town are seasonal and that some of those lie along the proposed Generator Interconnect Line route. TOL suggested a thorough study is required to determine the health, safety and home value impact along the three proposed routes.

TOL commented that the Project will deter development because of the Electric Magnetic Field (EMF) and view shed issues along the Rights-of-Way, over the Chaumont River and bordering properties. TOL suggested further investigation is required since the Chaumont River Corridor Waterfront Revitalization Project is in Phase I. TOL commented that the siting of the Interconnection lines over the Chaumont River might inhibit recreational uses and development on the riverfront and that alternative routes or methods of crossing the river need to be studied. TOL suggested that CVWP check for areas or sites that are of significance in the history, architecture, archaeology or culture of the state, its communities, or the nation; and further is required in these areas. TOL stated that Chaumont Bay is part of what is known as the Golden Crescent and that CVWP needs to conduct a thorough study of impairment of scenic resources including as cost analysis of different options. TOL suggested that in so doing CVWP work with the community to address its concerns. TOL commented that extensive research is required to analyze Project impacts on man-made resources that contribute to the overall scenic

quality of the coastal area including addressing State designated Seaway Trail and/or the recreational opportunities which abound in the Golden Crescent. TOL comments that no plan has been devised or presented that addresses the Agriculture & Markets guidelines for Agricultural Mitigation for Wind Power Projects. TOL suggested that a study needs to be conducted of options that interconnect lines around coastal waterways or in alternative non-intrusive manner. TOL commented that a study needs to be conducted to analyze tidal or freshwater wetlands and potential mitigation if any are identified.

With respect to land use, TOL commented that the PSS does not address persons with special medical needs, and those utilizing new medical technologies, and that studies need to be conducted on minimizing Project impacts on such individuals. TOL further commented that additional studies should be conducted to address transmission line impacts on sensitive environmental areas. TOL commented that transmission lines should not be overhead especially in waterfront or other scenic areas and that studies should be conducted to identify which method (overhead or underground) should be used to minimize impacts. TOL commented that the interconnection line should be studied for impacts on accidental damage to water supply sources during construction.

6. Development Authority of the North Country - (See, Tab 6 For Comments and Responses)

The Development Authority of the North Country ("DANC") commented on potential impacts the Project may have on the 22 mile long Western Jefferson County Regional Waterline (the "Waterline") that DANC owns and operates. DANC commented that the PSS does not give sufficient detail as to the location, construction and operation of the Project's facilities relative to DANC's Waterline and operations. DANC commented that there are three major Project components that require more detailed study and analysis: (1) the Article 10 Application should have a full scale Basis of Design Report for the Electrical Collection System, developed in collaboration with DANC's engineering

department and the Town of Cape Vincent; (2) the Generator Interconnection line may have adverse impacts on the Waterline and the Article 10 Application should have a detailed Basis of Design Report that analyzes horizontal and vertical separations between DANC's facilities and the Generator Interconnect Line; and (3) the Article 10 Application should include a sufficient analysis and study of the potential adverse impacts to the Waterline in the event of a catastrophic failure of a wind turbine or tower.

DANC commented that the Basis of Design report should analyze whether cathodic protection is advisable. DANC commented that there should be an analysis consistent with Article 7 of alternative routes and that the Town of Lyme should be consulted as to crossing of Town sewer and water lines. DANC commented that the Article 10 Application should include a detailed analysis of Project components for persons, vehicles and equipment and potential impacts on DANC facilities, and that CVWP should consult with DANC on this analysis as well as Blasting and Construction Plans.

7. Lyme Central School District (See, Tab 7 For Comments and Responses)

The Lyme Central School District commented that to date, the Lyme Central School District has not consented to any type of Payment in Lieu of Tax ("PILOT") Agreement for the project, but would be willing to meet with BP and the other affected taxing jurisdictions to discuss terms and conditions of a potential PILOT.

8. Save the River - (See, Tab 8 For Comments and Responses)

Save the River commented that they agree wholeheartedly with the NYS DEC assessment of the PSS as replete with redundancies, lacking in reasonably available and necessary information, and containing a host of items needing further clarification. Save the River commented that it would be wholly appropriate to determine that the PSS as submitted is inadequate. Save The River commented

that the previous studies completed were for two separate projects and were designed to assess the potential impacts of each separately and with markedly smaller turbines and layouts and that CVWP should design and conduct new studies in order to more accurately assess the potential impacts the new CVWF Project may have based on the use of larger turbines. Save The River recommended that information from studies that have been and are being conducted at the nearby Canadian wind power project on Wolfe Island be included in the Article 10 Application to assess the potential cumulative effect on avian and bat resources. Save The River commented that there is no acceptable level of bird and bat deaths and disruption to the Atlantic Flyway which can be tolerated. Save The River stated that the people of Cape Vincent, the River region and New York State deserve and should demand new, comprehensive, cumulative studies of potential bird and bat mortality in order to better determine the true nature of the potential threat to this critical flyway.

9. Summary of PSS Responses Received From The Public- (See, Tab 9 For Comments and Responses)

In addition to the PSS comments submitted by local municipalities, state agencies, and a non-profit, thirteen comments were submitted by residents of Jefferson County. Of the thirteen comments received, seven supported the development of the CVWF and six did not.

The comments received can be characterized by general themes as follows:

Five comments noted that the PSS was a comprehensive document that demonstrated the technical and in-depth studies that have been, and will be, undertaken in the development of the CVWF. These studies addressed the areas that would be potentially impacted by the proposed Project and demonstrated how potential impacts will be lessened in areas of concern.

These commenters went on to state that the Article 10 permitting process had solidified the fact that the community supports the proposed CVWF. The wind farm enables the farm land to be kept in production while providing an economic stimulus to an economically depressed region. The Project will

provide jobs and income and will assist in keeping current jobs and small businesses in the local area, which are currently at risk of being lost, states the commenter

The five comments noted that the development of a wind power projects is a good fit for the region and that the proposed wind turbine array will enable the rural and agricultural setting that currently exists to be maintained.

One comment noted that the voice of the residents who support the development of the CVWF was not being fairly acknowledged or represented by the Town Board of Cape Vincent. The commenter noted that support for the Project existed through the list of landowners who had signed-up to be leaseholders.

Two comments submitted requested further analysis of the effect of wind farms on property values. And, two comments requested further information on the proposed decommissioning plans for the CVWF.

Comments were made regarding the cumulative effect of wind turbines from the existing wind farm on Wolfe Island and from the proposed CVWF on both view shed and migratory birds of the Thousand Island region. One comment requested research data on the effect of wind turbines on bees.

One commenter noted that the Article 10 permitting process removed the decision making process from the hands of the community.

One comment requested that an updated to-scale map be provided showing the proposed location of the wind turbines and ancillary locations.

**RESPONSE TO COMMENTS OF STAFF OF THE NEW YORK STATE DEPARTMENT OF
PUBLIC SERVICE TO THE PRELIMINARY SCOPING STATEMENT**

COMMENT: Some of the responses to comments received in the PIP outreach period do not address the interest or content of the comments. Cape Vincent Wind Power, LLC (CVWP, or the applicant) should review its responses to all comments and be prepared to address specific changes to the Preliminary Scoping Statement (PSS) in consideration of the issues and interests expressed, regarding project design, potential impacts and benefits. Likewise, STAFF encourages CVWP to take serious consideration of comments on the PSS submitted by reviewing agencies, municipalities and other interested parties.

RESPONSE: *As required by 16 NYCRR 1000.5(g) CVWP is providing a summary of material comments received on the PSS and a reply to such comments. CVWP has given serious consideration to all of the comments provided to date, including those on the PIP, regarding Project design, potential Project impacts and benefits. CVWP is giving the same consideration to all comments on the PSS and will be enhancing the scope of the PSS with thorough replies to comments where appropriate. CVWP will utilize the comments received on the PIP and PSS to further inform the methodology and/or type of studies to be conducted for the Project which will form the basis for the Application. By enhancing the scope of the PSS via stakeholder comment, where appropriate, CVWP anticipates filing a comprehensive Application that addresses all stakeholder concerns.*

COMMENT: The description of the scope of studies anticipated for many of the topic areas identified are general rather than specific as to methodologies to be employed, the study area parameters, and other details appropriate for indicating the methodology, intended extent and duration of studies proposed. CVWP should be prepared to work diligently to identify interests of and cooperate with other parties to develop specific protocols for developing a final scope of studies that applies the general information requirements of the application regulations to the specifics of the project proposal and the study area.

RESPONSE: CVWP will make use of comments received on the PSS to revise, where appropriate, proposed methodologies and the scope of studies as a starting point for continuing to engage with the reviewing agencies, municipalities and other interested parties. CVWP looks forward to working with parties during the stipulations process to further refine protocols and a final scope for applicable studies.

COMMENT: There will be overlapping information and integrated analysis needed for several of the separate topic areas - the scope of studies should acknowledge those potential areas of overlap and identify analysis that integrates information appropriately.

CVWP should immediately provide Staff (and other interested commenters) with GIS shapefiles for the project component layouts, property line and tax map reference information, to enable further evaluation of the PSS.

RESPONSE: CVWP will provide Staff with the requested information this month.

COMMENT: Staff would like to discuss with the applicant, the appropriate scale and size of figures, plans, maps and photographic exhibits where such scales or sizes are not specified by the applicable regulations.

RESPONSE: CVWP will work with DPS to address this comment.

COMMENT: Wolfe Island wind farm is located to the west of the proposed project and the Horse Creek wind farm is proposed to the north of the proposed project. Staff would like to discuss with the applicant and other interested parties in what exhibits it may be appropriate to review cumulative impacts.

RESPONSE: CVWP will work with DPS to address this comment.

Section 1.0 Introduction

Section 1.1: Description of the Applicant and Their Property Rights and Interests (p.4)

COMMENT: 16 NYCRR 1000.5(1)(6) requires a description of CVWP owner, BP Renewables. Staff advises that the Application should provide an explanation of BP Renewables interests in further development and future ownership of the proposed project given the corporate owners' recent public announcement that it is divesting its interests in wind energy projects in the United States.

RESPONSE: *Cape Vincent Wind Power, LLC is a New York limited liability company, a wholly-owned subsidiary of BP Wind Energy North America Inc., a Delaware corporation headquartered in Houston, Texas. BP Wind Energy is a wholly-owned subsidiary of BP. BP has invested more in the United States over the last five years than any other oil and gas company. With more than \$52 billion in capital spending between 2007 and 2011, BP invests more in the U.S. than in any other country. The company is the second largest producer of oil and gas in the U.S., a major oil refiner and a leader in alternative energy sources including wind power and biofuels. With 23,000 U.S. employees, BP supports nearly a quarter of a million domestic jobs through its business activities.*

BP is marketing for sale its Wind business as a going concern with physical assets, customer contracts and a committed and skilled workforce, which will provide the buyer with a solid platform to grow and develop the business. The company continues to pursue the development of projects in its portfolio as it adds value to the business moving forward. As such, it is business as usual for the Cape Vincent Wind Farm and BP remains fully committed to continuing to pursue the Article 10 process for the development and successful permitting of the Cape Vincent Wind Farm.

To this end, despite an internal BP communication on March 28th announcing that it would be marketing its wind business for sale, the company demonstrated its commitment to the Cape Vincent Wind Farm project by submitting its Preliminary Scoping Statement (PSS) on March 29th. It is worth noting that the PSS submittal was accompanied by a check of approximately \$100,000

to cover the costs of Intervenor Funding for the PSS stage of the Article 10 process.

COMMENT: The applicant should provide a pictorial, engineering drawing of both the overhead and underground connectors for the wind turbines. Drawings should be to scale and include a description of the overhead and underground facilities.

RESPONSE: *Overhead collection lines are not anticipated at this time, although may be utilized if necessary. The underground connections for the collection lines to the wind turbine generators will be part of the preliminary drawing package to be submitted with the Preliminary Design Drawings required under 16 NYCRR 1001.11.*

COMMENT: The description of the proposed facility as being 124 turbine sites with a total size range of 200-285 MW, and individual turbines sizes in a range of 1.7 to 3.0 MW is problematic, in that several of the exhibits required by the Rules specify that data and information for specific turbines or turbine sizes is needed to complete the application. Furthermore, some impacts are related to turbine dimensions (e.g., viewshed and shadow flicker extent are a function of facility height; laydown area size is potentially a function of turbine installation technology, and of rotor and blade diameter; etc.). Staff acknowledges that turbine size and design are evolving to increase efficiency and adapt to site conditions in the North American market, and that changes in technology are important to keep under consideration. To that end, and in the interests of orderly administration of this project in the Article 10 proceeding, the scope for topics that are potentially dependent on turbine-specific or class-size information must acknowledge the range of the various project size and turbine models that are under consideration. Specific comments in this regard will be included below, as appropriate.

RESPONSE: *The Application will include the data and information of specific turbines or turbine sizes needed to determine potentially significant adverse impacts. Studies conducted will state the turbine dimensions assumed in the analysis.*

COMMENT: The PSS indicates that the proposed Cape Vincent Wind Farm (CVWF) will consist of 124 turbines, with an output of 200-285 MW. It is also noted that the specific turbine model has not yet been chosen. The applicant, however, is reviewing turbine models with individual outputs of 1.7 to 3 MW. If the chosen model has a capacity of 3 MW, for the 124 turbine project the total output capacity would be 372 MW. If the maximum proposed project size is limited to 285 MW, then the project mapping and analysis should reflect the layout that would support that total output (i.e., which of the 124 turbine locations would be used for the 285 MW project using 95 turbines rated at 3.0 MW.)

RESPONSE: *The Application will put forth a project layout with 124 turbine locations as well as other alternatives, per the requirements under 16 NYCRR 1001.9*

COMMENT: Staff requests that CVWP clarify the maximum project output level that has been identified in reports filed with the NYISO.

RESPONSE: *The maximum Project output level that has been identified in reports filed with the NYISO is 285.2 MW.*

COMMENT: Staff advises that the application must clearly reflect the range of alternative project sizes and associated layouts reflected in the project description.

RESPONSE: *The Application will put forth a Project layout with 124 turbine locations as well as other alternatives, per the requirements under 16 NYCRR 1001.9*

COMMENT: The project mapping indicates that the Proposed Switching Station is located approximately 3,200 feet west of the Point of Interconnection Substation. This is an unusually long interconnection line separating the switching and interconnection stations, as compared to other generating facilities and wind farms in New York State. An explanation of the proposed ownership of the transmission facilities between the Switching Station and the POI Substation should be provided so that the appropriate attention to this proposal can be given

in consideration of the project scope of studies: explain whether these facilities will be owned by CVWP or by the interconnecting utility, Niagara Mohawk Power Corporation (NMPC) d/b/a National Grid.

RESPONSE: *After construction is complete, the connecting transmission operator (NMPC) would be responsible for owning and operating the interconnection switching station as well as that portion of the generator connection line that continues onto the Lyme 115kV tap.*

COMMENT: In response to the requirements of 16 NYCRR 1000.5 (1)(2)(ix) the PSS acknowledges certain components are proposed to be located within the designated Coastal Zone area boundary. Staff recommends that project location mapping in the Application indicate the location of the entire project and all project components in relation to the Coastal Area boundary.

RESPONSE: *The Application will include a map showing the location of all project components in relation to the Coastal Area boundary.*

Section 2.2 Overview & Public Involvement (pp.14-16)

Table 2.2-1 Comments and Responses on Proposed Facility (pp.14-16)

COMMENT: 1. The information in this (and subsequent) tables is not well- organized or easy to understand.

2. The table should clarify how each comment was presented - e.g. via letter, at board meeting, etc.

3. It is unclear whether the response was provided at the time the comment was made or whether the response is being made as part of the PSS.

4. The table should include information on any actions or changes to the project that may have resulted from the comment.

5. The table does not include feedback/comments received from consultation meetings with stakeholders and the Company's response.

RESPONSE: For the Application, CVWF will include feedback tables that are organized in such a way that enables the reader to follow: the date of a comment; how a comment was presented and from whom; a summary of the comment; and the timing and how a response was presented. CVWP will work with DPS Staff to make sure the format is well organized and will allow a reader to understand the information presented.

COMMENT: **Section 2.2.3 Public Involvement (p.16)**

The information in this section should be updated to include a summary of the applicant's public involvement program as outlined in the Public Involvement Plan (PIP). While the intent is not to duplicate the PIP, this section should provide basic information about public involvement program to someone unfamiliar with the PIP. The PIP can be referenced as a source of more specific information however, the PSS should include, at a minimum:

(a) a *brief* description of the program elements detailed in the PIP such as:

(1) identification of stakeholders (including methods to keep the list current);

RESPONSE: The Public Involvement Program plan contains an extensive stakeholder list that is updated as new information becomes available.

The method of outreach for each affected agency or stakeholder includes meetings, phone calls, and/or letters. In addition, outreach involves invitations to Open House Events, community outreach meetings, and Workshops throughout the Article 10 process.

(2) consultation with stakeholders;

RESPONSE: The outreach is conducted by Richard Chandler, BP Wind Energy North America, 700 Louisiana Street, Floor 33, Houston, TX 77002, phone: (713) 354-2100,

info@capevincentwindfarm.com. Cape Vincent Wind Power uses the DPS methodology (included in Attachment 3 to the DPS comments on the initial PIP submission) for tracking successful consultation or outreach, and consultation is deemed successful if information relevant to the affected agency or stakeholder was provided to the affected agency or stakeholder, information was gathered to help advance the PIP process and preparation of the Application, and follow up meetings or consultations are either scheduled or will be scheduled, if deemed necessary.

Tracking of Public Involvement Program:

Cape Vincent Wind Power prepares a monthly spreadsheet-style tracking report identifying PIP activities conducted by CVWP. This report provides summaries of feedback received in such activities and summaries describing any actions taken by CVWP in response to given feedback. Cape Vincent Wind Power designs the report in a manner that makes it easy to track CVWP's progress towards achieving its public involvement goals. The report is posted on CVWP's website; Appendix C provides a copy of the latest monthly tracking report.

(3) outreach materials and activities to be used to engage the public in the process (factsheets, newsletters, workshops, community meetings, project website, development of CVWF office); and,

RESPONSE: Printed materials are used for the various events associated with public consultation and community outreach, and include fact sheets on the following topics:

CVWF Project Overview; Economic Benefits; Article 10; Intervenor Funding; Company information; Project site map; Turbine transportation; Project schedule; Transmission; BP Wind Energy safety message; Sound; How wind turbines work

The CVWP team also uses Newsletters and Advertisements to disseminate information about the Project, the Article 10 process and to encourage participation in the Article 10 process via comments and the use of intervenor funding. Public comment sheets are available at all public events and the CVWP office. Public comments may also be provided through the CVWF website.

CVWF Office 114 S Esseltyne St. Cape Vincent, NY 13618. This local office is open Tuesday, Thursday, and Friday, from 9am-5pm.

Open House Meetings held in Cape Vincent, NY

Public workshop sessions: Article 10, Intervenor Funding, PSS, Application Process, Pre-Construction, Post-Construction

Community outreach meetings held at the local CVWF Office.

(4) how the public can access paper and electronic copies of project documents (i.e. repositories);

RESPONSE: Copies of pertinent Project information, including but not limited to: application materials, studies, reports, meeting presentation materials and media releases is and will be provided on the Project website <http://www.capevincentwindfarm.com>. Repositories have been set up for key documents at the Cape Vincent public library, Lyme public library, Watertown public library, Clayton public library.

(b) a reference to public involvement carried out for the previous projects and prior to submission (i.e. Exhibit C). The report states that Exhibit C includes a summary of changes to the PSS as a result of the public involvement program. However, Staff suggests that the applicant highlight these changes because it is not clear from the table what changes were made and how they impacted the PSS;

RESPONSE: The Application will more fully explain changes made to the wind turbine layout plan for the Cape Vincent Wind Farm due to public and stakeholder engagement and feedback.

(c) a list of stakeholders including those that may have been identified or that the Company has been in contact with since the development of the PIP (e.g. local municipalities like Frontenac Islands, farm bureaus, local emergency personnel, environmental groups, local historic societies, operators or airports/heliports, federal aviation agencies, etc.). This list should be updated to include the Town and Village of Clayton and

the Town of Brownville as they are municipalities located within the project study area;

RESPONSE: A monthly public involvement tracking report detailing public involvement program activity including, but not limited to stakeholder meetings, is available on the Cape Vincent Wind Farm website at: www.capevincentwindfarm.com.

The Town of Clayton was identified as a CVWF stakeholder and included in the PIP stakeholder list exhibit. The Village of Clayton and Town of Brownville have subsequently been added to the list of project stakeholders.

(d) a summary (either a description or chart similar to the one on p. 25 of the PIP) that outlines the outreach activities that will occur for key milestones in the upcoming phases of the project. The on-going monthly tracking report should be referenced here, with an indication of how the applicant will address/incorporate comments received as a result of the involvement activities conducted throughout the course of the project. The tracking report should also include a revised stakeholder list so statements like, "notifications to all stakeholders" can be put into context; and,

RESPONSE: The Cape Vincent Wind Farm monthly public involvement tracking report has been revised to include a 'Future Outreach Activities' section that will list all remaining outreach items as detailed in the PIP. The tracking report includes stakeholders who have been added to the stakeholder list which is currently tracked under the 'Summary of Actions Taken in Response to Feedback' column. If additional stakeholders are identified, for example, the Village of Clayton and Town of Brownville, they will be included in the monthly tracking report, otherwise all stakeholders listed in the PIP remain valid.

(e) information on Intervenor Funding and its relation to the public involvement program.

RESPONSE: As part of BP's on-going commitment to schedule activities designed to educate the public about the Article 10 permitting process, the company hosted an Intervenor Funding workshop on January 23, 2013. Open to the public, the workshop was designed to explain pre-application Intervenor Funding, explain who is eligible, discuss the process and answer questions about the Intervenor Funding process. Hand-out materials were available at the workshop. A copy of the PowerPoint presentation used at the workshop, together with Fact Sheets can be found on the Cape Vincent Wind Farm website at www.capevincentwindfarm.com. A second public workshop on the Preliminary Scoping Statement held locally on April 9th provided additional information regarding the Intervenor Funding process.

COMMENT: Section 2.2.4 Other Material Issues Raised by the Public and Affected Agencies (pp.16-22)

Table 2.2-2 - Comments and Responses on Public Involvement Program: See Staff's comments on Table 2.2-1 regarding the format of the table as they are applicable to this table as well. In addition, Staff found that the applicant's responses provide no new information and failed to adequately address the issue/comment. CVWP stated that it included a summary of changes to the PSS as a result of the public involvement program. Staff suggests that the company highlight these changes because it is not clear what they are from the information provided in the PSS.

RESPONSE: For the Application, CVWF will include feedback tables that are organized in such a way that enables the reader to follow: the date of a comment; how a comment was presented and from whom; a summary of the comment; and the timing and how a response was presented. CVWP will work with DPS Staff to make sure the format is well organized and will allow a reader to understand the information presented.

COMMENT: Section 2.3 Location of Facilities (1001.3 Exhibit 3: Location of Facilities) (pp.22-24)

The mapping required by subpart (a) should generally reflect current conditions. The mapping included in the PSS is

seriously out-of-date United States Geological Survey (USGS) topographic quadrangles published circa 1958. As noted in PIP comments by the Town of Cape Vincent, the preliminary project mapping does not adequately show the relation of the proposed project components to existing developed areas. Staff recommends that the recent-edition, circa 2012, USGS topographic quadrangles based on aerial photography and published at 1:24,000 scale as required by the regulations, should be used as appropriate base mapping for project layout, resource evaluation and for satisfying the mapping requirements in 16 NYCRR Part 1001.3(a) for demonstrating the project location and layout of facilities.

RESPONSE: *The USGS 1:24000 scale topographic maps were used to provide a uniform, general purpose map background for the project introduction. The same standards used to collect data for the 1:240000 USGS topographic maps were not used in creation of the US Topo maps (circa 2012). The data used for the US Topo maps has varying scale. In addition, the US Topo maps, with the aerial photography turned off, do not show any detail except contours. Although the intent is to add to the US Topo maps, certain features are not currently shown. For example, land cover and structures are omitted. For these reasons, the older USGS topographic maps were used in the PSS. As requested, the US Topo map background, with the aerial photography turned on in order to show more detail was used to revise the Location of Facilities Map (see Appendix A) and will be used in the Application, where applicable. Please note that the use of the US Topo map background will increase the file size of the maps significantly, potentially exceeding the thresholds outlined in the Guidelines for Filing Documents with the Secretary.*

COMMENT: The mapping of project location included in the PSS does not distinguish among the several locations indicated as "Facility Areas: batch, laydown, storage, O&M building" on the legend for Exhibit A. An explanation of the proposed facilities to be sited at each of the indicated locations would enable preliminary review and proper focus on the relevant scope of studies that will be appropriate at those individual locations. For instance, a temporary laydown yard will have different effect and analysis requirements than the permanent O&M building

location.

RESPONSE: Attached please find a revised Location of Facilities Map (Appendix A) with individual labels for each of the facility locations.

COMMENT: Project mapping for the application requirements at 16 NYCRR 1001.3(a)(1) should indicate the arrangement of facility components, including individual electrical collection circuits among turbines and the collection substation.

RESPONSE: CVWP will provide Staff with the requested information this month. The Application will include maps showing these facilities.

COMMENT: Any offsite improvements, upgrades or modifications of the existing transmission system which must be made to accommodate the interconnection of the proposed project, such as additional transmission or substation facilities located "downstream" of the NMPC interconnection should be identified as project-related offsite facilities and assessed accordingly. See 16 NYCRR 1001.3(a)(3). Description and location mapping of those improvements should be indicated in Exhibit 3 of the application and detailed in other exhibits as appropriate to address the regulations.

RESPONSE: Any required system upgrade facilities will be described in the interconnection study report(s). Given the potentially sensitive nature of contents within these documents, CVWP will consult with NMPC and NYISO to determine how such information is to be provided to Staff with the Application and the scope of a confidentiality arrangement for this information.

COMMENT: The PSS Study Area indicated in Exhibit B is limited to 5 miles from facility components, with the exception of the area within 5 miles excluded, i.e., those lands and waters within 5 miles but outside of New York State. Staff asserts that there is no rational basis to not include the areas within Ontario, Canada in the Study Area for demonstrating analysis of potential

impacts such as visual impacts (viewshed study), or of consideration of known information including avian impacts due to wind farm operation at Frontenac (Wolfe Island). The five-mile study area cited at 16 NYCRR 1000.2(ar) and 1001.3(a)(5) is a minimum, not maximum limit. Staff asserts that the 5-mile Study Area should be extended as appropriate to address viewshed resources that may be adversely affected by project siting and operation.

RESPONSE: *Data from Wolfe Island and other applicable studies are being reviewed and incorporated, as relevant, into the impacts assessment and cumulative effects assessment in the Article 10 and 11 Applications. CVWP will engage in further consultation with Staff regarding any potentially expanded study area.*

COMMENT: **Section 2.4 Land Use (1001.4 Exhibit 4: Land Use) (pp. 24 - 31)**

1. The PSS scope does not propose a land use classification scheme or methodology for the land use mapping within the study area required by 16 NYCRR 1001.4(a). Staff would like the opportunity to review and comment on the classification methods that are to be proposed by the applicant, as well as the base mapping that will be used, and the data that will be reviewed and provide the basis for the land use classifications. Staff advises that "Land Cover" data, often used as a surrogate for land use classifications, is not necessarily representative of land use. Land use distinctions are important for assessing both direct and indirect impacts on lands occupied by or in proximity to proposed facilities. The PSS uses the term "vacant land" (pg. 31, Section 2.4.3) which is a generalized term typically referring to parcels without developed buildings, but does not indicate any of the uses that such land may currently or potentially support.

RESPONSE: *CVWP agrees with DPS that there may be differences in land cover and land use; and parcels of land having similar land cover may have different land uses. CVWP proposes to use the US Geological Survey, Gap Analysis Program (GAP), August 2011, National Land Cover, Version 2, which provides data on the vegetation and land use patterns of the continental United*

States. CVWP will coordinate with DPS staff on the classification methods proposed, as well as the base mapping that will be used as the basis for the land use classifications.

COMMENT: The regulations require land use mapping for the (5-mile radius) study area: see 16 NYCRR 1001.4(a), (b), (d), (f), (g), (h), (m) and (n). The description of studies in Section 2.4 does not distinguish the general land use mapping requirements for those sub-parts from the detailed mapping and assessment requirements at 1001.4 (c), (i), (j), (k). This distinction is important in finalizing the scope of studies and the application.

RESPONSE: *General land use mapping for the (5-mile radius) study area compliant with requirements in 16 NYCRR 1001.4(a), (b), (d), (f), (g), (h), (m) and (n) will be provided in the Application. In addition, a map of all properties within 2,000 feet of the Project showing current land use, tax parcel number, owner of record of each property, and any publically known proposed land use plans for these properties will be prepared and provided in the Application. A qualitative assessment of compatibility of the Project with existing, proposed and allowed land uses, and local and regional land use plans, within a 1-mile radius of the Project will also be provided as part of the Application, as will qualitative assessments of compatibility of above-ground and under-ground interconnection facilities with land use within a 5-mile radius, and 300 feet, respectively.*

COMMENT: The conclusory statement at Section 2.4.4, pg. 31, "(u)navoidable indirect impacts to properties adjacent to Project facilities will be visual," does not provide the proper context for consideration of potential land use impacts or mitigation measures that may be appropriate. Staff would like to discuss this and other related land use analysis and impact mitigation considerations with the applicant and interested parties in refining the proposed land use scope of studies. Noise and infrasound, shadow flicker, shadows, land value impacts should be considered as potentially having impacts on existing or potential future land uses.

RESPONSE: *CVWP will work with DPS to address this comment.*

COMMENT: Staff would like to review and discuss with the applicant and interested parties the applicant's draft listing of recreational resources and land uses that will be analyzed in the land use exhibit. The conclusory statements at PSS pp. 26-27, section 2.4.1, "(d)irect impacts to recreational resources are expected to be limited because Project facilities are not currently proposed to be located within the boundaries of any recreational resources, other than potentially being located close to some snowmobile trails," indicates that the applicant is likely not aware of other recreational uses in the project area, including for example, designated bicycle touring routes or proposed recreational trails.

RESPONSE: CVWP will work with DPS to address this comment.

COMMENT: The land use and Coastal Zone Policy Consistency evaluations should address the potential mitigation effects of underground placement of all or portions of the proposed 115 kV electric transmission line and switchyard-to-substation Interconnection line. (See also: Alternatives, Exhibit 9).

RESPONSE: CVWP will provide an evaluation of underground placement of all or portions of the proposed 115 kV electric generation interconnection line in the Application.

COMMENT: Despite the statement in Table 2.4.1 in the PSS, Staff recommends that the Coastal Zone Consistency evaluation should address in detail the transmission interconnection crossing location(s) at the Chaumont River, in terms of land use, visibility, noise (corona potential), in assessing impacts on recreational use of the river and adjoining uplands, and assess the location's potential for providing recreational access to the riverfront.

RESPONSE: CVWP will provide an evaluation of the Chaumont River crossing in the Coastal Zone Consistency analysis contained within the Application submittal.

COMMENT: The applicant should propose a study methodology to address the stated conclusion regarding future residential

development at p. 27, "if future land use in the Project area consists of additional residential development, it is anticipated that the wind farm would not significantly impact future plans to develop the land."

RESPONSE: *The acreage needed for wind farm facilities typically comprises a small percentage of the total acreage leased for a project, making it highly compatible with other land uses, such as residential and agriculture. CVWP will provide such calculation in the Application.*

COMMENT: For the consideration of project component locations in relation to parcels enrolled in the Agricultural District program, Staff recommends that the applicant consult with appropriate agencies and records to document the latest available information. Staff notes that mapping published by Jefferson County Department of Planning that "includes 2012 Individual Inclusions" indicates several changes from the mapping of enrolled parcels as mapped and published by the NYS Department of Agriculture and Markets on the "Agricultural Districts 2012" mapping based on 2008 certifications.

RESPONSE: *CVWP will consult with the appropriate agencies and records to document the latest available information regarding the Agricultural District program.*

COMMENT: The PSS does not acknowledge the location of the Breezy Meadows heliport facility (29 NY) located near Route 12E in an area near several proposed turbine locations. The Land Use analysis should provide a report that addresses potential impacts to the continued use of this facility.

RESPONSE: *CVWP has notified the FAA regarding the Project and the Application (Exhibit 25(e)) will provide an analysis of the clearances of the Project facility components from the heliport, an analysis of flight zones, and the results of consultation with the owner/operator of the heliport.*

COMMENT: At section 2.4.2, the PSS mentions "community character" but does not specifically identify a proposed

methodology for identifying the specific studies that will be performed or methodology that will be used to assess this requirement of the Land Use exhibit regulations at 16 NYCRR 1001.4(p). Staff notes that the PSS mentions "community character" in response to comments in Table 2.20-5, referencing visual impact assessment, but does not specify the proposed method that CVWP will use to perform this assessment. Staff advises that additional consultation and discussion of this matter among CVWP, Staff and interested parties is appropriate.

RESPONSE: *Descriptions of community character are based on field review and aerial photo interpretation. CVWP will engage in further consultation with Staff regarding the involvement of interested parties.*

COMMENT: The PSS does not acknowledge the location of a private airfield in the project study area listed with the Federal Aviation Administration as John Gonzales Field Airport (NY69) located at Favrett Road in a location near several proposed turbine sites. Staff advises that the Application should provide a report that addresses potential impacts to the continued use of this airfield that at a minimum includes:

- (a) analysis of clearances of proposed facility components from the Gonzales airstrip;
- (b) analysis of flight direction and approach/takeoff zones sufficient to demonstrate that there will be no impact on the safe and efficient use of the airstrip (recommend demonstration as per analysis pursuant to New York State Law on Approval of Privately-Owned Airports - Title 17, Chapter III, part 75); and,
- (c) results of consultation with airport owners/operators regarding the results of the analysis listed in a. and b. above.

RESPONSE: *CVWP has notified the FAA regarding the Project and the Application (Exhibit 25(e)) will provide an analysis of the clearances of the Project facility components from the airport, an analysis of flight zones, and the results of consultation with the owner/operator of the airport.*

COMMENT: Recreation resources to be considered pursuant to 16

NYCRR

1001.4(i) should specifically include analysis of the following recreational resources, as well as any other such recreational uses known to the applicant, or identified through outreach or by the comments of other parties or interested groups or individuals.

RESPONSE: CVWP will undertake an evaluation of the recreational resources identified in (a) through (e) above in the Application.

COMMENT: (a) The New York State Statewide Trails Plan dated 2010 has identified that the abandoned railroad grade from the vicinity of Watertown to the Village of Cape Vincent is a "Proposed Greenway Trail" at Map #3 (see attachment, below).

The 2009-2013 New York Statewide Comprehensive Outdoor Recreation Plan¹ (SCORP) includes as a program policy objective under the heading "Creating Connections beyond the Parks" the statement, "develop comprehensive, interconnected recreationway, greenway, blueway and heritage trail systems;" and identifies as an "Action Strategy" the statement, "Encourage trail uses of highway, abandoned rail, and utility corridors" (SCORP, 2009, Chapter 2 - Visions and Policies, p. 17). Staff notes that part of this corridor has been developed into the "DANC Hiking" trail as mapped by New York State Department of Environmental Conservation (NYS DEC).

Staff advises that the analysis of impacts to address the regulations at 16 NYCRR 1001.4(f) should address this existing and proposed recreational land use. The analysis should address:

- (1) turbines located near the old rail grade in the Town of Cape Vincent; and,
- (2) the proposed overhead electric transmission line proposed to be located for approximately 10,000 feet along the old rail grade in the Town of Lyme. Analysis of transmission line impact should provide:
 - (i) an evaluation of impacts and compatibility

of the proposed overhead facility design on the planned development of a greenway trail along the old railroad grade; and,

(ii) an evaluation of impacts of an alternative underground transmission facility location on the planned development of a greenway trail along the old railroad grade.

¹ Statewide Comprehensive Outdoor Recreation Plan - 2009-2013, New York State Office of Parks, Recreation and Historic Preservation (OPRHP) and New York State Department of Environmental Conservation.

(b) The analysis of recreational land uses should address potential impacts on Snowmobile Trails as identified by the NYS OPRHP in the 2012 NYS Snowmobile Trail System Map (See map segment in Map #4, below).

(1) Trails through the project land use study area should be mapped and representative setbacks from turbine sites and other project facilities indicated. Participating property parcels should be indicated on these maps.

(2) Any potential impacts related to turbine locations and safety requirements or recommendations of turbine manufacturers, applicable codes or standards in regard to recreational uses near large wind turbine facilities should be reported.

(3) Any potential restrictions on recreational access to lands that would result from implementation of easements or land use agreements between landowners and CVWP or subsequent owners of the CVWF should be reported and analyzed to reflect the terms of these land use agreements.

(c) The analysis of recreational land uses should address potential project construction and operation on recreational bicycle use and quality of recreational experience for the following resources:

(1) the designated shared use roadway Bicycle Route on NYS Route 12E - Great Lakes Seaway Trail as indicated in attached Map #5;

(2) the Seaway Trail-Cape Vincent Bicycle Loop as indicated in the attached map figure #1.

(d) The analysis of recreational land uses should address potential project construction and operation on recreational uses of the French Creek and Ashland Wildlife Management Areas, as these resources are identified as recreation resources by NYS DEC. The Ashland Trail cross-country ski trail traversing easterly from Burnt Rock Road, and DANC Hiking Trail should also be specifically identified and addressed in this analysis. (See map of trail locations in attached Map #6.)

(e) The analysis of recreational land uses should include analysis of project construction and operation on recreational use of the Chaumont River, listed by NYS DEC as a "Recommended River for Fishing."

RESPONSE: CVWP will undertake an evaluation of the recreational resources identified in (a) through (e) above in the Application.

Section 2.4.2 Extent and Quality of Information Required (p. 30)

COMMENT: The statement as to consistency with municipal plans required by 16 NYCRR 1001.4(e) should provide a detailed and assessment of specific plan components and recommendations. This analysis should identify whether any of the municipal Comprehensive Plans are specifically referenced and incorporated into municipal laws or land use regulations.

RESPONSE: The Application will include a statement that the Town of Cape Vincent has an adopted Comprehensive Plan that is the basis for the Town of Cape Vincent Zoning Law and that the proposed land use is not consistent with the Comprehensive Plan to the extent that the Project conflicts with the zoning law. The Application will include an assessment of specific plan components and recommendations. The Application will include a reference to the website where the Town of Cape Vincent Comprehensive Plan is located (http://townofcapevincent.org/docs/cat_view/14-miscellaneous.html).

The Application will include a statement that the Town of Lyme

has an adopted Comprehensive Plan. The Town of Lyme Comprehensive plan is not specifically referenced or incorporated into the local wind law. The Application will include an assessment of specific plan components and recommendations. The Application will include a reference to the website where the Town of Lyme Comprehensive Plan is located (<http://www.townoflyme.com/comprehensiveplan2012.html>).

CVWP has not identified a comprehensive plan for the Village of Chaumont.

Section 2.5 Electric System Effects (1001.5 Exhibit 5: Electric System Effects) (pp. 31- 37)

COMMENT: 1. The Application should reference the NYISO website instead of the FERC website as it may be easier for interested parties to negotiate.

RESPONSE: The Application will reference the NYISO website.

COMMENT: 2. The Application should include a complete copy of the SRIS study for the two originally-proposed projects and the currently proposed, combined project. Explain any differences between the projects and studies conducted.

RESPONSE: The St. Lawrence Wind Farm (Queue #166) was originally proposed and studied as a 130 MW wind project. The scope of the SRIS included steady state analysis, stability analysis and short-circuit analysis. The size of the St. Lawrence Wind farm was subsequently reduced from 130 MW to 79.5 MW. NYISO approved the reduction as not having any material impact.

The Cape Vincent Wind Energy Project (Queue #207) was originally proposed and studied as 210 MW wind project. The scope of the SRIS included power flow, power factor, stability and short-circuit analyses. The SRIS performed for the Cape Vincent Wind Energy Project included St. Lawrence Wind Farm modeled as 130 MW in size.

The currently proposed Cape Vincent Wind Farm has a maximum

capacity of 285.2 MW. Since the Cape Vincent Wind Energy Project SRIS included the St. Lawrence Wind Farm, the scope of the SRIS included power factor, stability and short-circuit analyses. No steady state analysis was performed since the size of the combined project is less than the size of the two individual projects which were studied under the Cape Vincent Wind Energy Project SRIS.

COMMENT: 3. Provide the NMPC facility studies and system upgrade facilities to interconnect the project. Explain why the upgrades are needed.

RESPONSE: Any required system upgrade facilities will be described in the interconnection study report(s). Such analysis will describe the need for upgrades. Given the potentially sensitive nature of contents within these documents, CVWP will consult with NMPC and NYISO to determine how such information is to be provided to Staff with the Application and the scope of a confidentiality arrangement for this information.

COMMENT: 4. Provide a copy of the short circuit study and all supporting documentation.

5. Provide the power factor study conducted and all supporting documentation.

6. Provide the Low Voltage Ride Through (LVRT) study and all supporting documentation.

7. The applicant states that the interconnection switching station Rockledge will strengthen the transmission system in the vicinity of the project and enable National Grid to expand its transmission system. Provide the studies and analysis that support this statement.

RESPONSE: This statement is made based on the design of the switching station and the integration of the proposed project, rather than a study.

COMMENT: 8. The applicant should provide a transmission interface study showing the impacts to the system.

RESPONSE: The proposed project is an Energy Only resource and has not requested to be studied as a Network Resource. The Project will only deliver when there is capacity available on the system interfaces. Consequently, CVWP does not intend to conduct an interface transmission study."

RESPONSE APPLICABLE TO ITEM 2-8 ABOVE: Given the potentially sensitive nature of contents within these documents, CVWP will consult with NMPC and NYISO to determine whether such information is to be provided to Staff with the Application and whether such information is to be provided under a confidentiality arrangement.

COMMENT: The applicant must provide type certification of the wind turbine to be installed by the certifying organization and all supporting documents by the certifier. If several models are being considered, the type certification and supporting information should be provided for each model under consideration.

RESPONSE: Certification documents of the wind turbines under consideration and all supporting documents by the certifier will be provided when available.

COMMENT: The applicant must prove the function test program for the wind turbines chosen and how it will assure that the entire wind turbine has been thoroughly tested and all safety system work. If several models are being considered, the applicant should provide this information for each model under consideration.

Response: A typical commissioning test program can be submitted including typical test certificates, if available. Turbine specific commissioning test programs are deemed proprietary by most wind turbine manufacturers. Given the potentially sensitive nature of contents within these documents, CVWF will consult with final turbine supplier to determine whether such information is to be provided to Staff with the Application and

whether such information is to be provided under a confidentiality arrangement.

COMMENT: The applicant should review the order of energization of the project listed.

RESPONSE: *Comment noted and will be updated in the Application.*

COMMENT: The applicant should include a copy of its maintenance plan.

RESPONSE: *A maintenance plan will be developed and shared with Staff.*

COMMENT: The applicant should provide the expected time table when the substation will transfer to NMPC.

RESPONSE: *CVWP will work with NMPC to develop a schedule for transferring ownership of the interconnection switching station to NMPC. It is anticipated that such transfer will occur prior to energization of this facility.*

COMMENT: The applicant must meet all of NMPC's design standards for the substation to be turned over to NMPC.

RESPONSE: *CVWP will ensure that the design of the interconnection switching station comports with NMPC's design standards for such facility.*

COMMENT: The applicant should provide the operational and maintenance responsibilities for the substation and how they will be met.

RESPONSE: *The operation and maintenance responsibilities will reside with NMPC for the interconnection switching station. If such plan is shared with CVWP, a copy will be shared with Staff.*

COMMENT: Provide the layout, vertical configuration and design of the collector substation including the fence design and the height.

RESPONSE: *The layout for the project substation will be provided as part of the drawing package submitted with the Preliminary Design Drawings required under 16 NYCRR 1001.11.*

COMMENT: The applicant should submit a bar chart of major construction activities and deliveries of components for the facility.

RESPONSE: *CVWP will include a bar chart of major construction activities and deliveries of components for the facility in the Application.*

COMMENT: Explain why the applicant believes provision regarding blackstart capabilities is not applicable to this facility.

RESPONSE: *The wind turbine generators require auxiliary power to start and this power is to be backfed from the interconnecting utility until enough power is generated by the Wind Farm to power the other turbines. Blackstart would require a startup generator to power the wind turbine auxiliaries to start and the ability to "power island" the facility if a loss of power from the grid occurs.*

COMMENT: Describe all of the NERC, NPCC, NYSRC and NMPC standards the facility must be in compliance with and the applicant's plan to meet those standards.

RESPONSE: *CVWP will include a plan to meet applicable reliability standards at the time of Application.*

Section 2.6 Wind Power Facilities (1001.6 Exhibit 6: Wind Power Facilities) (pp. 37-41)

COMMENT: 1. The PSS at Section 2.6.1 (a) does not address New York State Public Service Commission (NYS PSC) requirements for wind turbine setback from electric transmission facilities. The

project layout as depicted in PSS at Exhibit A indicates turbine facilities are proposed for sites relatively close to the proposed 115 kV electric transmission line and the associated collection substation. Staff advises that the NYS PSC policy for wind turbine facilities in proximity to electric transmission facilities should be addressed in developing facility layout and identifying relevant setback criteria. The PSC has established a setback baseline of 1.5 times maximum turbine blade tip height from the edge of the right of way of any electric transmission (or substation facility) designed to operate at 115 kV or more.² Staff advises that the project layout in the application should reflect this siting setback limitation, and that the application state the design setback distance proposed for turbine(s) near the proposed substation or transmission facility.

RESPONSE: CVWP will account for this siting setback limitation in the layout proposed in the Application.

² Case 07-E-0213 - Petition of Sheldon Energy LLC for an Original Certificate of Public Convenience and Necessity on Regulatory Regime Pursuant to Public Service Law Section 68; Order Granting Certificate Of Public Convenience And Necessity, And Providing For Lightened Regulation, (Issued and Effective January 17, 2008); footnote page 12.

Sec. 2.6.1 Setback Requirements and/or Recommendations- Applicant Specifications

COMMENT: Noise studies should be conducted pursuant to Town of Cape Vincent Zoning Law Section 6.7 and any noise mitigation plans must be submitted along with the application.

RESPONSE: *Compliance with the 35 dBA nighttime noise limit contained in the 2012 Town of Cape Vincent Zoning Law Section 6.7 will be evaluated in the modeling studies. Noise mitigation plans will be submitted along with the Application.*

COMMENT: The PSS states that the "setbacks for the combined project meet or exceed the setbacks held by the previously proposed SLWF and CVWEP." The application should include a table of the setbacks (include an explanation of the rationale

for the setback distances) for all turbines from roads, public places, occupied and non occupied structures, electric and gas transmission lines for the previously proposed and the newly proposed wind project, as required or recommended by the manufacturer's specifications, the applicant, and any local ordinance or law. If any manufacturer's recommended setbacks cannot be achieved, the reasons should be stated in the application.

RESPONSE: CVWP will include a table of setbacks in the Application.

COMMENT: Provide any reports and studies regarding noise level, infrasound, and shadow flicker to nearby dwellings.

RESPONSE: CVWP will include studies on noise and visual, consistent with the Article 10 regulations, in the Application.

COMMENT: For any turbine model being considered by the applicant, provide a copy of the manufacturer's standards document that provides recommended setback distances.

RESPONSE: A copy of manufacturer's standard document that provides setback recommendations for wind turbine siting will be submitted along with the Application, if available and applicable.

Section 2.6.2 Accommodation Setbacks Requirements and/or Recommendations

COMMENT: Applicant should report results of consultation with turbine manufacturer(s), indicating manufacturer recommendations for turbine setbacks from roads, residences, structures, places of public assembly, and other criteria locations. Written confirmation of manufacturer recommendations should be submitted along with the application.

RESPONSE: Results of consultation with turbine manufacturer and written confirmation of manufacturer's recommendations or lack of recommendations will be provided to Staff once available.

COMMENT: Five full size maps showing the location of the wind turbines with respect to Town of Cape Vincent zoning Law Sec. 10 (from property lines, dwelling places, structures, transmission lines, gas lines, roads, etc.) must be submitted with the application.

RESPONSE: *Five full size maps showing the location of the wind turbines with respect to the setbacks identified in the Town of Cape Vincent Zoning Law, Section 10, will be created and included in the application.*

Section 2.6.3 Status and Results of Third-party Review and Certification

COMMENT: The applicant should provide the turbine make and model at the time of the application. If more than one model is under consideration, the applicant should provide the make and model of each under consideration.

RESPONSE: *CVWP will provide turbine make and model at the time of Application, if available, or otherwise a set of characteristics that will be used to evaluate the Application.*

COMMENT: A list of sites where similar turbines are used should be furnished along with the application, including their performance.

RESPONSE: *Further consultation with Staff is needed to define "similar" and "performance".*

COMMENT: For the turbine make and model chosen or each under consideration, provide all the testing and supporting documents that the third party has reviewed the wind turbine design, material used, control system and that they are in conformance with all applicable American National Standards. Provide the credentials of the third party and how they qualify along with all supporting documentation.

RESPONSE: *Further consultation with Staff is needed to understand this comment.*

COMMENT: The applicant should provide a complete copy of the turbine manufacturer's manuals for construction, maintenance, and operation of the wind turbine.

RESPONSE: CVWP will consult with Staff on the parameters for the level of detail required by 16 NYCRR 10001.6.

Section 2.6.4 Wind Metrological Analyses

COMMENT: Existing meteorological towers are described, throughout the PSS, however, it is not clear if all notes are in reference to the existing towers or to proposed towers. . If new meteorological towers are planned, provide the details (height, location, etc.) of these installations.

RESPONSE: Wind meteorological analysis uses on-site meteorological data collected from seven existing meteorological (met) towers. Met tower configuration sheets for the seven existing met towers showing tower coordinates, tower height, sensor height and boom orientation will be provided along with the Application. All seven existing met towers will be decommissioned prior to or during construction. New met towers used to monitor wind farm performance once the wind farm is in operation are planned for installation. Height and proposed location of new met towers will be provided when available.

COMMENT: Provide a copy of the wind meteorological analysis with the application

RESPONSE: A copy of the wind meteorological analysis will be provided along with the Application.

Section 2.8 Electric System Production Modeling (1001.8 Exhibit8: Electric System Production Modeling) (pp. 41-42)

COMMENT: The production modeling analysis identified in 16 NYCRR 1001.8(a) must be completed prior to the submission of the application.

RESPONSE: The production modeling analysis identified in 16 NYCRR 1001.8(a) will be provided with the Application.

COMMENT: The applicant should plan to conduct a production modeling analysis for an out-year scenario, five years beyond the in-service date of the facility.

RESPONSE: The production modeling analysis identified in 16 NYCRR 1001.8(a) will be included with the Application and will include an out-year scenario, five years beyond the in-service date of the facility.

COMMENT:

Section 2.9 Alternatives (1001.9 Exhibit 9: Alternatives) (pp. 42-51)

One aspect of "alternative location" (16 NYCRR Part 1001.9) that should be evaluated is one or more alternative layouts with a reduced project footprint within the project area.

RESPONSE: CVWP will take this comment under advisement in developing Exhibit 9 for the Application.

COMMENT: Staff recommends that the application address alternative facility arrangements, including:

(a) Alternative arrangements for the various project sizes that may result from use of different size turbines, (e.g., indicating which of the 124 turbine locations would be used for the 285 MW project using 95 turbines rated at 3.0 MW);

(b) An alternative arrangement that avoids locating wind turbines in exclusion zones specifically identified in the Cape Vincent Zoning Regulations;

(c) An alternative arrangement that would not require Siting Board approval (e.g., a 24.9MW project to be reviewed by the Town of Cape Vincent per applicable regulations);

(d) Alternative location for the Operations and Maintenance building, that would locate that facility near the collection substation;

(e) An alternative underground arrangement for the proposed 115 kV transmission and switchyard-to-substation interconnection line, including associated cost information; and,

(f) An alternative underground arrangement for the proposed 115 kV transmission interconnection line at the crossing of the Chaumont River corridor.

RESPONSE: CVWP will take comments (a) through (f) under advisement in developing Exhibit 9 for the Application.

COMMENT:

2.9.6 Other Material Issues Raised by the Public and Affected Agencies (pp. 47-51)

Table 2.9-1 - Comments and Responses on Potential Alternative Locations: Project stakeholders have asked for copies of large-scale maps. . The Company offers that maps are available at the local CVWF office and project website. They should be included with document repositories developed under the PIP, including, but not limited to, the repository placed in the environmental justice area.

RESPONSE: The Town of Cape Vincent was provided a large scale map on March 7, 2013. Additionally, large scale maps were included in the PSS that was submitted in March 2013 to each of the four libraries in the project area. For clarification purposes, please note that there is no environmental justice area.

COMMENT:

Section 2.10 - Consistency with Energy Plan Objectives (1001.10 Exhibit 10: Consistency with Energy Planning Objectives) (pp. 51-53)

The applicant must describe how the wind project will impact the reliability of the state and direct the reader to where the applicant has documented those impacts and explained them.

RESPONSE: CVWP will provide this description in the Application.

COMMENT: The applicant should provide documentation and explain how it will be in compliance with NERC, NPCC, NYSRC and NMPC Reliability criteria.

RESPONSE: CVWP will include a list of the applicable reliability standards to the Project and demonstrate the degree to which we intend to comply with those standards."

COMMENT: The applicant should describe and provide an analysis of the impact of the project on regional requirements for capacity and direct the reader to where the applicant has documented that analysis.

RESPONSE: CVWP will provide this description and analysis in the Application.

COMMENT: The applicant must describe and provide analysis of the impact of the facility on electric transmission constraints and direct the reader to where the applicant has documented that analysis.

RESPONSE: CVWP will provide this description and analysis in the Application.

COMMENT: The applicant must provide a description and analysis of the project on potential impacts during normal operating conditions and outages with supporting documentation and analysis.

RESPONSE: CVWP will provide this description and analysis in the Application.

COMMENT:

Section 2.11 - Preliminary Design Drawings (1001.11 Exhibit 11: Preliminary Design Drawings) (pp. 53-54)

The application should include both hard copies and AutoCAD files of the preliminary design drawings.

RESPONSE: Hard copies and .pdf drawings will be provided. The drawings will be made using computer aided design software as provided in 16 NYCRR 1001.11, which will be contained in Exhibit 11.

COMMENT: If temporary easements, etc. are to be obtained for extra work space during construction, show these work space locations on the preliminary drawings.

RESPONSE: Drawings will show construction work space.

COMMENT: Include any preliminary engineering assessments for determining the types of foundations to be installed for the wind turbines. Provide a typical wind turbine detail and a typical wind turbine foundation detail. If a turbine model has not been selected, provide the typical details for the turbines and foundations of each model under consideration.

RESPONSE: *A preliminary foundation for the largest turbine will be included with the design package, alternative models will only differ in the details, of reduced depth, reduced width, and result in lower quantities of concrete and rebar.*

COMMENT: Include the following on the "Grading and Erosion Control" plans: surrounding soil types, depth to bedrock, general areas of cut and fill, retaining walls, contours (existing and proposed), and permanent storm water retention areas (see 16 NYCRR 1001.11(c)).

RESPONSE: *A Preliminary Grading and Erosion and Control Plan will be included with the Application.*

COMMENT: Provide "Lighting Plans" (including any FAA required lighting) for the O&M building, wind farm facility, substation, lay down areas, and all other facilities requiring lighting (see 16 NYCRR 1001.11(e)).

RESPONSE: *The final FAA lighting plan for wind turbines and met towers will be determined by the FAA and will not be available for the Application, but will be applied for and approved by FAA prior to wind turbine erection. The lighting plan for the substation, O&M building, and other facilities will be submitted with the Application.*

COMMENT: Provide a typical layout showing all components to be utilized on the proposed batch plants.

RESPONSE: *A typical layout for a batch plant will be submitted with the Application.*

COMMENT: Show construction entrance ways on the laydown yard location plans.

RESPONSE: *The drawings will show construction entrance ways on the laydown yard location plans.*

COMMENT: Regarding the architectural drawings of building and structure arrangements, include exterior elevations, and indicate the length, height, material to be used for construction, color, and finish of all structures, and foundation drawings (see 16 NYCRR 1001.11(f)).

RESPONSE: *The information submitted in the Application will comply with the requirements of 16 NYCRR 1001.11(f). Foundation drawings for the O&M building are not required under the regulations and will not be provided with the application.*

COMMENT: The applicant should provide a full set of to scale drawing of all the items referenced on pages 53 and 54 of the PSS.

RESPONSE: *The drawings requested in referenced on pages 53 and 54 of the PSS will be provided with the Application.*

**Section 2.12 Construction (1001.12 Exhibit 12: Construction)
(pp.54-55)**

COMMENT: Early consultation with utility owners is encouraged. Provide updates of any correspondence with existing utility owners regarding protection, separation, or relocations.

RESPONSE: *CVWP will consult with utility owners and address protection, separation and relocations for each of the different types of utilities.*

COMMENT: Provide a plan exhibiting existing utilities, as marked out by a utility locating service.

RESPONSE: *This information will be informed by "One call" methods and will be included in an ALTA Survey.*

COMMENT: The applicant should provide the additional detail to the outline provided in the PSS at p.54.

RESPONSE: CVWP will consult with Staff to better understand what additional detail is sought.

Section 2.13 Real Property (1001.13 Exhibit 13: Real Property) (p. 55)

COMMENT: For all parcels on which project facilities are proposed to be located, indicate:

(a) Tax Parcel ID;

(b) Method of proposed occupancy (i.e. easement, fee-ownership, other); and,

(c) Current land use and zoning and any land use restrictions that apply to all or any portion of the parcel.

RESPONSE: CVWP will include a map in the Application that complies with the requirements of 16 NYCRR 1001.13, including tax parcel ID, method of proposed occupancy, and current land use and zoning.

COMMENT: Staff would like to discuss with the applicant for consideration in advancing the project scope and application the following:

(a) The matter of property for the switchyard and ROW for the interconnection line, and whether proposed occupancy will be by easement, fee-ownership, or other terms; and,

(b) Criteria for transmission line and interconnection line property and ROW configuration, facility design, property and legal terms that transmission owner (NMPC) requires for assuming ownership in the future.

RESPONSE: CVWP will discuss with Staff the topics listed in (a) and (b).

Section 2.14 Cost of Facilities (1001.14 Exhibit 14: Cost of Facilities) (p.56)

COMMENT:

1. Cost estimates should be supplied for each of the alternative wind turbine sizes being considered for the project.
2. A detailed cost estimated of the project and all elements shall be provided with the application including all supporting documents and workpapers relied upon for determining the estimate and describing how the costs were developed. An order of magnitude cost estimate will not be adequate.

RESPONSE: CVWP will provide a cost estimate in the Application that complies with the requirements of 16 NYCRR 1001.14.

Section 2.15 Health and Public Safety (1001.15 Exhibit 15: Public Health and Safety) (pp.57-63)

COMMENT: 1. Applicant must include maps showing the relation of the facility and interconnection to: flood hazard zones, areas of geologic, geomorphic, or hydrologic hazards, etc. as identified in 16 NYCRR 1001.15(f).

RESPONSE: CVWP will provide a map in the Application that complies with the requirements of 16 NYCRR 1001.15 (f).

2. Applicant should conduct an evaluation of the health and safety impacts regarding a tower collapse beyond a manufacturer's evaluation of turbine collapse based on site specific loads.

RESPONSE: CVWP will conduct a tower collapse analysis to be included in the Application.

3. For the wind turbine(s) proposed for installation, provide information regarding turbine blades associated with the turbines selected, including:

(a) an analysis of blade throw potential and appropriate setback distances, based on design characteristics and performance history. Include all work papers supporting the calculations; and,

(b) manufacturer or other reports regarding any

investigations into blade failures, citing causes of failures and remedial measures undertaken.

4. Provide an analysis of icing and accumulation of ice on the wind turbine. Include a calculation and all supporting documentation of ice throw by the blades.

5. Provide an analysis of the effect the grounding grid will have on other underground facilities when a turbine receives a direct lightning strike hit. Provide copies of all supporting documentations.

6. Provide an analysis of how a direct strike to the blades is dissipated and what the impact is to the blade. Provide copies of all supporting documentation.

7. The PSS states that a model will be developed pertaining to ice shedding/throwing based on literature from operating North American wind farms. Focus should be placed on similarly situation wind farms.

8. Hourly time data from meteorological databases should be prepared. The location of available data should be specified.

9. The blade throw analysis the applicant proposes to use will use calculations from the California Energy Commission's Permitting Setback Requirements for Wind Turbines in California. This report was produced using only California counties with operating wind farms. The applicant should consult with Staff and other interested parties to discuss whether other reports should be considered.

10. The PSS states that throw distances of fractional breakages of 20% - 80% as well as entire blade will be calculated. The applicant should describe how these percentages were determined and why they may be appropriate.

11. According to the California report rotor fragmentation occurs at a rate of 1% per year, the applicant should consult with Staff and other interested parties to determine whether rotor fragmentation should be addressed.

12. Provide all documentation relied upon for the ice and blade throw presentation in the application, and back up work papers

for the calculations that support the presentation.

13. Provide an analysis for the wind turbine tower collapse due to wind and for the loss of part of a blade and a full blade.

RESPONSE: *For items 3-13 above CVWP will work with DPS Staff and other interested parties to develop an analysis that addresses the requirements of Exhibit 15.*

COMMENT: The PSS states that the Spill Prevention Control and Containment plan (SPCC) will endeavor to provide specifications as to when secondary containment will be necessary. The SPCC provided with the application should provide the specifications.

RESPONSE: *A preliminary SPCC plan will be submitted with the Application.*

COMMENT: The PSS states that the results of ice and blade throw analysis will be used to inform the wind turbine layout however no specifics are included regarding how this information will be used. This description should be provided.

RESPONSE: *CVWP will provide an explanation in the Application of how results from these studies are used to inform the wind turbine layout.*

COMMENT: The PSS does not address specific components of the regulations at 16 NYCRR 1001.15 (a), (b), and (d) for solid wastes such as forest clearing debris (stumps, etc.), stone and fractured bedrock wastes. While these are not expected to pose issues in terms of public health and safety (1001.5(g)), the basic estimates of volumes should be reported to comply with the application requirements.

RESPONSE: *An estimate will be provided with the Application.*

COMMENT: The PSS does not address specific components of the regulations at 16 NYCRR 1001.15(f) for various resources, facilities and risk factors that may influence facility siting,

design, construction or appropriate mitigation.

RESPONSE: CVWP will address in the Application all of the components within the requirements of 16 NYCRR 1001.15 (f).

COMMENT: For the mapping and analysis of public water supply resources (16 NYCRR 1001.15(f)), Staff advises that project mapping should indicate the locations of municipal water supply mains along the abandoned railroad grade and along public roads to be used to access project sites during construction, and those mains in the vicinity of all electrical collection and transmission lines, turbine access roads, laydown and storage areas, transmission interconnection facilities, and other proposed facility components. Analysis should address public health issues potentially due to construction phase damage to water supply infrastructure.

RESPONSE: Improvements within a leased boundary that can be located via public records, the utility and/or OneCall, will be shown on the ATLA survey drawings.

COMMENT: The PSS in section 2.15 does not specifically address any intent to study or otherwise address several items listed in the regulations at 16 NYCRR 1001.15(e) including audible frequency noise, low-frequency noise, and shadow flicker. Staff advises that the applicant should propose a scope of studies to demonstrate a responsible approach to analyzing potential health impacts of low-frequency sound and vibration, including a thorough literature review, analysis of background conditions, report on the current known state of scientific analysis ongoing at the time of application, and provide an analysis of potential project effects in the project study area. Original study analyzing reported problems of low-frequency or infrasound and relation of problem locations to operating wind energy projects is recommended, including reporting on potential health effects.

RESPONSE: Section 2.19.3 of the PSS states that an evaluation of low frequency and infrasonic sound from the project will be carried out in the assessment. It has always been the Applicant's intention to address this issue. No credible

*scientific study to date, including those considered in comprehensive reviews by Massachusetts, Ontario, Canada, and Australia, has found any association between infrasound from wind turbines and any health effects. **Section 2.16 Pollution Control Facilities (1001.16 Exhibit 16: Pollution Control Facilities) (p. 63)***

COMMENT: Staff advises that the NYS DEC is not the federally delegated authority for issuance of 401 Water Quality Certifications (WQC) for projects certified under Article 10 of the New York State Public Service Law. Such delegation is assigned to The New York State Board on Electric Generation Siting and the Environment (Siting Board). Staff anticipates that the Siting Board will delegate authority for issuance of the 401 WQC to the Director of the New York State Department of Public Service Office of Energy Efficiency and the Environment.

RESPONSE: CVWP will work with the appropriate party for issuance of the 401 Water Quality Certification.

Section 2.18 Safety and Security (1001.18 Exhibit 18: Safety and Security) (p. 64)

COMMENT: The applicant must identify any Department of Commerce, NIST, NERC, and International Organization for Standardization compliance standards the project must comply with regarding cyber security, as well as how the applicant plans to meet those standards, as indicated in 16 NYCRR 1001.18(b) (6).

RESPONSE: Given the potentially sensitive nature of this information, CVWP will consult with Staff to determine what information is needed, when it can be supplied, and the scope of a confidentiality arrangement for this information.

COMMENT: The applicant should provide a description of the methodology used to determine security risks associated with CVWF both during the construction phase and during post-construction operations.

RESPONSE: *The methodology will be provided in the Application for determining threats.*

COMMENT: The applicant should provide an original list of anticipated security threats to be mitigated for the project.

RESPONSE: *A list of security typical threats will be provided in the Application for the project.*

COMMENT: Safety and Security records should be made available to Staff if and when required.

RESPONSE: *Safety and security records, if applicable, will be provided to Staff if and when required, as they relate to this Project.*

COMMENT: A safety protocol should be established as to who will be in charge of the wind turbines during erection, commissioning and operation of the turbines. Since there are so many entities involved in various phases of the construction and operation, the protocol should clearly establish responsibility of each entity at each stage.

RESPONSE: *A Chart will be provided that details who has care, custody and control of the Wind turbines at the various stages of the project.*

2.18.1 Construction Security and Features (pp.64-65)

COMMENT: Provide a copy of the Security Review conducted by the Project Single Point of Accountability (SPA).

RESPONSE: *This will be conducted at a date after Application submittal but prior to mobilization to the site.*

COMMENT: Provide expected commencement and completion date of the Emergency Response Plan.

RESPONSE: *The Emergency Response Plan is part of the site Safety plan and will be completed prior to mobilization of the Balance of Plant contractor to the site.*

COMMENT: Provide a comprehensive list of all agencies and stakeholders to be included in the development of the Emergency Response Plan.

RESPONSE: *The Emergency Response Plan is part of the site Safety plan and will be completed prior to mobilization of the Balance of Plant contractor to the site. All agencies will be identified and notified as to involvement with the plan.*

2.18.2 Operations Security (pp.65-66)

COMMENT: Provide the method of alarm and intrusion detection for wind turbine access doors or any point that could allow access to the tower interior.

RESPONSE: *This will be part of the Operating Plan; CVWP intends to seek confidentiality protection for this information.*

COMMENT: Provide a detailed plan and discuss how security at each wind turbine will be accomplished.

RESPONSE: *This will be part of the Operating Plan; CVWP intends to seek confidentiality protection for this information..*

COMMENT: Provide a detailed plan and discussion how the information security strategy will meet NERC's CIP standards that are currently in effect.

RESPONSE: *Companies that own and operate wind farms that are registered with NERC do not typically have any assets that are considered critical under the CIP standards currently in effect and, therefore, are not required to meet CIP standards governing information security. As a result, CVWF does not anticipate being required to comply the CIP standards currently in effect*

that govern information security.

2.18.3 Safety Response Plan (p. 66)

COMMENT: Provide the comprehensive scope of the capabilities of on-site Medical Provider.

RESPONSE: *This will be determined prior to mobilization to the site.*

COMMENT: Provide medical evacuation plan for serious injury during periods of inclement weather when med-flight is unavailable.

RESPONSE: *This will be included in the "Site Safety Plan" and will be determined prior to mobilization to the site.*

COMMENT: The Emergency Response Plan should also contain a procedure as to "Community Notification" in case of emergency.

RESPONSE: *The Emergency response plan for construction and operations will contain a procedure for community notification.*

2.18.4 New York State Division of Homeland Security and Emergency Services Review (p. 66)

COMMENT: Provide specific point in lifecycle of the CVWF when the site security plan will be fully implemented and operational.

RESPONSE: *Site security plan will be implemented at start of construction and then for operations at transition to the Operations team.*

2.18.5 Local Office of Emergency Management Review (p. 67)

COMMENT: Notwithstanding minimum requirements, provide an explanation why a review of emergency plans will not take place with County office of emergency management.

RESPONSE: *Based on 16 NYCRR 1001.18 (Exhibit 18(e)), this was*

not required for a city of less than 1,000,000 people. As a good practice, the County emergency management office will be contacted and involved in the review of the plans.

2.18.6 Fire Response plans and Emergency Response plans (p.67)

COMMENT: Provide and All Hazards Risk assessment for CVWF.

RESPONSE: *A Phase I ESA for the Project area will be done.*

COMMENT: Provide full fire prevention plan.

RESPONSE: *This will be part of the Site Security Plan.*

COMMENT: Provide specific points in the lifecycle of the CVWF when the Fire Prevention plan will be implemented and operational.

RESPONSE: *Site security plan will be implemented at start of construction for construction team and then for operations at transition to the Operations team.*

COMMENT: Provide an assessment of Emergency Medical Service (EMS) capabilities that would act in support of the CVWF Emergency Plans, to include the medical treatment facilities that will support treatment of severe trauma cases.

RESPONSE: *This will be part of the Site Security Plan.*

2.18.7 Contingency Plans for Fire Emergency or Hazardous Substance Instance (p.67)

COMMENT: Provide a description of exercises that will be used to validate all Contingency Plans.

RESPONSE: *This will be part of the Site Safety plan.*

COMMENT: Provide a schedule in the lifecycle of the CVWF of when validation exercises will take place.

RESPONSE: This will be included in the Site Safety plan for Construction and part of the operations safety plan.

COMMENT: Provide a detailed assessment of potential hazardous substances that could be utilized in the construction, operation or maintenance of the CVWF facility from Mobilization through Full Operational status.

RESPONSE: This will be part of the preliminary SPCC plan.

2.19 Noise and Vibration (1001.19 Exhibit 19: Noise and Vibration) (pp.68-73)

COMMENT: The scope of studies should provide details including the criteria to be used for selection of background and ambient noise level measurement locations and identification of proposed sampling or measurement locations.

RESPONSE: The assessment will describe in detail the location of all ambient sound level measurement locations and the rationale for the selection of each position. In general, the study will describe locations selected to capture the environmental sound levels typically observed at numerous existing residences throughout the project area. The study will describe instruments generally being located in rear yards away from any local sources of man-made noise, such as farm machinery or roads. The study will describe re-measuring at the "community" noise positions used in Paul Schomer's 2009 field survey. In cases where permission from relevant landowners is not achieved, the study will describe comparable, nearby cases used instead.

COMMENT: Tonal noise analysis mentioned at 2.19.1 (pg. 68) and 2.19.3 (at 5th bullet) should be performed for the proposed substation as well as for wind turbines. High voltage transformers are likely to exhibit tonal characteristics during operations. The scope should identify the analysis methodology, definitions and terminology, and applicable standards for performing the tonal characteristics analysis.

RESPONSE: The potential audibility of tones from the substation

transformers will be addressed in the assessment.

COMMENT: Noise analysis of wind turbines should be based on turbine model(s) selected for installation at the project. The PSS statements about turbine models being selected at some future time is problematic for modeling noise emissions, predicting tonal character, and making findings regarding probable environmental impacts. Staff recommends that CVWP provide additional information regarding its proposal for studying turbine and project impacts of unspecified turbine make or model and provide more complete characterization of the classes of turbines under consideration, the range of turbine make(s) and model(s) within those classes, and representative data to demonstrate that it's proposal is responsible and will result in credible record information. Staff recommends that follow-up discussions be planned to address this and related topics with interested parties in attendance before the applicant advances to final scoping or application phases.

RESPONSE: *While sound contour maps could be prepared for each and every turbine model that is being considered for potential use in the project, the current intention is to focus mainly on the model with the highest sound power level rating as the most conservative case and to also map the sound emissions of the turbine model with the quietest performance. Consequently, the full range of potential outcomes will be covered.*

COMMENT: The scope of Noise and Vibration studies should be revised to include:

- (a) a glossary of terminology and abbreviations used, so there is no misunderstanding by reviewing agencies or parties; and,
- (b) copies of any reference standards that will be relied upon in study methodologies.

RESPONSE: *A glossary of relevant acoustical terms can easily be added to the assessment. Standards are not normally appended in full to such reports since copyright restrictions prohibit such reproduction and distribution. All standards shall be listed in*

the reference section of the report and may be obtained from ANSI, ISO or IEC, etc. if desired.

COMMENT: The position stated in section 2.19.3 at the second bullet that, "there are no plans at this time to carry out a survey of background sound levels during summertime conditions" as per the regulations at 16 NYCRR 1001.19(b), (f)(2) and (f)(5), will require that the applicant request a waiver from the application requirements.

RESPONSE: A new summertime survey is not planned because such a survey was already carried out within the project area in 2007. Because of contributions from nocturnal insect noise, leaf rustle and human activity all that could be concluded was that the environmental sound levels during the summer were substantially higher than in the wintertime (also measured in late 2007 and early 2008) - implying that the potential noise impact from the project would be significantly lower during the summer due to the presence of elevated background noise. Consequently, there would be no value added by conducting an additional summertime survey.

COMMENT: The PSS should be supplemented with a description of the scope and methodology that will be used to develop and perform the "evaluation of construction sound levels at potentially impacted and representative noise receptors" (Section 2.19.3, at third bullet). Describe how representative noise receptors will be selected and indicate specific representative receptors that may have already been selected or studied to support the application. This selection of representative noise receptor locations should include consideration of interested parties.

RESPONSE: Construction noise varies greatly with location and time and is usually only occurring in a particular local area at any given time. In essence, its analysis does not lend itself very well to evaluating potential impacts at a specific set of pre-determined receptor points. Instead, a more generalized approach is used where typical sound levels associated with various phases of the project (earthworks, concrete pouring, erection, road building, etc.) are estimated at the turbine set

back distance and also evaluated in terms of the distance at which construction noise should become inconsequential. The potential impact is associated with the magnitude of the level at residences and how many residences may be close enough that construction noise is clearly audible.

COMMENT: The PSS does not specifically address any intent to study or otherwise address low-frequency noise or vibration. Staff advises that the applicant should propose a scope of studies to demonstrate a responsible approach to analyzing potential health impacts of low-frequency sound and vibration, including a thorough literature review, analysis of background conditions, report on the current known state of scientific analysis ongoing at the time of application, and provide an analysis of potential project effects in the project study area. Original study analyzing reported problems of low-frequency or infrasound and relation of problem locations to operating wind energy projects is recommended, including reporting on potential health effects.

RESPONSE: *Section 2.19.3 of the PSS states that an evaluation of low frequency and infrasonic sound from the project will be carried out in the assessment. It has always been the Applicant's intention to address this issue. No credible scientific study to date, including those considered in comprehensive reviews by Massachusetts, Ontario, Canada, and Australia, has found any association between infrasound from wind turbines and any health effects.*

Section 2.20 Cultural Resources (1001.20 Exhibit 20: Cultural Resources) (pp. 73-87)

COMMENT: At Section 2.20, the PSS describes background context for prior cultural resource studies conducted based on the previous Cape Vincent and St. Lawrence wind project configurations. The recitation of recent consultations indicates that Staff was involved in the first two of the three meetings CVWP held with OPRHP regarding cultural resource evaluations. Staff was not invited to the third such meeting, reportedly held February 5, 2013. Staff has previously

requested that CVWP provide the proposed scope of work prepared by CVWP consultants, but has not received such document(s) to date. Staff advises that additional consultation between CVWP, OPRHP and Staff is needed to determine the information needed to address the application requirements specified by 1001.20(a)(3) and (4).

RESPONSE: CVWP will engage in further consultation with OPRHP and Staff regarding Section 2.20.

COMMENT: At Section 2.20.1, the PSS notes that the 5-mile Area of Potential Effect (APE) "extends across the US-Canadian border and is not subject to federal and state historic preservation laws" (PSS, page 79). It is not clear from the PSS whether the Canadian portion of the APE/study area will be reviewed for historic resources. Staff recommends that the review of potential project effects including visibility from historic resources should include known historic resources outside of NYS but within the 5-mile APE/study area be undertaken. This approach has been used previously in review of a major wind energy project in Clinton County, NY near the Canadian border.

RESPONSE: CVWP will engage in further consultation with Staff regarding this topic.

COMMENT: At Section 2.20.1, the PSS quotes previous correspondence and findings by OPRHP that the prior project configuration "forever alters and changes the rural setting, which itself is a significant element in much of the survey area and serves as the backdrop for the architectural, cultural and scenic tourism heritage of these communities" (PSS, pp. 79-80). Staff advises that the "scenic tourism heritage" aspect of cultural and visual resource evaluation should specifically be addressed in the scope of studies for the current proposal of the CVWF. Staff would like to consult further with CVWP and interested agencies in regards to an appropriate scope for this evaluation.

RESPONSE: CVWP will engage in further consultation with Staff and other interested agencies regarding this topic.

COMMENT: The PSS at Section 2.20.2 (second paragraph) proposes "that no further subsurface archeological investigation of the northern section of the current Project is necessary" (PSS, p.80). Staff advises that this and other details, such as the strategy and number of shovel tests that remain to be completed (PSS, p. 81), and the timing of when the technical report on Phase 1B archeological survey work described at PSS (p. 83) would be completed should be further refined in additional consultation among CVWP, OPRHP and Staff. Staff notes that Phase 1B reports, if required, are components of the application requirements at 16 NYCRR 1001.20.

RESPONSE: *CVWP will engage in further consultation with OPRHP and Staff regarding Section 2.20.*

COMMENT: At Section 2.20.2.2, the PSS suggests that there may be gaps in coverage in project APE based on previous surveys of Historic Architectural Resources (PSS, page 84). Staff notes that the applicant identified such gaps in the New York State survey area as early as the September 28, 2012 meeting referenced in the PSS at page 75. Staff advises that the small areas involved could readily be surveyed and results provided to OPRHP and Staff in anticipation of additional consultation as recommended in preceding comments above.

RESPONSE: *CVWP will engage in further consultation with Staff regarding this topic.*

COMMENT: PSS Section 2.30.3.2, regarding avoidance and minimization measures for Historic Architectural Resources (PSS pg. 85) provides a list of measures that should be amended appropriately to include project arrangement and scale alternatives that could potentially reduce significant visual impacts on architectural, cultural and scenic tourism heritage resources in the project area. Likewise, the proposed measures for mitigation of unavoidable impacts at Part 2.20.4.2 (PSS, page 86) should be based on prior consideration of project arrangement and scale alternatives.

RESPONSE: CVWP will take this comment under advisement in developing Exhibit 20 for the Application.

COMMENT: Staff advises that the assessment of project visibility from, and visual impacts on historic resources, should include identification of specific turbines that are visible from and affect the settings of individual historic resources.

RESPONSE: Identification of the potential turbines visible from historic resources will be provided in the visual resource assessment.

COMMENT: PSS Section 2.30.3.2 discussion of minimization measures includes an exception to the project decommissioning proposal for the "interconnection facility equipment owned by the interconnection utility (PSS, p. 85)". Staff requests an explanation of the rationale for this stated exception, when the purpose for development of the switching station is the isolation and interconnection of the proposed electric generating facility with the existing transmission infrastructure of NMPC d/b/a National Grid.

RESPONSE: After construction of the interconnection switching station is complete, the connecting transmission operator (NMPC) would be responsible for owning and operating the interconnection switching station as well as that portion of the generator connection line that continues onto the Lyme 115kV tap. Consequently, NMPC would also be responsible for decommissioning all components that they own, not CVWP.

Section 2.21 Geology, Seismology and Soils (1001.21 Exhibit 21: Geology, Seismology and Soils) (pp. 87-103)

COMMENT: PSS Section 2.21.3, Page 88, provide specifications for structural fill and crushed stone that will be used as fill to replace unstable subgrades.

RESPONSE: CVWP will provide this information and ensure that it is in compliance with NYSDOT specifications.

COMMENT: PSS Section 2.21.3, Page 88, the invasive species plan should describe procedures for identifying the presence of invasive species in spoil materials. A pre-construction invasive species survey should be conducted at the project site to identify areas where invasive species are populated. In order to minimize the introduction and/or spread of invasive species, spoil materials excavated from those areas identified as containing invasive species during the pre-construction survey shall not be transported or used as fill materials in other locations.

RESPONSE: *An invasive species plan will be developed to minimize the spread of invasive species for both construction and operations. A preconstruction survey will be conducted to identify areas of concern. Spoils from these areas of concern will not be used as fill for other locations onsite.*

COMMENT: PSS Section 2.21.4, Page 89, according to the PSS, permanent gravel access roads with 16-foot wide travel lanes will be constructed. However, "additional area will be compacted on each side of the gravel roads to allow for the additional construction traffic and crane movement" during construction.

Provide the design dimensions for both temporary construction access roads and permanent access roads. Additionally, identify any areas where improvements will be made to public roadways to facilitate the transport of turbine and construction equipment.

RESPONSE: *The permanent and temporary access road widths will be part of Exhibit 11 and the improvements to public roadways will be part of the transportation plan, which will also be part of Exhibit 25.*

COMMENT: Provide detailed descriptions and preliminary calculations of the amount of topsoil that will be brought in to the facility site and interconnections.

RESPONSE: *Preliminary calculations will be provided in the*

Application.

COMMENT: Identify the source of all backfill materials, including topsoil, subsoil and gravel that will be imported from an offsite location.

RESPONSE: *The source of materials will be determined by the Balance of Plant contractor. Materials will meet New York State Department of Transportation (NYSDOT) specifications. DPS will be notified of material sources prior to construction.*

COMMENT: PSS Section 2.21.5, Page 89, provide specifications and requirements for excavated soils that may be reused as backfill.

RESPONSE: *Materials used will meet applicable state regulations.*

COMMENT: PSS Section 2.21.5, Page 89, identify the location(s) where excavated materials that are not reused as backfill will be disposed.

RESPONSE: *Disposal sites will be determined by the BOP contractor in accordance with NYSDOT specifications*

COMMENT: PSS Section 2.21.6, Page 90, identify any locations where traditional boring or directional drilling techniques will be used to install the 34.5kV interconnects and the 115kV transmission line. Provide installation feasibility and risk assessment studies for each location where such methods are proposed, based on the results of the geotechnical studies and known geologic conditions of the area.

RESPONSE: *Because final locations of all directional boring will not be known at time of Application (but rather when the final design of the facility is completed), identification of preliminary locations will be provided in the Application.*

COMMENT: PSS Section 2.21.6, Page 90, where the 34.5kV interconnects or the 115kV transmission line will cross public roadways, indicate the crossing method, the jurisdictional

agency (i.e., NYSDOT) and any required permits for occupation of the road right-of-way.

RESPONSE: *In general, 34.5kV lines will cross under roads, while the 115kV generation interconnection line will cross over roads. Final crossing methodology will be completed after the ALTA survey is completed and utilities and/ or agencies have been identified and contacted.*

COMMENT: PSS Section 2.21.6, Page 90, for any locations where the 34.5 kV interconnects are proposed to be routed aboveground, provide justification based on engineering and/or environmental constraints to underground installation.

RESPONSE: *For any aboveground 34.5kV installation the constraints to underground installation will be provided.*

COMMENT: PSS Section 2.21.8, Page 91, provide the results of all geotechnical investigations conducted for the project area.

RESPONSE: *CVWP will provide geotechnical investigations with the Application.*

COMMENT: PSS Section 2.21.9, Page 91, include in the blasting plan estimates of the amount of rock to be blasted, as required by 16 NYCRR 1001.21(i).

RESPONSE: *A preliminary Blasting Plan in compliance with 16 NYCRR 1001.21 (i) will be submitted with the Application. A Blasting Plan will need to be submitted and approved prior to any blasting. The Blasting Plan will follow the Bureau of Mineral Resources requirements. The Blasting Plan needs to be prepared by the certified blasting contractor selected by the BOP contractor which will be determined during the bidding process.*

COMMENT: PSS Section 2.21.11, Page 91, include a plan for securing compensation for damages that may occur due to blasting, as required by 16 NYCRR 1001.21(k).

RESPONSE: CVWP will work with Staff to develop an Exhibit 21 that will comply with 16 NYCRR 1001.21.

COMMENT: PSS Section 2.21.16, Page 97, the discussion of any dewatering that may be necessary during construction should include the location(s) of dewatering activities, estimated volume of dewatering, location(s) of discharge and methods of filtration.

RESPONSE: CVWP will work with Staff to develop an Exhibit 21 that will comply with 16 NYCRR 1001.21.

COMMENT: PSS Section 2.21.17, Page 97, provide maps and descriptions of existing permanent natural and manmade surface water drainage features within the project construction area and the existing surface water drainage flow patterns.

RESPONSE: CVWP will work with Staff to develop an Exhibit 21 that will comply with 16 NYCRR 1001.21.

COMMENT: PSS Section 2.21.17, Page 97, provide maps showing anticipated post-construction drainage flow patterns, indicating any new permanent surface water drainage features.

RESPONSE: CVWP will work with Staff to develop an Exhibit 21 that will comply with 16 NYCRR 1001.21.

COMMENT: PSS Section 2.21.18, Page 101, in the evaluation to determine suitable building and equipment foundations, include identification of mitigation measures regarding pile driving impacts, if applicable, including a plan for securing compensation for damages that may occur due to pile driving, as required by 16 NYCRR 1001.21(r)(3).

RESPONSE: CVWP will work with Staff to develop an Exhibit 21 that will comply with 16 NYCRR 1001.21.

COMMENT: PSS Section 2.21.18, Page 101, the foundation

evaluations should address the suitability of soil and bedrock conditions in the area, particularly the known karst geology of the region. Provide a geotechnical risk assessment for the turbine foundation integrity and design, citing the results of the geotechnical site investigations and known geologic conditions of the region.

RESPONSE: *CVWP will work with Staff to develop an Exhibit 21 that will comply with 16 NYCRR 1001.21.*

Section 2.22 Terrestrial Ecology and Wetlands (1001.22 Exhibit 22: Terrestrial Ecology and Wetlands) (p. 103-136)

COMMENT: The preliminary scoping statement frequently makes note of "consultation" between CVWP and the USFWS and NYSDEC. CVWP should include documentation, summaries, and results of these consultations in the application.

RESPONSE: *Applicant will include documentation of agency consultations in the monthly tracking sheet for Article 10 purposes and in the formal Article 11 Application.*

COMMENT: Section 2.22.3 General Wildlife Habitat - CVWP should also identify plant communities according to Edinger, G.J., D.J. Evans, S. Gebauer, T.G. Howard, D.M. Hunt, and A.M. Olivero (editors), 2002, *Ecological Communities of New York State. Second Edition. A revised and expanded edition of Carol Reschke's Ecological Communities of New York State.* (Draft for review). New York Natural Heritage Program, New York State Department of Environmental Conservation, Albany, NY.

RESPONSE: *CVWP will also identify plant communities according to Edinger et. al., 2002.*

COMMENT: Rarity of plant communities should be evaluated and reported relative to state and global rarity rankings.

RESPONSE: *CVWP will also evaluate and report rarity of plant communities relative to state and global rarity rankings.*

COMMENT: Avian and Bat Mortality - In addition to annual mortality calculations, CVWP should break down annual mortality rates into seasonal rates (e.g., spring and fall migration mortality rates).

RESPONSE: *Post-construction mortality studies will be conducted according to NYSDEC and USFWS guidelines and will include searcher efficiency and carcass removal trials in each season in which mortality searches are conducted, enabling seasonal mortality estimates to be calculated as necessary.*

COMMENT: Section 2.22.4 Avoidance and Minimization Measures - Alternative methods of washing machinery and equipment should be evaluated in the control of invasive species, especially during winter construction.

RESPONSE: *An invasive species control plan will be created for the construction and operations of the facility. These plans will include proposed methods of preventing the spread of invasive species.*

COMMENT: When evaluating potential impacts to Rare, Threatened and Endangered (RTE) species, CVWP should take into account and provide analysis regarding the height of aerial breeding displays (e.g. upland sandpiper) and foraging heights (e.g., northern harrier and other species).

RESPONSE: *The Article 11 Application will include a thorough analysis of RTE species use of the Project area and the potential for mortality of these species at the Project. This analysis will incorporate information about the flight behaviors of these species.*

COMMENT: CVWP should include the Golden Eagle in its list of RTE species to be evaluated. Golden Eagles have been documented using the eastern coast of Lake Ontario.

RESPONSE: *Applicant will continue to consult with USFWS and NYDEC regarding the list of RTE species to be considered for the Project and will respond to agency concerns regarding these*

species.

COMMENT: The PSS at Section 2.22.4, Avoidance and Minimization Measures, states that "(t)he project has been designed to avoid and minimize wetland impacts to the greatest extent practicable" (PSS, p. 115). The application should address specific details regarding transmission line routing and construction impacts on the Silver Maple-Ash Swamp significant natural community as mapped by NYS DEC, and located northeasterly of Swamp Road in the Town of Lyme. The impact analysis should identify routing and facility design variations to reduce the length of line and area of disturbance in this hardwood swamp. The analysis should identify clearing width(s) needed to accommodate the construction and long-term operation of the proposed 115 kV overhead line.

RESPONSE: *While the project has been designed to avoid and minimize wetland impacts to the greatest extent practicable, CVWP will continue to consider alternative routing to avoid or minimize wetland impacts. The Application will address specific details regarding the generator interconnection line and construction impacts on the Silver Maple-Ash Swamp significant natural community generally located northeast of Swamp Road in the Town of Lyme. This analysis will identify routing and facility design variations to reduce the length of line and area of disturbance in this hardwood swamp. The analysis will also provide clearing width(s) necessary to accommodate the construction and long-term operation of the proposed 115 kV overhead line.*

Section 2.23 Water Resources & Aquatic Ecology (1001.23 Exhibit 23: Water Resources and Aquatic Ecology) (pp.136-146)

COMMENT: PSS Section 2.23.3, Page 141 - According to the PSS, "(p)re- construction surveys will be conducted to locate local water supply wells within 500 feet of each turbine where blasting will occur for foundation excavation. For positively identified wells, CVWF will conduct pre- and post construction hydrological studies and monitoring to characterize flow rates and water quality." Staff recommends that CVWF consult with Staff to develop a more comprehensive pre- and post-construction

well monitoring program for both public and private water supplies wells within the potentially affected aquifer zone.

RESPONSE: CVWP will work with DPS to address this comment.

COMMENT: PSS Section 2.23.3, Page 141, provide maps identifying all classified and field delineated surface water bodies within the project construction area. For all classified streams and water bodies, indicate classification.

RESPONSE: Maps identifying all classified and field delineated surface water bodies within the project construction area along with their classification will be provided in the Article 10 Application.

COMMENT: PSS Section 2.23.3, Page 141, as required by 16 NYCRR 1001.23(b) (3), provide an identification of all downstream surface water drinking-water supply intakes within one mile of the project site (or if none are located within one mile, identify the nearest one that could potentially be affected by the facility or interconnections), and describe each identified intake including characterization of the type, nature and extent of service provided.

RESPONSE: All downstream surface water drinking-water supply intakes within one mile of the Project will be provided in the Application with descriptions of each intake including characterization of the type, nature and extent of service provided

COMMENT: PSS Section 2.23.3, Page 141, identify existing areas of natural or man-made drainage within and around the project area and design temporary and permanent erosion and sedimentation controls to effectively use such existing drainages.

RESPONSE: These will be part of the Preliminary Engineering Drawings submitted with the Application.

COMMENT: PSS Section 2.23.3, Page 141, provide maps showing the

layout of all permanent stormwater management and erosion control measures proposed for the facility site.

RESPONSE: These parts of the Preliminary Engineering Drawings submitted with the Application.

COMMENT: PSS Section 2.23.4, Page 143, for all streams and surface water bodies proposed to be crossed by access roads, 34.5 kV interconnects or the 115 kV transmission line, identify the proposed crossing method.

RESPONSE: Typical details for each type of crossing will be provided with the preliminary drawings, final locations of all crossings will not be known until final design is completed.

**Section 2.24 Visual (1001.24 Exhibit 24: Visual Impacts)
(pp.146-156)**

COMMENT: Staff recommends that the landscape similarity zone analysis be based on a comprehensive inventory of relevant physical attributes of the existing landscape.

RESPONSE: Landscape similarity zones will be provided in the visual assessment.

COMMENT: Staff recommends that the scope of the visual impact analysis should include user group interviews as part of background studies to identify important landscape characteristics and values attributed by landowners, residents, visitors/tourists, recreational users, and others as appropriate to the various visual resources and landscape similarity zones.

RESPONSE: CVWP will engage in further consultation with Staff regarding this topic.

COMMENT: Staff requests that CVWP provide, as soon as possible, a preliminary viewshed analysis showing areas of predicted project visibility and identified "key visual receptors," as well as the "landscape similarity zones" overlay, to support the consultation regarding selection of important or representative

viewpoints envisioned by 16 NYCRR 1001.24 (b)(4) and (5).

RESPONSE: CVWP will engage in further consultation with DPS Staff regarding this topic.

COMMENT: Staff recommends that the minimum 5-mile study area for the viewshed assessment be expanded to address the following areas: the NYS Route 180 - NYS Route 12 corridor from NYS Route 12E to and including the Village of Clayton - designated as part of the "Thousand Islands -Seaway Wine Trail." That section of the designated touring "trail" traverses along the easterly edge of the proposed CVWF Study Area as mapped at PSS Exhibit B. (A map of the "Wine Trail" is attached to these comments below as Map #2). This minor expansion of the Study Area will provide for an assessment of potential project visibility from a designated tourism route that is likely to have some areas with views of at least some of the proposed wind turbines.

RESPONSE: CVWP will engage in further consultation with DPS Staff in order to finalize the expanded study area.

COMMENT: Staff advises that the Study Area as proposed (PSS Exhibit B) does not include those areas of Ontario that are within the five-mile minimum radius required for major wind energy generating projects by the regulations at 16 NYCRR 1000.2(ar). Digital Elevation Model information and base mapping of that area is readily available and the project study area should be revised to include that area in the viewshed and visual analysis accordingly. Staff notes that the DEC Visual Policy paper referenced by CVWF also recommends a minimum 5-mile radius viewshed analysis from the highest point of proposed large scale facilities.

RESPONSE: CVWP will engage in further consultation with DPS Staff regarding this topic.

COMMENT: Staff recommends that the viewshed analysis include depiction of the number(s) of turbines predicted to be visible from areas within the viewshed analysis. Furthermore, the visibility analysis should include a table listing those individual turbines visible from key visual receptors

identified in the study, with an indication of the extent of visibility (by categories such as: blade tip; blade; nacelle; tower; etc.).

RESPONSE: CVWP will engage in further consultation with DPS Staff regarding this topic.

COMMENT: Staff advises that a depiction of the areas that will be exposed to shadow flicker and the expected exposure duration be included in the analysis performed in accordance with 16 NYCRR 1001.24(b)(8).

RESPONSE: A shadow flicker analysis within approximately 9 times the rotor diameter will be included in the visual analysis.

COMMENT: For purposes of advancing discussion of the proposed mapping of potential project visibility in Task 1.2 at PSS page 149, Staff requests that CVWP identify the following: (a) the date of National Land Cover Dataset (NLCD) information proposed to be used to characterize vegetation screening effect; and (b) the type of base map proposed to be used for depicting areas of predicted project visibility, since the proposal is to not use a topographical base map such as USGS quad maps. CVWP should provide an example of the type of base maps proposed to be used.

RESPONSE: CVWP will engage in further consultation with DPS Staff regarding this topic.

COMMENT: Staff recommends that CVWP provide the working lists of the "sensitive visual resources" identified thus far for consideration of the completeness of the inventory performed for Task 1.3 of the visibility analysis, per PSS pages 150-151.

RESPONSE: A working list of resources may be provided to DPS Staff prior to consultation with Staff on other topics.

COMMENT: Staff requests that CVWP further explain the methodology proposed to be used to develop the "landscape similarity zones" overlay for the viewshed mapping, per Task 1.4 in PSS at pages 151-152.

RESPONSE: Landscape zones (or units) are areas with common characteristics of landform, water resources, vegetation, land use, and land use intensity. These zones will be determined based on field investigations and review of aerial photography.

COMMENT: Staff requests specification of appropriate field conditions for completing field photography described in Task 1.6 – Conduct field assessment. Weather conditions, time of day, sun direction and seasonal considerations are important in conducting field photography that is representative for photographic simulation production.

RESPONSE: CVWP will engage in further consultation with DPS Staff regarding this topic.

COMMENT: Staff advises that a pre-determined number of simulations should not be specified prior to completing consultation with the appropriate agencies and municipalities. Task 1.7 at PSS page 152 proposes a limit of 20 photo-simulations. As noted in comments above, Staff recommends that CVWP present preliminary viewshed mapping with key visual receptor locations depicted, along with the “landscape similarity zones” analysis and initial field photography for consideration by agencies and municipalities for consultation purposes in completion of consultation regarding selection of representative viewpoints envisioned by 16 NYCRR 1001.24(b)(4) and (5).⁴ Staff notes that CVWP reports in the Monthly Tracking Report of Public Involvement Activities on the CVWF website, that its consultation on 7-Nov-12 regarding its proposed Visual Impact Assessment protocol with DEC, OPRHP and STAFF “addresses both the DPS and DEC policies and recommendations will be incorporated into the revised [VIA]”. Staff advised at the time of that meeting that it had only received the proposal a short time prior to the meeting and had not reviewed the proposal, but would have additional comments at an appropriate later time. Staff also advised that visual receptors in the area should be identified and that the lists in the prior project [SEQRA EIS] study were only a starting point, and that further study based on the revised layout and increased maximum turbine heights were significant changes to the prior projects. Staff further advised at that meeting that further consultation should be undertaking,

including with the attending agencies and municipal officials in the project area; and that the original proposal to not use an impact rating panel would not conform to the regulations.

RESPONSE: CVWP will engage in further consultation with DPS Staff regarding this topic.

Section 2.25 Effect on Transportation (1001.25 Exhibit 25: Effect on Transportation) (pp.156-163)

COMMENT: Since the project will involve many deliveries of equipment and materials to the project site, and there may be limitations on use of highways for oversize loads related to wind turbine components, the proposed study area for transportation impacts should be expanded.

RESPONSE: The sources of turbine components and the turbine component hauling company will be selected immediately prior to construction. The hauling company will obtain the required NYSDOT hauling permits similar to any other oversized delivery. NYSDOT will approve the hauling route based on the source of the materials and the roadway and bridge conditions.

COMMENT: The Transportation analysis should include analysis of road capability for deliveries to the project area from:

- (a) the Port of Ogdensburg and delivery route(s) from the Port to the project site; and,
- (b) Interstate Route I-81 and delivery route(s) to the project site.

RESPONSE: No decision has been made regarding which port(s) will be used; the sources of turbine components will influence this decision. Any transportation analysis will include an assessment of the port(s) selected and the delivery route to the project site as well as from I-81 and the delivery route to the project site.

COMMENT: The Study Area thus expanded should also be reviewed and analyzed for capital improvement projects and planned major

roadway construction for the proposed construction period, for purposes of identifying potentially significant constraints that

may affect use of specific routes for delivery of supplies, oversize equipment, or general construction activities. Planned bridge replacements, road closures, etc., should be identified, and transit and delivery plans should identify alternates or mitigation as appropriate. This study should include consultation with appropriate highway jurisdictions.

RESPONSE: CVWP will take this comment under advisement in developing Exhibit 25 for the Application.

Section 2.25.1 Project Layout

COMMENT: Five copies of full size project lay out drawings (Exhibit A) showing the location of turbines, access roads, collection lines, meteorological towers, lay down area, switching station, project substation, interconnection substation, land ownership, wet lands, riverfronts, etc. should be submitted along with the application.

RESPONSE: The Application will include a map to address this comment.

Section 2.25.5 Impacts on Mass Transit Systems

COMMENT: If there is no impact to any of the mass transit systems, it should be clearly stated in the application.

RESPONSE: If there is no impact to any of the mass transit systems, it will be clearly stated in the Application.

COMMENT: Early consultation with the various Highway Departments including State, County, Town, and Village is encouraged.

RESPONSE: CVWP agrees with consulting with the various jurisdictions regarding transportation. CVWP met with the NYSDOT on December 5, 2012 to discuss the Project. CVWP raised the topic of transportation during the January 22, 2013 meeting with the Cape Vincent Town and Planning Boards and Town of Lyme Board and was told to engage the County regarding Town roads. CVWP met

with Jefferson County on May 2, 2013 and discussed transportation for the Project. Given the feedback to date, CVWP will continue to work with the County and State regarding transportation for the Project.

COMMENT: If any road closures or detours will be required during construction, provide all necessary Maintenance and Protection of Traffic (M&PT) Plans.

RESPONSE: CVWP will provide such plan if any road closures or detours will be required during construction.

2.25.6 - Federal Aviation Administration Notice of Proposed Construction - Pages 161-162

COMMENT: Provide explanation why an *informal* review is more appropriate for this project considering the proximity of CVWF to the FT. Drum Military Installation. The Clearinghouse's *formal* review process applies to projects filed with the Secretary of Transportation, under section 44718 of title 49, U.S. Code (Federal Aviation Administration obstruction evaluation process), as well as other projects proposed for construction **within military training routes or special use airspace**, whether on private, state, or Federal property, such as Bureau of Land Management lands.

RESPONSE: We are not necessarily advocating an informal review by the DoD Siting Clearinghouse instead of a formal review. The project must be filed with the FAA under FAR Part 77 so a review will be necessary according to 16 NYCRR 1001.25 (f)(1). However, Ft. Drum and its airfield, Wheeler-Sack AAF, is not closely located to the Project; the distance from the airfield runways to the Cape Vincent project boundary is over 16.5 nautical miles. None of the airfield approaches or departures will be affected and it is not subject to the consultation requirement of 16 NYCRR 1001.25 (f)(2)(i). The issue relates to a matter of timing. The mandatory filing with the FAA may not be scheduled until later in the project development cycle, in which case CVWP may fulfill the 16 NYCRR 1001.25 (f)(1) requirement by pursuing an informal review.

COMMENT: This section details notifications that the applicant plans undertake in regards to air traffic. However, it should be noted that consultation with these entities was required by regulation (16 NYCRR 1000.4(f)) prior to the submission of the PSS. In addition, the PIP called for these consultations in the first quarter of 2013.

RESPONSE: *We will consult with the operators of the airports and heliports that are non-military facilities if that airport or heliport meets one of the criteria specified in (16 NYCRR 1001.25 (f) (2) prior to the submission of the Application.*

Section 2.26 Effect on Communications (1001.26 Exhibit 26: Effect on Communications) (pp.163-171)

COMMENT: The applicant must specifically identify all existing underground cable and fiber optic telecommunication lines that are located within a two mile radius of the facility, and identify the proximity of such lines to the proposed turbine locations and interconnection facilities as described in 16 NYCRR 1001.26(b).

RESPONSE: *CVWP will consult with telecommunication utilities and utilize "One call" methods to identify existing underground cable and fiber optic telecommunication lines. Information obtained will be mapped showing the proximity of such information in relation to proposed turbine locations and interconnection facilities.*

COMMENT: The applicant should consider communications systems on the US/Canada Border and any Border Patrol systems which could be impacted by the project.

RESPONSE: *The Cape Vincent studies consider telecommunication systems licensed with both the FCC and Industry Canada since the wind project is near the border. The United States Border Patrol is an agency within the Department of Homeland Security (DHS) and as such, its systems are assessed through the coordination with NTIA. The Canada Border Services Agency is classified by Industry Canada as an entity with non-disclosed telecommunication*

systems and its systems are assessed through correspondence directly with the agency.

COMMENT: For radar communications, explain the „gap-filler“ approach to mitigate unavoidable impacts as described on PSS p. 171, and discuss what further work is needed to determine the efficacy of this approach.

RESPONSE: *Gap-filler radars have been used for defense and commercial radar networks for many years. Gap-fillers are used because it is recognized that, due to terrain, vegetation and man-made structures, blind spots can be created in the coverage of a single radar site or network of radars. The gap-fillers fill in the coverage between mountainous terrains or on the backside of terrain or man-made structures. The gap-filler coverage data, when combined with the other radar coverage data, both normal radars and other gap fillers, produces composite coverage of an area with no blind spots. Gap-filler radar to mitigate lost coverage due to the installation of a wind energy facility is an effective and well established method to restore the coverage lost due to the potential shadowing caused by the wind turbines or other man-made structures.*

COMMENT: The applicant is encouraged to submit their proposed project information to National Telecommunications Information Administration (NTIA) as early as possible so that NTIA can forward it to all interested federal agencies to analyze the impacts of the turbines to their assets.

RESPONSE: *The project information was submitted to NTIA on Feb 20, 2013. After a 45 day period of review, no federal agencies had issue with turbine placement located in the area.*

COMMENT: Provide the paths of all microwave system operated by wireless communication facilities and provide an analysis showing how the wind turbines will not interfere with the path.

RESPONSE: *The Microwave Geoplanner Study identifies all licensed non-federal microwave paths operated by wireless communication entities. The conservative Fresnel Zone analysis indicates*

whether the wind turbines will obstruct the path or not.

COMMENT: Provide the radar facilities that are in area and surrounding the facility. Provide an analysis that the turbines will not interfere with the operation of the radar unit (this includes NOAA and defense). Discuss what the applicant will do if the wind turbine analysis suggests the turbines will interfere pre-construction and once the project is operational.

RESPONSE: *The radar study utilizes the industry-standard Department of Defense's screening tool to assess the impact on military (DoD), weather (NOAA), and FAA radar systems. The screening tool results are substantiated by the NTIA's coordination response letter. In regards to the missile defense site of Fort Drum, this facility is overseen by the Department of Army and as such, its systems are assessed through the coordination with NTIA.*

2.26.2 - Federal Government Systems - Exhibit 26 - Pages 165-166.

COMMENT: The official response to the notification letter to National Telecommunications and Information Administration ("NTIA") should be provided for review to ensure that all stakeholders, including Department of Defense, Department of Homeland Security and the U.S. Coast Guard, have responded identifying any potential adverse impacts to government systems.

RESPONSE: *The NTIA coordination letter is provided to all federal agencies represented in the Interdepartment Radio Advisory Committee (IRAC). This committee is comprised of federal government stakeholders with communications systems, including the Department of Defense, Department of Homeland Security and the U.S. Coast Guard, among others. The agencies have approximately 45 days to review the proposed wind project and indicate any issues of concern. For the Cape Vincent project, the response letter from NTIA indicated "no agencies had issues with turbine placement in the area." According to our contact at the NTIA, the following agencies provided specific responses of No Harmful Interference Anticipated (NHIA): Coast Guard, Department of Homeland Security, Department of Commerce,*

Department of Justice, and Department of Navy.

COMMENT: Provide specific details on notification and communication channels with Canadian Forces (Canadian Army, Royal Canadian Air Force, and Royal Canadian Navy) and Transport Canada Civil Aviation (TCCA) to ensure potential adverse impacts on their operations are identified.

RESPONSE: *Although there are no formal cross-border recommendations for wind projects located in the United States, the following federal agencies in Canada are identified by the Radio Advisory Board of Canada (RABC) as agencies with communication systems that should be notified of proposed Canadian wind projects: NAV Canada, Environment Canada, Canadian Coast Guard, Royal Canadian Mounted Police and Department of National Defence and the Canadian Forces.*

COMMENT: Provide methodology of assessments that will be used to determine potentially significant adverse effects on all wireless system types referenced in Exhibit 26.

RESPONSE: *The general methodology that is employed to determine potentially significant adverse effects is as follows: (1) Collect incumbent data from available data sources including licenses from the Federal Communications Commission (FCC) and Industry Canada (IC), (2) Determine a conservative zone around the turbines and around each communication system that could be an area of potential impact, (3) Perform a detailed engineering analysis to predict extent of impact, if any. The detailed engineering analysis varies by type of telecommunication system. The final step (4) is to provide recommendations and mitigation measures to resolve unavoidable impacts.*

COMMENT: Identify the location of all emergency services antennas, transmitters, and repeaters. Explain how the applicant will restore the system to normal if it blocks or curtails transmission from any of these sources and provide a remediation plan in the event of degradation of EMS communications capability due to CVWP.

RESPONSE: *The Land Mobile and Emergency Services study identifies the location of all emergency services antennas, transmitters, and repeaters. These types of systems are designed to operate in an environment with existing clutter such as buildings, trees, and other large structures. Although unlikely, if it is conclusively determined that the Cape Vincent turbines have significantly degraded emergency services in the area, there are methods to optimize the coverage of these types of systems.*

COMMENT: At p. 164, the applicant states that the potential for AM broadcast stations that are non-directional will be troublesome. Please explain this statement and provide technical details how the applicant will detune the turbines and towers so as to reduce the interference. Provide a discussion of the maintenance program that will be used to maintain the system used and how fast the applicant will respond to complaints.

RESPONSE: *AM stations are only susceptible to having their coverage affected if they are located close-in to the wind turbines of the project. For Cape Vincent, all of the wind turbines should be separated from the operational AM stations by sufficient distance so that AM coverage will not be affected. This applies to both directional antennas and non-directional antennas. Detuning a wind turbine tower with rotating blades to avoid this problem is not recommended because the impedance of the tower is constantly changing. Detuning of structures to mitigate AM station coverage issues is applicable to stationary structures.*

Exhibit 12 will address complaint resolution. CVWP is committed to developing a process that will provide a timely and effective response to concerns raised by local residents and landowners during the construction and operations of the CVWF.

COMMENT: The applicant should perform a pre-assessment of radio and television signals. Provide a description of the complaint system the applicant plans to put into place. The applicant should address both digital and analog radio and television signals.

RESPONSE: The AM/FM Broadcast Radio Report and Off-air Television Study identify the stations that could be potentially affected. These studies are pre-assessments of the Cape Vincent turbines' impact on radio and television reception in the area.

Exhibit 12 will address complaint resolution. CVWP is committed to developing a process that will provide a timely and effective response to concerns raised by local residents and landowners during the construction and operations of the CVWF.

COMMENT: The applicant should locate local amateur radio operators and discuss how any problems will be resolved and provide a plan in the application.

RESPONSE: Local amateur radio operators will be identified in the Amateur Radio Study. Since each amateur system varies in design, the resolution for potential impacts will be on a case by case basis. The Application will include a plan offering potential mitigation solutions.

Section 2.27 Socioeconomic Effects (1001.27 Exhibit 27: Socioeconomic Effects) (pp.171-177)

COMMENT: Staff recommends that the applicant provide an analysis of project consistency with the "Comprehensive Economic Development Strategy (CEDS) 2012 "Blueprint for Economic Development" prepared by the Jefferson County CEDS Committee in partnership with Camoin Associates, Inc.

RESPONSE: CVWP will work with DPS to address this comment.

COMMENT: Staff recommends that the applicant analyze the number of jobs created by the proposed project as compared to the jobs displaced at other possible projects that would be built, if not for the proposed project. The applicant should prepare a comparison of the job intensity, as measured in jobs/MWh, of the proposed project versus other possible projects.

RESPONSE: CVWP will work with DPS to address this comment.

COMMENT: The PSS indicates that comments were received during the Public Information Plan phase regarding property value impacts, and impacts on tourist assets (PSS, pp. 176-177). In the PSS, CVWP acknowledges receipt of those comments, but does not offer substantive ways of studying potential effects (other than visual impacts) that may be significant in terms of socioeconomic impacts on the community and the region. Staff acknowledges the range of results of various studies on wind project property value impacts, and recommends that further detailed consideration of this matter on the project area communities is warranted. In a region that has a significant reliance on tourism as an economic mainstay, the potential for adverse impacts on tourism, heritage and tourism resources and attractions should be undertaken as part of the application. Staff would like to discuss this matter further with CVWP and the municipal parties to develop recommendations for a focused scope of studies on these socioeconomic issues not specifically listed in the regulations for Exhibit 27.

RESPONSE: CVWP will work with DPS to address this comment.

**Section 2.28 Environmental Justice (1001.28 Exhibit 28:
Environmental Justice) (pp.177-183)**

COMMENT: The PSS states that "the first statistical threshold does not relate to the Project" (PSS pg. 180). It is not clear what this statement refers to since there is no citation and the statement appears to be out of context. A reference citation should be provided to clarify this issue.

RESPONSE: When the Section 2.28 of the PSS was produced, the first paragraph on page 180, following Table 2.28-1, that contained an introductory sentence and three bullets was inadvertently omitted from the document. This paragraph read:

Pursuant to 6 NYCRR Part 487, an Environmental Justice ("EJ") Area is present in the Impact Study area if a minority or low-income community is present. For this analysis, an EJ area was

defined as U.S. Census block groups of 250 to 500 households each, or contiguous areas with multiple census block groups, that have populations that met or exceeded at least one of the following statistical thresholds:

- At least 51.1 percent of the population in an urban area reported themselves to be members of minority groups; or*
- At least 33.8 percent of the population reported themselves to be members of minority groups; or*
- At least 23.59 percent of the population in an urban or rural area had household incomes below the federal poverty level.*

COMMENT: Likewise, the PSS refers to "the statistical EJ threshold (bullet 2 above)" and "these two data sets are below the EJ statistical threshold (bullet 3 above)" (PSS, pg. 180). Staff notes that there are no bullets indicated in the preceding text in this part of the PSS. Further description and a reference citation should be provided to clarify this issue.

RESPONSE: When the Section 2.28 of the PSS was produced, the first paragraph on page 180, following Table 2.28-1, that contained an introductory sentence and three bullets was inadvertently omitted from the document. This paragraph read:

Pursuant to 6 NYCRR Part 487, an Environmental Justice ("EJ") Area is present in the Impact Study area if a minority or low-income community is present. For this analysis, an EJ area was defined as U.S. Census block groups of 250 to 500 households each, or contiguous areas with multiple census block groups, that have populations that met or exceeded at least one of the following statistical thresholds:

- At least 51.1 percent of the population in an urban area reported themselves to be members of minority groups; or*
- At least 33.8 percent of the population reported themselves to be members of minority groups; or*
- At least 23.59 percent of the population in an urban or*

rural area had household incomes below the federal poverty level.

Section 2.29 Site Restoration and Decommissioning (1001.29 Exhibit 29: Site Restoration and Decommissioning) (pp.183-186)

COMMENT: Include a plan for the decommissioning and restoration of the facility site including how such decommissioning and restoration shall be funded and a schedule for the conduct of decommissioning and site restoration activities (see 16 NYCRR 1001.29(b) and (c)). For wind-powered generation facilities and other facilities to be located on lands owned by another, include a description of all site restoration, decommissioning and guaranty/security agreements between the applicant and landowner, municipality, or other entity, including provisions for turbines, foundations, and electrical collection, transmission, and interconnection facilities.

RESPONSE: *CVWP will include a decommissioning and restoration plan in the Application.*

COMMENT: Provide the following: the decommissioning cost in current dollars, the method and schedule for updating the cost of decommissioning and restoration, the method of ensuring that funds will be available for decommissioning and restoration, and the method in which the project will be decommissioned and the site restored.

RESPONSE: *CVWP will include a decommissioning and restoration plan in the Application.*

Section 2.31 Local Laws and Regulations (1001.31 Exhibit 31: Local Laws and Ordinances) (pp.186-206)

COMMENT: The applicant has not provided a scope of work it plans to undertake or consultations it plans to make in preparation of the application.

RESPONSE: *CVWP has asked the municipalities for assistance in identifying local laws or regulations that might be applicable to the construction, operation or maintenance of the proposed*

facility. It is expected that the comments from the local municipalities on the PSS will help to further clarify the applicable laws and/or regulations. In addition, CVWP will make every effort to consult with Staff and the municipalities regarding a final list of laws and regulations prior to inclusion in the Application.

COMMENT: This section identifies a list of laws and regulations that have been listed as *possibly* being applicable to the construction, operation or maintenance of the proposed facility. The applicant must consult with the municipalities to determine if the list provided is exhaustive and whether the identified sections are applicable to the construction, operation or maintenance of the proposed facility. Staff also recommends that the applicant consult with it in finalizing a scope.

RESPONSE: *CVWP will make every effort to consult with Staff and the municipalities regarding a final list of laws and regulations prior to inclusion in the Application.*

COMMENT: The applicant should review 16 NYCRR 1000.2(t) and (u) to differentiate between procedural and substantive local standards. The application will require that the applicant provide a list of those items it believes to be procedural in nature. The PSS identifies some local provisions that it believes are procedural in nature, but it also states that it may later request a waiver of such standards. The applicant should review the list of local laws it considers to be procedural and consult with the municipalities and Staff to address any questions it may have regarding that status.

RESPONSE: *Certain local laws have both procedural and substantive elements. CVWP will consult with Staff and the municipalities to further clarify which provisions are to be considered procedural and which provisions are substantive.*

COMMENT: In preparation of the application, the CVWP should review each local provision to determine if any procedural provisions have substantive elements. Those substantive elements

must be identified.

RESPONSE: *Certain local laws have both procedural and substantive elements. CVWP will consult with Staff and the municipalities to further clarify which provisions are to be considered procedural and which provisions are substantive.*

COMMENT: The revised PSS should clearly identify what CVWP means when asserting that, "the Public Service Law general preemption of local laws" will relieve the applicant of its obligations to comply with a local standard.

RESPONSE: *The summary of comments and the responses are to be considered the revised preliminary scoping statement.*

With respect to general preemption, a majority of the local zoning laws address siting of wind generating facilities through site plan review processes. Site plan review processes, and the underlying analyses, are conducted pursuant to SEQRA. SEQRA is generally preempted, or supplanted, by Article 10. In addition, Section 172 of the Public Service Law provides that "no state agency, municipality or any agency thereof may, except as expressly authorized under this article by the board, require any approval, consent, permit, certificate or other condition for the construction or operation of a major electric generating facility...". Where a procedural local provision has been identified it is expected that the general pre-emption provision articulated in Section 172 of the Public Service Law will preclude the local municipality from imposing such law on CVWP.

COMMENT: The PSS does not address the applicant's ability to comply with the identified sections of applicable law but instead focuses on why the Board should elect not to apply identified sections. The rationales provided should be expounded upon and should include the basis for the waiver as grounded in existing technology, factors of costs or economics, or the needs of consumers.

RESPONSE: *CVWP will consult with Staff, the municipalities and interested parties to further clarify which provisions require*

additional supporting arguments relating to factors of costs economics, existing technology or needs of consumers.

COMMENT: The PSS describes that CVWP will attempt to comply with the local requirements but may seek a determination from the Siting Board that such requirements are unreasonably restrictive. The applicant should consult with the municipalities and Staff to make a determination on its approach prior to filing the application.

RESPONSE: *CVWP will consult with Staff, the municipalities and interested parties to further clarify which provisions are unreasonably restrictive.*

COMMENT: The applicant should provide rationales for any argument it asserts that a provision of local law seemingly applicable to the project does not apply.

RESPONSE: *CVWP intends to provide the following for each local substantive requirement seemingly applicable to the project that CVWP will request the Siting Board to not apply: a statement of justification including facts and analysis showing the degree of burden caused by the requirement, why the burden should not reasonably borne by CVWP, that the request cannot be reasonably obviated by design changes to the proposed facility, the request is the minimum necessary and the adverse impacts of granting the request are mitigated to the maximum extent practicable.*

COMMENT: The PSS should identify which local laws, both procedural and substantive, are applicable to the interconnection to or use of water, sewer, telecommunications and steam lines in public rights of way or should identify that there are no such facilities planned to be in public rights of way.

RESPONSE: *Within the Application, CVWP will identify any local laws contained within the zoning laws of the Towns of Cape Vincent and Lyme, and within the local laws of Jefferson County that are applicable to the interconnection to or use of water, sewer, telecommunications and steam lines in public rights of way.*

COMMENT: The application should include a map of the facility with zoning and flood zones overlaid on it.

RESPONSE: *The Application will include this map.*

COMMENT: Staff advises that the Town of Lyme reportedly passed a resolution adopting changes to the town zoning law regarding wind energy facilities on April 10, 2013. The analysis provided in the PSS should be revised accordingly to address any substantive changes that may affect the content of the Application.

RESPONSE: *It is CVWP's understanding that these changes to the Town of Lyme Zoning Law impact small wind energy facilities, but CVWP will review the changes and address any substantive changes that impact the Project.*

COMMENT: The applicant should identify any use and occupancy permits required by Town(s) or County for facilities crossing or linear occupancy of municipal road rights-of-way.

RESPONSE: *CVWP is unaware of any use or occupancy permit required by the Towns and was directed by the Towns during the January 23, 2013 public meeting to consult with the State Department of Transportation and the County Highway Superintendent regarding any such permits.*

COMMENT: Table 2.31-1 addresses comments raised regarding local laws and regulations. The responses to comments do not always address the concerns raised or how the applicant plans to address those concerns.

RESPONSE: *CVWP will continue to update responses to comments and questions that we receive.*

Section 2.32 State Laws and Regulations (1001.32 Exhibit 32: State Laws and Regulations) (pp. 206-212)

COMMENT: The applicant is encouraged to consult with the

agencies to determine whether the list of state laws and regulations applicable to the project is comprehensive.

RESPONSE: CVWP will continue to consult with the reviewing agencies to determine whether the list of state laws and regulations applicable to the Project is comprehensive.

COMMENT: While the PSS indicates that it will be required to obtain permits for construction activity and location of facility access road entrances within New York State (NYS) highway rights-of-way, the document does not report that use and occupancy permits to permanently locate facilities and occupy property within the right-of-way of New York State highways is proposed for several locations within the project layout. Review of the project layout depicted at Exhibit A indicates that there are several proposed crossings and linear occupancy of the right-of-way of NYS Route 12E by electric collection lines (and potentially data communication lines). Staff advises that the applicant should consult further with the New York State Department of Transportation (DOT) to review permitting requirements for use and occupancy of State Highway Right-of-way for the Route 12E corridor.

RESPONSE: CVWP will continue to consult with New York State DOT with regard to the review of permitting requirements for use and occupancy of State Highway Right-of-way for the Route 12E corridor.

COMMENT: Table 2.32-3 - "State Approvals, Consents, Permits, Certificates, or Other Conditions of a Procedural Nature CVWP anticipates requesting the Siting Board not supplant" (PSS, page 211) lists the New York State Department of State (NYSDOS) Coastal Zone Management Program (CZMP) Federal Consistency Certification. That Certification is considered by NYSDOS pursuant to federal statute, and regulations at 15 CFR Part 930. As such, the Siting Board would have no authority to supplant the determination by NYSDOS even if the applicant requested that it do so.

RESPONSE: CVWP understands that the Siting Board has no authority to supplant this Coastal Zone Management Program (CZMP) Federal Consistency Certification.

COMMENT: The list of approvals at Table 2.32-3 should be amended to include occupancy permits for facility components installed within NYS DOT rights-of-way, such as electrical collection system wires and conduits. Occupancy permits are for the use of property of the state and involve grants of property rights that the Siting Board cannot issue.

RESPONSE: The list of approvals will be updated to include occupancy permits for the use of State property, including property within NYS DOT right-of-ways.

COMMENT: The list of approvals at Table 2.32-3 should be amended to include the New York State Office of General Services for use of underwater lands, in the event that the Siting Board requires underground-underwater installation of the proposed electric transmission interconnection line at the Chaumont River.

RESPONSE: After consultation with the New York State Office of General Services in the month of December, it was conveyed to CVWP on January 4, 2013 by OGS that the lands underwater at the proposed Chaumont River transmission interconnection line are not owned by the State of New York.

Section 2.33 Other Applications and Filings (1001.33 Exhibit 33: Other Applications and Filings) (pp.212-215)

COMMENT: 1. The listings in Table 2.33-1 should be amended to include consultation with Department of Defense regarding military operations and training flight routes in particular.

2. The entry at Table 2.33-1 for an individual permit pursuant to Section 10 of the Rivers and Harbors Act should be amended to include:

(a) Federal clearance requirements for 115 kV aerial crossing of navigable waters including the Chaumont River are addressed at 33

CFR Section 322.5(i)(2), pursuant to section 10 of the Rivers and Harbors Act of 1899 (33 USC 403); and,

(b) Reference to necessity for permit in the event that the Siting Board requires underground placement of the 115 kV transmission interconnection line at the Chaumont River.

RESPONSE: CVWP will update the listings in Table 2.33-1 to reflect comments received from reviewing agencies and municipalities after review and consultation with the reviewing agencies regarding appropriateness and necessity for the suggested consultation and permit additions.

Section 2.34 Electric Interconnection (1001.34 Exhibit 34: Electric Interconnection) (pp. 215-216)

COMMENT: Staff advises that as part of the information required by 16

NYCRR Part 1001.34(i) the applicant should provide a single line drawing or 3 line drawing of the collection and interconnection substations (including the interconnecting utility-owned substation) and the interconnection switchyard showing all breakers, current transformers, potential transformers, switches, motor operated switches, lightning arresters, meters, and transformers. Explain the rating of all the components including the voltage, current, short circuit ratings, etc.

RESPONSE: CVWP will provide a single line diagram stating the ratings of the various components.

COMMENT: Staff requests that applicant consult further with interested agencies (e.g., DPS, DANC) regarding preparation of application details and consideration of co-location of the electric interconnect facilities with other utility infrastructure.

RESPONSE: CVWP will continue to consult with DANC and DPS.

Section 2.35 Electric and Magnetic Fields (1001.35 Exhibit 35: Electric and Magnetic Fields) (pp. 216-219)

COMMENT: The applicant should provide a study of both the underground and overhead facilities' electric and magnetic fields and electrostatic fields on the right-of-way, at the edge of the right-of-way, and 1,000 feet from the right-of-way in increments of 5 feet. All supporting work papers and assumptions should be provided.

RESPONSE: *A 500-ft corridor is requested in Article 1001.35 Exhibit 35 from either side of the generator interconnection Line ROW. There are no underground generator interconnection lines anticipated at this time. Study of electrostatic fields is not included in the Article 10 regulations as part of the information to be provided by Applicants, thus this study will not be performed.*

COMMENT: The applicant should include cross-section drawings for each segment including all details outlined in 16 NYCRR 1001.35(b) (1-5).

RESPONSE: *CVWP will provide these drawings.*

COMMENT: The applicant should include aerial photos/drawings identifying all details outlined in 16 NYCRR 1001.35(c) (1-3).

RESPONSE: *CVWP will provide these drawings.*

Section 2.38 Water Interconnection (1001.38 Exhibit 38: Water Interconnection) (pp. 219-220)

COMMENT: PSS Section 2.38.1, Page 219, provide results of the hydrology study for the project area, including:

description of methods for minimizing water withdrawal on site during normal, drought, and peak usage conditions.

RESPONSE: *CVWP will take this comment under advisement in developing Exhibit 36 for the Application.*

COMMENT: PSS Section 2.38.1, Page 219, provide results of the hydrology study for the project area, including: assessment of

any known contaminant plumes that may be potentially influenced by well withdrawal on site.

RESPONSE: *A Phase I ESA of the site will be conducted and results will be provided with the Application.*

COMMENT: PSS Section 2.38.1, Page 219, provide notification procedures for nearby well owners/operators potentially affected by construction activities and/or use of on-site water supply wells and provide contact information for such owners/operators to report any observed impacts to their flow rate or water quality.

RESPONSE: *CVWP will take this comment under advisement in developing Exhibit 36 for the Application.*

COMMENT: PSS Section 2.38.1, Page 219, if water will be supplied from an offsite source, identify the source and indicate the method of transport, applicable permitting requirements and onsite storage locations.

RESPONSE: *CVWP will take this comment under advisement in developing Exhibit 36 for the Application.*

COMMENT: PSS Section 2.38.2, Page 220, provide water chemistry requirements and water treatment methods for potable water supply wells proposed for use during operation of the facility.

RESPONSE: *CVWP will take this comment under advisement in developing Exhibit 36 for the Application.*

Section 2.39 Wastewater Interconnection (1001.39 Exhibit 39: Wastewater Interconnection) (pp. 220-221)

COMMENT: PSS Section 2.39.2, Page 220, identify the offsite disposal location for any wastewater that will be transported offsite.

RESPONSE: *This will be identified by the Balance of Plant*

Contractor after the time of award of construction contract.

COMMENT: PSS Section 2.39.2, Page 221, provide design details and specifications for the proposed septic system designed specifically for the Operations and Maintenance building, including all discharge pretreatment methods.

RESPONSE: CVWP will provide this information with the Application.

COMMENT: Identify specific design or code requirements and permitting requirements of local jurisdictions for siting and installation of septic systems. Include site plan information showing proposed location in relation to property lines, any on-site water wells to be installed, soils types and wetlands locations.

RESPONSE: CVWP will provide this information with the Application.

Section 2.40 Telecommunications Interconnection (1001.40 Exhibit 40: Telecommunications Interconnection) (pp.222-?)

COMMENT: Staff advises that as part of this exhibit the applicant should provide a detailed description of the design capabilities and criteria for system communications with NMPC and NYISO. The applicant should address what types of normal phone communication and emergency communications it proposes during facility testing, commissioning and operation.

RESPONSE: Given the potentially sensitive nature of this information, CVWP will consult with Staff to determine what information is needed, when it can be supplied, and the scope of a confidentiality arrangement for this information.

COMMENT: Provide maps and descriptions of the equipment to be owned by or leased from others by the applicant including any fiber-optic, micro-wave or any other communications medium to be used for project system communications.

RESPONSE: Given the potentially sensitive nature of this information, CVWP will consult with Staff to determine what

information is needed, when it can be supplied, and the scope of a confidentiality arrangement for this information.

COMMENT: The applicant must be sure to provide a description of negotiations/agreements with companies providing communications interconnection, including restrictions, conditions, installation, ownership, operation and maintenance, etc. as identified in 16 NYCRR 1001.40.

RESPONSE: *Given the potentially sensitive nature of this information, CVWP will consult with Staff to determine what information is needed, when it can be supplied, and the scope of a confidentiality arrangement for this information.*

Exhibit C – Public Involvement Program (PIP), Monthly Tracking Report (C1-C16)

COMMENT: As noted in Section 2.2.3, the applicant should include an updated stakeholder list since the monthly tracking identifies agencies/municipalities that have been contacted but were not previously identified as stakeholders (e.g. Frontenac Islands, Jefferson Co Farm Bureau, Onondaga Nation).

RESPONSE: *The Onondaga Nation was identified as a stakeholder and included as such in the CVWF revised PIP submission of November 16, 2012.*

The Jefferson County Farm Bureau was identified as a stakeholder and included on the stakeholder list on February 6th, 2013.

The Frontenac Islands were identified as stakeholders and included on the stakeholder list on March 26th, 2013.

The Cape Vincent Wind Farm monthly public involvement tracking report is considered to provide the best format and single-point repository for recording all activities as they relate to the PIP. The tracking report has been revised to include a 'Future Outreach Activities' section that will list all remaining outreach items and stakeholders as detailed in the PIP.

COMMENT: There is little connection between the comments noted

in Tables 2.2-1 and 2.2-2 and the monthly tracking report. For example, the comments received at various stakeholder consultations are listed in the tracking but not in the tables. The same is true for the November 10, 2012 open house - it is listed in Exhibit C but not the tables. There should be some consistency between the two items or some rationale given as to why certain items appear on a given list (e.g. tables only include specific comments provided in writing).

The tracking report contains information for activities through March 21, 2013. Staff finds no public involvement activity/consultation in Exhibit C for the following stakeholders: Jefferson County; Development Authority of the North Country; several federal agencies including: Department of Defense Clearinghouse for Energy Development, Federal Aviation Administration, and NOAA; National Grid and NYISO, and state agencies such as NYS Attorney General's Office, NYSOGS, NYS Division of Homeland Security and Emergency Services, and Empire State Development. All consultations and public involvement activities with all affected stakeholders should be clearly stated in the PSS - either in the tracking section if it has already occurred or in the section describing outreach plans for upcoming project phases.

RESPONSE: CVWP, through its lawyers, has been in contact with NYS Division of Homeland Security and Emergency Services ("Homeland Security"). Phone calls with Homeland Security took place in December, February and March. Homeland Security will be reviewing the emergency management plan for the Project. CVWP, through its lawyers, has been in contact with the New York State Office of General Services ("OGS") in December of 2012, and January of 2013. The primary purpose of the consultation with OGS was to identify any land under the waters of the Chaumont River owned by the State of New York within the Project area. After consultation with OGS it was determined that the State of New York does not own any land under the waters of the Chaumont River in the Project area. CVWP has provided the Attorney General's Office copies of the PIP, PSS and project updates as well as all Stakeholder notifications. To date CVWP has not had a formal consultation on the Project with the Attorney General's office.

Date/ PIP Activity/Information Provided at PIP Activity/Summary of Feedback Received/Summary of Actions Taken in Response to Feedback

Dec - 12, Jan - 13/ Calls with the Office of General Services/Project Map and detail regarding Chaumont River Crossing/Land underwater the Chaumont River at point of proposed interconnection generator tie-line is not owned by the State of New York/OGS permit, license or easement for crossing the Chaumont River not necessary.

Dec - 12, Feb - 13, and March -13/ Call with the New York State Division of Homeland Security/Discuss project status, Article 10 Process, Safety and Security/Homeland Security developing a protocol for providing comments on Article 10 projects/continue to update Homeland Security as regarding security plans.

April 10, 2013 - Meeting with Development Authority of the North Country/Discuss project status, Article 10 process, project placement in relation to existing water line/DANC seeks to ensure water line is not adversely impacted, access to infrastructure is maintained for operations and maintenance purposes, safety is not compromised, and requested additional details regarding locations where Project infrastructure is near water line/provided contact information, will provide additional materials for DANC review regarding placement of infrastructure, and will continue to engage DANC as project advances through permitting process

May 2, 2013 - Meeting with Jefferson County/Discuss project status, Article 10 process, economic benefits from project, working together on siting the project/County wishes to continue receiving updates on the project and will work with CVWP on road crossing agreement and/or other siting issues/provided contact information, will provide additional materials for County review regarding roads, and will continue to engage County as project advances through permitting process

Ongoing (monthly to bi-monthly interactions) - discussions with National Grid and NYISO regarding interconnection studies for the Project.

The Cape Vincent Wind Farm monthly public involvement tracking

report is considered to provide the best format and single-point repository for recording all activities as they relate to the PIP. The tracking report has been revised to include a 'Future Outreach Activities' section that will list all remaining outreach items and stakeholders as detailed in the PIP.

Other Public Notice Filing

COMMENT: Staff found that Company provided proof of publication of required notice in the Water Daily Times, a newspaper of general circulation in the project area. However, 16 NYCRR 1000.5(d) requires a notice to be placed in local community newspaper such as the Thousand Islands Sun as well. The PIP identified local media outlets and the applicant has used them for other activities in the past. The applicant should use those media outlets it has identified.

RESPONSE: *The public notice was also published in the Thousand Island Sun on 3/27/13, proof of publication is attached as Appendix D.*

COMMENT: The PIP indicated that the applicant would notify all stakeholders of significant project milestones such as the filing of a PSS. The PIP states that the applicant will notify stakeholders through list serves, letters, media outlets (e.g. Fox News Watertown and North Country Public Radio and public notices in the Watertown Daily Times, the Thousand Island Sun, Fox News Online Event Calendar and YNN News Online Event calendar). The applicant should provide a description of how it provided notice using those media sources to stakeholders.

RESPONSE: *A PSS public notice was published in the Sunday edition of the Watertown Daily Times newspaper on March 24th, 2013 and on Wednesday, March 27th, 2013 in the Thousand Island Sun. CVWP also issued notices to stakeholders on March 22nd, 2013 and a copy of the notice was placed in the Fox News and YNN community calendars on March 29th 2013.*

All tables under the "Other Issues Raised by the Public"

COMMENT: Formatting of the tables regarding public comments must be reworked - it is unclear how and where particular comments were received and whether the Company's response dates back to the receipt of the comment or is part of the PSS. In addition, in many cases, the Company response does not address the issue and provides little to no insight as to how the Company will address it in the future.

RESPONSE: For the Application, CVWF will include feedback tables that are organized in such a way that enables the reader to follow: the date of a comment; how a comment was presented and from whom; a summary of the comment; and the timing and how a response was presented. CVWP will work with DPS Staff to make sure the format is well organized and will allow a reader to understand the information presented.

CASE NO: 12-F-0410
RESPONSE TO NYS DEPARTMENT OF CONSERVATION COMMENTS ON THE
PRELIMINARY SCOPING STATEMENT

Comment: In DEC’s opinion, and as evidenced below, the PSS filed by CVWP is not in the form that it will appear in the application – making review difficult; and although replete with redundancies, is also lacking in reasonably available and necessary information, while containing a host of items needing further clarification. The PSS does not contain any Exhibits using the numbering system in the regulations, but rather uses its own alphabetic nomenclature with subparts, repeating some of the same information and statements from section to section. It also appears to DEC that the PSS is, for the most part, very general in nature, lacking in specificity of important local elements to this particular project, and devoid of “as much information as is reasonably available concerning the proposed facility”. Many of the Applicant’s responses to comments and questions raised during consultations remain unanswered, or simply state that they will be addressed in the application. Clearly, the PSS is not in compliance with either the intent or spirit of the requirements of 16 NYCRR § 1000.5 especially Subsection (l)(1 through 8), which are intended to allow for a meaningful discussion between the Applicant, the public, affected agencies, and other stakeholders toward development of the Application.

Response: *In accordance with the requirements of 16 NYCRR § 1000.5, CVWP is required to provide the information required by 1000.5 subsection (l) (1)-(8). The format for providing the information is to be “generally in the form (though in less detail) that it will appear in the application.” CVWP endeavored to reconcile the needs of providing the subsection (l) (1)-(8) information with the requirement that the information be generally in the form that it will appear in the application. While the section headings of the PSS correspond to the Exhibit numbering*

system that is included in the regulations, we understand how a reviewing entity might have been confused by the fact that CVWP used letters for the Exhibits in the PSS when they should have been called attachments. Additionally, in hindsight the information could have been separated out into Exhibits corresponding to the Exhibits that will comprise the application instead of sections corresponding to the Exhibits. As provided in the PSS on page 1, CVWP identified which sections in the document are responsive to 1000.5 subsection (l) (1)-(8). We have further clarified below the section and page numbers where such information may be found. Again, note that the Section headings were intended to correspond to the Exhibits that will be included in the Application.

Comment: The PSS is a requirement of PSL §163, and 16 NYCRR §1000.5, which provide that the PSS must contain, as much information as is reasonably available concerning the proposed facility, generally in the form (though in less detail) that it will appear in the application; and a brief discussion, on the basis of available information, of all of the following items:

1. description of the proposed facility and its environmental setting;

Response: A description of the proposed facility can be found in sections 1.2 and 1.3 on pages 4-6

2. potentially significant adverse environmental and health impacts resulting from the construction and operation of the proposed facility in the environmental setting;

Response: Potentially significant adverse environmental and health impacts are discussed in section 2. For example, see:

- subsection 2.4.1 Potentially Significant Adverse Impacts, page 24 (Land Use – Exhibit 4),

- subsection 2.10.1 *Potentially Significant Adverse Impacts*, page 51 (*Consistency with Energy Planning Objectives – Exhibit 10*),
 - subsection 2.15.1 *Potentially Significant Adverse Impacts*, page 58 (*Public Health and Safety – Exhibit 15*),
 - subsection 2.19.1, *Potentially Significant Adverse Impacts*, page 68 (*Noise and Vibration – Exhibit 19*),
 - subsection 2.20.1 *Potentially Significant Adverse Impacts*, page 76 (*Cultural Resources – Exhibit 20*),
 - subsection 2.22.1 *Potentially Significant Adverse Impacts*, page 103 (*Terrestrial Ecology and Wetlands – Exhibit 22*),
 - subsection 2.23.1 *Potentially Significant Adverse Impacts*, page 136 (*Water Resources & Aquatic Ecology – Exhibit 23*),
 - subsection 2.24.1 *Potentially Significant Adverse Impacts*, page 147 (*Visual – Exhibit 24*),
 - subsection 2.26.2 *Potentially Significant Adverse Impacts*, page 164 (*Effect on Communications – Exhibit 26*),
 - subsection 2.27.1 *Potentially Significant Adverse Impacts*, page 171 (*Socioeconomic Effects – Exhibit 27*),
 - subsection 2.29.1 *Potentially Significant Adverse Impacts*, page 183 (*Site Restoration and Decommissioning – Exhibit 29*), and
 - subsection 2.35.1 *Potentially Significant Adverse Impacts*, page 216 (*Electromagnetic Fields – Exhibit 35*)
3. a responsive analysis as to those issues identified in consultations with the public,

affected agencies, and other stakeholders;

Response: *A responsive analysis to material issues identified in consultations with the public, affected agencies, and other stakeholders is included throughout the PSS, but can be found more specifically on pages, 14, 16, 22, 47, 55, 56, 59, 71, 75, 85, 86, 101, 117, 145, 171, 174, 185, 202, and 212. Additionally, Exhibit C to the PSS (Monthly Tracking Report – PIP Activities) also provides a summary of stakeholder outreach.*

4. proposed studies or program of studies designed to evaluate potential environmental and health impacts, including, for proposed wind-powered facilities, proposed studies during pre- construction activities and a proposed period of post- construction operations;

Response: *References to completed studies and proposed studies are provided throughout the document, but more specifically can be found on pages: 33, 69, 110, 140, and 218. Additionally, a summary of pre-construction wildlife studies was included as an Exhibit E to the PSS.*

5. proposed and ongoing studies monitoring for potential impacts to avian and bat species, both preconstruction and post-construction;

Response: *For a discussion of proposed and ongoing studies monitoring for potential impacts to avian and bat species, both preconstruction and post construction see section 2.22.3, page 111 as well as Exhibit E.*

6. measures proposed to minimize environmental and health impacts or to mitigate those impacts which are not reasonably avoidable;

Response: *Measures proposed to minimize significant environmental and health impacts or mitigate those impacts are included throughout the PSS, see for example,*

pages 31,43, 44, 59, 70, 74, 84, 85, 113, 115, 116, 117, 143, 144, 145, 155, 156, 159, 161, 169, 173, 174.

7. where the proposed facility intends to use petroleum or other back-up fuel for generating electricity, a discussion and/or study of the sufficiency of the proposed on-site fuel storage capacity and supply;

Response: *A generator may be used in construction if a line drop from the local utility cannot be accommodated in time. The areas that can require a generator for construction are the construction yard, batch plant and the potential for pre-commissioning of the wind turbine generators. The Operational phase will need a generator to supply backup power to the Operations and Maintenance building for Emergency Services only. This is to occur only during a time when loss of local power and periodic testing of the unit. There is no generator to be used for production of power to the CVWF during periods of low wind speed. The CVWF is to be a load on the electrical grid until the wind speed sufficient to start the wind turbines and become self-generating. A discussion and/or study of the sufficiency of the proposed on-site fuel storage capacity and supply will be provided with the Application.*

8. a preliminary analysis of the consistency of the proposed facility with the enforceable policies of the New York State coastal management program or local waterfront revitalization program;

Response: *A preliminary assessment of potentially applicable coastal zone management policies and consistency measures is included in the PSS on page 25, see Table 2.4.1.*

9. reasonable alternatives to the facility that may be required by PSL § 164(i), i.e.

- a. a description and evaluation of reasonable and available alternate locations to the proposed facility, if any;
- b. a description of the comparative advantages and disadvantages as appropriate; and
- c. a statement of the reasons why the primary proposed location and source, as appropriate, is best suited, among the alternatives considered, including a “no action” alternative, to promote public health and welfare, including the recreational and other concurrent uses which the site may serve; provided that the information required shall be no *more* extensive than required under Environmental Conservation Law (“ECL”) Article 8 - Environmental Quality Review aka SEQRA;

Response: *An alternatives analysis was included in the PSS, see pages 42-51.*

10. identification of all other state and federal permits, certifications, or other authorizations needed for construction, operation or maintenance of the proposed facility;

Response: *CVWP endeavored to identify all other state and federal permits, certifications or other authorizations needed for the construction, operation or maintenance of the proposed facility in section 2.32, page 206.*

11. an identification of all other State and Federal permits, certifications, or other authorizations needed for construction, operation or maintenance of the proposed facility;

Response: *Please see response to item number ten above.*

12. a list and description of all State laws and regulations applicable to the construction,

operation or maintenance of the proposed facility and a preliminary statement demonstrating an ability to comply;

Response: CVWP provided a list of all other state and federal permits, certifications or other authorizations needed for the construction, operation or maintenance of the proposed facility in section 2.32, page 206.

13. a list and description of all local laws, and regulations applicable to the construction, operation, or maintenance of the proposed facility and a statement either providing a preliminary assessment of an ability to comply or indicating specific provisions that the applicant will be requesting the board to elect not to apply, in whole or in part, and a preliminary explanation as to why the board should elect not to apply the specific provisions as unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality;

Response: A list and description of all local laws potentially applicable to the Project, as well as an preliminary indication as to the applicant's ability to comply with such local law and a preliminary explanation as to why the Siting Board should elect not to apply such provision was provided in section 2.31, page 186.

14. a description of the applicant, its formation, status, structure, holdings, affiliate relationships, powers (including whether it has or will seek to obtain the power of eminent domain, either directly or indirectly), franchises and consents;

Response: A description of the applicant was provided in section 1.1, page 4.

15. a description of the applicant's property rights and interests or those it proposes to acquire to all lands of the proposed facility and any private or public lands or private or public streets, highways or rights-of-way crossed by any interconnections necessary to

serve the facility such as, but not limited to, electric lines, gas lines, water supply lines, waste water or other sewage treatment facilities, communications and relay facilities, access roads, rail facilities, or steam lines;

Response: *A description of the applicant's property rights and interests or those it intends to acquire was provided in Section 1.1, page 4.*

16. any other information that may be relevant, material issues raised by the public and affected agencies and the applicant's response thereto, or that the Siting Board may require.

Response: *A description of material issues raised by the public and affected agencies was included in several instances throughout the PSS, see for example, pages 14, 16, 22, 47, 55, 56, 59, 71, 86, 101, 117, 145, 171, 174, 185, 202, and 212.*

Comment: According to the PSS, Cape Vincent Wind Power, LLC is a New York limited liability company, *currently* a wholly-owned subsidiary of BP Wind Energy North America Inc., ("BP Wind Energy") a Delaware corporation with headquarters in Houston, Texas. BP Wind Energy is an indirect, wholly-owned subsidiary of BP p.l.c. ("BP"), a company organized under the laws of England and Wales with international headquarters in London, U.K. BP Wind Energy has interests in 16 wind farms in 9 states worth \$5 billion and having a gross generating capacity of nearly 2,600 MW. However, five days after filing the PSS, it was reported that "Conglomerate BP says it will divest its U.S. wind portfolio - more than 2.6 GW of installed capacity - in order to focus on its core oil and gas business...According to a company spokesperson, the company's portfolio also includes projects in various stages of development, including an additional 2 GW of projects that are nearly shovel ready."

http://www.nawindpower.com/e107_plugins/content/content.php?content.11326 (see also <http://invezz.com/analysis/energy/is-the-sun-setting-on-renewable-energy-investment>) How

such a divestment will affect CVWP and the project, and whether BP considers CVWF “shovel ready” is not yet known.

Response: *BP is marketing for sale its Wind business as a going concern with physical assets, customer contracts and a committed and skilled workforce, which will provide the buyer with a solid platform to grow and develop the business. The company continues to pursue the development of projects in its portfolio as it adds value to the business moving forward. As such, it is business as usual for the Cape Vincent Wind Farm and BP remains fully committed to continuing to pursue the Article 10 process for the development and successful permitting of the Cape Vincent Wind Farm.*

To this end, despite an internal BP communication on March 28th announcing that it would be marketing its wind business for sale, the company demonstrated its commitment to the Cape Vincent Wind Farm Project by submitting its Preliminary Scoping Statement (PSS) on March 29th. It is worth noting that the PSS submittal was accompanied by check a of approximately \$100,000 to cover the costs of Intervenor Funding for the PSS stage of the Article 10 process.

Comment: In the PSS, CVWP relies heavily on studies that were designed and conducted for two separate previously proposed projects in this general area: the original Cape Vincent Wind Energy Project (“CVWEP”) and the St. Lawrence Wind Farm (“SLWF”), which were each markedly smaller. Both of these previous projects area had smaller turbines with less of a rotor-swept area (e.g. the newly proposed CVWF is considering using turbines – as yet unknown or unidentified - that have a rotor swept area up to 72.48% larger than the original SLWF (121,921.97 sq. ft. versus 70,685.775 sq. ft.) and 44.29% larger than the original CVWEP

(121,921.97 sq. ft. versus 84,496.205 sq. ft.). Furthermore, the overall layout for the newly proposed CVWF is similar but altered from the combined layout of the two former projects. The overall rotor swept area (number of turbines x the individual turbine rotor swept area) for the CVWF is about 30% larger than what was proposed in the two former projects (15,118,323.82 sq. ft. versus 10,702,656 sq. ft.).

Response: *The Project as proposed includes 11 fewer turbines than the SLWF and the CVWEP projects would have together added to the landscape. Appendix A contains a map illustrating that the Project footprint closely overlaps with and is not larger than the combined footprint of the two predecessor projects. Studies conducted for the two predecessor projects were developed in consultation with the DEC and the USFWS, as appropriate, and followed the guidelines for standard and expanded studies set forth in the GUIDELINES for CONDUCTING BIRD and BAT STUDIES at COMMERCIAL WIND ENERGY PROJECTS; Prepared by New York State Department of Environmental Conservation Division of Fish, Wildlife and Marine Resources; August 2009. Thus, the types of studies conducted and their frequency, duration, and sample size considerations were established according to these guidelines. Because the new combined Project area is not larger than the previous two project areas, the studies previously conducted for the two separate projects should be applicable to the new Project area. Applicant will continue to coordinate with the state and federal agencies regarding potential additional pre-construction studies for the Project.*

Comment: DEC is still awaiting maps from CVWP depicting the total Project layout (e.g. tower locations, interconnection lines, transmission lines, buildings, roads, temporary construction areas, state lands, stream and wetland crossings ... etc.) in relation to known locations and associated habitat of endangered, threatened, and species of special concern

(“E/T/SC Species”) that were promised to DEC personnel at a meeting in Lowville, NY on July 17, 2012 and as recently as on a telephone conference on February 2, 2013. Furthermore, the *Guidelines for Conducting Bird and Bat Studies at Commercial Wind Energy Projects*, finalized by the DEC in August 2009, http://www.dec.ny.gov/docs/wildlife_pdf/finwindguide.pdf, specifically requests (on pages 4 & 5) that DEC is to be provided maps and Geographical Information Systems (“GIS”) data in order to aid the project developer with planning.

Response: CVWP is in the process of developing such a map and will provide to DEC upon completion, along with GIS files.

Comment: The lack of information contained in the PSS creates a high degree of variability in the estimate of the potential adverse impacts or benefits that a large commercial project of this type may have to an area. Without the proper knowledge of where and at what scale a project is to take place, an assessment of the potential adverse impacts or benefits would hold little value on behalf of the health, safety and welfare of the people of the state with regard to the overall economic and social well being of the people, their families, visitors, or tourists to this region.

DEC respectfully requests that the PSS be revised to address the lack of compliance with PSL §163, and 16 NYCRR § 1000.5, so that more meaningful comment and discussions can take place. In addition, when the Article 10 Application is filed it should provide detailed information from additional studies that will be conducted in relation to the new Project layout. These studies should be designed in consultation with local state and federal biologists who have extensive expert knowledge regarding the natural resources of this region. Additional studies should not begin until acceptance and approval by the DEC and other involved agencies.

Response: *As required by 16 NYCRR 1000.5(g) CVWP is providing a summary of material comments received on the PSS and a reply to such comments. The summary of comments and the responses thereto are to be considered the revised preliminary scoping statement. CVWP will make use of comments received on the PSS to revise, where appropriate, proposed methodologies and the scope of studies as a starting point for continuing to engage with the reviewing agencies, municipalities and other interested parties.*

DEC has reviewed the PSS and is providing the following comments and recommendations listed on the following pages and referenced by which section and page of the PSS that the statement was found. Finally, these comments and recommendations may not be exhaustive, given the brief time period for review and lack of detailed information provided.

DEC SPECIFIC COMMENTS/RECOMMENDATIONS

1. Section 1.0 Introduction (Pages 1-14)

A. Item (2) states; “a preliminary scope of an environmental impact analysis containing a brief discussion, on the basis of reasonably available information, of the following items:

I. Subparagraph (vii) on page 2 states; “where it is proposed to use petroleum or other back- up fuel for generating electricity, a discussion and/or study of the sufficiency of the proposed on-site fuel storage capacity and supply (not applicable)”.

II. Comment/Recommendation(s):

1. The Article 10 Application should include detailed information regarding the storage and use of on-site fuels, oils, or other potentially petroleum based fluids during construction, operation, maintenance, and potential

decommissioning after the projects life span of the proposed Cape Vincent Wind Farm. It is DEC's experience that:

- a. Many of the wind power projects that have been previously reviewed in Region 6 have proposed to use fuel on-site for construction equipment and back-up generators to supply electricity to the project during construction and testing phases before connection to a grid (see Section 2.15.1 (p. 57); and
- b. Some of these projects have also proposed to use fossil fuel fired generators during the operational phase of the project at times when the project was not generating its own electricity (e.g. wind speed too slow or too fast for safe, reliable operation; power outage from the grid ...etc.).

Response: *A generator may be used in construction if a line drop from the local utility cannot be accommodated in time. The areas that can require a generator for construction are the construction yard, batch plant and the potential for pre-commissioning of the wind turbine generators. The Operational phase will need a generator to supply backup power to the Operations and Maintenance building for Emergency Services only. This is to occur only during a time when loss of local power and periodic testing of the unit. There is no generator to be used for production of power to the wind turbines during periods of low wind speed. The wind turbines will be a load on the electrical grid until the wind speed sufficient to start the wind turbines and become self-*

generating. A discussion and/or study of the sufficiency of the proposed on-site fuel storage capacity and supply will be provided with the Application.

B. Subsection 1.2 Proposed Facility

- I. On page 5 the PSS states; “The SLWF design had consisted of 51 turbines while the original Cape Vincent Wind Farm had envisioned 84 turbines, making the total number of turbines between the two projects equal to 135 turbines. After an extensive review to optimize the layout of the combined project, CVWP has removed 11 turbines, reducing the total project size to 124 turbines.”
- II. On page 5 the PSS states; “The SLWF had contemplated using turbines that ranged in output from 1.5 to 3.0 MW per turbine, while the range for turbines under consideration for the CVWEP was 1.5 to 2.5 MW per turbine. The maximum blade-tip height was estimated to be approximately 430 feet and the rotor width (diameter) to be approximately 300 feet to 328 feet. The latest turbine options under consideration would have the maximum blade-tip height increasing to 499 feet and the rotor width to approximately 394 feet.”
- III. The PSS states (p. 6) that “The Study Area (“Study Area”) generally includes the area within a radius of at least five miles from all generating facility components, interconnections and related facilities and alternative locations sites, although differs for the evaluation of some resources.”
- IV. **Comment/Recommendation(s):**
 1. The Article 10 Application should take into account that the previous studies

for the SLWF and the original CVWEP projects, were for two separate projects and were designed to assess the potential impacts of each separately and with markedly smaller turbines and layouts.

- a. The newly proposed CVWF is considering using turbines that have a rotor swept area larger than what was considered in either former project previously.
- b. The newly proposed CVWF's overall project layout is changed somewhat from the layouts proposed and evaluated in the two former project proposals.

Response: *The Project as proposed includes 11 fewer turbines than the SLWF and the CVWEP projects would have together added to the landscape. Appendix A contains a map illustrating that the Project footprint closely overlaps with and is not larger than the combined footprint of the two predecessor projects. Studies conducted for the two predecessor projects were developed in consultation with the DEC and the USFWS, as appropriate, and followed the guidelines for standard and expanded studies set forth in the GUIDELINES for CONDUCTING BIRD and BAT STUDIES at COMMERCIAL WIND ENERGY PROJECTS; Prepared by New York State Department of Environmental Conservation Division of Fish, Wildlife and Marine Resources; August 2009. Thus, the types of studies conducted and their frequency, duration, and sample size considerations were established according to these guidelines. Because the new combined Project area is not larger*

than the previous two project areas, the studies previously conducted for the two separate projects should be applicable to the new Project area. Applicant will continue to coordinate with the state and federal agencies regarding potential additional pre-construction studies for the Project.

2. DEC recommends that the Applicant design and conduct new studies to be included in the Article 10 Application, in consultation with local state and federal agency personnel who have extensive expert knowledge of the resources in this region.
 - a. New studies would be needed in order to more accurately assess the potential impacts that the new CVWF Project may have based on the use of larger turbines and an altered footprint (Project Layout) from the two separate projects previously mentioned.

Response: *The Project as proposed includes 11 fewer turbines than the SLWF and the CVWEP projects would have together added to the landscape. Appendix A contains a map illustrating that the Project footprint closely overlaps with and is not larger than the combined footprint of the two predecessor projects. Studies conducted for the two predecessor projects were developed in consultation with the DEC and the USFWS, as appropriate, and followed the guidelines for standard and expanded studies set forth in the GUIDELINES for CONDUCTING BIRD and BAT STUDIES at COMMERCIAL WIND ENERGY PROJECTS; Prepared by New York State Department of Environmental Conservation Division of Fish, Wildlife and Marine Resources; August 2009. Thus, the*

types of studies conducted and their frequency, duration, and sample size considerations were established according to these guidelines. Because the new combined Project area is not larger than the previous two project areas, the studies previously conducted for the two separate projects should be applicable to the new Project area. Applicant will continue to coordinate with the state and federal agencies regarding potential additional pre-construction studies for the Project.

3. DEC recommends including information from studies that have been and are being conducted at the nearby Canadian wind power project on Wolfe Island which has similar social, economic, and environmental conditions as Cape Vincent, NY.
 - a. It is recommended that this information also be used to assess the potential cumulative impacts that may affect the health, safety, and welfare of the people of the state and their overall economic and social well being, such as, but not limited to;
 - i. The potential cumulative effect on avian and bat resources,
Response: *Data from Wolfe Island and other applicable studies are being reviewed and incorporated, as relevant, into the impacts assessment and cumulative effects assessment in the Article 11 Application and will be included in the Article 10 Application.*
 - ii. the potential cumulative effect on the overall viewshed of the residents of Cape Vincent, within and adjacent to the Project area, the potential economic impact to environmental recreation such as

tourism, sportfishing, boating/canoeing/kayaking, bird watching, hunting, camping... etc.

Response: *It appears that the cumulative visual impact of the Cape Vincent Wind and Wolfe Island Wind projects will be fairly limited to the St. Lawrence River and its shoreline, Lake Ontario, and select inland locations. A cumulative viewshed map (topographical and vegetated) will be developed using aerial imagery to identify the Wolfe Island turbine coordinates.*

4. Five miles is the minimum study area required by 16 NYCRR 1000.2(ar) for wind generating facilities, although for facilities in areas of significant resource concerns, the size of a study area shall be configured to address specific features or resource issues and could be larger. In addition, since the radius does not cross the U.S./Canada border the radius is significantly less than 5 miles from any facility component all along the St. Lawrence River. The political boundary should not be a limitation on the study of environmental impacts. Therefore the radius should be increased/

Response: *CVWP believes some resources do not warrant a 5-miles radius, for example, the Article 10 regulations at 16 NYCRR 1000.22(i) state that mapping of federal, state and locally regulated wetlands is required for wetlands present on the facility site and within 500 feet of areas to be disturbed by construction. In addition, analysis of off-site wetlands is to include wetlands that may be hydrologically or ecologically influenced by the project, in nearly all cases this influence would not extend to 5 miles. Studies*

conducted for the two predecessor projects were developed in consultation with the DEC and the USFWS, as appropriate, and followed the guidelines for standard and expanded studies set forth in the GUIDELINES for CONDUCTING BIRD and BAT STUDIES at COMMERCIAL WIND ENERGY PROJECTS; Prepared by New York State Department of Environmental Conservation Division of Fish, Wildlife and Marine Resources; August 2009. Thus, the types of studies conducted and their frequency, duration, and sample size considerations were established according to these guidelines. Because the new combined Project area is not larger than the previous two project areas, the studies previously conducted for the two separate projects should be applicable to the new Project area. CVWP also questions the requirement to extend the 5-mile radius into Canada for such resources as visual and noise, as this is a NYS permitting process. CVWP will consult with DEC, DPS Staff, and other interested parties to further explore this issue.

C. Subsection 1.3 Environmental Setting

(Pages 6-14) I. **Heading 1.3.5 Wetlands**

1. On page 9 the paragraph states; “Approximately 3,000 acres of wetlands are located in the Town of Cape Vincent consisting of emergent (18 percent), forested and scrub/shrub (76 percent), ponds (4 percent), lake (1 percent), and riverine (1 percent) cover types. In the Town of Lyme there are approximately 4,800 acres of wetlands consisting of emergent (12 percent), forested and scrub/shrub (43 percent), pond (2 percent), lake (39 percent),

and riverine (3 percent) cover types. See Section 2.22 for more details regarding “Terrestrial Ecology and Wetlands.”

II. Comment/Recommendation(s):

1. The Article 10 Application should include a detailed discussion on the potential impacts to rare communities that are present in this area which were not discussed in the PSS.
 - a. Rare and significant communities in this area that were not mentioned in the PSS include a silver maple-ash swamp, alvar grasslands, limestone woodlands, calcareous pavement barrens, sinkhole wetlands, waterfowl winter concentration areas, and raptor winter concentration areas.

Response: *Detailed discussions of the potential impacts to rare communities present in the Project area include silver maple-ash swamp, alvar grasslands, limestone woodlands, calcareous pavement barrens, sinkhole wetlands, all of which will be included in the Article 10 Application. While many of these plant communities will not be directly affected by construction and operation of the Project, the discussion will address indirect and direct impacts, if any.*

At this time, the applicant is not aware of any waterfowl winter concentration areas or raptor winter concentration areas present in the proposed Project area. The results of winter raptor and waterfowl driving surveys conducted from November 2006 through March 2007 (Kerns et al 2007), and from November 2007 through

March 2008 (Young et al. 2008) did not indicate the presence of raptor or waterfowl winter concentration areas within the Project area. In addition, the winter raptor driving surveys recorded only infrequent eagle observations and did not document any confirmed or suspected bald eagle winter concentration areas. These survey results are being included in the impacts assessment in the Article 11 Application.

III. Heading 1.3.8 Water Resources & Aquatic Ecology (Pages 10-12)

1. On page 11, in the first full paragraph, the PSS states; “Surface Waters – The Project is situated within the Chaumont-Perch watershed (USEPA Hydrologic Unit Code “HUC” 04140102) of the eastern section of Lake Ontario (Minor Tribs Drainage Basin and the Upper St. Lawrence watershed (HUC: 04150301) of the St. Lawrence River Drainage Basin (USEPA, 2012)⁴.”
2. **Comment/Recommendation(s):**
 - a. The Hydrologic Unit system is a standardized watershed classification system developed by USGS in the mid 1970’s. The HUC classification was not developed by the US EPA. This should be clarified in a revised PSS, or at the very least in the Article 10 Application to accurately reflect the proper usage for the term “HUC”. For more information regarding the proper definition of the Hydrologic Unit system please visit the following URLs:
 - i. http://nwis.waterdata.usgs.gov/tutorial/huc_def.html or
 - ii. http://cfpub.epa.gov/surf/huc.cfm?huc_code=04150102

a) Notice the EPA site states; “USGS Cataloging Unit: 04150102”.

Response: CVWP will ensure the Application contains the proper references.

3. On page 12, the PSS states; “Aquatic Life” – Most of the streams associated with the project do not support extensive fish communities.”

4. **Comment/Recommendation(s):**

a. The Article 10 Application should include detailed information regarding the fish communities within the streams and rivers located in the Towns of Cape Vincent, Lyme, and the Village of Chaumont.

Response: The Article 10 Application will include more detailed information regarding fish communities within the streams and rivers potentially affected by the Project.

b. A query from Version 45 of the DEC Statewide Fisheries Database indicates the following numbers of species found in local waterbodies near the Project area;

Waterbody	Number of Fish Species
Chaumont River	24
Kents Creek	18
Lake Ontario	41
Scotch Brook	16
Shaver Creek	6

St. Lawrence River	33
Three Mile Creek	11
Unnamed Water	11

5. The Applicant should define what is meant by the usage of the term “extensive fish communities”. The above table clearly demonstrates that a substantial diversity of fish species exist within local area waterbodies which could be labeled as having “extensive fish communities”.
- a. From the DEC Statewide Fisheries Database there are over 50 different species of fishes found within the Towns of Cape Vincent, Lyme, and the Village of Chaumont combined. Some species identified from this database that would be of concern to the DEC are:
 - i. Lake Sturgeon – state listed “Threatened” species
 - ii. American Eel
 - iii. Several economically important sportfish species
 - b. There are also fish species listed in the Natural Heritage Database which would be of concern to the DEC and they are as follows:
 - i. Blackchin Shiner in the Chaumont River
 - ii. Iowa Darter in Mud Creek, Cape Vincent
 - iii. Quillback – Chaumont Bay

Response: *The intent of the sentence that included the reference to extensive fish communities was to indicate that most of the surface waters*

directly affected by the Project do not contain suitable habitat to support fish communities. CVWP agrees with DEC that surface waters found throughout the Towns of Cape Vincent, Lyme, and the Village of Chaumont likely support over 50 different species of fish but we believe that most of the surface waters directly affected by the Project likely do not contain a diversity of fish. Most of the surface waters that would be directly crossed by the Project are highly manipulated streams that border agricultural fields. Many of these streams are intermittent, linear and vegetated with dense stands of reed canary grass rendering them less suitable as fish habitat.

CVWP acknowledges DEC concerns about Lake Sturgeon – state listed “Threatened” species, American Eel, economically important sportfish species, Blackchin Shiner in the Chaumont River, Iowa Darter in Mud Creek, Cape Vincent and Quillback – Chaumont Bay and will address these species in the Article 10 Application.

2. Section 2.0 Environmental Analysis (Pages 14-222)

A. Subsection 2.2 Overview & Public Involvement (Pages 14-22)

I. Heading 2.2.2 Other Material Issues Raised by the Public and Affected Agencies

1. In Table 2.2-1 on page 14, a comment from the Town of Cape Vincent stated; “Specifications should be provided for the type(s) of wind turbines proposed for Cape Vincent.”
 - a. The response from the Applicant stated; “A specific turbine model has not been selected at this time due to uncertainty regarding availability of

turbine models, although it is expected that the output per turbine will range from 1.7 to 3.0 MW”

2. In Table 2.2.1 on page 15, a comment from the Town of Cape Vincent stated; “Size of project, 200-285 MW range equates to a 42.5% variation.”
 - a. The response from the Applicant stated; “The project consists of 124 turbine locations. Due to various wind turbine technologies available in the marketplace, the overall Project size will not be determined until a model has been selected.”

II. Comment/Recommendation(s):

1. Certainly, CVWP should know by now which wind turbines it plans to use, especially since it has indicated height and rotor swept area. In order for the DEC and/or other involved agencies to begin a valid review of any potential impact or benefit from this project, the turbine model and specifications, along with the layout and entire footprint of the Project should be known.
 - a. The lack of this information creates a high degree of variability in the estimate of the potential adverse impacts or benefits that a large commercial project of this type may have to an area.
 - b. Without the proper knowledge of where and at what scale a project is to take place, an assessment of the potential adverse impacts or benefits would hold little value on behalf of the health, safety and welfare of the people of the state with regard to the overall economic and social well being of the people, their families, visitors, or tourists to this region.

Response: *CVWP has not yet selected a wind turbine model, although*

this does not preclude DEC and/or other involved agencies from beginning a valid review of potential impacts or benefits from the Project. The Application will include the data and information of specific turbines or turbine sizes needed to determine potentially significant adverse impacts. Studies conducted will state the turbine dimensions assumed in the analysis.

2. Exhibit A – Location of Facilities and Exhibit B – Study Area appear to have been created using Geographical Information Systems software so this information should be readily available to all interested parties. Both of these Exhibits only show the general layout of the Project and fail to show any type of potential impact analysis. The GIS information has been previously requested.

Response: *CVWP will provide DEC with GIS shapefiles for the Project component layouts, property lines, and tax map reference information later this month. The Application will serve to provide potential impact analysis.*

3. Data regarding the proposed site development and planned operational layout of the Project should be provided to the DEC and other involved agencies in the form of shapefiles, coverages, geodatabases, and/or geometric networks for use in Geographical Information Systems (GIS) software via ESRI's ArcGIS suite of software (e.g. ArcMap) including but not limited to:
 - a. Polygon coverages/shapefiles for the total project area as well as any concrete and building structures proposed for construction;

- b. Line coverages/shapefiles/geometric networks for the transmission and interconnect lines as well as proposed temporary construction and maintenance roads;
- c. Polygons of the proposed temporary construction and maintenance roads for assessing the overall impact of the road footprints; and,
- d. Point coverages/shapefiles for any tower locations and/or any other structures that would be best represented as a point.

Response: CVWP will provide DEC with GIS shapefiles for the Project component layouts, property lines, and tax map reference information later this month.

B. Subsection 2.3 Location of Facilities (Pages 22-23)

I. Heading 2.3.1 Other Material Issues Raised by the Public and Affected Agencies

1. In Table 2.3-1 on page 23 in the PSS, several comments from the Town of Cape Vincent stated the following;

- a. “The most important information BP can provide to our community are maps outlining turbine locations. ... Detailed project maps have been the most scrutinized documents in all the open houses and DEIS filings in the past. All other materials are of far less significance to the average property owners. Good maps are a must in any public information program.”
- b. “BP’s map lacks boundaries of the project, setbacks from property lines, location of turbines, a legend of host landowners and adjacent landowners. Location of electric lines, substations, interconnection

switching stations, and interconnection points are vague and indeterminable.”

c. “Maps do not show setbacks.”

i. The response from the Applicant to all of those questions is stated as; “Project maps have been and remain available on the project website, in the local CVWF office, and have been on display at each of the public forums, including the Open House, and meetings with the Town of Cape Vincent and Lyme. A Project map is also provided as part of the PSS submittal. Setbacks were outlined in the PIP submittal.”

II. Comment/Recommendation(s):

1. In order for the DEC and/or other involved agencies to begin a valid review of any potential impact or benefit from this project, the turbine model and specifications, along with the layout and entire footprint of the Project should be known.

a. The lack of this information creates a high degree of variability in the estimate of the potential adverse impacts or benefits that a large commercial project of this type may have to an area.

b. Without the proper knowledge of where and at what scale a project is to take place, an assessment of the potential adverse impacts or benefits would hold little value on behalf of the health, safety and welfare of the people of the state with regard to the overall economic and social well being of the people, their families, visitors, or tourists to this region.

Response: CVWP has not yet selected a wind turbine model, although this does not preclude DEC and/or other involved agencies from beginning a valid review of potential impacts or benefits from the Project. The Application will include the data and information of specific turbines or turbine sizes needed to determine potentially significant adverse impacts. Studies conducted will state the turbine dimensions assumed in the analysis.

2. Exhibit A – Location of Facilities and Exhibit B – Study Area appear to have been created using Geographical Information Systems (GIS) software; therefore this information should be readily available for conducting a proper review. Both of these Exhibits only show the general layout of the Project and fail to show any type of potential impact analysis. The GIS information has been previously requested.

Response: CVWP will provide DEC with GIS shapefiles for the Project component layouts, property lines, and tax map reference information later this month. The Application will serve to provide potential impact analysis .

3. Data regarding the proposed site development and planned operational layout of the Project should be provided to the DEC and other involved agencies in the form of shapefiles, coverages, geodatabases, and/or geometric networks for use in Geographical Information Systems (GIS) software via ESRI's ArcGIS suite of software (e.g. ArcMap) including but not limited to:
 - a. Polygon coverages/shapefiles for the total project area as well as any

- concrete and building structures proposed for construction;
- b. Line coverages/shapefiles/geometric networks for the transmission and interconnect lines as well as proposed temporary construction and maintenance roads;
 - c. Polygons of the proposed temporary construction and maintenance roads for assessing the overall impact of the road footprints; and,
 - d. Point coverages/shapefiles for any tower locations and/or any other structures that would be best represented as a point.

Response: *CVWP will provide DEC with GIS shapefiles for the Project component layouts, property lines, and tax map reference information later this month.*

C. Subsection 2.4 Land Use – Exhibit 4

(Pages 24-31) I.

Comment/Recommendation(s):

1. The Article 10 Application should be corrected to provide consistency in the usage of the term “Exhibit” and the associated nomenclature in referencing each “Exhibit”.

Response: *The Application will provide consistency in the usage of the term “Exhibit” and the associated nomenclature in referencing each “Exhibit.”*

2. For example, Subsection 2.4 – Land Use apparently refers to Exhibit 4 while the PSS does not contain any Exhibits using a numbering system. Instead, the PSS uses an alphabetic nomenclature (e.g. Exhibits A – I).
3. Looking for the Land Use information in Exhibit 4 under Exhibit D does not

produce Land Use information, instead, the reader of the PSS finds a “Production/Curtailment Impact Study” in Exhibit D (the 4th exhibit contained in the PSS) for the purposes of estimating “the effects of the Facility on emissions and the energy dispatch of existing must-run resources, such as wind, hydroelectric and nuclear facilities”.

Response: *The Application will provide consistency in the usage of the term “Exhibit” and the associated nomenclature in referencing each “Exhibit.”*

D. Subsection 2.5 Electrical System Effects – Exhibit 5

(Pages 31-37) I. Comment/Recommendation(s):

1. The Article 10 Application should be corrected to provide consistency in the usage of the term “Exhibit” and the associated nomenclature in referencing each “Exhibit”.
2. For example, Subsection 2.5 Electrical System Effects apparently refers to Exhibit 5 while the PSS does not contain any Exhibits using a numbering system. Instead, the PSS uses an alphabetic nomenclature (e.g. Exhibits A – I).
3. Looking for the Electrical System Effects information in Exhibit 5 under Exhibit E does not produce Electrical System Effects information, instead, the reader of the PSS finds a “Summary of Pre-construction Wildlife Studies, Methods and Findings” in Exhibit E (the 5th exhibit contained in the PSS).

Response: *The Application will provide consistency in the usage of the term “Exhibit” and the associated nomenclature in referencing each “Exhibit.”*

II. Heading 2.5.10 (j) Vegetation Management Practices

1. On page 37 the PSS states; “As part of the Operations and Maintenance procedures for the facility, a vegetation plan will be developed. The vegetation plan, for instance, may call for potential tree removal to avoid dangerous interference with the equipment. The plan would also include prescribed inspection intervals for the Project substation, interconnection switching station, and generator interconnection line to ensure proper vegetation control. Note, after construction is complete, the connecting transmission operator would be responsible for owning and operating the interconnection switching station as well as that portion of the generator connection line that continues onto the Lyme 115kV tap.”

2. **Comment/Recommendation(s):**

As part of a Vegetation Management Plan, the Applicant should prepare an Invasive Species Control Plan (ISCP) to be used in conjunction with vegetation management to insure that the Operations and Maintenance procedures do not inadvertently contribute to the spread of invasive species.

Response: *An invasive species control plan will be developed to minimize the spread of invasive species for both construction and operations.*

- b. An ISCP should be a ‘normal’ best management practice during the construction, operation & maintenance, and decommissioning should the project be decommissioned after its expected life-span.
- c. The Applicant should conduct a study to determine what potential impacts could occur to State Regulated Wetlands and their associated

Adjacent Areas through the use of vegetation management activities detailed in a Vegetation Management Plan.

Response: *CVWP will conduct an analysis of potential impacts to State Regulated Wetlands and their associated Adjacent Areas resulting from the use of vegetation management activities that will be described in a Vegetation Management Plan for the overhead generator connection line. Note, after construction is complete, the connecting transmission operator, National Grid, would be responsible for owning and operating the interconnection switching station and that portion of the generator interconnection line from the interconnection switching station to the Lyme 115kV tap.*

E. Subsection 2.6 Wind Power Facilities – Exhibit 6

(Page 37) I. **Comment/Recommendation(s):**

1. The Article 10 Application should be corrected to provide consistency in the usage of the term “Exhibit” and the associated nomenclature in referencing each “Exhibit”.
2. For example, Subsection 2.6 Wind Power Facilities refers to Exhibit 6 while the PSS does not contain any Exhibits using a numbering system. Instead, the PSS uses an alphabetic nomenclature (e.g. Exhibits A – I).
3. Looking for the Wind Power Facilities information in Exhibit 6 under Exhibit F does not produce Wind Power Facilities information, instead, the reader of the PSS finds the “Town of Cape Vincent Zoning Law of 1989 Amended 2012 (Local Law No. Three, August 1, 2012)” in Exhibit F (the

6th exhibit contained in the PSS).

Response: *The Application will provide consistency in the usage of the term “Exhibit” and the associated nomenclature in referencing each “Exhibit.”*

II. Heading 2.6.1 (a) Setback Requirements and/or Recommendations (Pages 37-38)

1. Subheading – Manufacturer’s Specifications
 - a. On page 37 the PSS state; “Setback associated with the selected wind turbine model will be guided by the established recommendations of the original equipment manufacturer.”
2. Subheading – Applicant Specifications
 - a. On page 38 the PSS states; “Setbacks used on BP Wind Energy projects are designed to reduce environmental, health, and safety risks. As currently contemplated, setbacks for the combined Project meet or exceed the setbacks held by the previously proposed SLWF and CVWEP; no setbacks have been decreased.”
3. Subheading – Local Ordinance or Laws
 - a. On page 38 the PSS states; “The Project proposes to site wind turbines in the Town of Cape Vincent. The current Town of Cape Vincent Zoning Law was enacted on August 1st, 2012 (“CV Zoning Law”). The setback requirements as stated in the CV Zoning Law have the effect of unjustifiably and unreasonably restricting the placement of turbines in agricultural districts and preclude CVWP from placing turbines in planned and/or optimal locations within the Town. In light of passage of the CV Zoning Law, CVWP decided to

enter the CVWF into the Article 10 permitting process in September 2012.”

III. **Comment/Recommendation(s):**

1. The Article 10 Application should take into account that the previous studies for the SLWF and the original Cape Vincent Wind Farm (CVWEP) projects, were for two separate smaller projects and were designed to assess the potential impacts of each separately and with markedly smaller turbines and layouts.

Response: *The Project as proposed includes 11 fewer turbines than the SLWF and the CVWEP projects would have together added to the landscape. Appendix A contains a map illustrating that the Project footprint closely overlaps with and is not larger than the combined footprint of the two predecessor projects. Studies conducted for the two predecessor projects were developed in consultation with the DEC and the USFWS, as appropriate, and followed the guidelines for standard and expanded studies set forth in the GUIDELINES for CONDUCTING BIRD and BAT STUDIES at COMMERCIAL WIND ENERGY PROJECTS; Prepared by New York State Department of Environmental Conservation Division of Fish, Wildlife and Marine Resources; August 2009. Thus, the types of studies conducted and their frequency, duration, and sample size considerations were established according to these guidelines. Because the new combined Project area is not larger than the previous two project areas, the studies previously conducted for the two separate projects should be applicable to the new Project area. Applicant will continue to coordinate with the state and federal agencies*

regarding potential additional pre-construction studies for the Project.

2. Proposed setbacks for the SLWF and the CVWEP should use the original manufacturer's recommendations as a minimum starting point and take into consideration the unique environmental, cultural, and community resources of this region by consulting with local town, village, state and federal agency personnel who have extensive expert knowledge of the resources in this region.

Response: *CVWP will take the original manufacturer's recommendations into account and continue to engage with stakeholders to finalize proposed setbacks for the Project.*

IV. Heading 2.6.2 (b) Accommodation Setbacks Requirements and/or Recommendations

1. On page 38 the PSS states; "CVWP will consult the manufacturer of the selected wind turbine model to make sure the manufacturer is in agreement with setbacks and/or positioning for the proposed turbine layout."

V. Comment/Recommendation(s):

1. The Article 10 Application should take into account that the previous studies for the SLWF and the original Cape Vincent Wind Farm (CVWEP) projects, were for two separate smaller projects and were designed to assess the potential impacts of each separately and with markedly smaller turbines and layouts.

Response: *The Project as proposed includes 11 fewer turbines than the SLWF and the CVWEP projects would have together added to the landscape. Appendix A contains a map illustrating that the Project footprint closely*

overlaps with and is not larger than the combined footprint of the two predecessor projects. Studies conducted for the two predecessor projects were developed in consultation with the DEC and the USFWS, as appropriate, and followed the guidelines for standard and expanded studies set forth in the GUIDELINES for CONDUCTING BIRD and BAT STUDIES at COMMERCIAL WIND ENERGY PROJECTS; Prepared by New York State Department of Environmental Conservation Division of Fish, Wildlife and Marine Resources; August 2009. Thus, the types of studies conducted and their frequency, duration, and sample size considerations were established according to these guidelines. Because the new combined Project area is not larger than the previous two project areas, the studies previously conducted for the two separate projects should be applicable to the new Project area. Applicant will continue to coordinate with the state and federal agencies regarding potential additional pre-construction studies for the Project.

2. Proposed setbacks for the SLWF and the CVWEP should use the original manufacturer's recommendations as a minimum starting point and take into consideration the unique environmental, cultural, and community resources of this region by consulting with local town, village, state and federal agency personnel who have extensive expert knowledge of the resources in this region.

Response: *CVWP will take the original manufacturer's recommendations into account and continue to engage with stakeholders to finalize proposed setbacks for the Project.*

F. Subsection 2.7 Natural Gas Power Facilities – Exhibit 7 (Page 41)

I. On page 41 the PSS states; “This exhibit is not applicable to the proposed Cape Vincent Wind Farm.”

II. Comment/Recommendation(s):

1. The PSS fails to mention if and what type of back-up power will be used to maintain electrical systems when the Cape Vincent Wind Farm is not generating its own electricity.

Response: *A generator may be used in construction if a line drop from the local utility cannot be accommodated in time. The areas that can require a generator for construction are the construction yard, batch plant and the potential for pre-commissioning of the wind turbine generators. The Operational phase will need a generator to supply backup power to the Operations and Maintenance building for Emergency Services only. This is to occur only during a time when loss of local power and periodic testing of the unit. There is no generator to be used for production of power to turbines during low periods of low wind speed. The wind turbines are to be a load on the electrical grid until the wind speed sufficient to start the wind turbines and become self-generating. A discussion and/or study of the sufficiency of the proposed on-site fuel storage capacity and supply will be provided with the Application.*

2. If natural gas powered generators are used for back-up power supply, then this section would be directly applicable.
3. The PSS should be revised or at the very least the Article 10 Application

should be corrected to provide consistency in the usage of the term “Exhibit” and the associated nomenclature in referencing each “Exhibit”.

4. For example, Subsection 2.7 Natural Gas Power Facilities refers to Exhibit 8 while the PSS does not contain any Exhibits using a numbering system. Instead, the PSS uses an alphabetic nomenclature (e.g. Exhibits A – I).
5. Looking for the Natural Gas Power Facilities information in Exhibit 8 under Exhibit H does not produce Natural Gas Power Facilities information, instead, the reader of the PSS finds the “Village of Chaumont Land Development Code (Adopted March 19,2007, filed April 13, 2007)” in Exhibit H (the 8th exhibit contained in the PSS).

Response: *The Application will provide consistency in the usage of the term “Exhibit” and the associated nomenclature in referencing each “Exhibit.”*

G. Subsection 2.8 Electrical Production Modeling – Exhibit 8 (Page 41)

- I. At the bottom of page 41 the PSS states; “The scope of work for Exhibit 8 is attached to this PSS as Exhibit D.”

II. Comment/Recommendation(s):

1. The PSS should be revised or at the very least the Article 10 Application should be corrected to provide consistency in the usage of the term “Exhibit” and the associated nomenclature in referencing each “Exhibit”.

Response: *The Application will provide consistency in the usage of the term “Exhibit” and the associated nomenclature in referencing each “Exhibit.”*

H. Subsection 2.9 Alternatives – Exhibit 9 (Pages 42-52)

- I. Heading 2.9.2 Alternative Project Design/Layout (Pages 42-46)

1. On page 43 the PSS states; “The proposed location of turbines and associated facilities accounts for feedback from stake holders at the local and state levels and results in a Project that factors in environmental, health, and safety issues while attaining cost- effective wind power.”

2. **Comment/Recommendation(s):**

a. The PSS lacks the necessary information to assess how the proposed Project layout was designed to take into consideration both state and federal listed endangered, threatened, and species of special concern (E/T/SC species).

i. The DEC is still waiting for maps from CVWP depicting the total Project layout in relation to know locations and associated habitat of E/T/SC species that was promised to agency personnel at a meeting in Lowville, NY on July 17, 2012 and as recently as on a telephone conference on February 2, 2013.

Response: *CVWP is in the process of developing such a map and will provide it to DEC upon completion, along with GIS files*

b. From Exhibits A and Exhibits B in the PSS it appears that several wind turbines have been moved into fields that are known and were made known to previous wind developers to contain E/T/SC species occupied habitat.

Response: *CVWP remains committed to working with the NYSDEC to develop a Project layout which results in minimum impacts to E/T/SC*

species; where impacts are unavoidable, they will be mitigated through the Article 11 process.

- c. The Article 10 Application should include the maps that were promised to the DEC and a detailed discussion regarding the adjustments that were made in the Project layout to first avoid, and then reduce or minimize potential impacts to:
 - i. E/T/SC species occupied habitat, ii. wetlands,
 - iii. waterbodies,
 - iv. public access sites,
 - v. public and state lands such as state Wildlife Management Areas (WMAs); and,
 - vi. other unique natural resources like rare and significant communities such as a silver maple-ash swamp, alvar grasslands, limestone woodlands, calcareous pavement barrens, sinkhole wetlands, waterfowl winter concentration areas (the Atlantic flyway), and raptor winter concentration areas, ... etc.

Response: : *Detailed discussions of the potential impacts to rare communities present in the project area including silver maple-ash swamp, alvar grasslands, limestone woodlands, calcareous pavement barrens, sinkhole wetlands will be included in the Article 10 Application. While many of these plant communities will not be*

directly affected by construction and operation of the Project, the discussion will address indirect and direct impacts, if any.

At this time, CVWP is not aware of any waterfowl winter concentration areas or raptor winter concentration areas present in the proposed Project area. The results of winter raptor and waterfowl driving surveys conducted from November 2006 through March 2007 (Kerns et al 2007), and from November 2007 through March 2008 (Young et al. 2008) did not indicate the presence of raptor or waterfowl winter concentration areas within the Project area. Additionally, the winter raptor driving surveys recorded only infrequent eagle observations and did not document any confirmed or suspected bald eagle winter concentration areas. These survey results are being included in the impacts assessment in the Article 11 Application and will be included in the Article 10 Application.

3. Subheading 135-Turbine Alternative (Pages 43-44)

- a. On page 44 the PSS states; “While it is anticipated that most of the collection system will be buried, overhead lines may be used to span wetlands and streams and to avoid installing multiple buried lines in certain locations. The installation of buried lines has impacts to vegetation, soils, and wetlands while the installation of overhead lines also has visual impacts. The installation of overhead lines, as proposed, will reduce impacts to soil and water resources but will increase visual impact during operation. To minimize adverse visual

impact, most overhead lines will be carried on single metal poles or equivalent structure, somewhat taller, but generally comparable in height compared to the existing network of distribution lines that currently run throughout the Project area. The overhead lines will be routed to reduce the need for right-of-way clearing and to be compatible with agricultural land and farming operations.”

4. Comment/Recommendation(s):

- a. Annual or semi-annual clearing of vegetation for overhead electrical collection and transmission lines have the potential to repeatedly impact wetlands, their associated adjacent areas, E/T/SC species occupied habitat, as well as rare and significant plant communities.
- b. The Article 10 Application should be corrected to provide a Vegetation Management Plan, including an Invasive Species Control Plan that would first, avoid potential impacts during these operations, secondly minimize and reduce impacts to wetlands, their associated adjacent areas, as well as rare and significant plant communities.

Response: *The Article 10 Application will include a Vegetation Management Plan and an Invasive Species Control Plan demonstrating avoidance, minimization and reduction of impacts of potential impacts during operations to wetlands, their associated adjacent areas, E/T/SC species occupied habitat, and rare and significant plant communities.*

- c. A Mitigation Plan should be drafted in consultation with local state and federal agency personnel who have extensive expert knowledge of the

resources in this region to offset any impacts to wetlands, their associated adjacent areas, E/T/SC species occupied habitat, as well as rare and significant plant communities.

Response: *Appropriate mitigation plans to offset impacts, if any, to wetlands, their associated adjacent areas, E/T/SC species occupied habitat, and rare and significant plant communities will be drafted in consultation with local state and federal agency personnel and submitted as part of the Article 10 Application.*

5. Subheading – Transmission Line Alternatives (Page 45)

- a. On page 45 the PSS states; “As an option to stringing an overhead generator interconnection line to carry power from the Project, CVWP studied the feasibility of using a buried line. For a project of this size, this would require the interconnection cable to not simply be buried, but to be encased in concrete. The result would remove the transmission line from view, but would require high construction costs that would contribute to making the project uneconomic. In addition, underground placement would generally require greater disturbance to wetland features which are located along the various routes identified. These wetlands are proposed to be crossed by aerial spans, greatly reducing both short- term and long-term impacts to the wetland ecology. Maintenance of an underground transmission line of this length would be very likely to incur higher costs of repairs during the project life, as well as

requiring substantially greater impacts to the environment in the case of any line maintenance, repairs, or upgrades.”

6. **Comment/Recommendation(s):**

- a. Annual or semi-annual clearing of vegetation for the electrical collection and transmission lines have the potential to repeatedly impact wetlands, their associated adjacent areas, E/T/SC species occupied habitat as well as rare and significant plant communities.
- b. The PSS should be revised or at the very least the Article 10 Application should be corrected to provide a Vegetation Management Plan, including an Invasive Species Control Plan that would first, avoid potential impacts during these operations, secondly minimize and reduce impacts to wetlands, their associated adjacent areas, as well as rare and significant plant communities.

Response: *The Article 10 Application will include a Vegetation Management Plan and an Invasive Species Control Plan demonstrating avoidance, minimization and reduction of impacts of potential impacts during operations to wetlands, their associated adjacent areas, E/T/SC species occupied habitat, and rare and significant plant communities.*

- c. A Mitigation Plan should be drafted in consultation with local state and federal agency personnel who have extensive expert knowledge of the resources in this region to offset any impacts to wetlands, their associated adjacent areas, E/T/SC species occupied habitat, as well as rare and significant plant communities.

Response: *Appropriate mitigation plans to offset impacts, if any, to wetlands, their associated adjacent areas, E/T/SC species occupied habitat, and rare and significant plant communities will be drafted in consultation with local state and federal agency personnel and submitted as part of the Article 10 Application.*

I. Subsection 2.21 Geology, Seismology and Soils – Exhibit 21 (Pages 87-100) I.

Heading 2.21.1 (a) Existing Surface Slopes (Pages 87-88)

1. The PSS states; “To the extent practicable, the proposed facilities will be sited in relatively flat areas. A small amount of the study area has been identified as having steep slopes. Detailed maps delineating existing slopes (0-3%, 3-8%, 8-15%, 15-25%, 25-35%, 35% and over), as applicable, on and within the drainage area potentially influenced by the Project and interconnections will be included in an Appendix to the Application.”

II. Comment/Recommendation(s):

1. The Article 10 Application should contain a specific plan describing the added pre- cautions and best management practices that will be used for working in the identified steep sloped areas. An additional assessment ensuring that turbine site selection has been properly evaluated in relation to the identified steep sloped areas should also be included.

Response: *Based on topography in the Project area, CVWP does not anticipate that steep slope areas will be an issue. However, if steep slope areas are encountered CVWP will develop a plan describing precautions and best management practices that will be used for working in the identified*

area.

III. Heading 2.21.3 (c) Excavation and Backfill Analysis (Page 88)

1. On page 88 the PSS states; “Accordingly, an Invasive Species Plan will be developed specific to the Project construction activities for identifying the presence of invasive species in spoil material and to prevent the introduction and/or spread of invasive species by the transport of fill material to or from the site. The Invasive Species Plan will detail procedures to reduce the introduction of invasive vegetation to all areas disturbed during construction.”

IV. Comment/Recommendation(s):

1. The Article 10 Application should be corrected to provide an Invasive Species Control Plan (ISCP) that would first, avoid potential impacts during these operations and secondly, minimize or reduce impacts by;
 - a. Inspecting all equipment, parts, and materials brought on site before and during construction activities,
 - b. Physically removing all plant or animal matter from equipment, parts, and materials brought on site,
 - c. Cleaning and Disinfecting of any surface that has come into contact with an invasive species or unknown vegetation.
 - d. Re-inspecting all equipment, parts, and materials before moving to a new site; and,
 - e. Repeating the above steps at each construction site.

Response: *The Article 10 Application will include an Invasive Species*

Control Plan.

V. Heading 2.21.5 (e) Material to be Removed from the Project Area (Pages 89)

1. On page 89 the PSS states; “Unless contaminated soil or any other undesirable material is encountered during construction, excavated soils are typically reused on site for backfill and contour smoothing with the goal of not removing soil from a particular area. Large stone and bedrock will be crushed for use in the immediate project area. Area surveys and geotechnical investigations will likely be conducted to determine if these conditions exist within the limits of disturbance. A detailed description and preliminary calculations of the proposed type and amount of cut material or spoil to be removed from the facility site and interconnections will be developed as needed.”

VI. Comment/Recommendation(s):

1. If the crushing device being used for the above mentioned operations produces a product faster than 150 tons per hour or is a diesel motor driven crusher that is larger than 400 Horsepower then an Air Permit and Registration would be required.

Response: *Comment Noted*

2. The Article 10 Application should include the detailed specifications for the proposed crusher unit to ensure that the best management practices and conditions of an Air Permit and Registration would be followed.

Response: *Comment Noted*

VII. Heading 2.21.6 (f) Excavation and Backfill Analysis (Page 90)

1. On page 90 in the 2nd paragraph the PSS states; “Following topsoil removal by dozer and pans, excavators will be used to excavate a foundation hole. If bedrock is encountered and it is anticipated to be able to be ripped, it will be excavated with a backhoe. If the bedrock could not be ripped, it will be excavated by pneumatic jacking, or blasting. Blasting will be utilized only if ripping or hammering are not practicable.”
2. On page 90 in the 3rd paragraph the PSS state; “Direct burial methods via cable plow, rock saw and/or trencher will be used during the installation of underground interconnect lines whenever possible. In general, the cable may be buried 36 to 48 inches deep depending on soil conditions, depth to bedrock, and land use.”
3. On page 90 in the 4th paragraph the PSS states; “Open trench installation may be required where there are unstable slopes, excessive unconsolidated rock, or standing or flowing water. Open trench installation is performed with a backhoe and will general result in a disturbed trench 36 inches wide. Similar to a trench cut by a trencher or rock cutter, a Bobcat or small bulldozer will be used to replace soils and restore the grade.”

VIII. Comment/Recommendation(s):

1. The DEC’s Bureau of Mineral Resources guidance for blasting should be followed.
 - a. Seismographs will be placed at the nearest structures to measure the seismic activity during and after the blasting.
 - b. Blasting limits are described based upon the Z-curve for peak particle

velocities versus frequency to protect nearby structures.

- c. Also, a Blasting Plan would need to be submitted and approved by the DEC before blasting could begin.

Response: *A plan will be submitted to DEC and will follow the Bureau of Mineral Resources' guidance.*

2. This section does not discuss what effect the multitude of buried, underground interconnection and/or transmission lines may have to intercept groundwater which is sometimes referenced as 'Pipe Flow' or 'Piping'.

- a. 'Piping' occurs when normal path of groundwater is intercepted because the soil and sediment compactness has been altered, modifying the hydraulic conductivity of the soil and sediment layers, allowing water to flow in the path of least resistance along the cable, line, or pipe that has been buried. This is a common practice around residential dwellings to keep groundwater from entering a basement known as interceptor trenches for positive groundwater control.

- b. The Article 10 Application should include a discussion in this section regarding the potential for the disturbance of the soil hydraulic conductivity along with what mitigation measures will be proposed to ameliorate the effects of groundwater interception

Response: *Geotechnical and groundwater data will be collected in advance of the application to determine what, if any 'Piping' could occur for the Project. An assessment of impacts and potential mitigation will be provided in the Application.*

3. Open trenching is not a viable option for flowing water sites. The preferred option is the use of a cofferdam combined with a pump around technique.

Response: *Comment Noted.*

4. Open trenches must also be backfilled “as you go” for burying lines.
5. No open trench shall remain open before proceeding to the next site.
6. The Article 10 Application should be corrected to include the above recommendations during excavation and backfill operations.

Response: *CVWP will work with DEC to further explore these comments.*

IX. Heading 2.21.9 (i) Blasting Plan (Page 91)

1. On page 90 the PSS states; “If blasting is required, it will be conducted in compliance with a Blasting Plan, and in accordance with all applicable laws and good engineering practices to avoid impacts to sensitive receptors.”

2. Comment/Recommendation(s):

- a. The DEC’s Bureau of Mineral Resources guidance for blasting should be followed.
 - i. Seismographs will be placed at the nearest structures to measure the seismic activity during and after the blasting.
 - ii. Blasting limits are described based upon the Z-curve for peak particle velocities versus frequency to protect nearby structures.
 - iii. Also, a Blasting Plan would need to be submitted and approved by the DEC before blasting could begin.

Response: *A plan will be submitted to DEC and will follow the*

X. Heading 2.21.12 (l) Regional Geology, Tectonic, and Seismology (Pages 92-95)

1. On page 95 the PSS states; “Additional geotechnical investigations, consisting of subsurface exploration, laboratory analysis, and seismic refraction testing will be conducted to encompass the entire Project area. Exhibit 21 will be updated with the results of these studies.
2. **Comment/Recommendation(s):**
 - a. The Article 10 Application should also included detailed local geotechnical investigation on all proposed turbine locations to ensure that the stability of the bedrock is compatible with the additional load of concrete base pads and wind turbines. The emphasis of the study would be to identify potential problem areas such as Karst formations, sinkholes, or other solution-enlarged conditions before construction begins.

Response: *A geotechnical study and Karst study will be performed at each turbine location. A percentage of the site will be done prior to the application. A final geotechnical study will be conducted at each turbine location based on final micrositeing locations.*

XI. Heading 2.21.17 (q) Subsurface Analysis and Impacts (Pages 97-100)

1. On page 100, under the heading of *Drainage Features* the PSS states; “If areas of potential subsurface drainage including drainage tile or solution-enlarged joints (Karst conditions) are encountered during construction, they will be avoided, protected, or completely restored. CVWP will mitigate these

potential impacts where necessary, including installation of culverts and water bars to maintain natural drainage patterns. In addition, where Project roads are constructed or existing roads are improved, design of these roads will include drainage systems.”

XII. Comment/Recommendation(s):

1. The Article 10 Application should also include detailed local geotechnical investigation on all proposed turbine locations to ensure that the stability of the bedrock is compatible with the additional load of concrete base pads and wind turbines. The emphasis of the study would be to identify potential problem areas such as Karst formations, sinkholes, or other solution-enlarged conditions before construction begins.

Response: *A geotechnical study and Karst study will be performed at each turbine location. A percentage of the site will be done prior to the Application. A final geotechnical study will be conducted at each turbine location based on final micrositing locations.*

2. Installation of culverts should follow the guidance provided in the DEC brochure titled; “Stream Crossings: Guidelines and Best Management Practices” which may be found at the following URL:
 - a. <http://www.dec.ny.gov/permits/49066.html>, with a printable version found at;
 - b. http://www.dec.ny.gov/docs/permits_ej_operations_pdf/streamcrossbmp.pdf
3. Another valuable source of information for design stream crossings and the

use of culverts is the U.S. Forest Service document titled; “Stream Simulation: An Ecological Approach to Providing Passage for Aquatic Organisms at Road-Stream Crossings.” This document may be found at the following URL:

- a. <http://www.fs.fed.us/eng/pubs/pdf/StreamSimulation/index.shtml>

Response: *Comment noted and these will be investigated further.*

J. Subsection 2.22 Terrestrial Ecology and Wetlands – Exhibit 22 (Pages 103-135) **I. Heading 2.22.1 Potentially Significant Adverse Impacts** (Pages 103-107)

1. On page 103 of the PSS it states; “The determination of potentially significant adverse impacts to terrestrial ecology and wetland resources is based on compiled state and federal resource information, results of extensive onsite multi-season studies, and discussions with various state and Federal agencies on the wildlife species and habitat types documented or expected to exist within the Project and the likely impacts of the construction and operation of the Project on wildlife. These impacts are grouped below as follows: general wildlife habitat, mammals (other than bats), avian and bat resources, state and federal endangered and threatened species, and wetlands.”

II. Comment/Recommendation(s):

1. The Article 10 Application should include a detailed discussion on the potential impacts to rare communities that are present in this area and were missed in the PSS.
2. Items missed during the review are rare communities in this area that

include a silver maple-ash swamp, alvar grasslands, limestone woodlands, calcareous pavement barrens, sinkhole wetlands, waterfowl winter concentration areas, and raptor winter concentration areas.

Response: *Detailed discussions of the potential impacts to rare communities present in the Project area including silver maple-ash swamp, alvar grasslands, limestone woodlands, calcareous pavement barrens, sinkhole wetlands will be included in the Article 10 Application. While many of these plant communities will not be directly affected by construction and operation of the Project, the discussion will address indirect and direct impacts, if any. At this time, CVWP is not aware of any waterfowl winter concentration areas or raptor winter concentration areas present in the proposed Project area. The results of winter raptor and waterfowl driving surveys conducted from November 2006 through March 2007 (Kerns et al 2007), and from November 2007 through March 2008 (Young et al. 2008) did not indicate the presence of raptor or waterfowl winter concentration areas within the Project area. Additionally, the winter raptor driving surveys recorded only infrequent eagle observations and did not document any confirmed or suspected bald eagle winter concentration areas. These survey results are being included in the impacts assessment in the Article 11 Application.*

III. Subheading – General Wildlife Habitat (Page 103-104)

1. On page 104 in Table 2.22-1, Land Cover with Limits of Disturbance, the PSS indicates that 149.2 acres of Eastern North American Flooded & Swamp Forest will be removed or disturbed.

2. Comment/Recommendation(s):

- a. The removal or disturbance of 149.2 acres of Eastern North American Flooded & Swamp Forest is significant if avoidance is not practiced.
- b. The Article 10 Application should provide specific detail as to the avoidance measures to be used. It is highly recommended that the Applicant consult with local state and federal habitat/wetland biologists to develop improvements of planned avoidance measures to help minimize the removal or disturbance of habitat types to the greatest extent practicable.

Response: *The 149.2 acres of Eastern North American Flooded & Swamp Forest represents the total acreage within the limits of disturbance based on the US Geological Survey, GAP land cover data. Actual wetlands within the limits of disturbance will be field delineated. CVWP will coordinate with local state and federal habitat/wetland biologists to develop avoidance measures that will minimize the removal or disturbance of wildlife habitat, including wetlands, to the greatest extent practicable.*

IV. Subheading – Avian and Bat Resources (Pages 104-105)

1. On page 105 the PSS states; “CVWP has conducted pre-construction surveys specifically for grassland birds. Information collected during those surveys has been used to inform project design to avoid and minimize indirect impacts resulting from construction or operation of the Project, to the extent practicable. CVWP will conduct post-construction fatality monitoring

studies to determine the direct impact of operating wind turbines on birds and bats and confirm the estimated impacts of the Project.” ... “CVWP will conduct post-construction fatality monitoring studies to determine the direct impact of operating wind turbines on grassland birds as well as studies designed to estimate the indirect impact of operating wind turbines on grassland birds.”

2. **Comment/Recommendation(s):**

- a. The timing and duration of the above mentioned pre- and post-construction fatality studies on grassland birds to determine the direct and indirect effects is not mentioned.
- b. The PSS does not mention what steps that were taken to avoid and minimize both the direct and indirect effects of construction and operation of the Project on avian and bat resources.
- c. The Article 10 Application should include details of the timing and duration of all pre- and post-construction monitoring studies for the Project. The Application should also include a detailed discussion as to the steps that were taken to avoid and minimize both the direct and indirect effects of construction and operation of a commercial scale operation such as this Project. Proposed avoidance and minimization measures should be developed in consultation with local state and federal agency personnel who have extensive expert knowledge of the resources in this region.

Response: *The dates of the pre-construction studies are provided in the*

survey reports (Young et al. 2007, Kerns et al. 2007, Tidhar 2009, Tidhar et al. 2010). The dates of the post-construction studies will be provided in the study plan being developed in consultation with state and federal agency personnel and to be included in the Article 11 Application for the Project. The Article 11 Application will include steps taken by the Applicant to avoid and minimize both the direct and indirect effects of construction and operation of the Project on avian and bat resources. For direct and indirect effects that cannot be avoided, a mitigation plan for the construction and operation of the Project will be developed in coordination with the NYSDEC and will also be included in the formal Article 11 Application.

V. Subheading – Wetlands (Page 106-107)

1. On page 107 of the PSS it states; “Unavoidable fill of wetlands will result in the permanent loss of acreage and associated functions and values. Although wetland impacts will be avoided to the extent practicable, any clearing through forested wetlands could result in a change from tree species to shrub and herbaceous vegetation. Impacts to non-forested wetlands are expected to be short term and vegetation is expected to return to pre-construction conditions in one to two growing seasons.”
2. **Comment/Recommendation(s):**
 - a. No estimate of the total acreage of wetlands that may be removed or disturbed appears under this subheading and this would be considered a “Potentially Significant Adverse Impact”.

Response: *It is estimated that approximately 81.5 acres of wetlands is located in the limits of disturbance associated with the current layout. Approximately 6 to 10 percent of these could potentially be permanently disturbed. CVWP will continue to change the layout to avoid or reduce total wetland impacts.*

- b. A change wetland type will be considered a loss of functions and values of that wetland.

Response: *CVWP acknowledges DEC's comment that a change in wetland type will be considered a loss of functions and values of that wetland and will include this in the list of criteria CVWP will use in evaluating changes to the proposed layout to avoid or minimize impacts to resources resulting from construction of the Project.*

- c. The Article 10 Application should provide specific details regarding the total acreage of wetlands that will potentially be impacted along with the proposed mitigation that will be used for the conversion or loss of wetland functions and values.

Response: *The Article 10 Application will include the total acreage of wetlands that will potentially be affected by the construction of the Project. Acreages will be summarized by temporary and permanent impacts as well as cover type. The Article 10 Application will also include proposed mitigation to compensate for the conversion or loss of wetland functions and values.*

VI. Heading 2.22.2 Extent and quality of Information Required (Pages 107-108)

1. On page 107 of the PSS it states; “Extensive pre-construction wildlife studies and data relating to the presence, abundance, or distribution of wildlife species in the Project Area have been conducted or compiled since 2006.”

VII. Comment/Recommendation(s):

1. The Article 10 Application should take into account that the previous studies for the SLWF and the original Cape Vincent Wind Farm (CVWEP) projects, were for two separate smaller projects and were designed to assess the potential impacts of each separately and with markedly smaller turbines and layouts.

Response: *The Project as proposed includes 11 fewer turbines than the SLWF and the CVWEP projects would have together added to the landscape. Appendix A contains a map illustrating that the Project footprint closely overlaps with and is not larger than the combined footprint of the two predecessor projects. Studies conducted for the two predecessor projects were developed in consultation with the DEC and the USFWS, as appropriate, and followed the guidelines for standard and expanded studies set forth in the GUIDELINES for CONDUCTING BIRD and BAT STUDIES at COMMERCIAL WIND ENERGY PROJECTS; Prepared by New York State Department of Environmental Conservation Division of Fish, Wildlife and Marine Resources; August 2009. Thus, the types of studies conducted and their frequency, duration, and sample size considerations were established according to these guidelines. Because the new combined Project area is not larger than the previous two project areas, the studies previously conducted*

for the two separate projects should be applicable to the new Project area. CVWP will continue to coordinate with the state and federal agencies regarding potential additional pre-construction studies for the Project.

2. The DEC recommends that the Applicant design and conduct new studies to be included in the Article 10 Application, in consultation with local state and federal agency personnel who have extensive expert knowledge of the resources in this region. a. New studies would be needed in order to more accurately assess the potential impacts that the new CVWF Project may have based on the use of larger turbines and an altered footprint (Project Layout) from the two separate projects previously mentioned.

Response: *The Project as proposed includes 11 fewer turbines than the SLWF and the CVWEP projects would have together added to the landscape. Appendix A contains a map illustrating that the Project footprint closely overlaps with and is not larger than the combined footprint of the two predecessor projects. Studies conducted for the two predecessor projects were developed in consultation with the DEC and the USFWS, as appropriate, and followed the guidelines for standard and expanded studies set forth in the GUIDELINES for CONDUCTING BIRD and BAT STUDIES at COMMERCIAL WIND ENERGY PROJECTS; Prepared by New York State Department of Environmental Conservation Division of Fish, Wildlife and Marine Resources; August 2009. Thus, the types of studies conducted and their frequency, duration, and sample size considerations were established according to these guidelines. Because the new combined Project area is not*

larger than the previous two project areas, the studies previously conducted for the two separate projects should be applicable to the new Project area.

CVWP will continue to coordinate with the state and federal agencies regarding potential additional pre-construction studies for the Project

3. The DEC recommend including information from studies that have been and are being conducted at the nearby Canadian wind power project on Wolfe Island which has similar social, economic, and environmental conditions as Cape Vincent, NY.

- a. It is recommended that this information also be used to assess the potential cumulative impacts that may affect the health, safety and welfare of the people of the state and their overall economic and social well being, such as, but not limited to;

- i. The potential cumulative effect on avian and bat resources,

Response: *Data from Wolfe Island and other applicable studies are being reviewed and incorporated, as relevant, into the impacts assessment and cumulative effects assessment in the Article 11 Application.*

- ii. The potential cumulative effect on the overall viewshed of the residents of Cape Vincent, within and adjacent to the Project area,

Response: *It appears that the cumulative visual impact of the Cape Vincent Wind and Wolfe Island Wind projects will be fairly limited to the St. Lawrence River and its shoreline, Lake Ontario, and select inland locations. A cumulative viewshed map (topographical and*

vegetated) will be developed using aerial imagery to identify the Wolfe Island turbine coordinates.

4. The potential economic impact to environmental recreation such as tourism, sportfishing, boating/canoeing/kayaking, bird watching, hunting, camping... etc

Response: *CVWP will take this comment under advisement.*

5. The Article 10 Application should provide specific detail on additional studies that will be conducted in relation to the new Project layout. These studies should be designed in consultation with local state (DEC) and federal biologists (USFWS) who have extensive knowledge regarding the natural resources in this area.
 - a. While the previous data collected will be useful; it is imperative that additional pre-construction studies be conducted in relation to the actual layout of the new Cape Vincent Wind Farm Project boundary.

Response: *The Project as proposed includes 11 fewer turbines than the SLWF and the CVWEP projects would have together added to the landscape. Appendix A contains a map illustrating that the Project footprint closely overlaps with and is not larger than the combined footprint of the two predecessor projects. Studies conducted for the two predecessor projects were developed in consultation with the DEC and the USFWS, as appropriate, and followed the guidelines for standard and expanded studies set forth in the GUIDELINES for CONDUCTING BIRD and BAT STUDIES at COMMERCIAL WIND ENERGY*

PROJECTS; Prepared by New York State Department of Environmental Conservation Division of Fish, Wildlife and Marine Resources; August 2009. Thus, the types of studies conducted and their frequency, duration, and sample size considerations were established according to these guidelines. Because the new combined Project area is not larger than the previous two project areas, the studies previously conducted for the two separate projects should be applicable to the new Project area. Applicant will continue to coordinate with the state and federal agencies regarding potential additional pre-construction studies for the Project.

VIII. Subheading – General Wildlife Habitat (Page 108)

1. On page 108 the PSS states; “Plant community and wildlife habitat characterization has been completed for the previous Project layout and will need to be updated to reflect the limits of disturbance for revised Project. Updated information will be included in the Article 10 Application.”
2. **Comment/Recommendation(s):**
 - a. The Article 10 Application should take into account that the previous studies for the SLWF and the original Cape Vincent Wind Farm (CVWEP) projects, were for two separate projects and were designed to assess the potential impacts of each separately and with markedly smaller turbines and layouts.

Response: *The Project as proposed includes 11 fewer turbines than the SLWF and the CVWEP projects would have together added to the landscape. Appendix A contains a map illustrating that the Project*

footprint closely overlaps with and is not larger than the combined footprint of the two predecessor projects. Studies conducted for the two predecessor projects were developed in consultation with the DEC and the USFWS, as appropriate, and followed the guidelines for standard and expanded studies set forth in the GUIDELINES for CONDUCTING BIRD and BAT STUDIES at COMMERCIAL WIND ENERGY PROJECTS; Prepared by New York State Department of Environmental Conservation Division of Fish, Wildlife and Marine Resources; August 2009. Thus, the types of studies conducted and their frequency, duration, and sample size considerations were established according to these guidelines. Because the new combined Project area is not larger than the previous two project areas, the studies previously conducted for the two separate projects should be applicable to the new Project area. CVWP will continue to coordinate with the state and federal agencies regarding potential additional pre-construction studies for the Project.

b. The DEC would recommend that the Applicant design and conduct new studies to be included in the Article 10 Application, in consultation with local state and federal agency personnel who have extensive expert knowledge of the resources in this region.

i. New studies would be needed in order to more accurately assess the potential impacts that the new CVWF Project may have based on the use of larger turbines and a larger overall footprint (Project Layout) than the two separate projects previously mentioned.

Response: *The Project as proposed includes 11 fewer turbines than the SLWF and the CVWEP projects would have together added to the landscape. Appendix A contains a map illustrating that the Project footprint closely overlaps with and is not larger than the combined footprint of the two predecessor projects. Studies conducted for the two predecessor projects were developed in consultation with the DEC and the USFWS, as appropriate, and followed the guidelines for standard and expanded studies set forth in the GUIDELINES for CONDUCTING BIRD and BAT STUDIES at COMMERCIAL WIND ENERGY PROJECTS; Prepared by New York State Department of Environmental Conservation Division of Fish, Wildlife and Marine Resources; August 2009. Thus, the types of studies conducted and their frequency, duration, and sample size considerations were established according to these guidelines. Because the new combined Project area is not larger than the previous two project areas, the studies previously conducted for the two separate projects should be applicable to the new Project area. CVWP will continue to coordinate with the state and federal agencies regarding potential additional pre-construction studies for the Project.*

IX. Subheading – State and Federal Endangered or Threatened Species
(Page 109)

1. On page 109 in the PSS it states; “The Project has consulted the USFWS and DEC and is currently preparing avoidance, minimization and mitigation

strategies for threatened and endangered species in compliance with the federal Endangered Species Act (ESA

1973) and Part 124 of New York State Environmental Conservation Law Article 11.”

2. **Comment/Recommendation(s):**

- a. The correct reference for the code of rules and regulations governing endangered and threatened species of fish and wildlife; species of special concern, and incidental take permits should be as follows:
 - i. 6 NYCRR Part 182 (pursuant to ECL Article 11-0535)
- b. For more information regarding endangered, threatened, and species of special concern please visit the following URL:
 - i. <http://www.dec.ny.gov/regs/3932.html>
- c. The Article 10 Application should provide the correct information for referencing the New York code of rules and regulations governing endangered and threatened species of fish and wildlife; species of special concern and incidental take permits.

Response: *CVWP will ensure that the Application contains the appropriate references.*

X. **Subheading – Wetlands** (Pages 109-110)

1. On page 110 of the PSS it states; “Wetlands within the SLWF and CVWEP limits of disturbance were delineated during the period between 2007 and 2010 using methods described in either the 1987 the Corps of Engineers Wetland Delineation Manual (Environmental Laboratory 1987)¹⁵ for delineations completed prior to 2010 or the 2012 Regional Supplement to the

Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region for delineations completed after 2010.”

XI. Comment/Recommendation(s):

1. Wetland delineations are technically only valid for a period of 5 years.
2. All delineations performed before 2008 will need to be re-delineated and should incorporate procedures from the DEC’s; “New York State Freshwater Wetlands Delineation Manual (July 1995)” for state regulated freshwater wetlands, which can be found at the following URL:

- a. http://www.dec.ny.gov/docs/wildlife_pdf/wdelman.pdf

Response: CVWP will ensure that the Application utilizes wetland delineation work performed within the last five years. In addition to using the USACE Wetland Delineation Manual (Environmental Laboratory, 1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region (Version 2.0) (USACE, 2012), CVWP has incorporated procedures from the DEC’s; New York State Freshwater Wetlands Delineation Manual (July 1995) for state regulated freshwater wetlands (i.e., wetlands greater than 12.4 acres in size).

XII. Heading 2.22.3 Proposed or On-going Studies during Pre-construction (Pages 110-113)

1. Subheading – General Wildlife Habitat
 - a. On page 110 the PSS states; “Habitat characterization within the revised Project will be based on identification and description of the type of plant communities present on the Project, including the overhead

transmission line, and adjacent properties. Plant communities will be classified using the U.S. Geological Survey Gap Analysis Program (“GAP”) national land cover data set (Version 2) and will be identified to ecological system level describing dominant species and subdominant associates.”

2. **Comment/Recommendation(s):**

- a. The proper name for GAP is the **National Gap Analysis Program**, please visit the following URL:

i. <http://gapanalysis.usgs.gov>

- b. The National GAP Land Cover data uses Landsat 1999-2001 imagery and the CVWF Project will need to supplement this information with on the ground field collection of recent data through pre-construction studies.

Response: *Within the context of the Article 11 Application, a new landcover layer is being created for the Project area using more recent existing landcover data (e.g., NLCD 2006), and/or current aerial photos to update analysis of habitat types used by RTE species that are potentially impacted by the Project.*

- c. The National Land Cover Dataset is created by the U.S. Geological Survey’s Land Cover Institute. For more information please visit the following URL:

i. <http://landcover.usgs.gov/>

3. **Subheading – Avian and Bat Resources** (Page 111)

- a. On page 111 the PSS states; “Based on extensive avian and bat studies

completed within the Project area to date, additional studies for this group are not proposed. Potential avian mortality due to operation of the Project will be estimated using fatality rates derived from post construction mortality monitoring studies conducted at operational wind energy facilities located in New York and the northeast U.S.”

b. Comment/Recommendation(s):

- i. The Article 10 Application should take into account that the previous studies for the SLWF and the original Cape Vincent Wind Farm (CVWEP) projects, were for two separate smaller projects and were designed to assess the potential impacts of each separately and with markedly smaller turbines and layouts.

Response: *The Project as proposed includes 11 fewer turbines than the SLWF and the CVWEP projects would have together added to the landscape. Appendix A contains a map illustrating that the Project footprint closely overlaps with and is not larger than the combined footprint of the two predecessor projects. Studies conducted for the two predecessor projects were developed in consultation with the DEC and the USFWS, as appropriate, and followed the guidelines for standard and expanded studies set forth in the GUIDELINES for CONDUCTING BIRD and BAT STUDIES at COMMERCIAL WIND ENERGY PROJECTS; Prepared by New York State Department of Environmental Conservation Division of*

Fish, Wildlife and Marine Resources; August 2009. Thus, the types of studies conducted and their frequency, duration, and sample size considerations were established according to these guidelines.

Because the new combined Project area is not larger than the previous two project areas, the studies previously conducted for the two separate projects should be applicable to the new Project area. CVWP will continue to coordinate with the state and federal agencies regarding potential additional pre-construction studies for the Project.

- ii. The DEC recommends that the Applicant design and conduct new studies to be included in the Article 10 Application, in consultation with local state and federal agency personnel who have extensive expert knowledge of the resources in this region.
- c. New studies would be needed in order to more accurately assess the potential impacts that the new CVWF Project may have based on the use of larger turbines and an altered footprint (Project Layout) from the two separate projects previously mentioned.

Response: *The Project as proposed includes 11 fewer turbines than the SLWF and the CVWEP projects would have together added to the landscape. Appendix A contains a map illustrating that the Project footprint closely overlaps with and is not larger than the combined footprint of the two predecessor projects. Studies conducted for the two predecessor projects were developed in consultation with the DEC and*

the USFWS, as appropriate, and followed the guidelines for standard and expanded studies set forth in the GUIDELINES for CONDUCTING BIRD and BAT STUDIES at COMMERCIAL WIND ENERGY PROJECTS; Prepared by New York State Department of Environmental Conservation Division of Fish, Wildlife and Marine Resources; August 2009. Thus, the types of studies conducted and their frequency, duration, and sample size considerations were established according to these guidelines. Because the new combined Project area is not larger than the previous two project areas, the studies previously conducted for the two separate projects should be applicable to the new Project area. Applicant will continue to coordinate with the state and federal agencies regarding potential additional pre-construction studies for the Project.

- i. The DEC recommends including information from studies that have been and are being conducted at the nearby Canadian wind power project on Wolfe Island which has similar social, economic, and environmental conditions as Cape Vincent, NY.
- ii. It is recommended that this information also be used to assess the potential cumulative impacts that may affect the health, safety and welfare of the people of the state and their overall economic and social well being, such as, but not limited to;
 - a. The potential cumulative effect on avian and bat resources,

Response: *Data from Wolfe Island and other applicable studies are being reviewed and incorporated, as relevant,*

into the impacts assessment and cumulative effects assessment in the Article 11 Application.

- b. The potential cumulative effect on the overall viewshed of the residents of Cape Vincent, within and adjacent to the Project area,

Response: *It appears that the cumulative visual impact of the Cape Vincent Wind and Wolfe Island Wind projects will be fairly limited to the St. Lawrence River and its shoreline, Lake Ontario, and select inland locations. A cumulative viewshed map (topographical and vegetated) will be developed using aerial imagery to identify the Wolfe Island turbine coordinates.*

- c. The potential economic impact to environmental recreation such as tourism, sportfishing, boating/canoeing/kayaking, bird watching, hunting, camping... etc

Response: *CVWP will take this comment under advisement.*

- iii. The Article 10 Application should provide specific detail on additional studies that will be conducted in relation to the new Project layout. These studies should be designed in consultation with local state (DEC) and federal biologists (USFWS) who have extensive knowledge regarding the natural resources in this area.

- a. While the previous data collected will be useful; it is

imperative that additional pre-construction studies be conducted in relation to the actual layout of the new Cape Vincent Wind Farm Project turbine locations and boundary.

Response: *The Project as proposed includes 11 fewer turbines than the SLWF and the CVWEP projects would have together added to the landscape. Appendix A contains a map illustrating that the Project footprint closely overlaps with and is not larger than the combined footprint of the two predecessor projects. Studies conducted for the two predecessor projects were developed in consultation with the DEC and the USFWS, as appropriate, and followed the guidelines for standard and expanded studies set forth in the GUIDELINES for CONDUCTING BIRD and BAT STUDIES at COMMERCIAL WIND ENERGY PROJECTS; Prepared by New York State Department of Environmental Conservation Division of Fish, Wildlife and Marine Resources; August 2009. Thus, the types of studies conducted and their frequency, duration, and sample size considerations were established according to these guidelines. Because the new combined Project area is not larger than the previous two project areas, the studies previously conducted for the two separate projects should be applicable to the new Project*

area. CVWP will continue to coordinate with the state and federal agencies regarding potential additional pre-construction studies for the Project.

4. Subheading – Wetlands (Pages 112-113)

- a. On page 112 through 113 the PSS states; “Functions and values will be assessed using procedures outlined in the Highway Methodology Workbook Supplement issued by the USACE New England District (USACE, 1995) that prescribes a descriptive approach. This method integrates wetland science and value judgment into the overall assessment of a wetland. This method considers eight functions and five values. Principal and secondary, where applicable, functions and values will be designated to each wetland delineated within the 500-foot buffered Project limits of disturbance.”

5. Comment/Recommendation(s):

- a. The Applicant will also be required to provide the conclusions of the DEC wetland compatibility and value tests as would be required by Article 24 of the Environmental Conservation Law for each class and each wetland disturbed.
- b. The Article 10 Application should provide specific details regarding the DEC wetland compatibility and value tests.

Response: *CVWP will conduct an evaluation of the compatibility of the proposed activity in regulated freshwater wetland and adjacent areas, including weighing by class and values as necessary. Results of this*

evaluation, including specific details, will be included in the Article 10 Application.

XIII. Heading 2.22.4 Avoidance and Minimization Measures (Pages 113-116)

1. Subheading – State and Federal Endangered or Threatened Species (Pages 114-115)

- a. On page 115 the PSS states; “To reduce, minimize, and/or avoid potential impacts to Blanding’s turtles and their habitats, CVWP will endeavor to:
 - i. Site roadways and staging areas, to the extent possible, away from potential nesting areas and the travel corridors between nesting areas and identified potential Blanding’s turtle wetlands and suitable habitat areas. If it is not possible to re-site roads and staging areas, barriers and culverts/underpasses will be used to either prevent movement to or facilitate movement across these features.”
 - ii. “Reduce construction clearance activities, to the extent practicable, during the peak nesting season in areas in and adjacent to Blanding’s turtle habitat (June 1 – July 31).”
- b. **Comment/Recommendation(s):**
 - i. The construction avoidance window for Blanding’s turtles is from May 28th through July 9th.
 - ii. The Article 10 Application should reflect the correct construction avoidance window for Blanding’s turtles as from May 28th through July 9th.

Response: *The Article 10 Application will define the construction avoidance window for areas of Blanding's turtle habitat within the Project area as May 28th through July 9th.*

2. Subheading – Avian and Bat Resources (Pages 113-114)

- a. On page 113 the PSS states: “The proposed Project will continue to be designed to reduce impacts to birds and bats.”

3. **Comment/Recommendation(s):**

- a. The Applicant should consult with local state (DEC) and federal biologists (USFWS) who have extensive knowledge regarding the natural resources in this area in order to reduce impacts to birds and bats.

Response: *Applicant has consulted with USFWS and NYSDEC since 2006 in regards to avian and bat resources and continues to do so in the current study design efforts and in the design of post-construction monitoring studies.*

XIV. **Heading 2.22.5 Proposed Measures to Mitigate Unavoidable Impacts** (Pages 116-117)

1. Subheading – General Wildlife Habitat (Page 116)

- a. On page 116 the PSS states; “Mitigation Options for wildlife habitat include:
 - i. Restoring temporary disturbed areas, where practicable, to comparable pre- construction contours and reseeding with native (noninvasive) as soon as practicable following the completion of construction activities; and
 - ii. Implementing a comprehensive Invasive Species Management

Plan that outlines management measures to identify invasive that may occur in the Project area, and control and monitor their spread during each phase of construction.”

b. Comment/Recommendation(s):

- i. There is really no true mitigation for adverse modification of habitat mentioned as a consideration.
- ii. The DEC requests that the Article 10 Application include a section that would detail the potential for habitat replacement through fee acquisition/conservation easement/active management as possible mitigation for the loss of habitat.

Response: *A mitigation plan for the construction and operation of the Project will be developed in coordination with the NYSDEC and will be included in the formal Article 10 Application.*

2. Subheading – Grassland Birds (Page 116)

- a. On page 116 the PSS states; “Specific mitigation plan development is on-going and includes consultation with the NYSDEC as per Part 182 of the New York Article 11.”

b. Comment/Recommendation(s):

- i. The Region 6 DEC office in Watertown, NY is unaware of any specific mitigation plan development and requests that avoidance and minimization measures be utilized and then evaluated.
 - a. After reviewing the results of the evaluation, and through consultation with local state (DEC) and federal biologists

(USFWS) who have extensive knowledge regarding the natural resources in this area, an appropriate mitigation plan could then be developed. Such was the case when DEC was actively considering a permit application for the SLWF. Significant progress was made in assessment of adverse habitat modification, along with proposals and justifications for habitat replacement. A draft permit was prepared which included provisions for facility operational adjustments, habitat acquisition, habitat management, and performance bonding. Prior efforts in this regard should be consulted when considering development of a mitigation plan.

Response: *A mitigation plan for the construction and operation of the Project will be developed in coordination with the NYSDEC and will be included in the formal Article 11 Application.*

- ii. The correct reference for the code of rules and regulations governing endangered and threatened species of fish and wildlife; species of special concern, and incidental take permits should be as follows:
 - a. 6 NYCRR Part 182 (pursuant to ECL Article 11-0535)
- iii. For more information regarding endangered, threatened, and species of special concern please visit the following URL:
 - a. <http://www.dec.ny.gov/regs/3932.html>
- iv. The Article 10 Application should provide the correct information

for referencing the New York code of rules and regulations governing endangered and threatened species of fish and wildlife; species of special concern and incidental take permits.

Response: CVWP will ensure that the Application contains the appropriate references.

3. Subheading – Wetlands (Page 117)

- a. On page 117 the PSS states; “Compensation for unavoidable fills in wetlands will be consolidated in one or more locations as yet undetermined. A compensatory mitigation plan will be prepared for any unavoidable permanent fill of wetlands or permanent conversion of forested wetland covered types to non-forested cover types. Wetlands will be mitigated in kind at a ratio to be determined in consultation with the appropriate regulatory agencies. Mitigation plans will contain sections on grading, planting, and monitoring for success of the mitigation.”

b. Comment/Recommendation(s):

- i. Mitigation plans should be drafted in consultation with local state and federal habitat/wetland biologist.

Response: CVWP will develop mitigation plans for any unavoidable impacts to wetlands in consultation with local state and federal habitat/wetland biologist.

- ii. The mitigation plans should be reviewed and approved by local state and federal habitat/wetland biologist before construction begins.

Response: CVWP will provide draft mitigation plans to local state and federal habitat/wetland biologist for their review and approval prior to the initiation of construction.

- iii. The Article 10 Application should include language which will ensure the Applicant will develop mitigation plan(s) by making the best use of the expert knowledge local state and federal habitat/wetland biologists have of the Project Area.

Response: CVWP will include language in the Article 10 Application ensuring that they have developed mitigation plan(s) in consultation with local state and federal habitat/wetland biologists.

K. Subsection 2.23 Water Resources & Aquatic Ecology – Exhibit 23 (Pages 136-146) I. **Heading – Groundwater** (Page 136)

- 1. On page 136 in the 3rd paragraph the PSS states; “If dewatering of excavated pits for foundations occurs, it may result in minor and local lowering of the water table. Given the minor and highly localized character of these impacts, local water supply wells will not be adversely affected.”

2. Comment/Recommendation(s):

- a. This section does not discuss what effect the multitude of buried, underground interconnection and/or transmission lines may have to intercept groundwater which is sometimes referenced as ‘Pipe Flow’ or ‘Piping’.
- b. ‘Piping’ occurs when normal path of groundwater is intercepted because the soil and sediment compactness has been altered, modifying the

hydraulic conductivity of the soil and sediment layers, allowing water to flow in the path of least resistance along the cable, line, or pipe that has been buried. This is a common practice around residential dwellings to keep groundwater from entering a basement known as interceptor trenches for positive groundwater control.

- c. The Article 10 Application should include a discussion in this section regarding the potential for the disturbance of the soil hydraulic conductivity along with what mitigation measures will be proposed to ameliorate the effects of groundwater interception.

Response: *Geotechnical and groundwater data will be collected in advance of the application to determine what, if any 'Piping' could occur for the Project. An assessment of impacts and potential mitigation will be provided in the Application.*

- d. The Article 10 Application should also include a discussion in this section on what mitigation measures will be used to offset the effects if the local water table is lowered and local water supplies become adversely affected.

Response: *If the lowering of the water table should occur it is expected to be highly localized and minor; however, CVWP will include a discussion in Exhibit 23 identifying what mitigation measures, if any, will be used to offset any potential adverse effects to the local water supply.*

II. Heading – Aquatic Species and Invasive Species (Pages 137-138)

1. On page 137 in the 1st paragraph the PSS states; “The NYSDEC has

documented walleye spawning activity over gravel beds in Kents Creek upstream of Route 12E. The ability of Kents Creek to support a substantial resident population of walleye has not been confirmed; however, NYSDEC considers most of the spawning individuals in Kents Creek to be upstream migrants from Lake Ontario and/or the St. Lawrence River (NYSDEC, 2007)²⁰. Field investigations confirm the density of fish bearing streams in the Project area is low and disturbances to streambeds and banks will be temporary; therefore, project-related impacts to aquatic species are not anticipated.”

2. Comment/Recommendation(s):

- a. In addition to walleye, there are several other economically important sportfish species, a threatened species, and three species listed in the Natural Heritage Database that would be of concern to the DEC which are found within or adjacent to the general project area of the Towns of Cape Vincent, Lyme and the Village of Chaumont.
- b. In light of this information, the Bureau of Fisheries and the Bureau of Habitat would recommend the use of the general warmwater construction avoidance window to ensure protection of these species during their spawning and rearing periods.

Response: CVWP will observe the general warmwater construction avoidance window to ensure protection of economically important sportfish species and state listed during their spawning and rearing periods. However, CVWP may also conduct fish surveys associated with each crossing to determine presence/absence of economically important

or listed species and the need to observe the construction avoidance window.

- c. The Article 10 Application should include proposed mitigation measures to be used in the event that aquatic species are impacted as a result of construction measures

Response: *The Article 10 Application will include proposed mitigation measures to be used if construction activities result in adverse effects on aquatic species.*

3. On page 137 in the 2nd paragraph the PSS states; “Based on results of previous studies, the Project area has suitable Blanding’s turtle habitat.”

4. **Comment/Recommendation(s):**

- a. Discussions involving Blanding’s turtles, their habitat, and any associated potential impacts should be in a section for endangered, threatened, or species of special concern because the Blanding’s turtle is a New York State listed “Threatened” species.
- b. The Article 10 Application should be corrected to include Blanding’s turtle discussions in a section for endangered, threatened, or species of special concern.

Response: *A thorough discussion of Blanding’s turtles will be included in the Article 10 Application.*

5. On page 138 of the PSS it states; “Eleven invasive species were identified by the NYSDEC as potentially occurring within the Project area.”

6. **Comment/Recommendation(s):**

- a. The DEC recommends that the Applicant develop an Invasive Species Control Plan (ISCP) in consultation with DEC. In addition to the eleven (11) invasive species listed on page 138, wild parsnip (*Pastinaca sativa*) is also present and will need to be included in the ISCP.
- b. The Article 10 Application should be corrected to provide an Invasive Species Control Plan (ISCP) that would first, avoid potential impacts during these operations and secondly, minimize or reduce impacts by;
 - i. Inspecting all equipment, parts, and materials brought on site,
 - ii. Physically removing all plant or animal matter from equipment, parts, and materials brought on site,
 - iii. Cleaning and Disinfecting of any surface that has come into contact with an invasive species or unknown, and;
 - iv. Re-inspecting all equipment, parts, and materials before moving to a new site.

Response: *The Article 10 Application will include a Vegetation Management Plan and an Invasive Species Control Plan demonstrating avoidance, minimization and reduction of impacts of potential impacts during operations to wetlands, their associated adjacent areas, E/T/SC species occupied habitat, and rare and significant plant communities.*

L. Subsection 2.23.3 Proposed or On-going Studies during Pre-construction Activities

(Pages 140-142)

I. Heading – Aquatic Species and Invasive Species (Page 142)

1. On page 142 in the 2nd paragraph of the PSS it states; “Potential habitat to support Blanding’s turtle will be assessed within the revised Project area and within 500 feet of the areas to be disturbed.”
2. On page 142 in the 2nd paragraph of the PSS it also states; “If suitable habitat is located, the survey will expand to encompass the radial extent of the habitat cover type.”

II. Comment/Recommendation(s):

1. The analysis for assessing potential Blanding’s turtle habitat should be expanded to include habitat within 1000 meters of disturbed areas and should be included in the section regarding E/T/SC species as it is a state listed species.
2. The methodology for conducting the assessment of potential Blanding’s turtle habitat should fully describe what is meant by expanding the survey to encompass the radial extent of the habitat cover type.
3. The Article 10 Application should reflect the request for extending the assessment of potential Blanding’s turtle habitat to include habitat within **1000 meters** of disturbed areas and this information should be in a section for endangered, threatened, or species of special concern as they are listed as a “Threatened” species. Likewise, the methodology for conducting the assessment of potential Blanding’s turtle habitat should fully describe what is

meant by expanding the survey to encompass the radial extent of the habitat cover type should be fully detailed in the Article 10 Application.

Response: *The Blanding's turtle surveys were not confined to any buffer areas for the Project. As described in the survey reports (Riveredge Associates, LLC 2007, 2010, and 2013), the entire Project area was evaluated to identify areas of suitable Blanding's turtle nesting habitat. Potential Project impacts were evaluated based on the proposed location of Project turbines and other facilities relative to upland areas identified as suitable Blanding's turtle habitat. A thorough discussion of Blanding's turtles will be included in the Article 10 Application and detailed methodology and results can be found in the survey reports.*

M. Subsection 2.23.4 Avoidance and Minimization Measures (Pages 143-144) I. **Heading – Surface Water** (Pages 143-144)

1. On page 143 the PSS states; “Potential impacts to surface waters will be minimal and will only occur during the construction of the Project. Results of field delineations for the Project area will be used to inform approaches for further avoidance, minimization, and/or reduction of impacts.”

II. Comment/Recommendation(s):

1. In the unlikely event of a tower collapse or a nacelle/hub fire or other catastrophic event there is a potential for nacelle fluids to be leaked into nearby surface waters.
2. The Article 10 Application should provide a detailed description of the responding to a catastrophic event and the subsequent mitigation measures

that will be employed to ameliorate any adverse impacts to surface waters of the State.

Response: *This will be part of the Emergency Response Plan and the SPCC plan. Preliminary plans will be provided with the Application.*

III. Heading – Aquatic Species and Invasive Species (Page 144)

1. On page 144 in the 2nd paragraph under the 3rd bulleted item the PSS states;
“Construction clearance activities will be reduced, to the extent practicable, during the peak nesting season in areas in and adjacent to Blanding’s turtle habitat (as June 1 – July 1).”

IV. Comment/Recommendation(s):

1. The construction avoidance window for Blanding’s turtles is from May 28th through July 9th.
2. The Article 10 Application should reflect the correct construction avoidance window for Blanding’s turtles as from May 28th through July 9th.

Response: *The Article 10 Application will define the construction avoidance window for areas of Blanding’s turtle habitat within the Project area as May 28th through July 9th.*

N. Subsection 2.23.5 Proposed Measures to Mitigate Unavoidable Impacts

(Page 135) **I. Heading – Aquatic and Invasive Species (Page 145)**

1. On page 145 the PSS states; “No significant adverse impacts to fish, amphibians, or reptiles are anticipated; therefore, no mitigation is proposed for aquatic species. Unavoidable impacts to Blanding’s turtle habitat will be mitigated through enhancement, creation, or preservation of

suitable Blanding's turtle habitat areas, including nesting areas, as part of the mitigation requirements for compliance with Article 11, Part 182 regulations."

2. Comment/Recommendation(s):

- a. The correct reference for the code of rules and regulations governing endangered and threatened species of fish and wildlife; species of special concern, and incidental take permits should be as follows:
 - i. 6 NYCRR Part 182 (pursuant to ECL Article 11-0535)
- b. For more information regarding endangered, threatened, and species of special concern please visit the following URL:
 - i. <http://www.dec.ny.gov/regs/3932.html>
- c. This section also failed to consider what mitigation would be proposed by the Applicant should there be adverse impacts to aquatic species even if they are unanticipated to occur.

Response: *Land based wind energy facilities typically have minor, if any, impacts to aquatic species. Most of the potential impacts are associated with the construction phase when the potential for direct or indirect disturbance of surface water is greatest. These disturbances could include and would end with the completion of construction. There is also the potential for impacts to fish habitat associated with placement of structures to accommodate access roads crossings. The Article 10 Application will include proposed mitigation measures to be used if construction activities result in adverse effects on aquatic species.*

- d. The Article 10 Application should provide the correct information for referencing the New York code of rules and regulations governing endangered and threatened species of fish and wildlife; species of special concern and incidental take permits.

Response: *CVWP will ensure that the Application contains the appropriate references.*

- e. The Article 10 Application should also discuss potential mitigation options should aquatic species or habitats are inadvertently impacted through this Project.

Response: *The Article 10 Application will include potential mitigation measures to be used if construction activities result in adverse effects on aquatic species or their habitats.*

O. Exhibit E Summary of Pre-Construction Wildlife Studies, Methods and Findings

I. Survey Type – Eagle Nest Survey (Page E-6)

1. On page E-6 the PSS states; “Bald eagle, osprey, and rough-legged hawk were observed on isolated and undeveloped islands in Lake Erie, while northern harrier was located in a cleared field on the mainland. One bald eagle nest, approximately 2 mi outside of the 10-mile survey buffer and formerly identified by the NYSDEC, was documented as occupied with 2 chicks during the May 11, 2012, survey.”

2. Comment/Recommendation(s):

- a. Cape Vincent is located along the shore of Lake Ontario and the St. Lawrence River so it is unclear as to what is meant by observations

regarding avian wildlife “observed on isolated and undeveloped islands in Lake Erie”.

- b. Furthermore the PSS does not specify what is meant by the term “10-mile survey buffer” and this should be clarified as many avian species easily travel more than 10 miles.
- c. Carlton Island is a significant habitat for wintering bald eagles and there are known roost and perch sites within approximately 2 miles of the closest proposed turbine. From Exhibit B it appears that the Study Area goes out only 4.5 miles from some of the proposed turbines.
- d. According to information from DEC’s Potsdam office, there is one Bald eagle nest located approximately 10.5 miles from the nearest turbine and another located approximately 11.5 miles from the closest turbine as laid out on the map in Exhibit B.
- e. The Article 10 Application should provide clarification as to the actual geographic location of where the studies/surveys were conducted (e.g. Lake Erie, Lake Ontario, or the St. Lawrence River ...etc.).

Response:

- a. *“Lake Erie” is a typo in the survey report; the surveys observed avian wildlife over Lake Ontario and the St. Lawrence River.*
- b. *Bald eagle nest surveys were conducted within the Project area and a 10-mile buffer as recommended by the USFWS Eagle Conservation*

Plan Guidance (USFWS 2013). Other raptors observed during these surveys were also recorded.

- c. Bald eagle nest surveys were conducted within the Project area and a 10-mile buffer as recommended by the USFWS Eagle Conservation Plan Guidance (USFWS 2013). Winter raptor surveys were conducted within the Project area per the NYSDEC guidelines. These survey areas are shown in the respective survey reports (Meinke et al. 2012, Young et al. 2007 and 2008, Kerns et al. 2007).*
- d. Thank you for the additional information. These nests were surveyed during the eagle nest survey effort and are included on the maps in the eagle nest survey report (Meinke et al. 2012). These nests are outside of the 10-mile buffer as established by the USFWS Eagle Conservation Plan Guidance (USFWS 2013). Impacts to eagles are being assessed according to these guidelines.*
- e. The survey areas are shown in the respective survey reports (Meinke et al. 2012, Young et al. 2007 and 2008, Kerns et al. 2007).*

P. Section 2.13 Real Property – Exhibit 13

- 1. On p. 6, the PSS states “The preliminary real property drawing for Exhibit 13 (see Exhibit A) shows the parcels (leased or subject to easement as well as those that can expect to be leased or made subject to easement) on which proposed project facilities...are to be located as well as the associated tax parcel numbers.”

2. **Comment/Recommendation(s):**

Not only does the map (Exhibit A) not contain all the information the PSS maintains that it does, it does not contain the information that will be required by 16 NYCRR § 1001.13 which must presently be reasonably available to the applicant, e.g. owners of record of all parcels included in the site and adjacent properties, easements, grants and related encumbrances, public and private roads planned for use as access, differentiation between properties leased or subject to easement and those which have not been. These should have been made part of the PSS, and was previously requested by the Town.

Response: *CVWP is in the process of developing a map and will provide to DEC upon completion, along with GIS files.*

CASE NO: 12-F-0410

**RESPONSES TO NYS AGRICULTURE & MARKETS COMMENTS ON THE
PRELIMINARY SCOPING STATEMENT**

1. Section 2.21.4 includes a description of the 16-foot wide gravel access roads that will be constructed at each turbine site. On page 89 it states that “[d]uring construction, additional area will be compacted on each side of the gravel roads to allow for the additional construction traffic and crane movement. Following construction, these compacted areas will be de-compacted and seeded, leaving permanent access roads with 16 foot travel lanes, plus required shoulder and side slopes.” The compaction of the topsoil along the sides of the roads in agricultural areas will be extremely difficult to mitigate sufficiently and damage to the topsoil structure will also occur from this intentional compaction. Restoring the topsoil to pre-construction conditions would be extremely difficult and this method is not consistent with this Department’s *Guidelines for Agricultural Mitigation for Wind Power Projects* (Department Guidelines). As a result, this construction method is not acceptable in agricultural areas.

RESPONSE: *Topsoil will be stripped and stockpiled in agricultural districts.*

2. Section 2.21.17 discusses the impacts to soil resources and agricultural productivity that can result from the construction activities and lists several of these impacts. The list should include topsoil and subsoil mixing.

RESPONSE: *Comment duly noted.*

3. The first paragraph under the heading “**Compaction and Rutting**” On page 98 of the PSS states “[r]utting and compaction of soils due to travel of heavy equipment may occur on the proposed construction areas. These impacts are of particular concern in cultivated fields and may be more likely to occur when soils are saturated, moist, or poorly drained. To prevent this, grading and compacting will take place prior to transporting larger pieces of equipment to the Project.” Grading and compaction of the topsoil in cultivated areas, particularly when the soils are wet, will lead to severe damage to the soil resource and would not be consistent with the Department Guidelines. To prevent such damage, the

topsoil must be removed from all construction areas in agricultural fields, prior to any grading or compaction. Additionally, no construction equipment or vehicles should be allowed to drive or park on the topsoil in agricultural areas.

RESPONSE: Topsoil will be stripped and stockpiled in agricultural districts where construction vehicles are intended to drive or park.

4. On page 209 of the PSS, Table 2.32-1 indicates that a Notice of Intent (NOI) will be filed with this Department in order to comply with the Agricultural District Law, The filing of an NOI is not required for this project pursuant to Agriculture and Markets Law Section 305(4). In closing, all proposed construction activities in agricultural areas should be consistent with the Department Guidelines to prevent damage to agricultural resources.

RESPONSE: CVWP agrees with Agriculture and Markets and apologizes for the misinterpretation in this statement. The intent of identifying Agriculture and Markets in Table 2.32-1 was to indicate that CVWP will coordinate with Agriculture and Markets to assure that construction affecting agricultural land will meet the goals of Agriculture and Markets' Guidelines for Agricultural Mitigation for Windpower Projects.

CASE NO: 12-F-0410

RESPONSE TO COMMENTS OF TOWN OF CAPE VINCENT TO THE PRELIMINARY SCOPING STATEMENT

CVWP has responded to material comments of the Town of Cape Vincent and would be willing to revisit any comment provided by the Town in its PSS response with DPS Staff and members of the Town Board.

Table 1. Summary of recommendations from the Town to BP from Exhibits 1-35.

Exhibit Number & Name	Town Recommendations
1- Introduction	BP must make a determination of the model/size of the turbines that they intend to use before they submit an application, otherwise both the Siting Board and the Town of Cape Vincent will be trying to address a moving target. <i>RESPONSE: CVWP has not yet selected a wind turbine model, although this does not preclude the Town of Cape Vincent (TOCV) and/or other involved agencies from beginning a valid review of potential impacts or benefits from the Project. The Application will include the data and information of specific turbines or turbine sizes needed to determine potentially significant adverse impacts. Studies conducted will state the turbine dimensions assumed in the analysis.</i>
	The Siting Board must require BP to use accurate, up-to-date maps that show its project layout and the relationship and distances to property lines and residences from its turbines and facilities. <i>RESPONSE: The USGS 1:24000 scale topographic maps were used to provide a uniform, general purpose map background for the project introduction. The maps, which have a scale, show turbines and project facilities in relationship to the property lines. Additional information, such as residences, will be provided in the Application. As requested, the US Topo map background, with the aerial photography turned on in order to show more detail, will be used for revising the Location of Facilities Map (see Appendix A)) and throughout the Application, where applicable.</i>
	The cost and impact on the environment of the required transmission system upgrade running through the Town of Lyme must be carefully evaluated by BP and the Siting Board. <i>RESPONSE: CVWP will address this issue in the Application submittal.</i>

Exhibit Number & Name	Town Recommendations
3 - Location of Facilities	Wolfe Island and the Wolfe Island Wind Power Project must be included in the study area in order that the true effect of wind turbines on its citizens, wildlife and environment may be examined. <i>RESPONSE: CVWP will take this issue under advisement.</i>
6 - Wind Power Facilities	BP should not put forward any project layout that does not reference every home within the Town at the current time. <i>RESPONSE: Updated structure/residence maps will be included in the Application.</i>
	In spite of BP's claim, its placement of turbines in Cape Vincent is still far too close for public health and safety.
	BP's setbacks were designed to make money, the Town's setbacks were designed to protect people - the Siting Board must support the Town's law.
8 - Electric Production Modeling	The facility cost and impact on the environment of the required transmission system upgrade must be carefully considered by the Siting Board.
9 - Alternatives	BP must follow the rules and provide a comparative assessment of its Project with a no-build alternative. <i>RESPONSE: CVWP will submit an Application that adheres to the Article 10 regulations, which includes a requirement for an Alternatives analysis.</i>
	If financial claims are the major benefit to the Project, then BP should divulge its financial data, the fixed costs versus the generating capacity, to determine if the project design and layout could be modified.
	The Town urges BP and the Siting Board to consider a solar project to demonstrate that solar is a better fit for not only Cape Vincent, but for all New York communities with natural and community resources similar to the Town of Cape Vincent. <i>RESPONSE: BP is unable to consider a solar project as the company is no longer in the business of building solar facilities.</i>

Exhibit Number & Name	Town Recommendations
	A solar renewable project alternative should be provided by BP to demonstrate that solar is environmentally friendly while wind is an environmental disaster. <i>RESPONSE: BP is unable to consider a solar project as the company is no longer in the business of building solar facilities.</i>
	BP needs a balanced project alternative that is less oriented toward its corporate bottom line and more considerate of the environmental risks to the community.
	BP offered dialog but no alternatives. BP should comply with the rules in Exhibit 9. <i>RESPONSE: CVWP will submit an Application that adheres to the Article 10 regulations, which includes a requirement for an Alternatives analysis.</i>
	BP should provide some best-guess cost estimates for a buried line in order to compare the costs with conventional above ground infrastructure. This information will be invaluable for the Town of Lyme to consider compensation for allowing above ground transmission infrastructure. <i>RESPONSE: An analysis will be undertaken to estimate the cost for an underground generator interconnection line per mile compared to the cost of using an overhead installation. An underground installation would need to be encased in concrete, which increases the construction time and expense of installation. Additionally, the underground cable is a different type of cable compared to an overhead system, which further increases the expense of an underground approach.</i>
	The Siting Board should insist that BP provide at least two alternative project designs: a no-build option and an option that considers and respects Cape Vincent's comprehensive plan and zoning law. Providing alternative project designs are a requirement of the Article 10 rules and it should be enforced. <i>RESPONSE: CVWP will submit an Application that adheres to the Article 10 regulations, which includes a requirement for an Alternatives analysis.</i>

Exhibit Number & Name	Town Recommendations
	Providing alternatives is a requirement of SEQRA as well as the Article 10 rules. It remains a key feature of any environmental assessment and BP should be required to provide a comparative analysis alternative designs. <i>RESPONSE: CVWP will submit an Application that adheres to the Article 10 regulations, which includes a requirement for an Alternatives analysis.</i>
	BP does need to provide at least two project designs for its 200 and 290 MW project options. The two options cannot responsibly be located on exactly the same project layout. <i>RESPONSE: CVWP will submit an Application that adheres to the Article 10 regulations, which includes a requirement for an Alternatives analysis.</i>
14 - Cost of Facilities	The Town requests the detailed work sheets used for the "detailed estimate of the total capital cost" for the Project as outlined in paragraph (c). <i>RESPONSE: CVWP will provide a cost estimate in the Application that complies with the requirements of 16 NYCRR 1001.14.</i>
15 - Public Health & Safety	The Siting Board should require BP to produce a complete, definitive turbine layout, stating the turbine specific setback used to address rotor failure, ice and blade throw. This layout should be based on the worst case scenario, using the 499 ft. high wind turbines. <i>RESPONSE: CVWP will conduct an ice throw, blade throw, tower collapse risks assessment, evaluating multiple turbine models.</i>
	The Town of Cape Vincent will be requesting intervenor funds to further study safety setbacks and recent turbine blade failures.
	The third-party engineering consultant used to assess turbine risks should be accredited and have experience assessing risks associated with industrial wind turbine failures. <i>RESPONSE: There is no accreditation for the ice throw, blade throw and tower collapse risks assessment process. The third-party engineering consultant used to assess ice throw, blade throw and tower collapse risks will have sufficient experience assessing the aforementioned risks associated with industrial wind turbine failures.</i>

Exhibit Number & Name	Town Recommendations
18 - Safety & Security	The Siting Board should require a review of any emergency response plans related to BP's Project by the county EMO (Emergency Management Office). <i>RESPONSE: The County emergency management office will be contacted and involved in the review of emergency response plans.</i>
	BP must be required to provide ongoing training to all of the emergency personnel in the towns of Cape Vincent, Lyme and Clayton.
19 - Noise & Vibration	The Town will strongly defend its laws that protect residents from noise, lights and flicker impacts, and that these laws should remain in place and not be waived by the Article 10 Siting Board.
	Any assessment of noise impacts shall “operate in compliance” with the Town’s local law until such time as that law has been waived by the Siting Board, and since no waiver has been requested or granted, any noise predictions for its application should comply with the 35 dBA nighttime limit, which is the Town’s current restriction. <i>RESPONSE: Compliance with the 35 dBA nighttime noise limit contained in the Town’s Local Law No. 3, 2012 will be evaluated by CVWP in the modeling studies as required by the State’s Article 10 statutes.</i>
	The Town requests a comparative assessment of several wind turbines using the Town’s assumptions vs. BP's universal ground absorption coefficient. <i>RESPONSE: It is CVWP’s understanding that the “Town’s assumptions” refers to a recommendation by Paul Schomer to evaluate the ground absorption loss during sound propagation by using source, middle ground and receiver ground absorption coefficients of 0,0,0.9, respectively. In order to show that this method (which is perfectly acceptable but impractical to implement for hundreds of receptors and many sources) produces similar results to a simpler approach of using a universal 0.5 ground coefficient, a comparative example turbine-receiver calculation will be provided using both methods.</i>

Exhibit Number & Name	Town Recommendations
	The Town requests predicted C-Weighted levels be included in predictive noise impacts in order to assess the potential for low frequency impacts. <i>RESPONSE: C-weighted sound contour plots will be generated as appropriate and/or C-weighted values may be added to the tabular results for individual residences.</i>
	The Town believes that comprehensive modeling of sound generated by industrial wind turbines should provide predicted levels at property lines as well as residences for all Township properties to coincide with Town law. <i>RESPONSE: The sound contour maps that will be produced will illustrate the project sound level throughout the site area and will be overlaid on a map of participating land parcels – thus allowing the Project level at any particular boundary of interest to be read directly from the graphics.</i>
	Contrary to BP's complaint regarding the number of modeling scenarios, the Town of Cape Vincent would not have made its recommendation for the evaluation of "three operational scenarios" if it didn't consider the information important. <i>RESPONSE: Per the Town's comment dated 1/20/13 in Table 2.19-1 of the PSS, "three operating scenarios" refers to the project sound levels at cut-in, half power and at full power. To be conservative, only maps at full power will be generated because project noise is undoubtedly maximum under such an operating condition.</i>
	BP needs to update its project map to include all the buildings and residences that have been added in the last 60 years, which is the time base for BP's current map. It is hard to imagine how turbines could be sited safely without knowing the location of all the residences within the Town. <i>RESPONSE: Updated structure/residence maps will be included in the Application.</i>
	The Town recommends that as the discussion of the adverse impact of sound goes forward, that BP should refrain from suggesting people who complain about noise are imagining the problem.

Exhibit Number & Name	Town Recommendations
	Regarding the design goal, and regardless of BP's biased view on infrasound, the Town requests that in addition to the normal noise impact predictions based on existing Town law, e.g., 35 dBA, that another scenario be included for the record based on 33.5 dBA to provide an interim measure of protection from infrasound until such time as further study resolves the issue to everyone's satisfaction. <i>RESPONSE: There is no tangible or meaningful difference between these two sound levels; i.e. the project would sound exactly the same whether it was 35 dBA or 1.5 dBA lower and nothing would be gained by lowering the design target by such a small amount. Consequently, the intention is only to carry the sound contour plots out to the Town limit of 35 dBA.</i>
	BP should provide a comprehensive analysis of the scientific literature, including the studies mentioned in the Exhibit 19 review, to describe the negative health impacts associated with sleep disturbance, regardless of the cause, and then to also assess the potential for sleep disruptions, and other direct and indirect health effects that could be associated with wind turbine noise. <i>RESPONSE: Section 2.19.3 of the PSS states that an evaluation of low frequency and infrasonic sound from the project will be carried out in the assessment. It has always been the Applicant's intention to address this issue. No credible scientific study to date, including those considered in comprehensive reviews by Massachusetts, Ontario, Canada, and Australia, has found any association between infrasound from wind turbines and any health effects.</i>
	The Town requests that the issue of sleep interference be reinserted back in the list of issues linked to wind turbine noise impacts considered in Exhibit 19.
20 - Cultural Resources	The Town insists that BP conduct the analysis that OPRHP had called for: alternatives that considered eliminating turbines, reducing the size of trubines, moving the turbines to other locations, other changes to eliminate or mitigate the agreed upon adverse impacts.
	BP should make a concerted effort to remove turbines from the background along the major site lines between the frontage roads and the historic sites.

Exhibit Number & Name	Town Recommendations
	BP should seek an alternate project layout that would remove turbines from the viewshed of the village historic district. <i>RESPONSE: As part of the Application, CVWP will undertake a viewshed analysis and an Alternatives analysis.</i>
21 - Geology	BP should complete a detailed geological assessment of the project area, including issues related to karst geology, prior to the award of an Article 10 certificate. <i>RESPONSE: The PSS document notes that a geotechnical and karst assessment will be undertaken.</i>
	Professional engineers strongly recommend that comprehensive geological and hydrogeologic assessments be completed by BP prior to issuance of a certificate. <i>RESPONSE: A Geotechnical study and hydrology study will be done at each turbine location. A preliminary study will be done for the Application.</i>
	The Service (USFWS) wants a karst survey prior to issuance of a certificate and prior to construction. <i>RESPONSE: The PSS document notes that a geotechnical and karst assessment will be undertaken.</i>
	The kind of karst survey recommended by the New York State Department of Environmental Conservation suggests far greater concerns than drainage impacts and just issuing a SWPP permit, as BP has suggested. <i>RESPONSE: A Karst survey will be done for each turbine location. A preliminary study will be done for the Application.</i>
	BP should follow guidelines suggested by NYSDEC in its review of a karst survey, i.e., what actions to take when karst features are encountered, including further testing and turbine relocation. <i>RESPONSE: A Karst survey will be done for each turbine location. A preliminary study will be done for the Application.</i>
	NYSDEC recommends that an environmental monitoring position, someone who is qualified to work in karst environment, be on site for all pre- construction surveys and construction activities that involve excavation and blasting of bedrock. <i>RESPONSE: A Karst survey will be done for each turbine location. A preliminary study will be done for the Application.</i>

Exhibit Number & Name	Town Recommendations
	DEC recommends the studies be completed prior to construction in order to assess the adequacy of proposed mitigation measures <i>RESPONSE: A Karst survey will be done for each turbine location. A preliminary study will be done for the Application.</i>
22 - Terrestrial Ecology	The point of many prior resource agency comments on this issue is that not enough study has been done by BP to understand the variability of the biological systems. <i>RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-construction studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i> <i>With regard to radar studies specifically, numerous radar surveys from New York, as well as other areas of the eastern United States, consistently show broad-front migration patterns with the majority of targets (mostly nighttime avian migrants) flying well above rotor-swept height. As such, data collected by radar migration surveys are not predictive of impacts to nighttime migrants that can be expected from wind energy facilities and therefore do not help inform effective avoidance, minimization, or mitigation measures. For these reasons, a second year of radar studies is not deemed to be useful for impact assessment.</i>

Exhibit Number & Name	Town Recommendations
	More work and effort is needed by BP, especially nocturnal radar and raptor migration studies. <i>RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i> <i>With regard to radar studies specifically, numerous radar surveys from New York, as well as other areas of the eastern United States, consistently show broad-front migration patterns with the majority of targets (mostly nighttime avian migrants) flying well above rotor-swept height. As such, data collected by radar migration surveys are not predictive of impacts to nighttime migrants that can be expected from wind energy facilities and therefore do not help inform effective avoidance, minimization, or mitigation measures. For these reasons, a second year of radar studies is not deemed to be useful for impact assessment.</i> <i>Three years of raptor migration surveys have been conducted, during the spring season in 2006, 2007, and 2008 as well as the fall season in 2006 and 2007. This level of survey effort exceeds the standard pre-construction survey recommendations in the NYSDEC guidelines and the USFWS Land-Based Wind Energy Guidelines. Additionally, two seasons (winter 2006-2007 and winter 2007-2008) of winter raptor surveys and a raptor nest survey were conducted to assess raptor use of the Project area and surrounding vicinity.</i>

Exhibit Number & Name	Town Recommendations
	Regardless of BP's attempt at misleading the discussion, more than a year of spring and fall migration data is required to understand the variability of avian migrant dynamics. <i>RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i> <i>With regard to radar studies specifically, numerous radar surveys from New York, as well as other areas of the eastern United States, consistently show broad-front migration patterns with the majority of targets (mostly nighttime avian migrants) flying well above rotor-swept height. As such, data collected by radar migration surveys are not predictive of impacts to nighttime migrants that can be expected from wind energy facilities and therefore do not help inform effective avoidance, minimization, or mitigation measures. For these reasons, a second year of radar studies is not deemed to be useful for impact assessment.</i>
	There was a loud, clear call from State, Federal and non-profit environmental organizations for more than a single year of study. <i>RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i>

Exhibit Number & Name	Town Recommendations
	Two more years of marine radar study of nocturnal migrants are needed to address these deficiencies. <i>RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i> <i>With regard to radar studies specifically, numerous radar surveys from New York, as well as other areas of the eastern United States, consistently show broad-front migration patterns with the majority of targets (mostly nighttime avian migrants) flying well above rotor-swept height. As such, data collected by radar migration surveys are not predictive of impacts to nighttime migrants that can be expected from wind energy facilities and therefore do not help inform effective avoidance, minimization, or mitigation measures. For these reasons, a second year of radar studies is not deemed to be useful for impact assessment.</i>

Exhibit Number & Name	Town Recommendations
	Again, the data is inadequate and at least two more years of radar data are needed to better understand the dynamics of the migratory flight corridor. <i>RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i> <i>With regard to radar studies specifically, numerous radar surveys from New York, as well as other areas of the eastern United States, consistently show broad-front migration patterns with the majority of targets (mostly nighttime avian migrants) flying well above rotor-swept height. As such, data collected by radar migration surveys are not predictive of impacts to nighttime migrants that can be expected from wind energy facilities and therefore do not help inform effective avoidance, minimization, or mitigation measures. For these reasons, a second year of radar studies is not deemed to be useful for impact assessment.</i>
	BP needs to consider alternative project layouts that provide a wide buffer for the special, significant wildlife habitats that are extant in the Town. <i>RESPONSE: Habitats in the Project area are widespread throughout the region and have been previously impacted through land use and development practices – common throughout the region, New York, and the eastern U.S. A mitigation plan for the construction and operation of the Project will be developed in coordination with the NYSDEC and will be included in the formal Article 11 Application.</i>

Exhibit Number & Name	Town Recommendations
	BP needs to conduct additional, up-to-date surveys that address resource agency concerns. <i>RESPONSE: The baseline studies were conducted according the NYSDEC and USFWS recommendations and provide the content and quality of data requested by those agencies. Since these comments were made, the previous developers continued to work with the agencies to address their concerns and BP is still continuing to do so through the Article 11 process. The studies conducted for both former projects were developed in consultation with both the NYSDEC and USFWS personnel and the recommendations for pre-construction studies of those agencies. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i>
	The point is the Article 10 rules themselves recognize the importance of protecting a migratory flight-path, such as exists in Cape Vincent. <i>RESPONSE: Section 2.31 does not specifically address the migratory flyway component of Article 10. However, Applicant is aware of this regulation, which does not provide a recommended setback distance from migratory flyways but only states that setbacks may be appropriate avoidance/minimization measures. Applicant has incorporated siting and design measures to avoid and minimize impacts within the flyway, which will be described in the avoidance and minimization measures section of the Article 11 Application.</i> <i>With regard to radar studies specifically, numerous radar surveys from New York, as well as other areas of the eastern United States, consistently show broad-front migration patterns with the majority of targets (mostly nighttime avian migrants) flying well above rotor-swept height. As such, data collected by radar migration surveys are not predictive of impacts to nighttime migrants that can be expected from wind energy facilities and therefore do not help inform effective avoidance, minimization, or mitigation measures. For these reasons, a second year of radar studies is not deemed to be useful for impact assessment.</i>

Exhibit Number & Name	Town Recommendations
	DEC recommended additional survey effort in order “to overcome this inconsistency in reporting.” More effort is needed to correct deficiencies in BP’s survey work, but drawing conclusions from inadequate data will only bias the Article10 record. <i>RESPONSE: The baseline studies were conducted according the NYSDEC and USFWS recommendations and provide the content and quality of data requested by those agencies. Since these comments were made, the previous developers continued to work with the agencies to address their concerns and BP is still continuing to do so through the Article 11 process. The studies conducted for both former projects were developed in consultation with both the NYSDEC and USFWS personnel and the recommendations for pre-construction studies of those agencies. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i>
	It is important that BP acknowledges what the New York State Department of Environmental Conservation has determined that the Town of Cape Vincent is part of an important Eastern North American migratory flyway, and thereby the migratory corridor deserves protection. <i>RESPONSE: As previously stated, this consideration has been noted; an assessment of the potential for impacts within the migratory flyway and avoidance and minimization measures will be included in the Article 11 Application for the Project.</i>

Exhibit Number & Name	Town Recommendations
	Others have added their voices to the call by resource agencies to have a better approach, better data and a more detailed and comprehensive analysis. <i>RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i> <i>With regard to radar studies specifically, numerous radar surveys from New York, as well as other areas of the eastern United States, consistently show broad-front migration patterns with the majority of targets (mostly nighttime avian migrants) flying well above rotor-swept height. As such, data collected by radar migration surveys are not predictive of impacts to nighttime migrants that can be expected from wind energy facilities and therefore do not help inform effective avoidance, minimization, or mitigation measures. For these reasons, a second year of radar studies is not deemed to be useful for impact assessment.</i>

Exhibit Number & Name	Town Recommendations
	The radar survey of the Town's migratory corridor needs to be completely redone and over a course of years; not a single year. RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies. With regard to radar studies specifically, numerous radar surveys from New York, as well as other areas of the eastern United States, consistently show broad-front migration patterns with the majority of targets (mostly nighttime avian migrants) flying well above rotor-swept height. As such, data collected by radar migration surveys are not predictive of impacts to nighttime migrants that can be expected from wind energy facilities and therefore do not help inform effective avoidance, minimization, or mitigation measures. For these reasons, a second year of radar studies is not deemed to be useful for impact assessment.

Exhibit Number & Name	Town Recommendations
	When BP begins its migratory radar studies they should use a protocol similar to that suggested by Old Bird, Inc. so that it would allow interpretation of the spatial dynamics of the corridor. <i>RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i> <i>With regard to radar studies specifically, numerous radar surveys from New York, as well as other areas of the eastern United States, consistently show broad-front migration patterns with the majority of targets (mostly nighttime avian migrants) flying well above rotor-swept height. As such, data collected by radar migration surveys are not predictive of impacts to nighttime migrants that can be expected from wind energy facilities and therefore do not help inform effective avoidance, minimization, or mitigation measures. For these reasons, a second year of radar studies is not deemed to be useful for impact assessment.</i>
	The Town recommends that an operational plan be adopted by BP, as per the protocol outlined by USFWS, and that it be included as part of Exhibit 22. <i>RESPONSE: CVWP is familiar with the practice of modified turbine operations to reduce bat mortality risk at wind energy facilities. However, the timing and details of the turbine operational protocol must be developed specific to each wind energy site and the particular bat mortality risk therein to be most effective. Research on this subject has progressed much since the 2007 USFWS recommendation. As previously stated, the Applicant has consulted with USFWS and NYSDEC in regards to threatened and endangered species (including bats) and will continue to do so.</i>

Exhibit Number & Name	Town Recommendations
CASE NO: 12-F-0410	The latest information, e.g., Old Bird, Inc., suggests that the mortality estimates available from Wolfe Island have been compromised, e.g., under estimated losses by 40%, and that the data needs to be reconsidered and mortality rates recalculated. Risk assessments based on these reformulations should then be conducted to estimate expected losses for both BP's Project and the cumulative mortality impacts to the region. <i>RESPONSE: As previously stated, in addition to the Article 11 Application's analysis of impacts to state-listed species, the Article 10 Application will include a thorough analysis of avian and bat use and the potential for avian and bat mortality at the Project. This analysis will be quantitative to the extent possible, although the relationship between pre-construction avian and bat use and subsequent avian and bat mortality levels at wind energy facilities is not well understood for most genera (Strickland et al. 2011). The Article 10 Application will also include a thorough analysis of cumulative effects to avian and bat resources. This analysis will be quantitative to the extent possible, although there is an inherent amount of uncertainty concerning future development of other projects and wind energy facilities in the area. For example, as reflected in the county and town records, the Cape Vincent area has undergone extensive property sub-division and housing development over the past few decades. Continued development of this nature will change the nature of the area from rural to residential, while development of wind farms will maintain the rural nature, and have differing mortality impacts to birds and bats (e.g. destruction of habitat, introduction of non-native species such as domestic cats). Predicting the future outcome of wildlife mortality for cumulative effects is difficult given the uncertainty over what development will occur.</i> <i>The NYSDEC has formally requested that the Applicant consider and incorporate the data from studies at Wolfe Island. Both the Article 11 Application and the Article 10 Application impacts assessments will incorporate the species composition and displacement data from these studies. The fatality estimates from the Wolfe Island study are being included in a compilation of fatality estimates from publically-available studies across the Northeast and North America to model probabilities associated with various potential fatality levels at the proposed Project. The Applicant must rely on the data that are publically available from those studies, fallible or not. The Applicant would review and incorporate any new report issued which addresses the concerns raised by Old Bird, Inc.</i>

Exhibit Number & Name	Town Recommendations
	BP needs to complete a quantified risk assessment of potential loss to the Project's future operation. <i>RESPONSE: As previously stated, in addition to the Article 11 Application's analysis of impacts to state-listed species, the Article 10 Application will include a thorough analysis of avian and bat use and the potential for avian and bat mortality at the Project. This analysis will be quantitative to the extent possible, although the relationship between pre-construction avian and bat use and subsequent avian and bat mortality levels at wind energy facilities is not well understood for most genera (Strickland et al. 2011). The Article 10 Application will also include a thorough analysis of cumulative effects to avian and bat resources. This analysis will be quantitative to the extent possible, although there is an inherent amount of uncertainty concerning future development of wind energy facilities and other projects in the area.</i>
	More needs to be done to satisfy resource expert's concerns.<i>RESPONSE: The baseline studies were conducted according to the NYSDEC and USFWS recommendations and provide the content and quality of data requested by those agencies. Since these comments were made, the previous developers continued to work with the agencies to address their concerns and BP is still continuing to do so through the Article 11 process. The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i>
24 - Visual Impacts	BP should provide epidemiological evidence that shadow flicker caused by wind turbines of the model chosen by BP does not and will not induce photosensitive seizures. <i>RESPONSE: CVWP will take this comment under advisement as it develops the Application.</i>

Exhibit Number & Name	Town Recommendations
	For residences, the zone for predicting shadow coverage shall include the area within a 100-foot radius of the center of the residence and not the one meter square receptor used by the wind industry. <i>RESPONSE: CVWP will conduct a shadow analysis for a study area of 1,080 meters around each proposed turbine. This study area is equivalent to roughly 9 times the largest proposed rotor diameter. Within the resulting study, potential shadow-flicker (potential hours per year) will be provided for each inventoried habitable residential structure, as well as a map that will show the potential shadow hours per year within the study area. This map will be useful in allowing the reader to interpolate the potential number of shadow hours per year at any given point within the study area, especially the area around each identified structure. The shadow-flicker at residential locations would be a 1 meter by 1 meter opening in all directions, which is referred to as the "greenhouse" mode, and is a suitable assumption.</i>
	An important new addition to forecasting impacts for Cape Vincent is the requirement by the Town for a larger sized receptor. <i>RESPONSE: Potential shadow-flicker may be identified at habitable residential structures located within 1,080 meters of a proposed turbine. Beyond this distance, a person should not perceive a turbine blade producing this potential phenomenon.</i>
	The Town requests that BP provide epidemiological evidence that the navigation lights it intends to use on its wind turbines does not and will not result in photic-induced seizures in individuals who have physical disorders which respond adversely to bright, flashing lights. <i>RESPONSE: CVWP will utilize lighting that is compliant with FAA regulations.</i>
	BP should provide a review of existing technologies that may be used to curtail the use of FAA lighting when no aircraft are in sight. <i>RESPONSE: CVWP will utilize lighting that is compliant with FAA regulations.</i>
27 - Socioeconomic	BP should contact the Town assessor for details for the Town's business PILOT.

Exhibit Number & Name	Town Recommendations
	The Town directed BP to NOT assume a PILOT based on the Galloo Island model. Galloo Island was an exceptional policy and the county warned developers not to assume its use in any other project proposed for Jefferson County. Without an agreed upon financial agreement, any assumptions by BP would be premature and misleading.
	BP must recognize that property values and the work of the Town's Economic Committee, McCann Appraisal and others all point to substantial risk to devaluing property and they should recast its project with 2-mile setbacks from the river and lake waterfronts, as stipulated in the Town's current zoning law.
	BP needs to clarify the point of property devaluation, especially for communities that have a high influx of summer, seasonal residents.
29- Decommissioning	A Certificate should not be issued without a detailed decommissioning plan that has been accepted by the Siting Board. <i>RESPONSE: CVWP will submit a decommissioning plan for approval by the Siting Board.</i>
	Financial Assurance decommissioning coverage must be in place and in force before ANY construction is allowed to begin. <i>RESPONSE: CVWP will submit a decommissioning plan for approval by the Siting Board.</i>
	The financial obligation must be iron clad to ensure that the Town and citizens are made whole and are not placed under any financial obligation due to inadequate decommissioning by the project owner.

Exhibit Number & Name	Town Recommendations
31 - Local Laws	A general preemption was NOT part of the treatment of local laws and ordinances under provisions of Article 10. A complete explanation is needed for the Town to understand what BP is referring to and why they failed to provide any account or reason why they want each section of our law waived. <i>RESPONSE: With respect to general preemption, a majority of the local zoning laws address siting of wind generating facilities through site plan review processes. Site plan review processes, and the underlying analyses, are conducted pursuant to SEQRA. SEQRA is generally preempted, or supplanted, by Article 10. In addition, Section 172 of the Public Service Law provides that “no state agency, municipality or any agency thereof may, except as expressly authorize under this article by the board, require any approval, consent, permit, certificate or other condition for the construction or operation of a major electric generating facility...”. Where a procedural local provision has been identified it is expected that the general pre-emption provision articulated in Section 172 of the Public Service Law will preclude the local municipality from imposing such law on CVWP.</i> <i>Under Article 10, local laws may be inapplicable to certification of a proposed major electric generating facility in one of two ways. First, the local law may be preempted by Article 10. Second, a local law may be applicable but nevertheless waived by the Siting Board if it is found unreasonably burdensome in light of existing technology or the needs of or costs to ratepayers. CVWP’s statements regarding preemption relate to preemption, not waiver.</i> <i>Article 10’s general preemption of local laws is not found solely within the text of statute. Article 10 is general law. “Comprehensive regulatory schemes relating to the siting of public utilities [such as Article 10] have been found to qualify as a “general law” preempting local zoning ordinances.” <u>Citizens for the Hudson Valley v. N.Y. State Bd. on Elec. Generation Siting</u>, 281 AD2d 89, 95 (3d Dep’t 2001).</i> <i>In addition, a majority of the local zoning laws address siting of wind generating facilities through site plan review processes. Site plan review processes, and the underlying analyses, are conducted pursuant to SEQRA. SEQRA is supplanted by Article 10. The Environmental Conservation Law states that SEQRA does not apply to “[a]ctions subject to the provisions requiring a certificate of environmental compatibility and public need in articles seven, ten and the former article eight of the public service law.” ECL § 8-0111(5)(b).</i>

CASE NO: 12-F-0410

RESPONSE TO COMMENTS FROM TOWN OF CAPE VINCENT

23

Exhibit Number & Name	Town Recommendations
	<i>Lastly, the provisions of Article X preempt inconsistent or duplicative local requirements. Section 172 of the Public Service Law provides that “no state agency, municipality or any agency thereof may, except as expressly authorize under this article by the board, require any approval, consent, permit, certificate or other condition for the construction or operation of a major electric generating facility....” [emphasis added] Where a local procedural provision has been identified, it is expected that the general pre-emption provision articulated in Section 172 of the Public Service Law will also preclude the local municipality from imposing such law on CVWP.</i>
	Furthermore, during the formal application BP is required to provide a rational, substantive explanation as to why a local law should be waived by the board.
	In nearly all the examples of Town law that BP asserts is problematic to its project proposal, they have not provided the required explanation but have misrepresented what is required of them in the PSS under the Article 10 rules.
	The Town's consulting engineers are also prepared to describe the adverse health and safety impacts associated with the excessive WECS sound levels advocated by BP and the entire wind industry. RESPONSE: The local noise standard requirements will be specifically included in Exhibit 19 as part of the Application and are a factor to be considered by the Siting Board. Given the state of existing technology, however, CVWP’s position is that this standard is unreasonably restrictive given existing technology.
	This setback would not only represent a visual blight, but a safety hazard as well, since the setback would be 3X the height of the turbine, rather than the 6X required in the Town’s law. RESPONSE: Section 7.16.4.g addresses visual impacts which will be studied and addressed in the CVWF Article 10 Application. The visual impact assessment requirements of this provision are obviated by the visual impact assessment requirements of the Article 10 Application.

Exhibit Number & Name	Town Recommendations
	Every residence within 1.5 miles of a turbine should have the projected noise impact. <i>RESPONSE: The Article 10 process will help provide the basis for developing a safe noise setback. The Town's requirement to conduct a noise profile to 1.5 miles is unnecessary, lacks merit, and is unduly burdensome.</i> This estimate is essential for any compliance testing done after the start of operation and for any future complaints from residents. <i>RESPONSE: As stated in the PSS, CVWP believes these provisions are unduly burdensome in view of the existing technology and the needs of or costs to ratepayers. A 6 times total height setback effectively prohibits any siting of wind generating facilities within the Town's boundaries.</i>
	Finally, since the Town may be the first to receive complaints, its plan should be controlling. <i>RESPONSE: CVWP will discuss with the Town and Staff a single complaint resolution plan to be approved by the Siting Board.</i>
	Regardless of this limitation, harmful impacts from turbines can best be mitigated by distance, i.e., the further away the lesser the impact.
	The idea of having all of the interconnecting electric lines above-ground on poles running from one end of the Town to the other is beyond comprehension, if not absurd. All the turbine-to-turbine interconnecting lines should be buried. <i>RESPONSE: Overhead collection lines are not anticipated at this time, although may be utilized if necessary. The generator interconnection line will be overhead.</i>
	For both the protection of valued waterfront property and the protection of invaluable natural resources, a 2-mile setback from the Town's shorelines represents a well-reasoned, rational necessity for the Town's restrictions in its zoning law. <i>RESPONSE: The Article 10 process allows for comprehensive study of this topic and the results of the analysis should help determine inform what is acceptable.</i>

Exhibit Number & Name	Town Recommendations
	Article 10 rules require BP to acknowledge that a Town has a comprehensive plan, which BP has done, but the rules also require BP to provide an explanation why its Project is incompatible with the Town's vision, which BP has not done. <i>RESPONSE: The Application will include a statement that the Town of Cape Vincent has an adopted Comprehensive Plan that is the basis for the Town of Cape Vincent Zoning Law and that the proposed land use is not consistent with the Comprehensive Plan to the extent that the Project conflicts with the zoning law. The Application will include an assessment of specific plan components and recommendations. The Application will include a reference to the website where the Town of Cape Vincent Comprehensive Plan is located (http://townofcapevincent.org/docs/cat_view/14-miscellaneous.html).</i>
	Regarding BP's suggestion they provided input to the Town during the drafting of its zoning law, BP provided no suggestions, no indication of problematic sections, just a general comment of total displeasure. Furthermore, at the time of Cape Vincent's public hearing BP made no comment, either in writing or in person.
34 - Electrical Interconnection	The Town requests the Siting Board require all inter connections to be underground, similar to Wolfe Island's interconnection arrangement. <i>RESPONSE: Overhead collection lines are not anticipated at this time, although may be utilized if necessary. The generator interconnection line will be overhead.</i>
35 - Electric and Magnetic Fields	Because agriculture is an important economic resource to the area within the footprint of BP's Project, BP should be required to investigate the impact of stray voltage on livestock and other animals.

Introduction - Comments

1.2 Proposed Facility

Project Size – Page 5

“The Project would be 200-285 MW in size leveraging these 124 turbine sites. While a specific turbine model has not been selected due to uncertainty regarding availability of turbine models at the time of construction, the selected turbine model is expected to range in output from approximately 1.7 to 3.0”

Comment - BP must be forced to make a determination of the Model/Size of the turbines that they intend to use before they submit an application; otherwise both the Siting Board and the Town of Cape Vincent will be trying to address a moving target.

RESPONSE: CVWP has not yet selected a wind turbine model, although this does not preclude the Town of Cape Vincent (TOCV) and/or other involved agencies from beginning a valid review of potential impacts or benefits from the Project. The Application will include the data and information of specific turbines or turbine sizes needed to determine potentially significant adverse impacts. Studies conducted will state the turbine dimensions assumed in the analysis.

1.3.11 Demographic and Economic Attributes of the Community

“The estimated 2010 populations of the Towns of Cape Vincent and Lyme were 2,777 and 2,185, respectively. The population in Cape Vincent is declining down from 3,445 in 2000, while that of Lyme is stable. Approximately 68 percent of the housing units in Cape Vincent and 61 percent of the housing units in Lyme were vacant in 2010. Most of the vacant homes are likely used for seasonal, recreational, or occasional use.” [p.13]

"On the whole, the distribution of residential dwellings over the Project area is fairly sparse, but there are several areas of higher density, such as the Hamlets of Rosiere and Three Mile Bay." (p. 9)

“... with the sparse population, and dominant agricultural and managed land use, make the Project area in Towns of Cape Vincent and Lyme suitable for development of a large-scale wind power project”. (p. 57)

Comment – BP must not be allowed to ignore or marginalize the seasonal residents of either town. These residents pay more than 50 percent of the school and property tax in Town of Cape Vincent. Many of these residents live here six months or more each year, consider

these Towns home and contribute to the economy and culture of the Towns.

Comment – The population data for the Town of Cape Vincent is influenced by the population of the State Correctional Facility.

Comment - BP frequently refers to Cape Vincent as sparsely populated (below) and apparently selected this “outdated map” to illustrate their contention. The statements from their PSS shown below illustrate their attitude toward the density of the Town’s citizens.

Comment - The Village of Cape Vincent, the Hamlets of Millen’s Bay and St. Lawrence Corners are ignored by BP.

Comment – If BP is to properly address the siting of wind turbines, it is imperative that the Siting Board insist that they use current maps that show the true conditions within the Town.

BP Exhibit A - LOCATIONS OF FACILITIES

The Project Map included with the PSS is solely for the purpose to show the “approximate” locations of the proposed turbines and ancillary facilities.

Comment - The base layer of the map shown in Exhibit A is our sole source of information on the proposed project, but the map is very old and outdated. It does not show over a 100 homes, the Thousand Islands Regional Middle and High School, which was placed in service in 1972, the State Correctional Facility as well as businesses and buildings. The location of the wind turbines and ancillary buildings relative to local residences and buildings which are inhabited by children is impossible to determine with this map. Numerous road names and creek names are incorrect.

The attached map, Appendix A, Jefferson County, RT 4, C.V, illustrates an area (3,300ft. X 2,000ft.) of the Town that shows an example of homes not shown on BP’s Map. Within this same area, BP intends to have two wind turbines and batch plant/laydown yard. The batch plant/laydown yard appears to be within 800 ft. of one of those homes. This would create a very annoying, uncomfortable environment for the homeowner.

Comment -The Siting Board must require BP to use accurate, up-to-date maps that show their project layout and the relationship and distances to property lines and residences from their turbines and facilities.

RESPONSE: The USGS 1:24000 scale topographic maps were used to provide a uniform, general purpose map background for the project introduction. The maps, which have a scale, show turbines and project facilities in relationship to the property lines. Additional information, such as residences, will be provided in the Application. As requested, the US Topo map background, with the aerial photography turned on in order to show more detail, will be used for revising the Location of Facilities Map (see Appendix A) and throughout the Application, where applicable.

Exhibit B Study Area for the Project

“The Study Area (“Study Area”) generally includes the area within a radius of at least five miles from all generating facility components, interconnections and related facilities and alternative location sites, although differs for the evaluation of some resources.”

Comment – BP’s map “Study Area Exhibit B” shows an outline of the study that extends five miles in all directions within the boundaries of the United States. The area is truncated at the US / Canadian Border. This removes all of Wolfe Island, Ontario, Canada from the study area. There is an 84 turbine wind farm in operation on Wolfe Island.

Comment – The PSC instructed BP to include both Wolfe Island and the Town of Clayton, NY, when studying the effect of the proposed wind farm on the area. Obviously, BP has chosen to

ignore the wishes of the PSC. **BP must be made to include Wolfe Island in their study area and do a thorough impartial study of the effect of the operating wind farm on Wolfe Island's citizens, wildlife, and environment.**

RESPONSE: CVWP will take this issue under advisement.

Exhibit D Production/Curtailment Impact Study

"The purpose of the Production/Curtailment Impact Study is to support the Article 10 filing for the Facility by projecting the Facility's impacts on the transmission system, emissions and the production of certain types of existing generating resources. The Production/Curtailment Impact Study will be included in the Exhibit 8 portion of the Article 10 filing for the Facility."

Comment – This study is the justification for the addition of additional generating capacity to the NY power grid. It is a complex study that must be correctly and completely carried out. Because of the complexity, the Town of Cape Vincent may be requesting intervenor funds for a consultant to monitor BP’s adherence to the requirements of Exhibit 8.

Comment - BP is requesting a Certificate that covers a project up to 289.5 MW. It our understanding that this far exceeds the available capacity of the current transmission system. **The cost and impact on the environment of the required transmission system upgrade must be carefully considered by BP and the Siting Board.** These costs will be significant as will the effect on the environment

RESPONSE: CVWP will address this issue in the Application submittal.

Exhibit 3 Location of Facilities

Study Area for the Project

“The Study Area (“Study Area”) generally includes the area within a radius of at least five miles from all generating facility components, interconnections and related facilities and alternative location sites, although differs for the evaluation of some resources.”

Comment – BP’s map “Study Area Exhibit B” shows an outline of the study that extends five miles in all directions within the boundaries of the United States. The area is truncated at the US / Canadian Border. This removes all of Wolfe Island, Ontario, Canada from the study area. There is an 84 turbine wind farm in operation on Wolfe Island. **Wolfe Island and the Wolfe Island Wind Power Project must be included in the study area in order that the true effect of wind turbines on the citizens, wildlife, and environment may be examined.**

RESPONSE: CVWP will take this issue under advisement.

Comment – The PSC instructed BP to include both Wolfe Island and the Town of Clayton, NY, to be considered when studying the effect of the proposed wind farm on the area. Obviously, BP chose to ignore the recommendation of the PSC. **BP must include Wolfe Island in their study area and do a thorough, impartial study of the effect of the operating wind farm on Wolfe Island’s citizens, wildlife, and environment.**

Exhibit 6 Wind Power Facilities

Setbacks

"Setbacks used on BP Wind Energy projects are designed to reduce environmental, health, and safety risks. As currently contemplated, setbacks for the combined Project meet or exceed the setbacks held by the previously proposed SLWF and CVWEP; no setbacks have been decreased."

"CVWP will consult with the manufacturer of the selected wind turbine model to make sure the manufacturer is in agreement with setbacks and/or positioning for the proposed turbine layout."

"The setback requirements as stated in the CV Zoning Law have the effect of unjustifiably and unreasonably restricting the placement of turbines in agricultural districts and preclude CVWP from placing turbines in planned and/or optimal locations within the Town."

Comment - First, with a map more than 50 years old, how can setbacks be determined for any homes that were built since the map was printed? Therefore, how can BP make any claim, with certainty, that setbacks are designed to reduce safety risks? **BP should not put forward any Project layout that does not reference every home extant in the Town at the present time.**

RESPONSE: Updated structure/residence maps will be included in the Application.

Comment - The statement regarding setbacks that "meet or exceed" the previous two Cape Vincent wind projects is deceptive and untrue. This is obvious considering wind turbine placement was sited using outdated maps without denoting residences built within the last 50 years. How can BP be assured that turbines are not encroaching on some homeowners if the maps are outdated? Furthermore, the combined Project is for 124 turbines, whereas the two previous projects totaled 135. Aside from removing a number of turbines that were very close to river waterfront cottages, there are basically the same number of turbines in the interior footprint of the combined project as the two separate projects. **In spite of BP's claim, their placement of turbines in Cape Vincent is still far too close for public health and safety.**

Comment - BP indicates that they will be contacting the manufacturer of the specific model of turbine they select for the Project to ensure the manufacturer is in agreement with setbacks and positioning. Yet, when it comes to setbacks that are designed to protect people from rotor failure, blade, and ice throw, BP's attitude is that these setbacks are unjustifiably restrictive. **BP is saying that they will not compromise manufacturer's recommendations, even if it means putting people at greater risk.**

Comment - BP, in its obvious indifference to the people who live in Cape Vincent, go on to state that the Cape Vincent Zoning Law is unjustifiably restrictive to the optimal placing of their turbines. Of course, Cape Vincent's Zoning Law is restrictive so that BP cannot optimally place their turbines in the Town, because **THERE ARE PEOPLE HERE!**

The Town urges the Siting Board to support the Town's Zoning Law, particularly the setbacks from roads and property lines, because these setbacks were recommended by the Town's consulting engineers, without ANY modification from Town officials. These setbacks were designed to protect families who live within the footprint of BP's Project. **BP's setbacks were designed to make money; the Town's setbacks were designed to protect people - support our Town law!**

Exhibit 8 Electric System Production Modeling

Production/Curtailment Impact Study

BP states that, *“The purpose of the Production/Curtailment Impact Study is to support the Article 10 filing for the Facility by projecting the Facility’s impacts on the transmission system, emissions and the production of certain types of existing generating resources. The Production-Curtailment Impact Study will be included in the Exhibit 8 portion of the Article 10 filing for the Facility.”*

Comment – This study is the justification for the addition of additional generating capacity to the NY power grid. It is a complex study that must be correctly and completely carried out. Because of the complexity, the Town of Cape Vincent may be requesting intervenor funds for a consultant to monitor BP’s adherence to the requirements of Exhibit 8.

Comment - BP is requesting a Certificate that covers a project up to 289.5 MW. It is our understanding that this far exceeds the available capacity of the current transmission system. **The cost and impact on the environment of the required transmission system upgrade must be carefully considered by the Siting Board.** These costs will be significant as will the effect on the environment.

Exhibit 9 Alternatives

This statement is taken from Exhibit 9 rules regarding consideration of alternative options to the proposed project, *"A description and evaluation of reasonable alternatives to the proposed facility at the primary proposed location including alternatives regarding:...(f) a description and evaluation of the no action/no build alternative at the primary proposed location including a statement of the reasons why the proposed facility is better suited to promote public health and welfare including the recreational, cultural and other concurrent uses that the site may serve."*

However, this was BP's response to the requirement in the rules to assess a no-build alternative, *"Once the project location was selected, CVWP evaluated various project size alternatives and determined the Project's optimal generating capacity. Certain "fixed infrastructure" costs are incurred regardless of the size of the project. For example, the cost of the Project substation will not vary greatly as a direct result of the size of the facility. Consequently, the financial viability of a project depends on the ability to maximize electric generation to defray these fixed costs."*

Comment - BP's rationale that they "evaluated various project size alternatives and determined the Project's optimal generating capacity" misses a very important requirement in the rules - "...why the proposed facility is better suited to promote public health and welfare..." BP fails to understand that consideration of alternatives are not a part of the rules just to make sure the applicant is maximizing their bottom line - profits. The rules are there also to acknowledge that the Town and State have a responsibility to make sure any kind of development does not compromise the health and safety of its citizens. This, of course was the principal concern of the Town when it drafted its Zoning Law. **The Town requests that the Siting Board require BP to follow the rules and provide a comparative assessment of their Project with a no-build alternative. Furthermore, if financial claims are the major benefit to the Project alternative, then BP should be required to produce their financial data, the fixed costs versus the generating capacity, to determine if the project design and layout could be modified**

RESPONSE: CVWP will submit an Application that adheres to the Article 10 regulations, which includes a requirement for an Alternatives analysis.

Feedback

This statement from BP's PSS indicates that their Project layout came about with substantive feedback from stakeholders, *"The proposed location of turbines and associated facilities accounts for feedback from stakeholders at the local and state levels and results in a Project that factors in environmental, health, and safety issues while attaining cost-effective wind power."*

Comment - This statement is remarkable. The overwhelming opinion of stakeholders,

excepting BP's financially tethered leaseholders, is that their 124-turbine project was outrageous and was totally incompatible with the Town and Village's Comprehensive Plan. Proof that BP never listened to local government and never listened to the community is evident by BP's entering the Article 10 process on September 17, 2012, with a 124-turbine Project, and after 6 1/2 months of a Public Involvement Program continues with the same 124-turbine Project. For BP to suggest they have support for this project at the local level, implies they have never read any of the letters and comments posted on the PSC's website for their

Project, where the general consensus is not supportive of the Project.

Town Comment	PSS Response	Town Response to PSS
Alternative project layouts and arrangements in the Acciona FEIS and BP's SDEIS were inadequate in relation to extensive comments made by involved agencies under SEQRA. Aside from BP's proposed project which is incompatible with the Town of Cape Vincent Comprehensive Plan and Zoning Law, BP should include for consideration a renewable energy development alternative that is compatible with the Town's plan and law. The analysis should also include alternative options (e.g. buried line) for the transmission line bisecting the Town of Lyme.	This PSS document offers extensive discussion regarding alternative facility sites, including other renewable energy development, and transmission line options.	BP dismisses solar out of hand because the company is no longer in the solar business. However, the point the Town wishes to make is wind development is incompatible with the Town's Comprehensive Plan because of noise, shadow flicker, blinking lights, ice throw, potential rotor failure, property devaluation, and major bird kills, whereas a solar project would have NONE of these adverse impacts on people and natural resources. The Town urges BP and the Siting Board to consider a solar project to demonstrate that solar is a better fit for not only Cape Vincent, but for all New York communities with natural and community resources similar to the Town's. <i>RESPONSE: BP is unable to consider a solar project as the company is no longer in the business of building solar facilities.</i>

Town Comment	PSS Response	Town Response to PSS
Based on USFWS 6/15/07 SLWF DEIS Review the developer should be required to also consider a range of alternative facility arrangements to enable the advancing of a project design that is responsive to the many significant resources of State interest in the project area.	This PSS document offers extensive discussion regarding alternative facility sites	In Exhibit 22 the Town has a very detailed discussion of the adverse impacts of industrial wind development on the natural resources of the Town. A solar renewable project alternative should be provided by BP to demonstrate that solar is environmentally friendly while wind is an environmental disaster. <i>RESPONSE: BP is unable to consider a solar project as the company is no longer in the business of building solar facilities.</i>
Based on USFWS 3/19/08 CVWF DEIS Review, no explanation is provided for feasibility of a smaller project. The DEIS should provide an explanation on the minimum number of turbines needed to make a viable project. How can alternatives be considered without knowledge of wind resources and avian concentrations within the project footprint.	CVWF does not evaluate projects in such a manner, but rather is looking to propose a project that is meaningful and can bring economic and environmental benefits to the community. Evaluation of potential impacts to avian species is addressed in Section 2.22.	Not surprising that BP in their response does not mention considering the community, its mission statement, vision and future plans, nor did BP mention that health, safety, and general welfare of a community as part of their equation. BP needs a balanced project alternative that is less oriented toward their corporate bottom line and more considerate of a community.

Town Comment	PSS Response	Town Response to PSS
Based on NYSDEC 2/29/08 CVWF DEIS review, the lack of detail in the project scope precludes meaningful discussion of alternatives if there is no project to compare alternatives to.... Details should include the factors that led to the specific turbine layout for each alternative such as wind resource evaluation, turbine spacing and/or orientation, wind turbine model selection, site constraints (setback requirements, avoidance of wetlands, landowner preference, etc.) access road and interconnect design, considerations and avoidance of identified adverse environmental impacts (e.g. archeological sites). The range of alternatives may also include as appropriate alternative sites technology scale or magnitude design timing use and types of action.	This PSS document offers extensive discussion regarding alternative facility sites.	Providing a lack of detail seems to be a BP corporate development trait. Back in 2008 the New York State Department of Environmental Conservation complains that BP provides a “lack of detail.” Details they need included turbine layout for different alternatives, spacing, orientation, model, setback constraints, etc. The Siting Board needs to step back and consider that BP has been involved with some form of project submittal for seven years, and in all that time, we still have no idea what turbine models will be used nor do we know the accurate placement of these turbines. There is no map that denotes current homeowners, the location of their homes and property lines, what property owners are BP co-operators, and who are non-participants. Seven years and we still do not know and we will not know until they are up and running.
Based on PSC 1/12/07 comment, BP should include alternative scales and layouts to avoid significant impacts.	This PSS document offers extensive discussion regarding alternative facility sites.	BP offered dialog but no alternatives. BP should be forced to comply with the directives in Exhibit 9. <i>RESPONSE: CVWP will submit an Application that adheres to the Article 10 regulations, which includes a requirement for an Alternatives analysis.</i>

Town Comment	PSS Response	Town Response to PSS
Based on PSC 06/13/07 comment on SLWF DEIS, the location of transmission line/facilities should be specified and alternatives, including consideration of the costs and benefits of underground location for all or part of the line should be addressed in the SDEIS. The alternatives analysis should address routing alternatives for 115kV transmission line including facility routes: within the abandoned railroad ROW adjacent to abandoned railroad ROW and other alternative locations. Consideration of underground placement should address at a minimum the crossing of the Chaumont River, any regulated wetlands or Wildlife Management Areas, important bird areas, locations visible from the Seaway Trail Scenic Byway, historic districts, and other locations as appropriate.	This PSS document offers extensive discussion regarding alternative facility sites, including transmission line options.	Discussion yes, but no transmission line alternative. Town of Lyme has a preference for a buried transmission in their wind law. BP should provide some best-guess cost estimates for a buried line in order to compare the costs with conventional above ground poles and lines. This information will be invaluable for the Town of Lyme to consider compensation for allowing above ground transmission infrastructure. If millions are saved, then Town of Lyme should receive just compensation. <i>RESPONSE: An analysis will be undertaken to estimate the cost for an underground generator interconnection line per mile compared to the cost of using an overhead installation. An underground installation would need to be encased in concrete, which increases the construction time and expense of installation. Additionally, the underground cable is a different type of cable compared to an overhead system, which further increases the expense of an underground approach.</i>

Town Comment	PSS Response	Town Response to PSS
Based on PSC 06/13/07 comment on SLWF the discussion of project alternatives should consider project alternative reduced alternative layout and project arrangement which would remove turbines from: the most prominent locations near the Coastal Zone and Local Waterfront Revitalization Areas, the Seaway Trail Scenic Byway, State Parks, Historic Properties listed or eligible for listing on the State or National Register of Historic Places, and other resources of recreational scenic and importance to the State from designated Coastal Habitat areas, Important Bird Areas ,Wildlife Management Areas, and NYS regulated wetlands.	This PSS document offers extensive discussion regarding alternative facility sites, and specifically addresses the reduced Project layout from 135 to 124 turbines, with the large majority of eliminated turbines coming from the St. Lawrence River area.	The Siting Board should insist that BP provide at least two alternative project designs: a no-build option and an option that considers and respects Cape Vincent's comprehensive plan and zoning law. Providing alternative project designs are a requirement of the Article 10 rules and it should be enforced. <i>RESPONSE: CVWP will submit an Application that adheres to the Article 10 regulations, which includes a requirement for an Alternatives analysis.</i>

Town Comment	PSS Response	Town Response to PSS
Based on Mentor Rubin & Trivelpiece 6/14/07 SLWF Review, the DEIS should contain a meaningful discussion of alternatives and not just the conclusory assertions that it presently contains. An EIS must contain a description and evaluation of the range of reasonable alternatives to the action that are feasible/considering the objectives and capabilities with a level of detail sufficient to permit a comparative assessment of the alternatives discussed NYCRR§617.9 (b)(5) (v). Significant further assessment of alternatives is warranted.	This PSS document offers extensive discussion regarding alternative facility sites.	Providing alternatives is a requirement of SEQRA as well as the Article 10 rules. It remains a key feature of any environmental assessment and BP should be required to provide a comparative analysis of at least three alternative designs. <i>RESPONSE: CVWP will submit an Application that adheres to the Article 10 regulations, which includes a requirement for an Alternatives analysis.</i>

Town Comment	PSS Response	Town Response to PSS
We need large-scale maps that show all turbines and interconnecting lines that make up the total project, both the 200 MW and 289.5 MW project alternatives.	Project maps have been and remain available on the project website, in the local CVWF office, and have been on display at each of the public forums, including the Open House, and meetings with the Towns of Cape Vincent and Lyme. A Project map is also provided as part of the PSS submittal. The project size ranges from 200 and 285 MW but leverages the same 124 turbine locations.	How can BP seriously consider using the same layout for 1.6 MW and 3.0 MW, which vary from 400 – 499 ft. high turbines? The noise characteristics alone would require different placement, particularly when infrasound is considered. Furthermore, the Town’s turbine setback restrictions are keyed to the total height of an industrial wind turbine. Therefore, a 500 ft. turbine would need a 3,000 ft. setback and 2,400 ft. setback for a 400 ft. turbine. BP does need to provide at least two alternatives for their 200 and 290 MW project options. The two options cannot responsibly be located on exactly the same project layout. <i>RESPONSE: CVWP will submit an Application that adheres to the Article 10 regulations, which includes a requirement for an Alternatives analysis.</i>

Town Comment	PSS Response	Town Response to PSS
We are not opposed to a commercial, renewable energy project. In both our Comprehensive Plan and Zoning Law commercial solar projects are deemed better fits and are encouraged as a renewable energy development project proposal. Since BP has completed other solar, renewable projects in New York, i.e., Brookhaven, L.I., we encourage BP to provide a solar energy development alternative as part of their Public Involvement Program.	BP is currently investing in three alternative energy technologies: 1) Wind, where BP has built up one of the leading wind businesses in the US; 2) Biofuels, that BP deems to be affordable, low carbon, sustainable, and scalable; and 3) Emerging business and ventures where BP is partnering with technology start-ups and venture capital firms with a goal of speeding up breakthrough innovations in areas of strategic importance to the company.	BP fails to mention they were in the solar business until two years ago. If they had read Cape Vincent's 2003 Comprehensive Plan, they would have understood that solar was a better fit for Cape Vincent and may have had a project up and running by now had they made the right choice then for our community. <i>RESPONSE: BP is unable to consider a solar project as the company is no longer in the business of building solar facilities.</i>

Exhibit 14 Cost of Facilities

Exhibit 14 states, "*(a) A detailed estimate of the total capital costs of the proposed facility, including a separately stated estimate for each interconnection, broken down in a rational manner by the Applicant into major cost components appropriate to the facility; (c) Upon the demand of any party or of DPS, the applicant shall supply the work papers from which the estimates required by subdivision (a) of this section were made.*"

Comment - Is the Town to assume this will be an actual cost of construction? Or, is it ground preparation, foundations, roads, etc.? According to NYS Sales Tax Department, BP will be liable for sales tax on cement, gravel, bolts, and similar materials. Only the power generating equipment would be exempt as production equipment, (e.g., towers, nacelles, blades). BP should provide details for each and every component of capital outlay. **The Town requests the detailed work sheets used for the "detailed estimate of the total capital cost" for the Project as outlined in paragraph (c).**

RESPONSE: CVWP will provide a cost estimate in the Application that complies with the requirements of 16 NYCRR 1001.14.

Exhibit 15 Public Health and Safety

Rotor Failure, Blade Throw and Ice Throw

"A modeling effort pertaining to ice shedding /throwing range and ice size will be generated based on a literature search of available information from wind farms operating in North America."

"Calculations in the California Energy Commission's Permitting Setback Requirements for Wind Turbines in California, prepared by the California Wind Energy Collaborative, November 2006, report number CEC-500-2005-184, (the "CEC report") will be used to help inform an understanding about blade throw."

"Therefore, an iterative process will be used to determine various cases for blade throw at this site using the actual topographic data for the Project."

"A third party engineering firm will review materials from the wind turbine manufacturer to help assess risk for wind turbine towers."

Comment – BP is proposing to use studies prepared by a "wind industry collaborative," not an independent engineering study, dated November 2006. Using data that was developed prior to November 2006, BP is ignoring recent events and the evaluation of blade failures that have occurred since that time. Cape Vincent's Zoning Law setback requirements were developed in 2012 and are based on a study prepared by the Town's engineering consulting firm, who modeled potential rotor and ice throw as well as reviewed any debris field analysis available from turbine accident reporting.

Comment - BP has not said what size/model turbines that they intend to use. They stated that they will not address rotor failure and blade throw until they site the individual turbines. This further suggests that they do not know where they will be placing turbines and may move them where ever they desire. **The Siting Board should require BP to produce a complete, definitive turbine layout, stating the turbine specific setback used to address rotor failure, ice and blade throw. This layout should be based on the worst case scenario, using the 499 ft. high wind turbines.**

RESPONSE: CVWP will conduct an ice throw, blade throw, tower collapse risks assessment, evaluating multiple turbine models.

Comment – The Town of Cape Vincent's independent study for a GE 426 ft. high (1.6MW) turbine shows a projectile throw of 2655.8 ft., which is the basis for the Safety Setback requirement of "six times the total turbine height," in the Town Zoning Law. See attached "Wind Turbine Projectile Calculator," dated March 9, 2012.

Comment- The Town of Cape Vincent will be requesting intervenor funds to study further safety setbacks and recent turbine blade failures.

Comment- The third-party engineering consultant used to assess turbine risks should be accredited and have experience assessing risks of industrial wind turbine risks and failures.

RESPONSE: There is no accreditation for the ice throw, blade throw and tower collapse risks assessment process. The third-party engineering consultant used to assess ice throw, blade throw and tower collapse risks will have sufficient experience assessing the aforementioned risks associated with industrial wind turbine failures.

Table 2.15-1 and Town Responses

Town Comment	PSS Response	Town Response to PSS
Turbines too close to residences	The Project maintains setbacks to residences at one-quarter of a mile, which meets or exceeds the previous setback for residences held for either of the predecessor projects and is believed to be adequate to address health and safety concerns.	Proposed ¼ mile (1,320 ft) setback from residences is unsafe. Previous setbacks were similar (1,250 ft) and also unsafe. Current law is based on engineering modeling by Town consultant, e.g., six times total turbine height or 3,000 feet. CV zoning law also includes the project boundary line and roads not just the residences. BP states 1/4 mile setback is "adequate to address health and safety concerns." If so, then why do BP contracts with leaseholders stipulate reduced setbacks, if they know these reduced setbacks will be less than adequate?
Provide a comprehensive assessment of rotor failure and debris scatter for modern industrial scale wind turbine failures as well as a well-reasoned explanation for setbacks they may use that are not compliant with the Cape Vincent Zoning Law.	Potentially significant adverse health and safety impacts associated with ice throw, blade throw, and tower collapse will be addressed in Exhibit 15 of the Application.	Exhibit 31 specifies that until such time that local laws are waived or supplanted that the local laws remain in force. Therefore, the Town's six times total height setback from roads and property lines is the default setback until BP succeeds in waiving this restriction in the Town's Law.

Exhibit 18 Safety and Security

2.18.5 – Local Office of Emergency Management Review –

“A review of plans by the local office of emergency management is not required for towns less than one million people.”

Comment - No review for towns of less than 1,000,000 people is required in Exhibit 18 rules; however, Jefferson County, NY, has an Emergency Management Office, which has controlling authority, and **the Siting Board should require a review of any emergency response plans related to BP's Project by the County's EMO.**

RESPONSE: The County emergency management office will be contacted and involved in the review of emergency response plans.

2.18.6 Fire Response Plans

“The project will have a Fire Protection and Prevention Plan. The objective of the plan is to eliminate the causes of fire, prevent loss of life and property by fire, and to comply with Occupational Safety and Health Administration's (“OSHA”) standard on fire prevention, 29 CFR 1926.24.

“Project personnel are not trained firefighters and are not to fight fires beyond the incipient or initial stages, or as required to facilitate personal safety/egress. Personnel will be trained to summon professional help and evacuate to designated zones of safety. Personnel will not be equipped with or trained in the use of professional firefighting equipment.”

Comment - BP must be required to provide on-going training to all of the emergency personnel in the Towns of Cape Vincent, Lyme, and Clayton.

2.18.8 – Review by Local Emergency Responders

“The Emergency Response plans in Section 2.18.3 will be provided to the local emergency first responders.”

Comment - In addition to having local review prior to the issuance of a Certificate, BP must be required to have an on-going training program for local fire and emergency response personnel.

Exhibit 19 Noise and Vibration

In-Home Adverse Impacts

Of all the potential adverse impacts that are associated with BP's Project, there are some that transcend all others. Impacts that are annoying and unhealthy to people were an important factor in the adoption of the Town's revised Zoning Law. But, impacts such as wind turbine noise, blinking red FAA lighting, and shadow flicker are especially important because they may affect Town residents in their homes. In the extreme, experiences at some wind farms were so bad that people were driven from their homes; in some cases, they deserted homes that were impossible to sell. Because in-home impacts have such a great potential to do harm in the comfort, privacy, and otherwise security of our homes, the issues of wind turbine noise, blinking lights, and shadow flicker are at the top of the Town's list of concerns. **The Town will demand that our laws that protect residents from noise, lights, and flicker impacts will remain in place and not be waived by the Article 10 Siting Board.**

Issue Applying Local Standards: Subsection K, (1) Stipulates that "The preliminary scoping statement shall contain": item (2) (ii) "...potentially significant adverse environmental and health impacts...including any material impacts or effects identified in consultations by the public, affected agencies, and other stakeholders, and a responsive analysis by the Applicant as to those issues identified in consultations." The Town interprets this section as requiring BP to act on its concerns and not ignore and put them aside.

In its PSS submission BP states, "A noise impact assessment will be carried out to determine existing environmental sound level with the current project area, what the expected operational sound levels from the project are likely to be and how they compare to pre-construction levels." Further, under 2.19.1 "Sound emissions from the turbines once the project is operational could be audible at residences and other potentially sensitive receptors with the project area and a potential will exist for annoyance and complaints. Analysis will be carried out to tabulate the sound levels at each residence due to the project alone..." Lastly, in Section 2.19.3, 'Proposed or On-Going Studies During Pre-Construction Activities,' the PSS states as a requirement, "The development of a map showing all potentially sensitive noise receptors in proximity to proposed turbine locations – primarily consisting of residences and churches."

Comment: The Town of Cape Vincent has made clear, written representations of its position on the modeling and assessment of industrial wind turbine (IWT) generated noise. In January 2013, BP was furnished a lengthy document entitled, "Additional Potential Adverse Environmental Impacts & Other Recommended Studies and Issues." Under the heading 'Wind Turbine Noise' the following recommendations were made:

- a. In the memorandum accompanying the publication of the Article 10 rules, this was the

discussion point at the end of Section 19 Noise, *“The disagreement described above (adopting a noise standard) lends support to the case by case approach in the proposed regulations.”* In addition, Section 31 Local Laws directs, *“Pursuant to PSL §168(3)(e), the Siting Board must find that the facility is designed to operate in compliance with all local substantive requirements, all of which shall be binding upon the applicant, unless the Siting Board elects to not apply them.”*

shall “operate in compliance” with the Town’s local law until such time as that law has
Therefore, any assessment of noise impacts shall “operate in compliance” with the
Town’s local law until such time as that law has been waived by the Siting Board, and
since no waiver has been requested or granted, any noise predictions shall comply
with the 35 dBA limit, which is the Town’s current nighttime restriction.

RESPONSE: Compliance with the 35 dBA nighttime noise limit contained in the Town’s Local Law No. 3, 2012 will be evaluated by CVWP in the modeling studies as required by the State’s Article 10 statutes.

- b. Relative to assumptions made in predictive noise modeling BP made the following comment regarding the Town’s request: *“Although we concur with Dr. Schomer’s logic of using source, middle ground and receiver ground absorption coefficients of 0,0,0.9, such an analysis can only be done for the simplest case of a single turbine radiating noise to a single receptor because only then can the three different zones can be properly defined. In a contour map involving hundreds of receptors and many turbines these zones cannot be defined in any practical way. However, comparative analyses indicate that very similar results are obtained by using a universal coefficient of 0.5, so that is the anticipated approach”.* **Town requests a comparative assessment of several single wind turbines using the Town’s assumptions vs. a universal ground absorption coefficient.**

RESPONSE: It is CVWP’s understanding that the “Town’s assumptions” refers to a recommendation by Paul Schomer to evaluate the ground absorption loss during sound propagation by using source, middle ground and receiver ground absorption coefficients of 0,0,0.9, respectively. In order to show that this method (which is perfectly acceptable but impractical to implement for hundreds of receptors and many sources) produces similar results to a simpler approach of using a universal 0.5 ground coefficient, a comparative example turbine-receiver calculation will be provided using both methods.

- c. Although BP indicates it will provide C-Weighted predictive noise impacts in its assessment, indicating it is required in the rules. **However, the Town requests C-Weighted impacts be included in predictive noise impacts, since BP erred and it is not required in the rules.**

RESPONSE: C-weighted sound contour plots will be generated as appropriate and/or C-weighted values may be added to the tabular results for individual residences.

- d. “In the preparation of maps to describe potential noise impacts, property lines should be clearly defined so that landowners, those with leases and good neighbor agreements as well as non-participants can examine noise impacts on their property. In addition, the

shall “operate in compliance” with the Town’s local law until such time as that law has predictive analysis should include a tabled format of sound levels for all residences keyed to the sound level map.” In other words, **the Town believes that truly comprehensive modeling of sound generated by industrial wind turbines should provide predicted levels at property lines as well as residences for all Township properties.**

RESPONSE: The sound contour maps that will be produced will illustrate the project sound level throughout the site area and will be overlaid on a map of participating land parcels – thus allowing the project level at any particular boundary of interest to be read directly from the graphics.

- e. “The noise impact analysis should include three operational scenarios: 1) noise levels at cut-in speeds, 2) noise levels at ½ power output and 3) noise levels at full output of the wind turbine.” BP addressed this recommendation in its PSS in Table 2.19.1, page 72 by saying “To be conservative, the use of only the maximum turbine sound power level at full output is anticipated.” **The Town of Cape Vincent would not have made its recommendation for the evaluation of “three operational scenarios” if it didn’t consider the information important.**

RESPONSE: Per the Town’s comment dated 1/20/13 in Table 2.19-1 of the PSS, “three operating scenarios” refers to the project sound levels at cut-in, half power and at full power. To be conservative, only maps at full power will be generated because project noise is undoubtedly maximum under such an operating condition.

- f. “Potentially sensitive receptors” include more than residences and churches (see 2.19.3 above). Receptor locations may be property lines, schools, and any public gathering place. **BP needs to update their Project map to include all the buildings and residences that have been added in the last 60 years, which is the time base for BP’s current map.**

RESPONSE: Updated structure/residence maps will be included in the Application.

Issue “It’s in their heads”: Under section 2.19.5 Proposed Measures to Mitigate Unavoidable Impacts, BP states *“Although it is a possibility, it is unlikely that the sound emissions from a project of this type will go completely unnoticed at all times by everyone in the project area; consequently, an unavoidable impact of some degree is anticipated. The extent of any adverse reaction to project noise depends on more than just the sound level, including attitudinal factors that have no direct association with noise, and cannot be precisely known ahead of time.”* This description by BP that noise concerns may be psychological is disingenuous and dismissive of real health issues, yet in comparison, BP’s good neighbor agreements provide no mention of “attitudinal factors.”

There is no discussion of “attitudinal factors” in BP’s Wind Energy Lease Agreement. As cited in ‘Approved Form 07-26-10’, Section 8 ‘Owner’s Representations, Warranties and Covenants’, Subsection 8.10 ‘Noise’, “Owner grants Grantee an easement for the right and privilege to generate and maintain audible noise levels in excess of 50 dbA on and above the Noise Easement at any time of the day or night. The Noise Easement shall mean the Property except those portions within a two hundred foot radius circle... centered on the inside of each presently existing, occupied residence on the Property. If noise levels produced by the turbines exceed 50 dbA (L90) without the Owner’s consent...Grantee shall reduce the noise levels produced by the turbines to 50 dbA (L90)... Measures to be taken by Grantee may include installing insulation, or sound-deafening material in the offending turbine(s); installing landscaping, insulation and sound deafening material at the residence, or changing the operation of the turbine(s) to reduce noise output”.

Comment: The citation above is straight forward; there is no offsetting suggestion that attitudes, whether formed before or after turbine construction and initial operation, constitute a basis for reporting excessive noise annoying any more than the physiological reaction itself. A landowner who enters into a Lease or Good Neighbor Agreement is, in part, compensated for his/her tolerance of adverse impacts. The compensation-for-tolerance does not preclude the impact(s) to the human condition. Explicit in BP’s Lease and Good Neighbor Agreements is the recognition that annoyance and/or physical/emotional discomfort experienced by persons living within or near to the boundaries of an industrial wind farm is most effectively dealt with by compensation. There is no attempt to deflect what a resident may feel by suggesting “it is all a matter of perception, any portion of which is due to preconceived ideas.” **The Town recommends that as the discussion of the adverse impact of sound goes forward, that BP refrain from the human suggestibility argument.**

Issue Infrasound: Another potential IWT generated adverse impact to health is Infrasound and Low Frequency Noise (LFN). These effects are less related to audible noise, annoyance, and sleep deprivation and more related to symptoms associated with motion sickness. Again, the Town’s January 20, 2013, recommendations for Studies and Issues referenced a recent report
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submitted to the Wisconsin Public Service Commission in their review of the Highland Wind Farm proposal. The Commission sponsored a study of wind turbine generated infrasound at the Shirley Wind project, Brown County, Wisconsin. The work was carried out by four acoustic consulting firms, each experienced in assessing turbine noise impacts. In their summary

findings, the authors concluded, *“The four investigating firms are of the opinion that enough evidence and hypotheses have been given herein to classify LFN and infrasound as a serious issue, possibly affecting the future of the industry.”* Because infrasound levels were inaudible, but nevertheless caused ill health for some residents of the Shirley Wind project, the acoustical engineers recommended conducting a follow-up study to establish the threshold of perception for infrasound.

Section 1001.19 (k) of the Article 10 Rules outline issues that may have “potential community noise impacts.” Included in the list to evaluate are “industrial or medical activities that are sensitive to vibration or infrasound.” Citing this reference, BP was requested to provide an evaluation of low frequency noise and epidemiological evidence that low frequency sound generated by the turbine model(s) selected for the proposed project is not, and will not be associated with the advent of adverse health effects such as sleep and mood disorders, problems with concentration, tinnitus, vestibular disorders, and an onset of hypertension in residents living within or in close proximity to the wind farm.

BP included this response in their PSS to the Town's reference to the Wisconsin infrasound study, *"The actual finding of the Wisconsin PSC study was that the levels of infrasound from the project turbines were extremely low and most likely similar to or equivalent to the natural environmental sound level at those frequencies inside of each tested residence. In short, nothing was found that even suggested an explanation for the complaints about adverse health effects. The 33.5 dBA design goal was suggested by one of the team's investigators as an extreme precaution but others recommended 45 dBA as an adequate regulatory limit for the specific reason that the measured levels of infrasonic sound appeared to be utterly negligible."*

Comment: BP's response, which suggests infrasound is an 'attitudinal factor,' fails to consider that as a direct outcome of elevated noise levels, the Wisconsin PSC denied the application for the Highland Wind Farm, *"The PSC denied the application from Emerging Energies of Wisconsin, Highland's developer, at its Feb. 14 meeting, citing inconclusive information about the wind farm's ability to meet state standards related to noise from turbines (Pierce County Herald, March 14, 2013)."* **Regarding the design goal, and regardless of BP's biased view on infrasound, the Town requests that in addition to the normal noise impact predictions based on existing Town law, e.g., 35 dBA, that another scenario be included for the record based on 33.5 dBA to provide an interim measure of protection from infrasound until such time as further study resolves the issue to everyone's satisfaction.**

RESPONSE: There is no tangible or meaningful difference between these two sound levels; i.e. the project would sound exactly the same whether it was 35 dBA or 1.5 dBA lower and nothing would be gained by lowering the design target by such a small amount. Consequently, the intention is only to carry the sound contour plots out to the Town limit of 35 dBA.

Issue Sleep Deprivation:

The Town repeats its January 20, 2012, concern for sleep deprivation associated with elevated noise levels. *"Sleep deprivation is now a well established health risk associated with the noise produced by industrial wind turbines (B. Berglund et.al. 1999, C. Hanning & Evans 2012, M. Nissenbaum et.al. 2012, E. Pedersen et.al. 2007, Pedersen & Waye 2004, N. Pierpont 2009, D. Shepherd et.a. 2011 and G. van den Berg et.al. 2008).* **BP should provide a comprehensive analysis of the scientific literature, including the aforementioned papers, to describe the negative health impacts associated with sleep disturbance regardless of the cause, and then**

to also assess the potential for sleep disruptions, and other direct and indirect health effects.

RESPONSE: Section 2.19.3 of the PSS states that an evaluation of low frequency and infrasonic sound from the project will be carried out in the assessment. It has always been the Applicant's intention to address this issue. No credible scientific study to date, including those considered in comprehensive reviews by Massachusetts, Ontario, Canada, and Australia, has found any association between infrasound from wind turbines and any health effects.

Assessing the potential for sleep disruption in Cape Vincent from industrial wind development should be keyed to BP's predicted sound levels. The restrictions imposed in Cape Vincent's zoning law were formulated with the expressed purpose of minimizing health impacts, such as sleep deprivation. Alignment with those restrictions should help ensure BP that potential adverse health effects from their proposed development will be minimized."

Comment: This was the extent of BP's response in its entirety to the Town's concerns for sleep deprivation associated with elevated wind turbine noise levels, "*Potentially significant adverse health and safety impacts associated with noise will be addressed in Exhibit 19 of the Application.*" Yet, early in the process of drafting the Article 10 rules sleep interference was under consideration, "*...an evaluation of the following potential noise impacts: hearing damage (as addressed by applicable OSHA Standards); **sleep interference**...*" The wind industry and their consultants lobbied to remove any reference to sleep deprivation; however, **the Town requests that the issue of sleep interference be reinserted back in the list of issues considered in Exhibit 19.**

Exhibit 20 Cultural Resources

'OPRHP provided comments on both studies (Proposals for turbine layouts) during 2008 and determined that no further analysis was needed.'

Comment - This assertion by BP is patently false. In fact OPRHP in their letter dated May 28 2008 (SHPO Bonafide to PSC Andy Davis), after declaring an Adverse Impact on the 'communities' for the St Lawrence Wind project, called for an analysis of alternatives including eliminating turbines, changing the location of turbines, the size of turbines and other variables. Also OPRHP indicated that this study should be shared with all contributing agencies as part of an important attempt to remove or mitigate the adverse impacts.

What is at issue now is the layout of the Project, which BP is suggesting was accepted during local Town SEQRA review. According to the Article 10 rules, however, no decisions that transpired under SEQRA have any merit or validity under Article 10. But BP now wishes to recreate the previous nightmare and have it accepted under Article 10 without ever addressing the solution that SHPO had proposed.

The Town insists that BP conduct the analysis that OPRHP had called for: alternatives that considered eliminating turbines, reducing the size of turbines, moving the turbines to other locations, other changes to eliminate or mitigate the agreed upon adverse impacts.

Table 2.20-5 Comments and Responses on Potential Project Impacts to Cultural Resources

Town Comment Jan. 20	PSS Response	Town Response to PSS
In addition to the concerns for historic and cultural resources outlined in Section 12, past reviews associated with the Town's SEQR process stated that industrial wind turbine development had a very substantial visual impact on historic and cultural resources. More attention has to be directed to minimizing these impacts.	Visual impacts to the rural landscape will be reduced through the use of plain materials free of advertising and high-visibility commercial markings, other than standard manufacturer markings. Unavoidable adverse impacts, if any, would be addressed through potential mitigation measures.	The response by BP that plain materials and no advertising are on 500 ft. tall turbines is their approach to mitigating visual impacts on historic and cultural resources is ridiculous. BP should make a concerted effort to remove turbines from the background along the major site lines between the frontage roads and the historic sites.

Town Comment Jan. 20	PSS Response	Town Response to PSS
Based on PSC 06/13/07 SLWF the DEIS indicates the location of the Project substation on four acres near Swamp Road. The location indicated on the project facilities layout map is within or directly adjacent to the Warren Wilson House Historic District which is listed on the Register of Historic Places. This location presents a potential conflict with the Historic District, is likely to adversely affect that District. Alternative locations should be explored.	Potential effects of the revised Project on the Warren Wilson House will be addressed as part of the proposed Visual Resource Assessment.	BP chose to ignore the recommendation of the New York State Public Service Commission. The PSC's comment was made during a 2007 review of the St. Lawrence Wind Project, but in Exhibit B, the study area of the project, there is a designation for a substation on the same property of the Warren Wilson House. BP should find an alternate site for the Project substation as suggested by the PSC in 2007.
Based on PSC 06/13/07 SLWF adverse effects (turbines in view) on the Cape Vincent Village Broadway Historic District will conflict with Coastal Zone Management Policies. Supplemental Surveys should include all component resources and landscapes within listed eligible or potentially eligible historic properties or districts as appropriate to demonstrate the extent of impacts of the project on those resources. The discussion of Visual Resources and Community Character does not adequately address the scale and scope of the project impacts on the project area, the affected community, or several resources of regional and statewide significance.	Potential effects of the revised Project on the Broadway Historic District will be addressed as part of the proposed Visual Resource Assessment and will also be addressed in the assessment of potentially applicable coastal policies and consistency measures. In addition, revised discussions of visual resources and community character will be prepared following Article 10 § 1001.24 Exhibit 24: Visual Impacts requirements.	The current Project continues to site turbines in the same locations that will impact the Cape Vincent Village Broadway Historic District. What will be an even more adverse impact will be turbines that dominate the viewscape even more than those proposed in 2007, i.e., 100 ft. higher and with much larger diameter rotors. BP should seek an alternate project layout that would remove turbines from the view shed of the Village's Historic District. <i>RESPONSE: As part of the Application, CVWP will undertake a viewshed analysis and an Alternatives analysis.</i>

Town Comment Jan. 20	PSS Response	Town Response to PSS
Based on Mentor, Rudin & Trivelpiece 6/13/07 SLWF Review, determine how the presence of each turbine affects each building that meets criteria for inclusion in the National Historic Register.	A visual resource assessment will be undertaken to determine the extent and assess the significance of Project visibility.	BP should make a concerted effort to remove turbines from the background along the major site lines between the frontage roads and the historic sites.

Exhibit 21 Geology, Seismology, and Soils

Summary

BP, in Exhibit 21 of their PSS does not identify the locations where karst conditions exist. They should be identified before the project is started. Any pre-construction plans should identify the specific procedures to be followed in order to keep turbine placement away from sensitive features and to prevent any form of pollution from entering the aquifers. These procedures need to be approved prior to the start of construction to ensure they are adequate to protect the environment and any homeowners that rely on wells for their water supply.

These studies should be conducted following the protocol outlined by DEC previously set forth in the SLWF review. The suggestions put forth by BP that they will seal off areas that might allow pollutants to enter the aquifer are unacceptable because as pollutants are prevented from entering the karst formation so will any natural water runoff. This has the potential for reducing the water supply to homeowner's wells.

The Extent of Karst Discussion in BP's PSS:

The following information covers the entire topic of karst geology provided by BP covered in Section 21 of the Article 10 rules:

P. 93 Both the Rockland and the Kirkfield Limestones can contain up to 25 percent by volume of the mineral dolomite, which makes these bedrock formations less susceptible to karst formation than the relatively pure Chaumont Limestone (contains 0 to less than 5 percent dolomite).

P. 96 Karst conditions exist in the Project area and their development may be accelerated by significant infiltration of water. Site specific preliminary karst condition assessments will be conducted to assess the potential of each site for karst formation. A SPDES permit will be obtained prior to construction initiation in which storm water best management practices will be developed specifically to protect the karst features at the site. Precautions will also be taken to seal potential pathways for water with concrete over exposed bedrock subgrades.

P. 96 The Storm Water Pollution Protection Plan ("SWPPP") required as part of the SPDES permit will address these impacts. **The SWPPP will take into consideration karst features in relation to the drainage patterns to ensure that karst development is not accelerated.**

P. 100 Surface drainage features that may be encountered during construction include watercourses that may be located within the Project area and solution-enlarged joints (karst conditions) in the far northeastern portion of the Project area.

P. 100 If areas of potential subsurface drainage including drainage tile or solution-enlarged joints (karst conditions) are encountered during construction, they will be avoided, protected, or completely restored.

In summary of the comments on karst from BP’s PSS, BP sees karst geology as a drainage problem that will be solved with a Storm Water Pollution Protection Permit (SWPP), and therefore, it is no big deal. But in the comments that follow the Town’s engineering consultant, the New York State Department of Environmental Conservation, and the U.S. Fish and Wildlife Service have a very different view of the importance of karst features of the Cape Vincent landscape.

Responses to Table 2.21-2

In BP’s description of the Town’s comments provided to them in a document dated January 20, 2012, BP fails to fully represent the Town’s concern by paraphrasing the issue in their PSS. In the Town’s following response, the complete comment is noted as it was provided to BP as well as the Town’s response to the PSS:

Town Comment Jan. 20	BP PSS Response	Town Response to PSS

Conducting a comprehensive assessment of the karst geology in the Town of Cape Vincent was probably the most egregious lapse in oversight by the Lead Agency during the SEQRA review of the BP and Acciona project proposals. The Town's engineering consultant recommended at the time that the applicants include an evaluation of the bedrock geology, in particular the karst geology. They stated, "This work is critical to maintain suitable foundations for future turbines, as well as to protect and maintain any regional geological and hydrogeologic conditions of the karst geology." Regrettably, the karst assessment was never completed, but it nevertheless should be a part of BP's list of issues that require study during the application phase of Article 10.	See discussion above regarding karst geology.	The Town's consulting engineers Bernier Carr Associates had a major concern with the karst geology not because of a drainage problem, as suggested by BP. BCArequired a pre-construction assessment of the karst geology in order to properly and safely place turbine foundations and to protect and maintain local aquifers. BP should complete a detailed geological assessment of the area, including issues related to karst geology, prior to the award of an Article 10 Certificate. <i>Response: The PSS document notes that a geotechnical and karst assessment will be undertaken.</i>
BERNIER CARR ASSOCIATES TOWN CONSULTANT6/28/07 SLWF Review - "We recommend that the applicant, St. Lawrence Wind, include an evaluation of the bedrock geology in their definition as well as the	The Project will take the comment under Advisement.	All assessment for karst geological conditions must be performed before the Siting Board issues a Certificate. BP continues to give shoddy, incomplete information and

Environmental Impact Analysis. This work is critical to maintain suitable foundations for future turbines, as well as to protect and maintain any regional geological and hydrogeologic conditions of the karst geology.” “Our challenge during the SEQRA review is to identify the potential impacts which will limit tower locations within sensitive areas of the karst geology.”		wants to push all work out until after they are granted a Certificate. This is an obvious attempt to minimize their costs in applying for the Certificate at the expense of the Town, its environment, and its citizens. Professional engineers are strongly recommending that comprehensive geological and hydrogeologic assessments be conducted by BP prior to issuance of a Certificate. <i>RESPONSE: A Geotechnical study and hydrology study will be done at each turbine location. A preliminary study will be done for the Application.</i>
USFWS 6/15/07 SLWF Review – Karst landscapes are typified by underground drainages, caverns, and on the surface shallow, linear patterns of vegetation. The dissolution cracks, caves, and caverns provide heretofore unknown hibernacula for bats and that these areas should be avoided.	The Project will take the comment under advisement.	The U.S. Fish & Wildlife recommends that a karst survey be done beforehand so as to ensure that turbines will be placed away from areas that may be critical habitat for bats. Again, the Service wants a karst survey prior to issuance of a Certificate and prior to construction. <i>RESPONSE: The PSS document notes that a geotechnical and karst assessment will be undertaken.</i>

NYSDEC 2/29/08 CVWPP Review – DEC recommends that a more complete discussion of karst features be included in the SDEIS. The location of bedrock fractures and sinkholes should be shown relative to proposed project activities. Where carbonate rocks are exposed at land surface, solution features create karst topography, characterized by little surface drainage as well as by sinkholes, blind valleys, and sinking streams. Because water enters the carbonate rocks rapidly through sinkholes and other large openings, any contaminants in the water can rapidly enter and spread through the aquifers. In addition, a detailed construction plan needs to be developed to incorporate stringent containment of construction materials, particularly concrete slurry. This would include such practices as the use of watertight forms, silt/storm-water fencing, controlled concrete truck washout areas, and covered storage of equipment and construction chemicals. Engineering specifications to describe these proposed practices need to be detailed in this plan.	See discussion above regarding karst geology.	The kind of karst survey recommended by the New York State Department of Environmental Conservation suggests far greater concerns than just issuing a SWPP permit, as BP has suggested. The DEC is recommending a very detailed field survey to identify surface drainage anomalies, sinkholes, blind valleys, and sinking streams. DEC, too, is concerned with contamination of local aquifers by construction activities. They recommend that BP provide a detailed construction plan that identifies areas where surface water should be contained or diverted. <i>RESPONSE: A Karst survey will be done for each turbine location. A preliminary study will be done for the Application.</i>

NYSDEC 6/15/07 SLWF Review: “DEC recommends that a plan be prepared that specifies procedures for conducting detailed subsurface investigations at turbine site locations and other project components that may interface with limestone/karst features. The plan should specify actions to be taken if karst features are identified or suspected, including further investigation (e.g., dye 6 Town of Cape Vincent Review January 20, 2013, testing), turbine relocation, determination of the effects of blasting, or engineering construction controls.”.	See discussion above regarding karst geology.	NYSDEC provides some details how BP must conduct its karst survey, i.e., what actions to take when karst features are encountered, including further testing and turbine relocation. <i>RESPONSE: A Karst survey will be done for each turbine location. A preliminary study will be done for the Application.</i>

NYSDEC 5/29/09 SLWF Review - "In comments on the DEIS for this project dated June 15, 2007, DEC recommended that a comprehensive survey of karst features be conducted in the project development area, and a plan be prepared that specifies procedures for conducting a detailed subsurface investigations at turbine locations and other project components that may interface with limestone/karst features. DEC further recommended that an environmental monitor qualified to work in karst environment be on site for all pre-construction surveys and any construction activities that involve excavation to bedrock or are located in proximity to a known karst feature. "The SDEIS included an outline of proposed karst investigations, but DEC recommends the studies be completed prior to construction in order to assess the adequacy of proposed mitigation measures.	See discussion above regarding karst geology.	The NYSDEC, in addition to calling for a comprehensive assessment of karst geology, also recommends that an environmental monitor position, who is qualified to work in karst environment, be on site for all pre-construction surveys and construction activities that involve excavation and blasting of bedrock. <i>RESPONSE: A Karst survey will be done for each turbine location. A preliminary study will be done for the Application.</i> Herein a quote from NYSDEC: "DEC recommends the studies be completed prior to construction in order to assess the adequacy of proposed mitigation measures." <i>RESPONSE: A Karst survey will be done for each turbine location. A preliminary study will be done for the Application.</i>
MENTOR, Rudin & TRIVELPIECE 6/13/07 SLWF Review -"The DEIS provides to construction, a geo- technical investigation "would be performed" to identify subsurface conditions necessary for engineering the final design of the Project. – DEIS contains no technical investigation.	See discussion above regarding plan for geotechnical investigation.	Representatives for the non-profit Wind Power Ethics Group endorse the recommendation from state and federal resource agencies.

PRESSY & ASSOCIATES 5/29/07 SLWF Review – “The potential to impact receptors, e.g., domestic wells, springs etc., will be increased due to the presence of karst limestone bedrock across the project area and the need to construct large concrete foundations.”	See discussion above regarding plan for geotechnical investigation.	More concern for special treatment of karst features of local geology.

Exhibit 22 Terrestrial Ecology and Wetlands

Proposed or On-going Studies During Pre-Construction Activities: An important consideration for any reviewer of this PSS is this Project is not beginning from scratch. BP has gone through several iterations of preparing environmental assessments in conjunction with the New York SEQRA requirement for projects administered through local governments as lead agents. What the Town has provided to BP prior to this PSS are comments from involved agencies, principally the resource agencies with greatest responsibility in New York--the New York State Department of Environmental Conservation and the U.S. Fish & Wildlife Service.

What follows as “Town Comment/Response” are comments from these resource agencies when they provided reviews to wind project developers. The Town has focused on including those comments from these agencies that were principally ignored by developers in the past. What the Town finds remarkable in BP’s PSS is that they do not propose anything new, and that they are repackaging studies and reports that were prepared for SEQRA assessments as far back as 2007.

BP makes this statement regarding additional pre-construction study: “Based on extensive avian and bat studies completed within the Project area to date, additional studies for this group are not proposed.” What follows, in contrast, are pages of comments from resource agencies directing BP to conduct additional years of study, increase the frequency of each study effort, improve the study approach, and other suggested changes. What is obvious from this PSS is that BP is not serious about doing anything additional to satisfy environmental concerns. Rather, their intent is to repackage and window dress all the inadequacies and hope that no on notices.

The Importance of Adequate Environmental Studies: BP notes in their PSS (p.105), “Information collected during those surveys has been used to inform project design to avoid and minimize direct impacts resulting from construction or operation of the Project to the extent practicable.” This statement, however, also suggests that if surveys have been inadequate, both in quality and quantity, then project design may NOT avoid or minimize direct impacts. What follows is an extensive, well documented litany of problems with BP’s environmental studies identified by state and federal resource agencies. The Town has used those agency reviews to describe its concerns with BP’s PSS.

Responses to Table 2.22-4

<u>Town Comment Jan. 20</u>	<u>BP PSS Response</u>	<u>Town Response to PSS</u>
MULTIPLE YEARS OF ENVIRONMENTAL STUDY RECOMMENDED: Although past baseline studies of bird and bat populations associated with SEQRA efforts may appear extensive and complete, involved resource agencies considered the effort inadequate and recommended three years of study. Therefore, additional work is needed for nocturnal radar studies (1 yr. spring & fall), raptor migration (1 yr. fall), breeding birds (2 yrs.), and winter raptor & waterfowl (1 yr.).	The commenter provided this comment at a date (May 2009) earlier than publication of the final NYSDEC Guidelines (2009) and publication of the most recent USFWS Guidelines (2012). Extensive bird and bat studies have been conducted within the CVWP since 2006. The plans for these studies were developed in conjunction with the NYSDEC Division of Fish, Wildlife and Marine Resources staff and the USFWS Region 5 staff and followed the NYSDEC Draft (NYSDEC 2007) and Final Guidelines for wind power project studies (NYSDEC 2009) and guidance provided in the USFWS Indiana Bat recovery plan (USFWS 1999; USFWS 2007) and included the studies requested by the commenter. All field study reports were provided to the USFWS and NYSDEC and the need for additional field studies was discussed with these agencies during in person meetings conducted between 2009 and 2012. Additional field studies were carried out for Blanding's turtle, grassland breeding birds and bald eagle nests based on agency comments. Studies for grassland birds and Blanding's turtle were conducted using work plans based on NYSDEC Region 6 protocols. Bald eagle nest surveys were conducted using protocols outlined in Draft USFWS Eagle Guidance (USFWS 2011). Pre-construction studies completed at the Project followed the framework identified in the recent USFWS Land Based Turbine Guidelines for Tier 3 field studies (USFWS 2012). Studies completed included the following and a summary of the methods and data collected are presented in Exhibit E: • Spring and fall radar surveys for nocturnal avian and bat migrants; • Spring and fall surveys for migrant raptors; • Winter surveys for raptors	BP's beginning argument is that all the studies that the Town contends are deficient were all "developed in conjunction" with the agencies. No doubt there were conferences with involved resource agencies; nevertheless, the same agencies were critical of the resulting studies outlining various deficiencies, including the need for additional years of work and study. BP provides a lengthy list of studies but fails to consider they completed only a single year of radar study to assess the migratory corridor. As noted in the Town's Jan. 20 submission, both USFWS and NYSDEC Guidelines call for multiple year studies "in order to establish a trend in site use and conditions that incorporates annual and seasonal variation in meteorological conditions, biological factors, and other variables." The point of prior resource agency comments on this issue is that not enough study has been done by BP to understand the variability of the biological systems. <i>RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-construction studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i> <i>With regard to radar studies specifically, numerous radar surveys from New York, as well as other areas of the eastern United States, consistently show broad-front migration patterns with the majority of targets (mostly nighttime avian migrants) flying well above rotor-swept height. As such, data collected by radar migration surveys are not predictive of impacts to nighttime migrants that can be expected</i>

	Indiana bat telemetry studies; • Blanding's turtle habitat and presence/absence surveys, and; • Habitat focused surveys for federal and state threatened or endangered species. CVWP recently met with the NYSDEC (November 2012) and the NYSDEC did not request any additional pre-construction studies be completed at the CVWP. Further information regarding over-wintering raptors, migration birds and bats will be provided in the Article 10 Application.	
Based on USFWS Land Based Wind Energy Guidelines, pre- construction studies need to occur over multiple years to establish a trend in site use and conditions that incorporates annual and seasonal variation in meteorological conditions, biological factors, and other variables. Three years of pre- construction studies may be appropriate in many circumstances. However, the level of risk and the question of data will be based on site sensitivity affected species and the availability of data from other sources	The commenter provided this comment at a date (May 2009) earlier than publication of the Final USFWS Guidelines (2012). The CVWP is meeting the framework of the USFWS 2012 Guidelines and has conducted field surveys recommended within the 2012 USFWS Guidelines. The 2012 Guidelines are not prescriptive and do not prescribe multiple years of field surveys. In certain cases such as for acoustic bat surveys, breeding bird surveys and raptor migration surveys, the CVWP conducted multiple years of study. The Article 10 Application will include evaluation of bird migration data for impact assessment.	Page 25 of the USFWS Guidelines are clear about the need for multiple year studies, "To establish a trend in site use and conditions that incorporates annual and seasonal variation in meteorological conditions, biological factors, and other variables, pre-construction studies may need to occur over multiple years." Although BP notes that "in certain cases" they conducted multiple year studies (e.g., 2 years), more studies were of only a single year's duration. Article 10 may not require multiple years of study, but the resource agencies and the Town deem it important. More work and effort is needed, especially nocturnal radar and raptor migration studies. RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines

		<i>for expanded pre-construction studies.</i> <i>With regard to radar studies specifically, numerous radar surveys from New York, as well as other areas of the eastern United States, consistently show broad-front migration patterns with the majority of targets (mostly nighttime avian migrants) flying well above rotor-swept height. As such, data collected by radar migration surveys are not predictive of impacts to nighttime migrants that can be expected from wind energy facilities and therefore do not help inform effective avoidance, minimization, or mitigation measures. For these reasons, a second year of radar studies is not deemed to be useful for impact assessment.</i> <i>Three years of raptor migration surveys have been conducted, during the spring season in 2006, 2007, and 2008 as well as the fall season in 2006 and 2007. This level of survey effort exceeds the standard pre-construction survey recommendations in the NYSDEC guidelines and the USFWS Land-Based Wind Energy Guidelines. Additionally, two seasons (winter 2006-2007 and winter 2007-2008) of winter raptor surveys and a raptor nest survey were conducted to assess raptor use of the Project area and surrounding vicinity.</i>

Based on NYSDEC Guidelines Conducting Bird Bat Studies 8/09 a proposal to site a wind energy project in proximity to an Indiana bat hibernaculum (40 miles), wildlife concentration area (2 miles), along a coastline (5 miles), or on a prominent ridgeline may result in a recommendation to conduct expanded pre-construction studies. If a developer proposes to construct a wind energy project in or near one of the features or resources of concern identified in Section 2(b), then two to three years of pre- construction study may be recommended incorporating one or more expanded preconstruction studies to provide in-depth information on the bird and bat resources of the site.	See first response in this Table. In addition, expanded pre-construction studies as defined in the final NYSDEC Guidelines (2009) were conducted, including: multiple years of raptor migration surveys, nocturnal radar surveys for nocturnal bird and bat migrants, bat mist net surveys and telemetry of Indiana bats, surveys for threatened and endangered species including bald eagle nest surveys, Blanding's turtle habitat assessments and presence/absence surveys, and grassland breeding bird surveys. These surveys were conducted over multiple years –some of these efforts preceded drafting of either the Draft (2007) or Final (2009) NYSDEC Guidelines. The Project consulted the NYSDEC throughout the period in which pre-construction surveys were conducted (2006-2012) and provided work plans and reports for review by the agency. CVWP recently met with the NYSDEC (November 2012) and the NYSDEC did not request any additional pre-construction studies be completed at the CVWP.	The Town disagrees. For example, BP states they conducted multiple years of study with nocturnal radar surveys for birds and bats. Doing a fall survey in 2006 and a spring survey in 2007 may be BP's idea of a multiple year survey, but that is not what USFWS and NYSDEC intended in their comments. To assess the variability of fall migrants requires a number of fall surveys and not a spring and fall survey in subsequent years. Regardless of BP's attempt at misleading the discussion, more than a year of spring and fall migration data is required to understand the variability of avian migrant dynamics. <i>RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i> <i>With regard to radar studies specifically, numerous radar surveys from New York, as well as other areas of the eastern United States, consistently show broad-front migration patterns with the majority of targets (mostly nighttime avian migrants) flying well above rotor-swept height. As such, data collected by radar migration surveys are not predictive of impacts to nighttime migrants that can be expected from wind energy facilities and therefore do not help inform effective avoidance, minimization, or mitigation measures. For these reasons, a second year of radar studies is not deemed to be useful for impact assessment.</i>

Based on NYSDEC R-6 4/17/07 SLWF Review only a one (1) year protocol is too short based on the USFWS guidelines and the local knowledge of the migratory birds and bats of the area. This plan should follow the USFWS guidelines of three (3) years as a minimum to establish pre- construction base line data. The single year of data on migrating raptors is also inadequate: "The number of points, amount of time (i.e., 60 minutes) per point, the number of days and duration of sampling period are all inadequate to capture the raptor (migration) data needed to fully address potential impacts."	See first response in this Table. The commenter provided this comment earlier than publication of the NYSDEC 2009 comments or the Final USFWS Guidelines (2012). The CVWP is meeting the framework of the USFWS 2012 Guidelines and has conducted field surveys recommended within the 2012 USFWS Guidelines. The 2012 Guidelines are not prescriptive and do not prescribe multiple years of field surveys. In certain cases such as for acoustic bat surveys, breeding bird surveys and raptor migration surveys, the CVWP conducted multiple years of study. The Article 10 Application will include evaluation of bird migration data for impact assessment	Page 25 of the USFWS Guidelines are clear about the need for multiple-year studies, "To establish a trend in site use and conditions that incorporates annual and seasonal variation in meteorological conditions, biological factors, and other variables, pre-construction studies may need to occur over multiple years." Although BP notes that "in certain cases" they conducted multiple-year studies (e.g., 2 years), more studies were of only a single year's duration. Article 10 may not require multiple years of study, but the resource agencies and the Town deem it important. More work and effort is needed, especially nocturnal radar and raptor migration studies. <i>RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i> <i>With regard to radar studies specifically, numerous radar surveys from New York, as well as other areas of the eastern United States, consistently show broad-front migration patterns with the majority of targets (mostly nighttime avian migrants) flying well above rotor-swept height. As such, data collected by radar migration surveys are not predictive of impacts to nighttime migrants that can be expected from wind energy facilities and therefore do not help inform effective avoidance, minimization, or mitigation measures. For these reasons, a second year of radar studies is not deemed to be useful for impact assessment.</i>

		<i>Three years of raptor migration surveys have been conducted, during the spring season in 2006, 2007, and 2008 as well as the fall season in 2006 and 2007. This level of survey effort exceeds the standard pre-construction survey recommendations in the NYSDEC guidelines and the USFWS Land-Based Wind Energy Guidelines. Additionally, two seasons (winter 2006-2007 and winter 2007-2008) of winter raptor surveys and a raptor nest survey were conducted to assess raptor use of the Project area and surrounding vicinity.</i>
Based on SAVE THE RIVER 2/29/08 Letter, the DEIS must include studies of at least three years in duration to account for natural annual variability of bird and wildlife habitat. Currently the DEIS includes only one year of study and data collection.	See first response in this Table for comprehensive response.	The importance of the comment from Save The River is that a non- profit is echoing the concern of state and federal resource agencies in their collective call for multiple years of study. <i>RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i>

Based on Rudin & Trivelpiece 6/13/07 SLWF Review in addition the proposed one year avian and bat study is not adequate to determine the value and usage of the area by wildlife. According to the United States Fish & Wildlife Service a three- year pre - construction study should be conducted to assess such impacts.	See first response in this Table for comprehensive response.	Yet another non-profit, Wind Power Ethics Group, endorsing the state and federal resource agencies in their collective call for multiple years of study. <i>RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i>
Based on Smith Ecologist 6/8/01 SLWF Review, the studies to date must be considered pilot efforts requiring 3-5 years of intense further studies of many groups before any conclusions of value may be drawn.	See first response in this Table for comprehensive response.	Here an independent ecologist who has the most extensive first- hand knowledge of the Cape Vincent avian fauna supporting the call from state, federal, and non-profit environmental organizations for more than a single year of study. <i>RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i>

MIGRATION STUDIES: In the Joint Comprehensive Plan for the Town and Village of Cape Vincent, the avian migration corridor was recognized as one of the Town's most important natural resource assets. The spatial context and dynamics of the avian migratory corridor through the Town of Cape Vincent should be described in far greater detail (see below) than the one year of study conducted by BP in 2006-2007. More effort is required to document annual variation in numbers specie composition description of the spatial gradient within the corridor and the vertical distribution of migrants over the project footprint (500 ft. turbines are 100 ft. higher than those previously considered and therefore require a new assessment).	See first response in this Table for comprehensive response. In addition, avian reports and a summary of the methods and data collected are presented in Exhibit E and contain information characterizing patterns of use and flight paths of raptor migration observed at the Project. The Article 10 Application will include a discussion of raptor migration at the Project.	Exhibit E indicates only a single spring and fall of marine radar data, and there were problems with this information concerning location and data treatment. This information is totally inadequate to describe the flight path of migrant birds along the Cape Vincent migratory corridor. There is no data or analysis that describes a migratory density gradient from shorelines to points inland because there is no data to support it. Nothing collected to date by BP is useful in describing the migratory flight path through Cape Vincent. Two more years of marine radar study of nocturnal migrants are needed to address these deficiencies. <i>RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i> <i>With regard to radar studies specifically, numerous radar surveys from New York, as well as other areas of the eastern United States, consistently show broad-front migration patterns with the majority of targets (mostly nighttime avian migrants) flying well above rotor-swept height. As such, data collected by radar migration surveys are not predictive of impacts to nighttime migrants that can be expected from wind energy facilities and therefore do not help inform effective avoidance, minimization, or mitigation measures. For these reasons, a second year of radar studies is not deemed to be useful for impact assessment.</i>

Based on USFWS 3/19/08 CVWF Review, starting the radar study in mid- April misses a substantial portion of the spring avian migration and likewise ending the radar study on October 15 in the fall will underestimate the migration during that season particularly some raptors and passerines and most waterfowl. Further, collecting data in only one year is inadequate.	See first response in this Table for comprehensive response. In addition, avian reports will be included in the Article 10 Application which contains information characterizing patterns of use and flight paths of raptor migration observed at the Project. The Article 10 Application will include a discussion of raptor migration at the Project. All wildlife study reports were provided previously to the USFWS and the NYSDEC for review.	The response to the U.S. Fish and Wildlife's comment is non- informative. The point was the time frame for the nocturnal radar studies was too short and thereby missed substantial numbers of migrants in both spring and fall surveys. These omissions underestimate the magnitude of the flyway and furthermore would underestimate collision mortality and negative impacts from the Project. Again, the data is inadequate and at least two more years of radar data are needed to better understand the dynamics of the migratory flight corridor. <i>RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i> <i>With regard to radar studies specifically, numerous radar surveys from New York, as well as other areas of the eastern United States, consistently show broad-front migration patterns with the majority of targets (mostly nighttime avian migrants) flying well above rotor-swept height. As such, data collected by radar migration surveys are not predictive of impacts to nighttime migrants that can be expected from wind energy facilities and therefore do not help inform effective avoidance, minimization, or mitigation measures. For these reasons, a second year of radar studies is not deemed to be useful for impact assessment.</i>

Based on USFWS 5/29/09 SLWF Review, the proximity of turbines to these (grasslands etc.) habitats as well as Lake Ontario and the St Lawrence River are cause for great concern/ because these habitats are known to attract waterfowl, water birds, and shorebirds to the area during the breeding and migratory periods	See first response in this Table for comprehensive response. In addition, avian reports and a summary of the methods and data collected are presented in Exhibit E and contain information characterizing patterns of use and flight paths of raptor migration observed at the Project. The Article 10 Application will include a discussion of raptor migration at the Project.	The point of the comment is not one of how much data was collected, rather it is the placement of turbines close to critical habitats. BP needs to consider alternative project layouts that provide a wide buffer for the special, significant wildlife habitats that are extant in the Town. <i>RESPONSE: Habitats in the Project area are widespread throughout the region and have been previously impacted through land use and development practices – common throughout the region, New York, and the eastern U.S. A mitigation plan for the construction and operation of the Project will be developed in coordination with the NYSDEC and will be included in the formal Article 11 Application.</i>

Based on USFWS 5/29/09 CVWF Review “insufficient data were collected at the project site to determine the spatial and temporal use of the project air space by flying animals. We recommendation for wildlife studies at wind projects generally specifies that the data should be collected over multiple seasons and years to determine average annual conditions. Because of the variability in migration and weather patterns/ collecting data for one year likely does not reflect typical wildlife use in the project area. Therefore we find insufficient data currently exists to adequately conduct a risk assessment and predict wildlife mortality for this project.”	See first response in this Table for comprehensive response. Multiple years of migration period studies for birds and bats were completed at the CVWP and a summary of the methods and data collected are presented in Exhibit E). Further information regarding overwintering raptors, migration birds and bats will be provided in the Article 10 Application. Those studies contain information characterizing patterns of use for birds observed during pre-construction studies. Data on flight heights for birds observed during pre-construction studies are included in the aforementioned reports. The Article 10 Application will include a discussion of raptor migration at the Project.	The U.S. Fish & Wildlife Service characterized Project data as “insufficient” in May 2009, long after the marine radar and migrating raptor surveys were completed. Therefore, the insufficiency still stands, and it results in the inability to conduct reasonable assessments of risk and the prediction of avian mortality. Regardless of how often BP refers to their list in Exhibit E, the data is lacking. The data may be listed, but an important federal resource agency has deemed the data inadequate. BP needs to conduct additional, up-to-date surveys that address resource agency concerns. <i>RESPONSE: The baseline studies were conducted according the NYSDEC and USFWS recommendations and provide the content and quality of data requested by those agencies. Since these comments were made, the previous developers continued to work with the agencies to address their concerns and BP is still continuing to do so through the Article 11 process. The studies conducted for both former projects were developed in consultation with both the NYSDEC and USFWS personnel and the recommendations for pre-construction studies of those agencies. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i>

Based on Article 10 EXHIBIT 31 “Setbacks requirements would have to be considered on a case- by-case basis by looking at the purpose for their establishment and the circumstances of a specific site or case. A setback might be unreasonable for the purposes of preventing construction encroachments but reasonable to protect migratory flight paths.”	Please see Section 2.31 for discussion regarding this topic.	BP’s referral to Section 2.31 is non responsive. Nothing they mention in 2.31 relates to the rules in Exhibit 31 where they reference the protection of a migratory flight path. Furthermore, BP failed to provide quotes around the Town’s statement, which indicates the statement was taken verbatim from the rules. The point is the Article 10 rules themselves recognize the importance of protecting a migratory flight- path, such as exists in Cape Vincent. <i>RESPONSE: Section 2.31 does not specifically address the migratory flyway component of Article 10. However, Applicant is aware of this regulation, which does not provide a recommended setback distance from migratory flyways but only states that setbacks may be appropriate avoidance/minimization measures. Applicant has incorporated siting and design measures to avoid and minimize impacts within the flyway, which will be described in the avoidance and minimization measures section of the Article 11 Application.</i> <i>With regard to radar studies specifically, numerous radar surveys from New York, as well as other areas of the eastern United States, consistently show broad-front migration patterns with the majority of targets (mostly nighttime avian migrants) flying well above rotor-swept height. As such, data collected by radar migration surveys are not predictive of impacts to nighttime migrants that can be expected from wind energy facilities and therefore do not help inform effective avoidance, minimization, or mitigation measures. For these reasons, a second year of radar studies is not deemed to be useful for impact assessment.</i>

Based on NYSDEC 5/29/09 SLWF Review, SDEIS suggests winter densities were low and that the relative risks to these species are very low. DEC staff on the other hand, have documented high numbers. To overcome this inconsistency in reporting between the DEC and the consultant, additional survey effort directed towards the short-eared owl is recommended both pre-construction and post construction to be sure this species' distribution and abundance is accurately documented as a basis for future project evaluation and planning efforts. It is also known that the project area lies within one of the most important raptor wintering grounds in New York State. A more thorough analysis of raptor migration within the project area is needed to support the conclusions made in the SDEIS. It is clear from Table 3.1.1 that the numbers of birds per hour for Cape Vincent are not similar to the other wind facilities but higher than all of the other sites.	See first response in this Table. In addition, avian reports will be included in the Article 10 Application which contains information characterizing patterns of use for birds observed during pre-construction studies. All wildlife study reports were provided previously to the USFWS and the NYSDEC for review. Overwinter use of the Project by short-eared owl and northern harrier will be addressed within the Article 11 Part 182 Application, while general avian patterns of use observed during overwinter pre-construction surveys will be summarized in the Article 10 Application. The Application will compare publicly available data from other wind projects in terms of how bird use compares to the level of use observed at the Project and will include a discussion of what current information suggests about the correlation of bird use observed during pre-construction studies and observed mortality during post-construction monitoring. Current publicly available post-construction monitoring data from New York and other regional studies will be used.	BP's response is focusing on how they will analyze their data, whereas the comment by the New York State Department of Environmental Conservation relates to the content and poor quality of the data. DEC's concern is poor data will lead to an inadequate analysis and conclusion regarding impacts. The last date of the winter raptor survey from BP's Exhibit E is May 28, 2008, while the review by the DEC is dated a year later. Therefore, the issues raised in the DEC's comment are still in force, if no new surveys and data acquisition have been completed. DEC recommended additional survey effort in order "to overcome this inconsistency in reporting." More effort is needed to correct deficiencies in BP's survey work, but drawing conclusions from inadequate data will only <u>hurt</u> the Article10 record. <i>RESPONSE: The baseline studies were conducted according the NYSDEC and USFWS recommendations and provide the content and quality of data requested by those agencies. Since these comments were made, the previous developers continued to work with the agencies to address their concerns and BP is still continuing to do so through the Article 11 process. The studies conducted for both former projects were developed in consultation with both the NYSDEC and USFWS personnel and the recommendations for pre-construction studies of those agencies. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i>

Based on NYSDEC 12/31/04 Chautauqua Wind Farm Review (K Kispert) The eastern and southern shore of Lake Ontario and the eastern shore of Lake Erie are documented and well recognized migratory bird pathways which are important within Eastern North America on a regional scale particularly during spring migration as birds move north.	The comment is noted.	It is important that BP acknowledges what the New York State Department of Environmental Conservation has determined that the Town of Cape Vincent is part of an important Eastern North American migratory flyway, and thereby deserves protection. <i>RESPONSE: As previously stated, this consideration has been noted; an assessment of the potential for impacts within the migratory flyway and avoidance and minimization measures will be included in the Article 11 Application for the Project.</i>

Based on PSC 2/28/08 CVWF Review a more thorough explanation of the nature of migration through the project area and consideration of potential impacts of the project on migrating raptors is warranted.	See first response in this Table. In addition, the Article 10 Application will include a discussion of raptor migration at the Project.	If BP does not correct and remedy the deficiencies noted in the migratory raptor data by the DEC, then a “more thorough explanation of migration through the project area” that was requested by the New York Public Service Commission will be impossible to complete. <i>RESPONSE: The baseline studies were conducted according the NYSDEC and USFWS recommendations and provide the content and quality of data requested by those agencies. Since these comments were made, the previous developers continued to work with the agencies to address their concerns and BP is still continuing to do so through the Article 11 process. An additional season (March-May 2008) of raptor migration surveys was conducted in response to this comment from NYSDEC.</i> <i>The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i> <i>Three years of raptor migration surveys have been conducted, during the spring season in 2006, 2007, and 2008 as well as the fall season in 2006 and 2007. This level of survey effort exceeds the standard pre-construction survey recommendations in the NYSDEC guidelines and the USFWS Land-Based Wind Energy Guidelines. Additionally, two seasons (winter 2006-2007 and winter 2007-2008) of winter raptor surveys and a raptor nest survey were conducted to assess raptor use of the Project area and surrounding vicinity.</i>

Based on Smith Ecologist 6/8/07 SLWF Review, the fact no other waterfowl than Canada Goose and mallard were identified is of particular concern as it suggests at best marginal competence of observers and inadequate sampling time. The comment is noted. All bird species identified in pre-construction studies are described in pre-construction study reports, which will be included in the Article 10 Application	The comment is noted. All bird species identified in pre-construction studies are described in pre-construction study reports, which will be included in the Article 10 Application	The overall general comments regarding data deficiencies do not provide confidence in any conclusions that may be drawn by BP in their Article 10 application. <i>RESPONSE: The baseline studies were conducted according the NYSDEC and USFWS recommendations and provide the content and quality of data requested by those agencies. Since these comments were made, the previous developers continued to work with the agencies to address their concerns and BP is still continuing to do so through the Article 11 process. The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i>
Based on Audubon 6 /71/ 07 SLWF Review, “We have concerns about development of wind power at sites that are known migratory corridors or provide habitat to at - risk species.”	The comment is noted.	The Town shares Audubon’s concerns as well and in its Zoning Law has provided a 2-mile buffer along its lake and river shoreline that will also provide some protection for the migratory corridor.

Based on Old Bird Inc. 6/74/07 SLWF Review bird/bat migration altitude information should be provided at 25 m resolution up to 200 m above ground level. The West radar report, however, does not provide information on movements along the shoreline and inland areas of coverage are simply summed together to produce a single passage rate for the whole radar survey area.	The comment is noted. Data from the nocturnal radar studies completed at the Project were reported using standardized methods and metrics. Reports were submitted to the NYSDEC and USFWS for review and will be included in the Article 10 Application.	Bill Evans the Director of Old Bird, Inc., has extensive experience and understanding of the radar survey technique. His suggestions add to the call by resource agencies to have a better approach, better data, and a more detailed and comprehensive analysis. <i>RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i> With regard to radar studies specifically, numerous radar surveys from New York, as well as other areas of the eastern United States, consistently show broad-front migration patterns with the majority of targets (mostly nighttime avian migrants) flying well above rotor-swept height. As such, data collected by radar migration surveys are not predictive of impacts to nighttime migrants that can be expected from wind energy facilities and therefore do not help inform effective avoidance, minimization, or mitigation measures. For these reasons, a second year of radar studies is not deemed to be useful for impact assessment.

Based on Old Bird Inc. 6/14/07 SLWF Review, "The most significant problems I find with the West Inc. radar study involve the location they chose to carry out their radar study and their lack of analysis of migration density dynamics within the radar study area. The St Lawrence Wind project area is currently proposed to be located within 800 m of the St. Lawrence River. The radar study site is apparently only about 500 m from the shoreline in fact outside the wind project area. My interpretation of the NYSDEC and USFWS comments is that the radar site would ideally be located 1500 m from the shoreline." West's placement of the radar unit approximately one kilometer closer to the shoreline than had apparently been recommended leads to the fact that about one third of the radar detection area was located over the St. Lawrence River and less than half of their radar coverage was actually over the proposed wind project site.	While not every portion of the current Project area was covered in the studies, the surveys are applicable to the whole Project area due to similarity of habitat and landform. Information published by the NYSDEC (http://www.dec.ny.gov/docs/wildlife_pdf/radarwind.pdf) indicate that at 23 sites studied in New York, only 2 included more than one radar sampling location. In addition, those data do not account for the fact that the radar sampling locations from both the SLWF and the previous CVWEP are now included in the impact assessment for the CVWF. As a result, two radar stations are now included in the evaluation of the CVWF. Only transmission facilities are proposed for the Wildlife Management Area and Coastal Zone Habitats.	The New York State Department of Environmental Conservation has deemed the area within the Town as part of a major migratory flyway (see above). Such an important migratory corridor requires an unbiased study. Having a substantial part of radar coverage out over water, where bird densities would be greatly reduced, will result in biased, low estimate of migratory density. Therefore, not only are the data scant, i.e., only one year, but the data are also unreliable, as identified by Old Bird, Inc. The radar survey of the Town's migratory corridor needs to be completely redone and over a course of years; not a single year. <i>RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i> <i>With regard to radar studies specifically, numerous radar surveys from New York, as well as other areas of the eastern United States, consistently show broad-front migration patterns with the majority of targets (mostly nighttime avian migrants) flying well above rotor-swept height. As such, data collected by radar migration surveys are not predictive of impacts to nighttime migrants that can be expected from wind energy facilities and therefore do not help inform effective avoidance, minimization, or mitigation measures. For these reasons, a second year of radar studies is not deemed to be useful for impact assessment.</i>

Based on Old Bird Inc. 6/14/07 SLWF Review, “The question of migration corridor along the south shore of the St. Lawrence River is not addressed as was suggested it would be in the study plan. What would be useful to see in evaluating potential impact to night migrants is a 500 m resolution representation of flying target density as one moves away from the St. Lawrence River. In other words, what is the migration density within 500 m of the River? What is the migration density in the zone between 500 m and 1 km from the River? What is the migration density in the zone between 1 km and 1.5 km from the River? What is the migration density in the zone between 1.5 km and 20 km from the River? Such data can be obtained from a properly designed marine radar study or with other methodologies.”	Same as above.	Description of the spatial gradient to the migratory corridor within the Town should have been the focus of the marine radar studies. Had the data been collected in the manner described by Old Bird, Inc., then the results may have supported the Town’s 2-mile setback from the lake and river waterfronts. Part of the justification for this restriction was to protect the migratory corridor. When BP begins their migratory radar studies, they should use a protocol similar to that suggested by Old Bird, Inc. so that it would allow interpretation of the spatial dynamics of the corridor. <i>RESPONSE: The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i> <i>With regard to radar studies specifically, numerous radar surveys from New York, as well as other areas of the eastern United States, consistently show broad-front migration patterns with the majority of targets (mostly nighttime avian migrants) flying well above rotor-swept height. As such, data collected by radar migration surveys are not predictive of impacts to nighttime migrants that can be expected from wind energy facilities and therefore do not help inform effective avoidance, minimization, or mitigation measures. For these reasons, a second year of radar studies is not deemed to be useful for impact assessment.</i>

WIND TURBINE OPERATIONAL PLAN: BP should provide an operational plan that includes the increase in cut-in speed and the provision for shut down during the migration season as outlined below.	The Project has consulted the USFWS and NYSDEC in regards to threatened and endangered species and will continue to do so in regards to the ESA and Article 11 Part 182.	This is a plan that is recognized nationally as a means to mitigate potentially major collision mortality associated with seasonal periods of high migratory passage rates. Turbine rotor cut-in speed has been shown to reduce mortality of bats during their foraging period. The management plan will be especially important for any wind project development within the Town and its migratory corridor. <i>RESPONSE: CVWP is familiar with the practice of modified turbine operations to reduce bat mortality risk at wind energy facilities. However, the timing and details of the turbine operational protocol must be developed specific to each wind energy site and the particular bat mortality risk therein to be most effective. Research on this subject has progressed much since the 2007 USFWS recommendation. As previously stated, the CVWP has consulted with USFWS and NYSDEC in regards to threatened and endangered species (including bats) and will continue to do so.</i>
Based on USFWS 6/15/07 SLWF Review, "If turbines will be located in blocks of grassland habitat, we recommend that information be gathered on the displacement of grassland nesting birds. To mitigate potential impacts to bats, turbines should not have a cut-in speed of less than 6 m/s and operation should be curtailed between July 15 and September 15 for five hours after sunset."	Same as above.	Same as above. <i>RESPONSE: CVWP is familiar with the practice of modified turbine operations to reduce bat mortality risk at wind energy facilities. However, the timing and details of the turbine operational protocol must be developed specific to each wind energy site and the particular bat mortality risk therein to be most effective. Research on this subject has progressed much since the 2007 USFWS recommendation. As previously stated, the CVWP has consulted with USFWS and NYSDEC in regards to threatened and endangered species (including bats) and will continue to do so.</i>

Based on USFWS 5/29/09 SLWF Review previous recommendation to mitigate potential impacts to bats was not included in the SDEIS. The project sponsor should commit to adjusting turbine cut-in speeds during low wind nights to reduce bat fatalities. This is the period when most bats are killed as documented by recent research, e.g. Arnett 2005. Cut- in speed should be 6 m/ s or more and operation should be curtailed for five hours after sunset from July 15 to September 15.	Same as above.	This comment by the U.S. Fish & Wildlife Service is important not only for the specifics it provides for managing potential mortality from wind farm operation, but also because the comment suggests their concerns and recommendations were ignored in the past. The Town recommends that an operational plan be adopted by BP, as per the protocol outlined by USFWS, and that it be included as part of Exhibit 22. <i>RESPONSE: CVWP is familiar with the practice of modified turbine operations to reduce bat mortality risk at wind energy facilities. However, the timing and details of the turbine operational protocol must be developed specific to each wind energy site and the particular bat mortality risk therein to be most effective. Research on this subject has progressed much since the 2007 USFWS recommendation. As previously stated, the CVWP has consulted with USFWS and NYSDEC in regards to threatened and endangered species (including bats) and will continue to do so.</i>

Based on NYSDEC 5/29/09 CVWF Review, "The SDEIS should further state that based on the results of these studies, adjustments to the project's operational configuration and or timetable may be necessary to affect avoidance or minimization of the take of birds and bats with listed species receiving the highest consideration."	Same as above.	To reiterate the New York State Department of Environmental Conservation's recommendation on May 29, 2009: BP's application "should further state that based on the results of these studies adjustments to the project's operational configuration and or timetable may be necessary to affect avoidance or minimization of the take of birds and bats with listed species receiving the highest consideration." <i>RESPONSE: CVWP is familiar with the practice of modified turbine operations to reduce bat mortality risk at wind energy facilities. However, the timing and details of the turbine operational protocol must be developed specific to each wind energy site and the particular bat mortality risk therein to be most effective. As previously stated, the CVWP has consulted with USFWS and NYSDEC in regards to threatened and endangered species (including bats) and will continue to do so.</i>

RISK ASSESSMENT: As indicated in Cumulative Analysis section (below), projected avian mortality should use the mortality data coming from the Wolfe Island Wind Power project located two miles north of the Village of Cape Vincent. Risk assessments should also include avian avoidance or displacement i.e. those birds and bats driven away from traditional habitats by the proposed industrial development.	See first response in this Table for comprehensive response.	In BP's SDEIS for their Cape Vincent Wind Power Project submitted in 2011, they provide no quantitative risk assessment of mortality impacts. On the contrary, the cumulative assessment in the SDEIS provides no estimate of potential losses from collision mortality and the qualitative discussion is misleading when it suggests collision impacts will be minimal because migrating fauna will be passing over the top of turbines. The latest information, e.g., Old Bird, Inc., suggests that the mortality estimates available from Wolfe Island have been compromised, e.g., under estimated losses by 40 percent, and that the data needs to be reconsidered and mortality rates recalculated. Risk assessments based on these reformulations should then estimate expected losses for both the Project and the region. <i>RESPONSE: As previously stated, in addition to the Article 11 Application's analysis of impacts to state-listed species, the Article 10 Application will include a thorough analysis of avian and bat use and the potential for avian and bat mortality at the Project. This analysis will be quantitative to the extent possible, although the relationship between pre-construction avian and bat use and subsequent avian and bat mortality levels at wind energy facilities is not well understood for most genera (Strickland et al. 2011). The Article 10 Application will also include a thorough analysis of cumulative effects to avian and bat resources. This analysis will be quantitative to the extent possible, although there is an inherent amount of uncertainty concerning future development of other projects and wind energy facilities in the area. For example, as reflected in the county and town records, the Cape Vincent area has undergone extensive property sub-division and housing development over the past few decades. Continued development of this nature will change the nature of the area from rural to residential, while</i>

		<i>development of wind farms will maintain the rural nature, and have differing mortality impacts to birds and bats (e.g. destruction of habitat, introduction of non-native species such as domestic cats). Predicting the future outcome of wildlife mortality for cumulative effects is difficult given the uncertainty over what development will occur.</i> <i>The NYSDEC has formally requested that the CVWP consider and incorporate the data from studies at Wolfe Island. Both the Article 11 Application and the Article 10 Application impacts assessments will incorporate the species composition and displacement data from these studies. The fatality estimates from the Wolfe Island study are being included in a compilation of fatality estimates from publically-available studies across the Northeast and North America to model probabilities associated with various potential fatality levels at the proposed Project. The CVWP must rely on the data that are publically available from those studies, fallible or not. The CVWP would review and incorporate any new report issued which addresses the concerns raised by Old Bird, Inc.</i>

Based on USFWS 6/15/07 SLWF Review, environmental assessments of impacts on wildlife from wind projects should include a risk assessment. None was provided in the DEIS. These assessments should consider population abundance distribution in the project airspace over multiple years and seasons, avian avoidance weather, as well as information on breeding wintering and stopover habitat.	See above responses. The Article 10 Application will include further analysis of avian use and the potential for avian mortality at the Project. This analysis will utilize existing site-specific data collected during pre-construction studies which will be included in the Article 10 Application as well as publicly available information on direct and indirect effects of operating wind energy facilities on birds.	As noted above, the latest analysis of Project impacts was the 2011 SDEIS submission to the Town Planning Board. That report did not include any quantitative risk assessment nor did it quantify any cumulative losses to wind turbine operations within the region for a number of other projected wind development projects. BP needs to complete a quantified risk assessment of potential loss to the Project's future operation. <i>RESPONSE: As previously stated, in addition to the Article 11 Application's analysis of impacts to state-listed species, the Article 10 Application will include a thorough analysis of avian and bat use and the potential for avian and bat mortality at the Project. This analysis will be quantitative to the extent possible, although the relationship between pre-construction avian and bat use and subsequent avian and bat mortality levels at wind energy facilities is not well understood for most genera (Strickland et al. 2011). The Article 10 Application will also include a thorough analysis of cumulative effects to avian and bat resources. This analysis will be quantitative to the extent possible, although there is an inherent amount of uncertainty concerning future development of wind energy facilities and other projects in the area.</i>

Based on USFWS 3/19/08 CVWF Review, "Further, it appears that the site has high avian use as well but these resources were not fully considered in the fatal flaw analysis. Based on the data collected so far the Cape Vincent area has high concentrations of waterfowl and water birds migrating passerines and year -round raptor use."	The Article 10 Application will include further analysis of avian use and the potential for avian mortality at the Project. This analysis will utilize existing site-specific data collected during pre-construction studies which will be included in the Article 10 Application, as well as publicly available information on bird mortality observed at regional operating wind energy facilities.	U.S. Fish & Wildlife Service continues to have concerns about the quality of the data collected for wind projects in the Town. Everyone acknowledges that the Town is a special location with important natural resource assets, and the resource agencies are concerned about the extent of data, the quality of data, and types of analyses. More needs to be done to satisfy resource experts' concerns. <i>RESPONSE: The baseline studies were conducted according the NYSDEC and USFWS recommendations and provide the content and quality of data requested by those agencies. Since these comments were made, the previous developers continued to work with the agencies to address their concerns and BP is still continuing to do so through the Article 11 process. The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i>
LONG-TERM MANAGEMENT: Included in a long-term management plan should be an adaptive management component that would outline steps and actions that would be taken in response to potential adverse impacts that may arise from project operations.	The Project will take the comment under advisement.	Article 10 requires somewhat more than just take under advisement. The Town, New York State Department of Environmental Conservation, and U.S. Fish & Wildlife Service are all stakeholders in the process. What the agencies propose for long-term adaptive management is a common sense approach that was overlooked in the Article10 rules but will be critical in managing any unforeseen, untoward events that may arise in the future.

Based on NYSDEC 6/15/07 SLWF Review the SDEIS should include a long-term environmental management plan that incorporates plans for restoration of environmental impacts during and following project construction (including grading, slope stabilization, re-planting with appropriate indigenous plant species, control of invasives, and restoration of disturbed habitats), environmental considerations to be included in the on-going maintenance of the facility (including maintenance and repair of roads and corridors, a contingency plan to assess and minimize environmental impacts during major repairs, and assessment and mitigation of environmental impacts during the decommissioning process. An adaptive management component is a necessary feature of an environmental management plan to respond to environmental impacts that arise during project operation, such as potential impacts to birds and bats disturbance to Blanding's turtle nest sites.	CVWP expects to comply with local substantive restoration requirements for road subgrade, base and pavement; restoration provisions within agreements with landowners; New York Agriculture and Markets guidelines for Agricultural Mitigation for Windpower Projects; NYSDEC requirements for endangered and threatened species, and the USFWS and NYSDEC substantive requirements for impacts to freshwater wetlands.	The Town has very serious concerns about both BP and the State's commitment to restoring our land to its preconstruction condition once the service life of the Project is terminated. <i>RESPONSE: CVWP will submit a decommissioning plan for approval by the Siting Board.</i>

INADEQUATE ENVIRONMENTAL STUDIES: The following excerpt from the Cape Vincent Zoning Law requires a developer shall take to properly evaluate wildlife and other environmental issues. The scope of such assessment shall be developed in consultation with the New York State Department of Environmental Conservation and the United States Fish & Wildlife Service and shall adhere to the USFWS Land Based Wind Energy Guidelines March 23, 2012, to assess suitability of the site; and if application is approved, outline post operational studies to assess impacts.	See first response in this Table for comprehensive response and other responses above. In addition, The CVWP has met the framework and intent of the USFWS 2012 Guidelines and has conducted field surveys recommended within the 2012 USFWS Guidelines. The 2012 Guidelines are not prescriptive and do not prescribe multiple years of field surveys. In certain cases such as for acoustic bat surveys, breeding bird surveys and raptor migration surveys, the CVWP conducted multiple years of study. The Article 10 Application will include evaluation of bird migration data for impact assessment.	BP's beginning argument is that all the studies the Town contends are deficient were all "developed in conjunction" with the agencies. No doubt there were conferences with involved resource agencies; nevertheless, the same agencies were critical of the resulting studies outlining various deficiencies, including the need for additional years of work and study, inappropriate siting of marine radar, and many other issues in addition. <i>RESPONSE: The baseline studies were conducted according the NYSDEC and USFWS recommendations and provide the content and quality of data requested by those agencies. Since these comments were made, the previous developers continued to work with the agencies to address their concerns and BP is still continuing to do so through the Article 11 process. The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i>

Based on NYSDEC 2/29/08 CVWF Review In order to adequately assess the potential impacts to the Project Area's threatened and endangered species the Project needs to fully characterize seasonal use of the area by these species. As submitted the SDEIS is inadequate to allow a thorough evaluation of the potential impacts to these species. Regarding breeding bird surveys, they state "Surveying during only one year and two days the entire breeding season is far from adequate. Knowing that both endangered and threatened grassland bird species have the potential to nest in this area should have triggered a more thorough Breeding Bird Survey consisting of more than one year of study."	See first response in this Table for comprehensive response and other responses above. The Project has consulted the USFWS and NYSDEC in regards to threatened and endangered species and will continue to do so in regards to the ESA and Article 11 Part 182.	The point of this comment by the New York State Department of Environmental Conservation is that a survey alone is not sufficient, nor is a comprehensive listing of surveys if the surveys are not designed properly and survey effort is insufficient. BP needs additional surveys to complete multi-year requirements, and they need to increase the sampling effort in each survey. <i>RESPONSE: The baseline studies were conducted according the NYSDEC and USFWS recommendations and provide the content and quality of data requested by those agencies. Since these comments were made, the previous developers continued to work with the agencies to address their concerns and BP is still continuing to do so through the Article 11 process. The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i>

Based on USFWS 3/19/08 CVWF Review, BP stated that the avian and bat study protocols were approved by the Service. We reviewed the study protocols and provided input to the sponsor (BP). We also provided recommendations to the Town of Cape Vincent. However, many of our recommendations have not been implemented such as conducting surveys over multiple years to account for annual variation in weather and migration.	Same as above.	This comment by the U.S. Fish & Wildlife Service is the most remarkable of the entire suite of agency commentary. Their frustration shows. They state in 2008 that BP, and the Town, paid no attention to their recommendations. The Town in this Article 10 process, however, will endorse and actively support all recommendations by all of the resource agencies. BP has to be responsive to all of the suggestions and recommendations provided by Article 10 stakeholders. <i><u>RESPONSE:</u> The baseline studies were conducted according the NYSDEC and USFWS recommendations and provide the content and quality of data requested by those agencies. Since these comments were made, the previous developers continued to work with the agencies to address their concerns and BP is still continuing to do so through the Article 11 process. An additional season (March-May 2008) of raptor migration surveys was conducted in response to this comment from NYSDEC.</i> <i>The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i>

Based on NYSDEC 5/29/09 SLWF SDEIS Review - In order to adequately assess the potential impacts to the project areas threatened and endangered species, the project needs to fully characterize seasonal use of the area by these species. As submitted, the SDEIS is inadequate to allow a thorough evaluation of the potential impacts to these species.	Same as above.	BP notes in Exhibit 32 that the New York State Department of Environmental Conservation issues an "Article 11 (6 NYCRR Part 182) Endangered and Threatened Species of Fish and Wildlife; Species of Special Concern, Incidental Take Permit." At the same time, the NYSDEC states on May 29, 2009, that studies and data collected are inadequate for describing threatened and endangered species seasonal use of the area. BP should pay heed to NYSDEC's concerns over inadequate study of threatened and endangered species within the Project area. <i>RESPONSE: The baseline studies were conducted according the NYSDEC and USFWS recommendations and provide the content and quality of data requested by those agencies. Since these comments were made, the previous developers continued to work with the agencies to address their concerns and BP is still continuing to do so through the Article 11 process. The studies conducted for both former projects were developed in consultation with both NYSDEC and USFWS personnel and were conducted in accordance with NYSDEC and USFWS guidelines. Multiple (two or three) years of study were conducted for all standard pre-construction studies required by the NYSDEC guidelines. In addition to the multiple years of standard pre-con studies, radar surveys were conducted for one spring and one fall season as recommended in the NYSDEC guidelines for expanded pre-construction studies.</i>

Based on Mentor Rudin & Trivelpiece 6/13/07 SLWF Review Based on material omissions described below, we request that the Planning Board, as the Lead Agency under SEQRA, reject the DEIS, reconsider its previous determination that the DEIS is complete and adequate for public review, and return the document to the Applicant for significant addition and revision.	The comment is noted.	More concerns voiced for inadequate environmental study and reporting.
INADEQUATE MAPPING: The reviews below by involved agencies were very critical of past attempts at depicting industrial wind project layouts due to the lack of sufficient detail with the underlying maps. BP should use a map similar to that provided in the Town's Comprehensive Plan that describes state and federal wetlands, archeological and historical resources, natural heritage assets, and the migratory corridor to name a few. Moreover, project maps need better detail than what is currently available to allow landowners to locate their property to better understand wind turbine setbacks from their property lines and potential adverse environmental impacts.	The Project will take the comment under advisement.	The Town's Planning Board has identified inadequate mapping as a major impediment to assessing any broad-based view of the Project. Current maps provided by BP to represent their Project are worse than inadequate. They use a map that is likely more than 50 years old that lacks proper road designations, homes, buildings, and many natural features. The Article 10 rules in Exhibit 22 require only wetlands mapping, but to provide an adequate record to assess the Project in the context of the area, BP needs to use a baseline GIS map with all the features mentioned in the Town's Jan. 20 listing. <i>RESPONSE: The USGS 1:24000 scale topographic maps were used to provide a uniform, general purpose map background for the project introduction. The maps, which have a scale, show turbines and project facilities in relationship to the property lines. Additional information, such as residences, will be provided in the Application. As requested, the US Topo map background, with the aerial photography turned on in order to show more detail, will be used for revising the Location of Facilities Map (see Appendix A) and throughout the Application, where applicable.</i>

Based on PSC 02/28/08 BP Project maps should include sensitive environmental features e. g., wetlands, rare plants, coastal zone protections, cultural and historical features, as well as the project layout.	As required in the Article 10 regulations, CVWP submit maps contains the following information to the required agencies: sensitive environmental features, including wetlands, coastal protection areas, cultural and historical features.	The New York State Public Service Commission makes a similar request for more feature- laden mapping. More so than is required by Exhibit 22. <i>RESPONSE: The USGS 1:24000 scale topographic maps were used to provide a uniform, general purpose map background for the project introduction. The maps, which have a scale, show turbines and project facilities in relationship to the property lines. Additional information, such as residences, will be provided in the Application. As requested, the US Topo map background, with the aerial photography turned on in order to show more detail, will be used for revising (the Location of Facilities Map, (see Appendix A)and throughout the Application, where applicable.</i>
Based on PSC 02/28/08 DEIS does not have adequate mapping of TX line and resources.	See comment above.	The PSC adds concern that mapping of the site of the transmission line is inadequate as well. <i>RESPONSE: The USGS 1:24000 scale topographic maps were used to provide a uniform, general purpose map background for the project introduction. The maps, which have a scale, show turbines and project facilities in relationship to the property lines. Additional information, such as residences, will be provided in the Application. As requested, the US Topo map background, with the aerial photography turned on in order to show more detail, will be used for revising the Location of Facilities Map (see Appendix A)and throughout the Application, where applicable.</i>

Based on USFWS 3/18/08 CVWF Review lack of sufficient information to properly assess impacts on wetlands. In fact, no estimates are provided. Without an understanding of wetlands extent, it is not possible to evaluate or provide recommendations.	Sufficient detail will be provided in the Application to adequately assess impacts to wetlands.	Exhibit 22 should provide sufficient treatment of wetland concerns if BP adheres to the rules. RESPONSE: CVWP will field delineate all wetlands to which it has access within the project limits of disturbance plus the area within 500-feet. CVWP will then overlay the project limits of disturbance and calculate wetland and surface water impacts broken down by temporary vs. permanent impacts and within those categories further broken down by project component (e.g., turbine foundation, access road, etc.).
Based on PSC 2/28/08 CVWF Review the representation of the wetlands...obscures relevant cover type information by use of solid colors for Field Verified Wetland Area. The scale of the mapping included is too gross to enable discernment of details. More detailed mapping with project layout should be provided in a supplement.	Sufficient detail will be provided in the Application to adequately assess impacts to wetlands.	If the purpose of Article 10 is to build a credible, informative record, then the request by the New York State Department of Public Service should be addressed, each and every item. <i>RESPONSE: CVWP will delineate all wetlands within the limits of disturbance and the area within 500 feet of the limits of disturbance. Wetlands impacts resulting from construction of the project will be displayed on 8.5 inches x 11 inches drawings at a scale of 1 inch equaling approximately 500 feet to enable discernment of details. Delineated polygons will be overlain as a transparent layer to allow for review of underlying information.</i>

Based on Pressy & Associates 5/29/07 SLWF Review DEIS notes wetland impacts will be avoided if practicable ... and where impacts could occur, if practicable, Project components will be moved to avoid or minimize impacts to wetlands The proposed project however has placed many turbines adjacent to wetlands and streams. Therefore, the listed turbines should be moved or eliminated.	The Project layout does seek to reduce impact by taking into account the location of turbines relative to wetlands.	The Project should adhere to appropriate regulations regarding any development nearby to identified state and federal wetland resources. <i>RESPONSE: Upon completion of field delineation of all wetlands within the limits of disturbance plus 500 feet, where accessible, CVWP will coordinate with local state and federal habitat/wetland biologists to develop measures that will avoid or minimize the removal of wetlands, to the greatest extent practicable. Where impacts are unavoidable, CVWP will draft mitigation plans to offset impacts to wetlands, their associated adjacent areas, in consultation with local state and federal agency personnel to be submitted as part of the Article 10 Application.</i>

Based on USFWS 3/19/08 CVWF Review without field surveys the description of reptiles and amphibians may be underestimated. Due to the abundant aquatic habitat found in the area these animals may represent an important part of the ecosystem. Further the discussion of affected mammals is inadequate, as no survey data or existing information sources were provided.	In addition to the several seasons of surveys previously completed, CVWP will characterize the facility and any areas to be disturbed for amphibians, terrestrial invertebrates, and reptiles using reconnaissance level surveys, supplemented by available data from the New York Natural Heritage Program, and New York State Amphibian and Reptile Atlas Project.	BP again missed the point of the U.S. Fish & Wildlife Service Comment. The Service is saying the survey data for reptiles, amphibians, and mammals provided by BP were inadequate. Furthermore, the Service is not suggesting BP examine some mapping resources, but that more field work is required to assess these natural resources adequately. <i>RESPONSE: Additional surveys for reptiles and amphibians were conducted after the date (3/19/08) of the original USFWS comment for the prior layout of the CVWF. CVWP has also committed to additional surveys for Blandings Turtle for the revised project layout. The Article 10 Regulations (1001.22(d)) references reconnaissance level surveys, supplemented by available data from the New York Natural Heritage Program, and New York State Amphibian and Reptile Atlas Project (Herp Atlas) as means to characterize the proposed project area. CVWP proposes to query the Herp Atlas to identify herpetofauna whose geographic distribution coincides with the project area. For those species, CVWP will then determine whether suitable habitat is present within the project limits of disturbance.</i>
NATURAL HERITAGE VEGETATIVE LANDSCAPES: Adequate mapping is needed to document and highlight those areas within the Town and the proposed project footprint that have important plant resources. These data are available from the DEC's mapping section and should be included as an overlay on any project layout mapping.	The Project will take the comment under advisement.	Unfortunately, BP's record to date taking concerns under advisement has been less than adequate (see all above and below).

Based on USFWS 6/15/07 SLWF Review Project area has many unique plant habitats that are protected and others that should be avoided SLWF. DEIS makes no mention of these areas and therefore when and where they should be avoided.	CVWP will initially assess the potential for rare plants based on available data from the New York Natural Heritage Program and coordination with the NYSDEC.	The U.S. Fish & Wildlife Service makes an excellent point about mapping to protect unique plant habitats. If you don't have adequate maps, then how will BP avoid these areas in the development plans. <i>RESPONSE: Detailed discussions of the potential impacts to rare communities present in the project area including silver maple-ash swamp, alvar grasslands, limestone woodlands, calcareous pavement barrens, sinkhole wetlands will be included in the Article 10 Application. While many of these plant communities will not be directly affected by construction and operation of the project, the discussion will address indirect and direct impacts, if any. For waterfowl winter concentration areas and raptor winter concentration areas....</i>

Based on USFWS 3/19/08 CVWF Review assessment conducted in fall when most plants were unavailable and/or difficult to observe. Better assessment needed at an appropriate time.	The Project will take the comment under advisement.	USFWS also notes that surveys were conducted in fall when many plants were unavailable for identification. More evidence of BP's poor management of their environmental studies. <i>RESPONSE: CVWP will coordinate with the USFWS and the NYSDEC regarding the presence of rare plants or communities within the proposed project to determine if any occurrences of rare plants have been documented at the Site. In addition, the New York Natural Heritage Program (NYNHP) Rare Plant Lists and the USFWS Threatened and Endangered Species System (TESS) databases will be reviewed to determine what rare plants have been documented in Jefferson County, New York. Specific habitats, plant associations and the distributions of the listed plant species documented in Jefferson County will be researched using readily available information. Wetland data from the delineation effort will also be reviewed to determine if any of these listed species, or their potential habitat and/or plant associations were observed during the wetland delineation field effort.</i> <i>Areas with potential habitats or plant associations for listed species will be specifically targeted for specific threatened and endangered species surveys that will be conducted by a qualified botanist, familiar with the flora of New York State.</i>

BP FAILED TO LIST THE CUMULATIVE IMPACTS SECTION: All resources agencies recommended a comprehensive impact analysis on birds and bats from the potential development of nearly 700 wind turbines within our region. Furthermore, estimates of mortality (which were lacking in the BP SDEIS) should utilize the Wolfe Island Wind Farm experience and a time frame of at least 20 years. In addition to quantifying turbine-induced avian and bat mortality, there should also be some consideration for displacement impacts from a regional build-out of industrial wind facilities.	An analysis of cumulative impacts to birds, bats, and wildlife (including endangered, threatened, and special concern species) will be addressed as part of Exhibit 22 for the Article 10 Application. CVWP will coordinate with NYSDEC and the USFWS to identify appropriate wind energy project within the region to include as part of this analysis.	The following was the extent of BP's cumulative assessment for the Cape Vincent Wind Farm in their Supplemental DEIS: <i>"The concern is that as more projects are constructed, migrating birds lose the ability to migrate unimpeded from potential risk of collision. This does not seem likely, considering that migrating birds generally fly at altitudes well above the top of a wind turbine blade for the size turbines planned for these projects. In general, while each individual wind project may have some impacts on migratory birds, the total impact is spread over numerous species so the impact to individual species is small."</i> This is a very poor example of the cumulative assessment that was requested by U.S. Fish & Wildlife Service, New York State Department of Environmental Conservation, and the New York State Public Service Commission. It lacks quantitative and analytical rigor and it is qualitatively wrong as well. Furthermore, there is no provision in Exhibit 22 to conduct a cumulative impact assessment, but this requirement is sorely needed. <i>RESPONSE: In addition to the Article 11 Application's analysis of cumulative effects for state-listed species, the Article 10 Application will include a thorough analysis of cumulative effects to avian and bat resources. This analysis will be quantitative to the extent possible, although there is an inherent amount of uncertainty concerning future development of wind energy facilities and other projects in the area.</i>

BP FAILED TO LIST: USFWS 6/15/07 SLWF Review – FWS recommends a cumulative impact analysis of other wind projects under consideration which includes both BP and Acciona projects as well as Horse Creek. The analysis should consider all potential projects and effects on avian and bat species over project life span of 20 years.	Same as above.	BP understands that the Article 10 rules in Exhibit 22 provide no consideration for cumulative impacts for wildlife but do have a provision for cumulative visual impacts. Because cumulative impacts were highlighted by the U.S. Fish & Wildlife Service, New York State Department of Environmental Conservation, and the New York State Public Service Commission, cumulative bird and bat mortality impacts for the potential build-out of industrial wind projects in our region should be a major additional focus of Exhibit 22 -Terrestrial Wildlife and Wetlands. <i>RESPONSE: In addition to the Article 11 Application’s analysis of cumulative effects for state-listed species, the Article 10 Application will include a thorough analysis of cumulative effects to avian and bat resources. This analysis will be quantitative to the extent possible, although there is an inherent amount of uncertainty concerning future development of wind energy facilities and other projects in the area.</i>
BP FAILED TO LIST: USFWS 3/19/08 CVWPP Review – Other wind farm proposals added to the mix besides SLWF and CVWPP: Wolfe Island, Galloo Is. Roaring Brook, Maple Ridge for a total of nearly 700 turbines in our region. A cumulative analysis should consider this magnitude of turbine development in the analysis.	Same as above.	The U.S. Fish & Wildlife Service in their March 19, 2008, review of BP’s Cape Vincent Wind Power Project states directly and clearly that a cumulative analysis should be completed using a total of nearly 700 turbines. The Town endorses USFWS recommendation that a cumulative assessment be completed for avian mortality impacts, and that this requirement should be added to Exhibit 22. <i>RESPONSE: In addition to the Article 11 Application’s analysis of cumulative effects for state-listed species, the Article 10 Application will include a thorough analysis of cumulative effects to avian and bat resources. This analysis will be quantitative to the extent possible, although there is an inherent amount of uncertainty concerning future development of wind energy facilities and other projects in the area.</i>

BP FAILED TO LIST NYSDEC R-6 4/17/07 SLWF Review - “An overall concern from regional staff is the potential cumulative impacts of the numerous proposed wind power projects to be located in the Lake Ontario/St. Lawrence River plains... The St. Lawrence Wind Energy Project is located in a major flyway, important raptor wintering ground, important grassland bird nesting area (not only in New York State, but in Northeast America) and in close proximity to a winter hibernaculum and dispersal area for both federal and state-listed bat species. Since natural resources know no boundaries, it is believed that the study area should be extended to include all of the lake and river coastal areas for a clearer assessment of the potential impacts.	Same as above	The New York State Department of Environmental Conservation in their April 17, 2007, review of the St. Lawrence Wind Farm reminds the developer that the Cape Vincent, eastern Lake Ontario, and the St. Lawrence River valley are a major flyway and that a cumulative impact analysis is needed for all proposed wind projects in the area. <i>RESPONSE: In addition to the Article 11 Application’s analysis of cumulative effects for state-listed species, the Article 10 Application will include a thorough analysis of cumulative effects to avian and bat resources. This analysis will be quantitative to the extent possible, although there is an inherent amount of uncertainty concerning future development of wind energy facilities and other projects in the area.</i>
BP FAILED TO LIST NYSDEC 9/14/07 CVWPP Review - “The cumulative impact analysis should include consideration of impacts from all wind projects known to be under development or review in the region, including St. Lawrence Wind Power Project in the Town of Cape Vincent, the Horse Creek Wind Project in the Town of Clayton, and the Wolfe Island Wind Power Project on Wolfe Island, Ontario. Specific resources of primary concern to DEC that warrant cumulative analysis are bird/bat/wildlife impacts (including impacts to endangered, threatened and special concern species), wetland/watershed impacts and visual/historic impacts.”		The New York State Department of Environmental Conservation in its September 14, 2007, review of BP’s Cape Vincent project reiterates the call for cumulative impacts for propose wind farms, but also includes the Wolfe Island project and also specifies bird and bat, wetland/watershed and visual/historic impacts. The message is even clearer, a broad- based, comprehensive assessment of cumulative impacts on the areas natural, visual, and historic resources are required to meet agency needs. <i>RESPONSE: In addition to the Article 11 Application’s analysis of cumulative effects for state-listed species, the Article 10 Application will include a thorough analysis of cumulative effects. This analysis will be quantitative to the extent possible, although there is an inherent amount of uncertainty concerning future development of wind energy facilities and other projects in the area.</i>

BP FAILED TO LIST: PSC – 02/28/08 BP - Project must be discussed in relation to neighboring project(s) and proposed projects.	Same as above	In their February 28, 2008, review of BP's Cape Vincent Wind Power Project, the New York State Public Service Commission has added their voice to the call for a cumulative assessment of impacts. <i>RESPONSE: In addition to the Article 11 Application's analysis of cumulative effects for state-listed species, the Article 10 Application will include a thorough analysis of cumulative effects. This analysis will be quantitative to the extent possible, although there is an inherent amount of uncertainty concerning future development of wind energy facilities and other projects in the area.</i>

Exhibit 24 Visual Impacts

Issue Shadow Flicker

BP failed to include the shadow flicker discussion provided by the Town in its January 20, 2013, list of potential adverse impacts. The following is repeated from that list:

BP shall provide epidemiological evidence that shadow flicker caused by wind turbines of the model chosen by BP does not and will not induce photosensitive seizures in individuals with progressive neuro-degenerative disorders living within or in close proximity to the proposed project.

RESPONSE: CVWP will take this comment under advisement as it develops the Application.

Cape Vincent's Zoning Law provides guidance for evaluating the impacts of shadow flicker: **The applicant shall conduct a study on potential shadow flicker.** The study shall identify locations where shadow flicker may be caused by wind turbines and the expected durations of the flicker at these locations. **For residences, the zone for predicting shadow coverage shall include the area within a 100-foot radius of the center of the residence.**

RESPONSE: CVWP will conduct a shadow analysis for a study area of 1,080 meters around each proposed turbine. This study area is equivalent to roughly 9 times the largest proposed rotor diameter. Within the resulting study, potential shadow-flicker (potential hours per year) will be provided for each inventoried habitable residential structure, as well as a map that will show the potential shadow hours per year within the study area. This map will be useful in allowing the reader to interpolate the potential number of shadow hours per year at any given point within the study area, especially the area around each identified structure. The shadow-flicker at residential locations would be a 1 meter by 1 meter opening in all directions, which is referred to as the "greenhouse" mode, and is a suitable assumption.

The study shall identify areas where shadow flicker may interfere with residences or highways and detail measures that will be taken to mitigate or eliminate such interference. The universal software used to predict shadow flicker impacts calculates shadow effects based on turbines within 1,000 meters of a receptor and a receptor of 1 square meter placed 1.5 meters above ground. The universal standard of shadow impact used by consultants is 30 hrs/yr/receptor. Given that most residents of Cape Vincent do not hover around a one-square meter window, but occupy a far greater living space that includes area outside the home itself, **the WindPro model should consider an alternative analysis that includes turbines within 2,000 meters of a receptor and**

assuming that each receptor is 5 m wide by 10 m long.

RESPONSE: CVWP will conduct a shadow analysis for a study area of 1,080 meters around each proposed turbine. This study area is equivalent to roughly 9 times the largest proposed rotor diameter. Within the resulting study, potential shadow-flicker (potential hours per year) will be provided for each inventoried habitable residential structure, as well as a map that will show the potential shadow hours per year within the study area. This map will be useful in allowing the reader to interpolate the potential number of shadow hours per year at any given point within the study area, especially the area around each identified structure. The shadow-flicker at residential locations would be a 1 meter by 1 meter opening in all directions, which is referred to as the “greenhouse” mode, and is a suitable assumption.

Shadow flicker represents another potential adverse health impact to residents living near CWWP’s project site. Certain individuals are unusually sensitive to flashing or sporadic bursts of light and shadow. This can occur within a dwelling or “in the open.” The Town specifically calls for BP to conduct an analysis of phenomenon. The Town referenced its updated Zoning Law and detailed a recommended methodology for assessing when, where, and of what duration shadow flicker can be expected as a result of the project’s operations. **An important new addition to forecasting impacts for Cape Vincent is the requirement by the Town for a larger sized receptor.**

RESPONSE: Potential shadow-flicker may be identified at habitable residential structures located within 1,080 meters of a proposed turbine. Beyond this distance, a person should not perceive a turbine blade producing this potential phenomenon.

BP’s PSS under Section 2.24.1 “It is anticipated that shadow flicker will generally not be a major concern...There are comparatively few occupied dwellings, and turbines will be situated with substantial buffers separating them from houses and most other buildings minimizing the amount of shadow flicker a residential structure may experience. Nonetheless, it is anticipated that there will be some structures in the vicinity of the turbines that would experience shadow flicker. Exhibit 24 will present, in table format, a summary of potential hours that each identified receptor could experience.”

No such table was included in Exhibit 24. Furthermore, and contrary to Section 1005, Subsection K, Rules of the Pre-application Procedures, BP did not address the Town’s request for an epidemiological assessment of shadow flicker’s impact on human health.

RESPONSE: CVWP will conduct a visual assessment that will include a table that will contain a summary of potential number of hours of shadow-flicker at each inventoried habitable residential structure.

Issue Blinking Lights

Operational industrial wind turbines present another visual annoyance that BP does not mention, except to say that “The project will adhere to minimum FAA requirements for aviation obstruction lighting.” (PSS, page 155). The presence of shadow flicker is observed as a phenomenon of the sun’s movement and the juxtaposition of a turbine to a structure or place in the open where one is located. On the other hand, the stationary, bright and flashing perimeter lighting of a wind farm is normally visible for long distances and continuous from dusk until dawn. This presence is completely antithetical to a rural existence, especially a vacation destination where nighttime darkness is held as a desired premium.

Comment: In addition to an aesthetic annoyance, the presence of flashing lights can also be a trigger for light-induced seizures for individuals who are known to have conditions which have sharp, marked responses to photic stimulation. **The Town requests that BP provide epidemiological evidence that the navigation lights it intends to use on its wind turbines does not and will not result in photic-induced seizures in individuals who have physical disorders which respond adversely to bright, flashing lights.**

RESPONSE: CVWP will utilize lighting that is compliant with FAA regulations.

In a 2010 study of the visual and sound impacts on Tibbetts Point Road residents from the Wolfe Island Wind Project, the report noted, “*Far more respondents (88%) were annoyed by the change in landscape view than with noise. Ninety-two percent said these changes were for the worst and the blinkinglightsatnightwereespeciallydisturbing;somecomparingthemwitha commercialairport.*” It was this reference to the blinking FAA lighting that lead to a provision in Town Zoning Law that any industrial wind project located in the Town must provide a radar-based switching device, or comparable technology, in order to keep wind farm lighting off until aircraft approach the facility. **BP should provide a review of existing technologies that may be used to curtail the use of FAA lighting when no aircraft are in sight.**

RESPONSE: CVWP will utilize lighting that is compliant with FAA regulations.

Exhibit 27 Socioeconomic Effects

Among the requirements for assessing socioeconomic effects in the Exhibit 27 rules are:

"For each jurisdiction, an estimate of the incremental amount of annual taxes (and payments in lieu of taxes, benefit charges and user charges) it is projected would be levied against the post- construction facility site, its improvements and appurtenances."

"For each jurisdiction, a comparison of the fiscal costs to the jurisdiction that are expected to result from the construction and operation of the facility to the expected tax revenues (and payments in lieu of taxes, benefit charge revenues and user charge revenues) generated by the facility."

These statements are from BP's PSS 2.27.2, *"The Project will provide revenues to the local communities through property taxes or through payment-in-lieu-of-taxes ("PILOT") arrangements. Increased municipal revenues will benefit the school districts, emergency services, and essential infrastructure."*

"An estimate of any real property taxes or PILOT payments, benefit assessments, and user fees, that will be paid by CVWP will be estimated or negotiated for inclusion in this Exhibit."

Comment - The rules require BP to estimate the projected revenue provided to each of the taxing jurisdictions. This estimation process should include discussion with the Town's assessor and inclusion of his recommended approach. Furthermore, if an income approach is used to assess value, then the Town suggests assuming a capacity factor of no more than 25 percent. During the PIP phase of the Article 10 process, the Town directed BP to NOT assume a PILOT based on the Galloo Island model. There is a current PILOT arrangement used by the Town for new or improved business development and that approach would be more appropriate. Again, **BP should contact the Town assessor for details for the Town's business PILOT.**

Table 2.29-1 Comments from Town

Town Comment	BP PSS Response	Town Response to PSS
BP's presentation included Town Supervisor Joseph Kushner, who discussed economic impacts from the wind project in the Town of Eagle, NY. BP's poster stated that the Town of Cape Vincent would receive 15% of the PILOT payment; yet Kushner noted that his town gets 88% of the pie. On a benefit per MW basis Kushner and the Town of Eagle are receiving nearly 6 times the money that BP plans for Cape Vincent. Kushner's experience was not a good example of what BP was offering Cape Vincent.	The Open House event provided an example of a successful wind project. The Town of Eagle reaped benefits from the project and no representation was made that the Town of Cape Vincent would receive more or less than the Town of Eagle. A PILOT payment structure was estimated by applying a previously approved PILOT structure for another proposed wind project in Jefferson County and showed that \$1.7 million (or more for a larger project size) would be paid by CVWP in year 1 to the local municipalities.	During the PIP phase of the Article 10 process, the Town directed BP to NOT assume a PILOT based on the Galloo Island model. Galloo Island was an exceptional policy and the county warned developers not to assume its use in any other project proposed for Jefferson County. Without an agreed upon financial agreement, any assumptions by BP would be premature and misleading.

Town Comment	BP PSS Response	Town Response to PSS
Property devaluation	The Project will take the comment under advisement.	In 2010 the Town appointed a committee headed by the Town's assessor to examine the economic impacts from proposed industrial wind projects in Cape Vincent. The committee completed a report: "Cape Vincent Wind Turbine Development Economic Impact Final Report" 10/7/10. The committee concluded that <i>"Impacts on property values are likely to vary depending on the proximity of turbines to neighboring properties and site lines. Indications are there will be an overall decrease in property values with the potential for significant negative impact on assessments and related factors such as tax rates and the ability to market property at a fair price."</i> To validate their work and conclusions the committee contracted with McCann Appraisal, LLC. who concluded: <i>"After completing my review of the subject location, it is clear that numerous homes in the Cape Vincent area will be adversely impacted, and the best available evidence indicates that value loss of 25% to 40% or more will occur to homes within approximately 2 miles of the turbines. This impact is not expected to be uniform, and some losses may well be lower and others higher."</i> BP's comment to take the issue under advisement is inadequate. The Town instituted a 2-mile setback from waterfront properties largely to protect these property owners from devaluation. BP must recognize that Property Values and the work of the Town's Economic Committee, McCann Appraisal, and others all point to substantial risk to devaluing property and they should recast their project with 2-mile setbacks from the river and lake waterfronts, as stipulated in current Town Zoning Law.

Other Comments -

In Table 2.28-1 "Vacant Units" Shows 1834 units in Cape Vincent, and 1420 in Lyme. The Census shows seasonal homes as vacant if unoccupied on April 1, 2010. Seasonal homes and vacation homes are occupied in season and represent a disproportionately higher population when they are occupied. They cannot be used to imply a "sparsely populated" or "rural" area. **BP needs to clarify the point especially for communities that have a high influx of summer, seasonal residents.**

Exhibit 29 Decommissioning

"CVWP will identify performance criteria proposed for site restoration in the event the Project cannot be completed and for decommissioning of the Project. CVWP will also discuss how the selected criteria are appropriately addressing." (p. 183)

"Prior to construction, a decommissioning plan will be prepared that will include a quantification of the salvage value of the Project components as well as a plan for, and cost of decommissioning the Project. This plan will also set forth requirements for disposal of any hazardous materials. This plan will specify how decommissioning and restoration, if required, will be funded and will provide a schedule for conducting such activities." (p. 184)

Comment – Decommissioning of a wind farm is one of the most critical aspects that the Siting Board has to address. A poorly formulated and implemented decommissioning plan exposes the municipality to significant financial and environmental risks. Prime examples of this exist in California and Hawaii today where turbines have been abandoned and left to decay.

Comment – Decommissioning is too important to be left until construction is imminent. The entire decommissioning plan must be in place and approved as part of the Article 10 application process. **A Certificate should not be issued without a detailed decommissioning plan that has been accepted by the Siting Board.**

RESPONSE: CVWP will submit a decommissioning plan for approval by the Siting Board.

Comment – The Article 10 application requirement (Exhibit 29) requires minimal information on decommissioning. BP has elected to follow this approach and proposed a decommissioning plan that is totally lacking in substance. An example of this is their plan to leave approximately 26 acres of access roads in place.

They have also stated that they intend to leave all underground cable in place. This is in conflict with the New York State Department of Agriculture and Markets request to remove the underground cable during the SEQR review of the proposed St. Lawrence Wind Farm in 2006/2007.

Comment – Cape Vincent's Zoning Law contains a well considered decommissioning plan that will restore the Town to pre-project condition. **We request the Siting Board maintain the integrity of the Cape Vincent Zoning Law. Anything less is absolutely in opposition with the intent of the Town's Comprehensive Plan**

2.29.3 Avoidance and Minimization Measures

“Financial assurance, such as a surety bond , corporate guaranty, cash, or letter of credit will be posted with the New York Department of Public Service starting 10 years after the project goes operational, which will cover the cost of decommissioning less the salvage value of the Project components. This will provide funding for decommissioning of the Project either if the Project cannot be completed or if it is at the end of its useful life.” (p. 184)

“The decommissioning plan will be updated every five years beginning in year 10 to take into account current commodity and component pricing, as well as decommissioning costs. The financial assurance will be updated to provide sufficient funding for decommissioning as per the decommissioning plan”. (p. 185)

Comment - Financial assurance decommissioning coverage must be in place and in force before ANY construction is allowed to begin. This coverage should be based on each component of the project (turbine, building, road, distribution lines, etc.).

RESPONSE: CVWP will submit a decommissioning plan for approval by the Siting Board.

Comment – Financial obligation must be insured. The vehicle of the insurance must be determined by an independent agency. **The financial obligation must be iron clad to ensure that the Town and citizens are made whole and are not placed under any financial obligation due to inadequate decommissioning by the project owner.**

Exhibit 31 Local Laws and Regulations

Article 10 law regarding the PSS statement also requires BP to note those portions of local zoning laws they will request the Siting Board waive if a provision of local law is unduly burdensome to the Project. The following Sections of the rules outline BP's responsibilities:

Section 1000.5 Pre-application Procedures requires the applicant's PSS to include:

*"...a list and description of all local laws, and regulations issued thereunder, applicable to the construction, operation, or maintenance of the proposed facility and a statement either providing a preliminary assessment of an ability to comply or indicating specific provisions that the applicant will be requesting the Board to elect not to apply, in whole or in part, and **a preliminary explanation as to why the Board should elect not to apply** the specific provisions as unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality..."*

However, the preliminary explanation commonly used throughout BP's PSS review of our local laws was: *"...the Public Service Law general preemption of local laws should relieve CVWF of the obligation to comply with this section."*

RESPONSE: Under Article 10, local laws may be inapplicable to certification of a proposed major electric generating facility in one of two ways. First, the local law may be preempted by Article 10. Second, a local law may be applicable but nevertheless waived by the Siting Board if it is found unreasonably burdensome in light of existing technology or the needs of or costs to ratepayers. CVWP's statements regarding preemption relate to preemption, not waiver.

Article 10's general preemption of local laws is not found solely within the text of statute. Article 10 is general law. "Comprehensive regulatory schemes relating to the siting of public utilities [such as Article 10] have been found to qualify as a "general law" preempting local zoning ordinances." Citizens for the Hudson Valley v. N.Y. State Bd. on Elec. Generation Siting, 281 AD2d 89, 95 (3d Dep't 2001).

In addition, a majority of the local zoning laws address siting of wind generating facilities through site plan review processes. Site plan review processes, and the underlying analyses, are conducted pursuant to SEQRA. SEQRA is supplanted by Article 10. The Environmental Conservation Law states that SEQRA does not apply to "[a]ctions subject to the provisions requiring a certificate of environmental compatibility and public need in articles seven, ten and the former article eight of the public service law." ECL § 8-0111(5)(b).

Lastly, the provisions of Article 10 preempt inconsistent or duplicative local requirements.

Section 172 of the Public Service Law provides that “no state agency, municipality or any agency thereof may, except as expressly authorize under this article by the board, require any approval, consent, permit, certificate or other condition for the construction or operation of a major electric generating facility....” [emphasis added] Where a local procedural provision has been identified, it is expected that the general pre-emption provision articulated in Section 172 of the Public Service Law will also preclude the local municipality from imposing such law on CVWP.

A general preemption was NOT part of the treatment of local laws and ordinances under the provisions of Article 10:

“Pursuant to PSL §168(3)(e), the Board must find that the facility is designed to operate in compliance with these local substantive requirements, all of which shall be binding upon the applicant, unless the Board elects to not apply them by finding that, as applied to the proposed facility such are unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality.” [Section 1001.31]

Furthermore, during the formal application, BP is required to provide a rational, substantive explanation as to why a local law should be waived by the Board:

“For each local procedural or substantive requirement identified, a statement justifying the request shall be provided. The statement of justification shall show with facts and analysis the degree of burden caused by the requirement, why the burden should not reasonably be borne by the Applicant, that the request cannot reasonably be obviated by design changes to the proposed facility, the request is the minimum necessary, and the adverse impacts of granting the request are mitigated to the maximum extent practicable.”

Although this level of detail was not a requirement in the PSS, it demonstrates that the preliminary explanation as to why the Board should elect to waive specific provisions of our local law indicates BP provide at least some show of preliminary facts and analysis, rather than the misleading refrain that a Public Service Law general preemption of local laws should apply. **In nearly all the examples of Town law that BP asserts is problematic to their project proposal, they have not provided the required explanation but have misrepresented what is required of them in the PSS under the Article 10 rules.**

Table 1. Town Responses to BP's selection of local law to supplant.

SECTION OF LAW	BP's ISSUE	TOWN RESPONSE TO PSS
3.4 Lot requirements.	Height requirement less than 35 feet.	This section of the law was not intended to apply to Wind Energy Conversion Systems (WECS, e.g., wind turbines). Para.
4.1 Lot uses	Only one principal use per lot.	This section of the law was not intended to apply to WECS. Para. 7.16.4 applies.
5.3.3 ZBA & 5.4.6 Site Plan Review	Special use permit and site plan review criteria	Special Use Permits and Site Plan Review are used throughout the country for the establishment and regulation of wind farms

SECTION OF LAW	BP's ISSUE	TOWN RESPONSE TO PSS
6.7 Noise	dB requirements, predicting noise impacts, enforcement and complaint resolution.	Section 1001.19 Exhibit 19 Noise does not establish any noise standards and specifically sets aside the issue to be determined in a case-by-case basis for each individual project proposal. In addition to the requirements of Exhibit 19, the Town also requests that all the provisions of its noise section of the law be given the fullest consideration in BP's application and that the Town's standards remain in force. The Town's noise law was adapted from a version provided by Dr. Paul Schomer, current Chairman of the Standards Committee of the Acoustic Society of America. To date, Dr. Schomer; Greg Tocci, Cavanaugh Tocci Associates; Dr. Dan Driscoll, past acoustic engineer for the PSC, Rick James, E- Coustic Solutions; Rob Rand, Rand Acoustics, and Charles Ebbing, Ebbing Associates, are all prepared to support the noise standards outlined in the Town's law, and that the Town's noise restrictions are backed by national and international acoustic standards. In addition to supporting the Town's noise standards these experts are also prepared to support those provisions in the noise section of the law that guide predicting noise, enforcing standards and resolving complaints. These engineering experts are also prepared to describe the adverse health and safety impacts associated with the excessive WECS sound levels advocated by BP and the entire wind industry. <i>RESPONSE: The local noise standard requirements will be specifically included in Exhibit 19 as part of the Application and are a factor to be considered by the Siting Board. Given the state of existing technology, however, CVWP's position is that this standard is unreasonably restrictive given existing technology.</i>
6.9 Outdoor Lighting	Intends to comply with FAA rules	This section of the law was intended to ensure the safety of the public and operating personnel, not to regulate or supersede FAA requirements.
6.10 Outdoor Storage	Unknown concern	This is to prevent uncontrolled storage of construction and maintenance supplies. Supplies that will be stored for longer than three months must be screened from public view.

SECTION OF LAW	BP's ISSUE	TOWN RESPONSE TO PSS
6.11 Parking Requirements	Cannot comply with parking requirement	This is to ensure that adequate parking for emergency vehicles and employee/company vehicles is available at each turbine and accessory building. <i>RESPONSE: CVWP will discuss with the Town the establishment of any necessary parking areas as described in the Town Zoning Law.</i>
6.14 Restoration of Land	Concerned the Planning Board may require additional restrictions	Land restoration is one of the most important sections of Cape Vincent's Zoning Law, Para. 5.4.6.8. Without this, there is no control over what happens to the land when the turbines or ancillary facilities are decommissioned. Response: As stated in the PSS, CVWP intends to comply with this provision, however it is not entirely clear as to what additional requirements the Town might impose and this provision requires further clarification.
6.15 Screening	Requires a 6' screen	This section of the law was not intended to apply to WECS.
6.17 Traffic	Planning Board may require a traffic survey	A traffic survey/study/program is critical to the safety of the community. This would include local "road use agreements," NYDOT permits, as well as other permits shown on section 2.23-1 of BP's PSS. <i>RESPONSE: CVWP will discuss with the Town additional traffic survey/study/program requirements as part of the stipulations process. The components of the Article 10 application will likely obviate any need for an additional Planning Board required traffic survey.</i>

SECTION OF LAW	BP's ISSUE	TOWN RESPONSE TO PSS
7.16.4.d Paint Finishes	Wants the Siting Board to pick a color	This is the requirement in Town law that BP is asking the Siting Board to preempt, <i>"Unless specifically required by other regulators, a tower shall have a finish (either painted or unpainted) that minimizes visual impact."</i> The Town finds this assertion remarkable. BP has conducted visual impact assessments with their prior project applications with the Town through New York's SEQRA law and concluded WECS are a visual intrusion of the grandest scale. Perhaps the visual alteration of our Town by BP's project proposal may be the most severe, long-lasting impact in the array of potential adverse impacts. While proposing this vast visual intrusion into the Town's rural setting, BP is suggesting that the Town's interest in finding a paint or finish that would "minimizes visual impact" is somehow too restrictive to their development plan and that the law deserves to be preempted. The Town fails to understand how any applicant would not want to support the Town's request that a finish be applied so that WECS do not stand out any more than they already will.
7.16.4.e Ancillary building color	Use of "maximize" too vague	Section 7.16.4.e requires that "ancillary structures shall maximize the use of building materials, colors, and textures that blend with the natural surroundings." BP contends that use of the term "maximize" is vague. Again, asking for preemptions on paint color and finishes indicates BP is trying to object to anything provided by the Town.
7.16.4.f Night Lighting & Glare	Only FAA standards should apply	This section of the law was not intended to apply to WECS.

SECTION OF LAW	BP's ISSUE	TOWN RESPONSE TO PSS
7.16.4.g Tower Siting	Minimizing visual impacts a problem	NYS Rte. 12 E has been designated a National Scenic Byway and the Seaway Trail. BP's project proposal is to place 19, 500 ft. tall turbines within 1500 ft. of either side of the Scenic Byway entering into Cape Vincent. This setback would not only represent a visual blight, but a safety hazard as well, since the setback would be 3X the height of the turbine, rather than the 6X required in the Town's law. <i>RESPONSE: Section 7.16.4.g addresses visual impacts which will be studied and addressed in the CVWF Article 10 Application. The visual impact assessment requirements of this provision are obviated by the visual impact assessment requirements of the Article 10 application.</i>
7.16.4.h Avoid Avian Impacts	Avian species will be addressed in Article 10	Avian impacts are addressed in the Town's Comprehensive Plan and are considered to be of critical importance to maintaining the ecology of the Town. Avian species impacts are also addressed in Section 7.16.10.f.5.g WECS of the Town's Zoning Law
7.16.4.i Preserve Existing Veg.	This section not applicable to project	This is to prevent practices like clear cutting. <i>RESPONSE: As stated in the PSS, CVWP was concerned that Section 7.16.4.could be used to impose additional requirements to preserve existing vegetation beyond those imposed by USACE, USFWS, and NYSDEC. An agreement as to clear cutting should be discussed in the stipulations process.</i>
7.16.4.j Access Road Approvals	Road inspections and approvals may be too restrictive.	Certain minimum requirements are needed in order to ensure emergency vehicles can safely access these turbine sites if needed by local emergency responders. The Town would argue if we are required to respond, then we should ensure access roads are safe for responders. <i>RESPONSE: CVWP intends to discuss the applicability of this provision with the Town and agrees that certain minimum requirements are needed to ensure emergency vehicles can safely access turbine sites.</i>

SECTION OF LAW	BP's ISSUE	TOWN RESPONSE TO PSS
7.16.4.k Parking	Parking restrictions	This is to ensure that adequate parking for emergency vehicles and employee/company vehicles is available at each turbine and accessory building. <i>RESPONSE: CVWP intends to discuss the applicability of this provision with the Town and agrees that certain minimum requirements are needed to ensure emergency vehicles can safely park at turbine sites and accessory buildings.</i>
7.16.4.l Fencing	No fences needed for WECS	Agreed.
7.16.4.o&p Decommissioning Plan	Decommissioning plan too burdensome	The proper decommission of a wind farm is extremely important to the restoration of a site. Otherwise Exhibit 1001.29 would not allow for a decommissioning plan. Therefore the Town expects provisions of Section 5.4.8 and 5.4.9 will remain in force. <i>Response: It is expected that certain components of the Town's decommissioning provisions will be incorporated into the final decommissioning plan, however, some provisions of the decommissioning plan requirements are unreasonable and unduly burdensome and CVWP intends to discuss those provisions with Staff and the Town.</i>
7.16.9 Meteorological Towers	Met towers needed for permanent operation of facility	Until applicant makes the case that wind velocity and directional data is needed that cannot be otherwise provided by the instrumentation on each WECS, the Town will require meteorological towers to be permitted as temporary structures in compliance with the intent of the Town's Comprehensive Plan and the Zoning Law. Fees will be assessed in accordance with the appropriate Town Ordinance. <i>RESPONSE: It is common practice in the industry and a requirement in order to properly operate the project that permanent meteorological towers be erected when the wind towers are erected.</i>
7.16.10.b WECS Site Plan Approval	Site plan approval and special use permit not required with Article 10	The Article10 process and the Certificate of Environmental Compatibility and Public Need represent the equivalent of the Town's local requirement for site plan approval and the issuance of a special use permit.

SECTION OF LAW	BP's ISSUE	TOWN RESPONSE TO PSS
7.16.10.c Application Requirements	6X Radius on maps to represent setbacks and noise impacts to 1.5 miles	This information is absolutely essential in presenting this application to our community. The 6 times the radius of the total height of a WECS denotes the setback distance for safe operation. Any roads, houses, or other infrastructure located within each turbine setback zone would be at risk. Every residence within 1.5 miles of a turbine should have the projected noise impact. <i>RESPONSE: The Article 10 process will help provide the basis for developing a safe noise setback. The Town's requirement to conduct a noise profile to 1.5 miles is unnecessary, lacks merit, and is unduly burdensome.</i> This estimate is essential for any compliance testing done after the start of operation and for any future complaints from residents. <i>RESPONSE: As stated in the PSS, CVWP believes these provisions are unduly burdensome in view of the existing technology and the needs of or costs to ratepayers. A 6 times total height setback effectively prohibits any siting of wind generating facilities within the Town's boundaries.</i>
7.16.10.e Complaint Resolution Plan	Referring to 6.7.7 Noise complaint plan should comply with Siting Board. Town plan should be waived because no time or frequency limits could lead to continued delays of wind farm operations	This is the only reference in the Article10 rules related to complaint resolution 1001.19 (m) Exhibit 19 Noise: <i>"An identification of practicable post-construction operational controls and other mitigation measures that will be available to address reasonable complaints, including a description of a complaint-handling procedure that shall be provided during periods of operation."</i> Without a specific plan denoted in the rules, then the Town's Complaint Plan remains in force and represents the default plan. The Town's plan provides for a response within five days of a complaint, involvement of the Town engineer if complaints cannot be resolved quickly, use of best engineering practices to evaluate source of complaint, and provision to shut down the WECS if needed to evaluate the source of problem. Finally, since the Town may be the first to receive complaints, their plan should be controlling. <i>RESPONSE: CVWP will discuss with the Town and Staff a single complaint resolution plan to be approved by the Siting Board.</i>

SECTION OF LAW	BP's ISSUE	TOWN RESPONSE TO PSS
7.16.10.f.5 Information related to WECS construction	Issues related to shadow flicker, noise and electromagnetic interference	Section 1001.24: Exhibit 24 Visual Impacts requires an analysis of <i>“shadow flicker, or related visible effects of facility operation, including an assessment of the predicted extent, frequency, and duration of any such visible effects created by the facility.”</i> This is the extent of treatment of the issue of shadow flicker in the rules. The Town’s law says much the same as Exhibit 24 but with one important added detail. Shadow flicker analyses commonly use a square meter window as the target of shadow flicker assessment and quantification of impacts. The Town determined that its citizens do not sit in front of a single window in their homes. We stipulate in the law that <i>“the zone for predicting shadow coverage shall include the area within a 100-foot radius of the center of the residence.”</i> <i>RESPONSE: CVWP will conduct a shadow analysis for a study area of 1,080 meters around each proposed turbine. This study area is equivalent to roughly 9 times the largest proposed rotor diameter. Within the resulting study, potential shadow-flicker (potential hours per year) will be provided for each inventoried habitable residential structure, as well as a map that will show the potential shadow hours per year within the study area. This map will be useful in allowing the reader to interpolate the potential number of shadow hours per year at any given point within the study area, especially the area around each identified structure. The shadow-flicker at residential locations would be a 1 meter by 1 meter opening in all directions, which is referred to as the “greenhouse” mode, and is a suitable assumption.</i> COMMENT: This is an important modification that will better serve to assess the impact of annoying wind turbine shadow flicker on the enjoyment of an individual’s home and immediate surroundings. <i>RESPONSE: This provision requires the preparation of an EIS with respect to specified information. The information specified will be included in the Article 10 application.</i>

SECTION OF LAW	BP's ISSUE	TOWN RESPONSE TO PSS
		Exhibit 19 in the rules requires a comprehensive assessment of potential impacts from noise on the community. However, the rules fail to define how far from a WECS these assessments should extend. The Town stipulates in Section 7.16.10.f of its law that any assessment of adverse wind turbine noise impacts should include properties and homes within a 1.5 mile radius of a WECS. The wind industry employs consultants that have sophisticated software to provide these kinds of analyses and the Town's request to expand the area of potential impacts will be inconsequential to BP's cost of analysis but will provide far better information to judge adverse impacts on our community. Moreover, these extended estimated noise impacts will be invaluable when used as a base for compliance and complaint surveys. The Town's law requires electromagnetic interference to be assessed and corrected up to one mile from the project boundary, which is less restrictive than Exhibit 26 Effect on Communication requirements, "<i>An identification of all existing broadcast communication sources within a two-mile radius of the facility and the electric interconnection between the facility and the point of interconnection.</i>" The Town, therefore, would not object to more restrictive requirements being implemented.

SECTION OF LAW	BP's ISSUE	TOWN RESPONSE TO PSS
7.16.10.g Application Certification	Provisions of this section of the law are procedural and should be preempted	The issue of liability was never addressed in the rules. The Town asserts that liability should be addressed in the application to ensure that the Town has no responsibility for any problems that may arise from the design, construction, and operation of BP's project. The assertion by BP that Article 10 should preempt the Town when Article 10 provides no guidance on the liability issue is a frivolous argument on the part of BP. <i>RESPONSE: The liability coverage amounts required by this section are excessive. CVWP does not intend to provide an escrow fund given there is no site plan application that will be submitted.</i>
7.16.10.h Noise requirements	Limit of WECS rated output to $\leq$ 1.6 MW	The intent of limiting WECS output to less than 1.6 MW was to minimize the effect of infrasound on residents, since recent science¹ demonstrated that larger turbines have greater potential for annoyance and harmful health impacts on nearby residents. Regardless of this limitation, harmful impacts from turbines can best be mitigated by distance, i.e., the farther away the lesser the impact.
7.16.10.i Application Review Process	Procedural impositions	Special Use Permits and Site Plan Review are used throughout the country for the establishment and regulation of wind farms.

¹ Moller, H. and C.S. Pedersen. 2011. Low frequency noise from large turbines. J. Acoust. Soc. Am.129(6), June 2011

7.16.10.j WECS standards	BP identified the following standards as problematic: underground transmission lines, radar switched FAA lighting, uniform WECS sizes, matte finish, no advertising, no communication interference, 1.25 mile setback from (Seaway Trail, hamlets, village, and schools), 2.0 mile setback from waterfronts, 6 times total height from: (nearest residence, nearest property line, roads).	For the interior areas of Cape Vincent, the Joint Comprehensive Plan discourages <i>“any industrial, commercial or utility development whose influence would have a negative impact on health, safety, scenic and natural resources, property values, recreational opportunities and tourism assets.”</i> The project proposed for Cape Vincent, e.g., 124 turbines up to 500 feet high, in itself is incompatible with the Town’s Comprehensive Plan. The idea of having all of the interconnecting electric lines above ground on poles running from one end of the Town to the other is beyond comprehension, if not absurd. For nearly every other wind farm facility in New York, the interconnecting lines are buried. Response: Overhead collection lines are not anticipated at this time, although may be utilized if necessary. The generator interconnection line will be overhead. The Wolfe Island Wind Project provided residents of Cape Vincent with a unique opportunity to assess visual impacts of an 86-turbine facility at a 2+ mile distance. The most common negative impact mentioned by Cape residents was the blinking, red FAA lighting at night. The nighttime impact was described as similar to a major international airport, and there were reports of residents installing curtains on bedroom windows facing Wolfe Island because it disturbed their ability to sleep. The Town included 3D radar switching technology² in its law to mitigate the impact of blinking, red FAA lighting. The OCAS system is currently in place on an operating wind farm in Canada and the technology has been licensed to Vestas, the Danish WECS equipment manufacturer. This represents an approach in the Town’s law to provide a level of protection for its citizens from an in-home annoyance from industrial wind development. The Town finds it difficult to comprehend why BP would consider restrictions on advertising and a matte finish on WECS as a critical imposition on their development plans and that they would seek preemption by State authority.

² <http://www.ocas-as.no/us/>

		BP is seeking relief from this provision in the Town’s law: <i>”No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems will produce electromagnetic interference with signal transmission or reception.”</i> Yet, Town law only underscores that noted in the rules Section 1001.12 Exhibit 12 Construction and Section 1001.26 Exhibit 26 Effect on Communications, <i>“...avoid interference with existing utility transmission and distribution systems...”</i> BP’s request for preemption on the Town’s communication provision seems to be designed to find any cause to supplant Town law. <i>RESPONSE: The Article 10 process allows for comprehensive study of this topic and the results of the analysis should dictate what is acceptable.</i> The 1.25 mile setback from NYS Rte. 12E was designed to be responsive to concerns identified in the Town’s Comprehensive Plan: <i>“It is important that Town and Village leaders keep in mind that the designation as a National Scenic Byway requires local municipalities to strive to improve and maintain a clean, attractive appearance and protect views of those areas surrounding the highway, where practical.”</i> Additional discussion regarding turbine placement close to the National Scenic Byway is discussed above in Section 7.16.4.g. The two-mile setback from the Town’s waterfronts is essential to protecting the highest valued properties that dot the Town’s lake and river shorelines. These properties represent the most valued land assets within the Town and they represent nearly three-fourths of the tax base. The Town appointed a committee of local government, business, and retired professionals to examine the impact of WECS on property values. The committee concluded that WECS in the view shed of these properties will diminish the value of the homes and property. The committee then had Michael McCann, McCann Associates, a professional appraiser who was

		familiar with WECS impacts on property, examine their report. McCann concluded that property devaluation could be substantial to distances of two miles or more. Clarkson researchers Dr. Heinzleman and Dr. Carrie
		Tuttle recently published a peer review study and also concluded that in some cases property values could be reduced. The Town is one of those locations where devalued property would be expected. This has been demonstrated on neighboring Wolfe Island, where there has been a significant negative impact on the residential property values as a result of the TransAlta Wind Farm. <i>RESPONSE: The U.S. Department of Energy study found that "proximity to wind energy facilities does not have a pervasive or widespread adverse effect on the property values of nearby homes." This study covered 24 wind projects, across 9 states, covering almost 7,500 single</i>

		<i>family homes, and required three years to collect all the data. This issue has already been thoroughly examined and does not need to be revisited.</i> The two-mile setback from the Town’s waterfronts is also crucial to affording protection for the Avian Migratory Corridor that extends along the lake and river shoreline. The corridor is depicted in Figure 3 of the Town’s Comprehensive Plan. The New York Department of Environmental Conservation touted the importance of this migratory corridor in their review of the Chautauqua Wind Project, <i>“The eastern and southern shore of Lake Ontario and eastern shore of Lake Erie are documented and well recognized migratory pathways, which are important within Eastern North America on a regional scale, particularly during spring migration as birds move north.”</i> For both the protection of valued waterfront property and the protection of invaluable natural resources, a two-mile setback from the Town’s shorelines represents a well-reasoned, rational necessity for the Town’s restrictions in its Zoning Law. <i>RESPONSE: The Article 10 process allows for comprehensive study of this topic and the results of the analysis should help determine inform what is acceptable.</i> During the development of the Town’s Zoning Law the Town’s consulting engineer, Bernier Carr Associates (BCA), was asked to develop a setback for WECS that was based on sound engineering practices that would protect residents of the Town from any potential WECS rotor failure or ice throw.

		Based on the normal operating specifications of current models of WECS, BCA engineers recommended setbacks that would coincide with six times the total height of any WECS, and indicated that this restriction would provide a reasonable margin of safety for Town residents. The Town asserts that the margin of safety provided by this restriction is absolutely essential to protect the safety of Town residents and that this standard should not be preempted or supplanted by any less restrictive guideline. These setbacks were developed based on turbine design operating speeds. They do not take into consideration “overspeed” operation which would result in greater debris throw if a failure were to occur. <i>RESPONSE: The Article 10 process allows for comprehensive study of ice throw, blade throw, and turbine collapse and the results of the analysis should help inform what is acceptable.</i>

Table 2.32-1 Comments and Responses Regarding Local Laws and Regulations

Town Comment	BP PSS Response	Town Response to PSS
9-25-12 The ...Comprehensive ... Plan pointedly states that a large wind project, similar to that proposed by BP under Article 10, is not a good fit for our community....Given that a large utility scale project is a poor fit, we would like to see BP's rationale for ignoring our Plan and proposing to turn our community into something it does not want and that will be a detriment to our overall prosperity - a highly industrialized energy complex	The Article 10 process offers a comprehensive one stop shop. To pursue multiple avenues for permitting a project would not be a desired route for the project. The Article 10 process represents a single permitting process that can be pursued for the entire Project.	BP's response ignores the question. The question was not about one-stop shopping. Article 10 rules require BP to acknowledge that a Town has a Comprehensive Plan, which BP has done, but the rules also require BP to provide an explanation why the project they propose is incompatible with a community's vision, which BP has not done. <i>RESPONSE: The Application will include a statement that the Town of Cape Vincent has an adopted Comprehensive Plan that is the basis for the Town of Cape Vincent Zoning Law and that the proposed land use is not consistent with the Comprehensive Plan to the extent that the Project conflicts with the zoning law. The Application will include an assessment of specific plan components and recommendations. The Application will include a reference to the website where the Town of Cape Vincent Comprehensive Plan is located (http://townofcapevincent.org/docs/cat_view/14-miscellaneous.html).</i>

9-25-12 We believe we are entitled to see the rationale for throwing aside our municipal prerogatives and trashing the Zoning Law that was designed in good faith and with expert consultation to protect the health, safety, and general welfare of our citizens.	CVWP appreciates the Town's feedback. The PSS document provides additional information about the Project.	Again, rules require an explanation, which BP chooses to ignore.
10-23-12 Comprehensive Plan states that the Town should avoid tall structures.	CVWP will take the Comprehensive Plan into consideration.	Ignoring a question seems to be the approach BP uses to handle an uncomfortable.
10-23-12: How can you ask the Siting Board to vacate Cape Vincent Zoning Law when you were given numerous opportunities to participate in the development of them?	We submitted a response in the June 2012 time frame to notify the Planning Board that we had seen the draft Zoning Law and would ask the Town to reconsider. As drafted at that time and as is currently drafted, the requirements are unduly unreasonable with respect wind turbine technology.	BP's June 2012 was a general indictment of our draft law. BP provided no suggestions, no indication of problematic sections, just a general comment of total displeasure. Furthermore, at the time of Cape Vincent's public hearing BP made no comment, either in writing or in person.

10-29-12: Why does BP now feel justified in asking the Article 10 Siting Board to presume any portion of our Law is unacceptable.	We submitted a response in the June 2012 time frame to notify the Planning Board that we had seen the draft Zoning Law and would ask the Town to reconsider. As drafted at that time and as is currently drafted, the requirements are unduly unreasonable with respect wind turbine technology. CVWP is not making presumptions. The Article 10 process represents a single permitting process that can be pursued for the entire Project.	Article 10 rules require BP to note the sections of the law that are considered unduly burdensome, as was outlined in Exhibit 31 of their PSS. However, at the time the Town was requesting comment on its draft law, BP provided nothing more than a general rebuke of the Town's law.

Exhibit 34 Electrical Interconnection

Comment - BP provides considerable detail regarding the electrical interconnection between their facility substation and the switching station and subsequent connection to the Lyme substation but provides NO INFORMATION relative to the interconnections between turbines within the facility. **The Town requests the Siting Board require all interconnections to be underground, similar to Wolfe Island's interconnection arrangement.**

RESPONSE: Overhead collection lines are not anticipated at this time, although may be utilized if necessary. The generator interconnection line will be overhead.

Exhibit 35

2.35.1 Potentially Significant Adverse Impacts

"Significant exposure to high strength EMF has not been consistently shown to have negative health consequences. Due to a lack of credible evidence proving any impact from significant exposure to high strength EMF, as discussed in the NYSPSC Policy referenced above, generator interconnection lines are not considered to be hazardous to public health."

Comment - Although EMF may not be a hazard to human health, there is some evidence livestock are much more sensitive to adverse effects from EMF. Stray voltage is known to cause problems for livestock and poor production for dairy cows. Livestock is approximately ten times more sensitive to stray voltage than humans. **Therefore, because agriculture is an important economic resource to the area within the footprint of BP's Project, BP should be required to investigate the impact of stray voltage on livestock and other animals.**

CASE NO: 12-F-0410

RESPONSES TO TOWN OF LYME COMMENTS ON THE PRELIMINARY SCOPING STATEMENT

Comment: Section 1.3.1 refers to the Rural Natural of Jefferson County. It fails to mention that the county is the fastest growing county in the state. Further study needs to be completed on how the Generator Interconnect line will affect the town's development, tax base and overall long term economic health.

RESPONSE: CVWP will take this comment under advisement.

Comment: The Town of Lyme is located strategically on Lake Ontario and includes a well recognized recreational fishing area known as the "Golden Crescent". Included within the Town is Chaumont Bay and Three Mile Bay, well noted and promoted in New York State as a prime fishing area. The Town, therefore, enjoys a recreational reputation quality which is enhanced by the many miles of water frontage in the Town. The economy of the Town is thus, recreation based. In the summer the economy is driven by seasonal residents who come to the shores to vacation homes and in the winter by hundreds of ice fishermen who take advantage of the fishing resources available in the nearby waters. Since outdoor activities and reaction are a large part of what drives the economy and population of the Town, anything which would affect that is of concern to the Town of Lyme.

RESPONSE: CVWP will take this comment under advisement.

Comment: In section 1.3.11 the PSS makes reference to the number of vacant home in Lyme as 61%, but fails to mention that most of these homes are seasonal and that some of those lie along the proposed Generator Interconnect Line route. It also fails to recognize that these homes are occupied seasonally. These seasonal homes are substantial homes and they add substantial

tax base to the Town. Anything that would decrease the value of these seasonal homes and the attractiveness of them to people, affects the economy of the Town. The presence of the major industrial overhead power line differs in character than the residential power lines already existing and is believed will have a negative impact on the Town in this regard. The town is concerned about the impact the lines will have on property values, and the short and long term health effects that the residents will incur.

RESPONSE: *The existing H-frame structures currently located in the Town of Lyme, entering the Lyme Substation are as high as 85ft above grade, comparable to the current monopole structures proposed for the generator interconnection line, which are 70' to 95' in total height. EMF and Visual impacts will be evaluated as part of the Application submittal.*

Comment: Since Exhibit A is extremely outdated, the CVWP failed to note all the newer residents that will be impacted by the Generator Interconnect Lines.

RESPONSE: *The USGS 1:24000 scale topographic maps were used to provide a uniform, general purpose map background for the project introduction. The same standards used to collect data for the 1:240000 USGS topographic maps were not used in creation of the US Topo maps (circa 2012). The data used for the US Topo maps has varying scale. In addition, the US Topo maps, with the aerial photography turned off, do not show any detail except contours. Although the intent is to add to the US Topo maps, certain features are not currently shown. For example, land cover and structures are omitted. For these reasons, the older USGS topographic maps were used in the PSS. As requested, the US Topo map background, with the aerial photography turned on in*

order to show more detail was used to revise Location of Facilities Map (see Appendix A) and will be used in the Application, where applicable. Please note that the use of the US Topo map background will increase the file size of the maps significantly, potentially exceeding the thresholds outlined in the Guidelines for Filing Documents with the Secretary.

Comment: Thus we believe a thorough study is required to determine the health, safety and home value impact along the three proposed routes.

Comment: Section 2.4.1 – NYS Coastal Policies.

Policy No. 2 states “State agencies will, avoid undertaking, funding, or approving non-water dependent uses when such uses would preempt the reasonably foreseeable development of water dependent uses. The siting of the Generator Interconnect Line over and along the Chaumont River will deter development because of the Electric Magnetic Field (EMF) and view shed issues along the Right-of-Way, over the river and bordering properties.

RESPONSE: *The proposed generator interconnection line will cross the Chaumont River, several hundred feet from an existing electric utility line that has resided above the river for decades. One of the proposed routes has the generator interconnection line crossing onto a shuttered open pit mine located on the banks of the Chaumont River. It is expected that the generator interconnection line can join these other features and operate in concert with homes and farms in the area, while allowing for access to the river. Visual and EMF impacts of the proposed generator interconnection line will be evaluated as part of the Application submittal.*

Comment: In addition further investigation is required since the Chaumont River Corridor Waterfront Revitalization Project is in

Phase I and CVWP failed to recognize the power line affect on that development program. The Town is in the process of developing a local Chaumont River Corridor Waterfront Revitalization project with New York State. The impact of the proposed development by CVWP on the development and the use of the waterfront needs to be thoroughly evaluated.

a. Policy 19- Protect, maintain, and increase the level and types of access to public water related recreation resources and facilities.

The siting of the Interconnection lines over the Chaumont river could well block access to the water front, The placing of the lines stops development by removing sections, on both sides of the river, from development. The Interconnect Right-of-Way effectively removes area from water front access and development. Alternative routes or methods of crossing the river need to be studied.

RESPONSE: *There is an existing electrical distribution line over the Chaumont River operating in concert with homes and farms in the area and allowing for access to the river. Visual and EMF impacts will be evaluated as part of the Application submittal.*

Comment: If overhead lines are allowed to be built, it will detract from people wanting to use the water resources.

Policy 21- Water dependent and water enhanced recreation will be encouraged and facilitated, and will be given priority over non-water-related uses along the coast. The Generator Interconnect Lines do not enhance recreation activities and will not encourage or facilitate use of the water front along the Chaumont River because the Interconnect Line Right-of-way will block access to the river, and development.

CASE NO: 12-F-0410

RESPONSE TO COMMENTS FROM TOWN OF LYME

RESPONSE: *There is an existing electrical distribution line over the Chaumont River operating in concert with homes and farms in the area and allowing for access to the river. The proposed generator interconnection line is not expected to block access to the river.*

Comment: The Chaumont River Corridor Waterfront Revitalization Project plan should be given priority to the uses of water resources over power line Rights of Way.

b. Policy 22- Development when located adjacent to the shore will provide for water-related recreation whenever such use is compatible with reasonably anticipated demand for such activities, and is compatible with the primary purpose of the development. The Generator Interconnect Lines do not provide for water related recreation.

RESPONSE: *There is an existing electrical distribution line over the Chaumont River operating in concert with homes and farms in the area and allowing for access to the river. The proposed generator interconnection line is not expected to reduce water related recreation to the river.*

Comment: While the Chaumont River Corridor Waterfront Revitalization Project Plan will address water related activities along the river, it requires a complete review before non recreational development proceeds.

c. Policy 23- Protect, enhance and restore structures, districts, areas or sites that are of significance in the history, architecture, archeology or culture of the State, its communities, or the Nation. The State of New York has recognized the region and portion of the Town of Lyme as being a significant resource to the State. Indeed, a portion of the Town

of Lyme has been designated to be on the Seaway Trail. The designation of the Seaway Trail was used to promote tourism and attract visitors to the area. Additionally, the recreational opportunities for fishing, as well as other water related activities in the town, abound because of the large amount of water frontage. The vast town shoreline has been designated as a part of the Golden Crescent and the fishing and recreational opportunities are well advertised and promoted. It brings many people to the area to enjoy these recreational opportunities. Additionally, the Town is involved in a study with the State of New York known as the Chaumont River Corridor Waterfront Revitalization Project. The Chaumont River Corridor Waterfront Revitalization Project Plan aims to fulfill this particular policy requirement. The CVWP response to this policy requirement indicates that they have not checked for areas or sites that are of significance in the history, architecture, archaeology or culture of the state, its communities, or the nation; as reference in the policy. Therefore, this policy requirement needs further research relative to the requirements of the policy.

RESPONSE: CVWP will consult with the Town regarding this issue.

Comment: Policy 24- Prevent impairment of scenic resources of statewide significance. CVWP has not adequately addressed how it intends to meet this policy requirement since the Chaumont River corridor is a statewide scenic resource located on the Seaway Trail. Chaumont Bay is part of what is known as the Golden Crescent. CVWP needs to conduct a thorough cost analysis of different options that will meet this requirement. In addition it needs to work with the community to address its concerns.

RESPONSE: CVWP is unable to verify that the Chaumont River and Golden Crescent are Statewide scenic resources. However, they will be discussed within the visual study.

Comment: Policy 25- Protect, restore or enhance natural and man-made resources which are not identified as being of statewide significance, but which contribute to the overall scenic quality of the coastal area. CVWP's response has failed to address this requirement. Their response indicates that they will make little or no effort to meet the requirements of this policy. Extensive research needs to be completed and a plan put forth on how this requirement will be met. The CVWP has failed to address impacts on the State designated Seaway Trail or the recreational opportunities which abound in the Golden Crescent as so designated.

RESPONSE: CVWP will take this comment from the Town under advisement.

Comment: Policy 26- Conserve and protect agricultural lands in the State's coastal area. No plan has been devised or presented that addresses the Agriculture & Markets guidelines for Agricultural Mitigation for Wind power Projects.

RESPONSE: CVWP will coordinate with New York State Agriculture and Markets to assure that construction affecting agricultural land will meet the goals of Agriculture and Markets' Guidelines for Agricultural Mitigation for Windpower Projects.

Comment: A study of the impacted areas needs to be completed and a mitigation plan devised. Jefferson County as a whole and the Town of Lyme have been known historically as dairy areas. There is only one remaining dairy farm in the Town of Lyme. The proposed line either crosses or is adjacent to such dairy farm

and it is believed will affect other types of farming activities in the Town. These have not been adequately addressed.

RESPONSE: *The dairy farm referred to by the Town in its comments is a participating landowner in the Cape Vincent Wind Farm project. This example illustrates the benefit of a renewable energy source that is compatible with agriculture. This landowner will be able to enjoy the benefits associated with being part of a wind farm project while continuing to maintain productive farm operations.*

Comment: Policy 27- Decisions on the siting and construction of major energy facilities in the coastal area will be based on public energy needs, compatibility of such facilities with the environment, and the facility's need for a shorefront location. A study needs to be conducted of options that route the Generator Interconnect Lines around coastal waterways or in alternative non-intrusive manner.

RESPONSE: *CVWP will conduct an Alternatives analysis (Exhibit 9) in the Application.*

Comment: Policy 44- Preserve and protect tidal and freshwater wetlands and preserve the benefits derived from these areas. CVWP acknowledges that tidal or freshwater wetlands may be affected but has offered no further studies or mitigation plan. This is another of the many Coastal Waterway studies that need to be completed.

RESPONSE: *CVWP will conduct Coastal Zone Consistency analysis and provide such findings within the Application.*

Comment: Section 2.4.2 Land uses, including but not limited to, residential, schools, civic facilities, agricultural, commercial, coastal areas, scenic resources, recreational and

public lands within one mile of the Project facilities will be identified. The response in this question has failed to analyze impacts on persons with special medical needs, including those with defibrillators, pacemakers or other electronic devices that could be affected by EMF. Also, there is no analysis suggestion of how the development might affect persons who are sensitive to a change in their environment such as those with autism and epilepsy. This is particularly true in areas adjacent to the Town of Lyme which, in some cases, towers are closer than 1,250 feet to the Town line and residents in the Town of Lyme may be affected by things such as shadow/flicker. Research needs to be completed on identifying and addressing how those impacts will be minimized.

RESPONSE: CVWP will take this comment from the Town under advisement.

Comment: Section 2.5 – “National Grid completed facilities studies for the previous 210 and 130 MW projects in 2008 (“2008 F’S”) and is currently re-evaluating the Transmission Owner Attachment Facilities (“TOAF”) and System Upgrade Facilities (SUFs) for the combined project.” CVWP should pay for any system upgrades or CVWP and National Grid need a mitigation plan to prevent the cost of these upgrade from being passed on to NYS customers. Same comment applies to Section 2.5.3.

RESPONSE: The two predecessor projects were studied as part of the 2007 and 2008 Class Years and were assigned upgrade costs. These costs will be incurred by CVWP, not New York State.

Comment: Section 2.9.1 “Ability to inject power into the New York State grid without overly costly grid upgrades.” The cost of the grid upgrades have not been identified (see section 2.5). No cost analysis of the upgrades referenced in Section 2.5.3 has

been completed. These studies need to be complete and their impact on NYS rate payers assessed.

RESPONSE: *The two predecessor projects were studied as part of the 2007 and 2008 Class Years and were assigned upgrade costs. These costs will be incurred by CVWP, not New York State.*

Comment: Section 2.9.2 "Project will result in some stream crossings and some unavoidable wetland areas that are crossed by roads and/or collections lines. It is impractical to eliminate all impacts to wetlands and further efforts to avoid wetlands beyond the current proposed Project would likely result in longer access roads and trenching for electrical interconnects, thereby increasing land disturbance impacts." Studies should be conducted to review alternatives to impacting sensitive areas. Studies should be conducted for alternatives to impacting sensitive areas in the purposed Generator Interconnect lines routes.

RESPONSE: *CVWP is currently delineating wetlands and surface waters associated with the project's limits of disturbance. CVWP will include wetlands in the list of criteria they will use in evaluating changes to the proposed layout to avoid or minimize impacts to sensitive resources resulting from construction of the Project.*

Comment: Section 2.9.2 "The installation of overhead lines, as proposed, will reduce impacts to soil and water resources but will increase visual impact during operation. To minimize adverse visual impact, most overhead lines will be carried on single metal poles or equivalent structure." It is believed that the poles being proposed will be much higher than existing power lines. Since these poles being proposed will be located in very important scenic vistas within the Town, including the Seaway

Trail and the Golden Crescent, it is important to minimize or eliminate visual impacts. It is for these reasons the Town of Lyme Law requires that the lines be underground. If lines are going to be proposed to be overhead, even in part, they should not be allowed to be overhead in those areas closest to the waterfront: areas where the scenic vistas are most important. A visual impact study should be conducted based upon actual towers proposed to be used and actual tower locations.

RESPONSE: *The existing H-frame structures currently located in the Town of Lyme entering the Lyme Substation are as high as 85ft above grade, comparable to the current monopole structures proposed for the generator interconnection line, which are 70' to 95' in total height. A visual study will be conducted on the generator interconnection line, although it is not anticipated that the study will extend from the generator interconnection line out as far as the locations raised by the Town.*

Comment: Section 2.9.2 "CVWP studied the feasibility of using a buried line. For a project of this size, this would require the interconnection cable to not simply be buried, but to be encased in concrete. The result would remove the transmission line from view, but would require high construction costs that would contribute to making the project uneconomic.

RESPONSE: *The Application will contain an Alternatives analysis (Exhibit 9) allowing for a comparison of various potential design solutions for the Project.*

Comment: In addition, underground placement would generally require greater disturbance to wetland features which are located along the various routes identified." CVWP has indicated that some unavoidable wetland areas would be impacted with overhead lines. However they have not identified studies that

have been, or will need to be, conducted to assess which option (buried or overhead) has the least impact on sensitive areas. In addition a cost analysis, maintenance cost, environmental, and health assessment of the two options, needs to be conducted. Any study should pay particular attention to the most sensitive areas such as population centers and recreation areas which are adjacent or close to the water.

RESPONSE: *An analysis will be undertaken to estimate the cost for an underground generator interconnection line per mile compared to the cost of using an overhead installation. An underground installation would need to be encased in concrete, which increases the construction time and expense of installation. Additionally, the underground cable is a different type of cable compared to an overhead system, which further increases the expense of an underground approach.*

Comment: Section 2.15.5 Other Material Issues Raised by the Public and Affected Agencies. CVWP response to public question. "Pacemaker users or others with magnetic implants should not exceed 5 Gauss at any time. In 2004 a team measured magnetic fields at the base of a wind turbine at the Windrush wind farm. They measured 0.0004 Gauss (Windrush, 2004)." This is an extremely old study. There should be research conducted to validate that the Windrush study is still the most up-to-date and valid study. It should also include the effects of all the newer electronic devices that have come into use in recent years and are used to assist handicapped person as well as those with special medical needs.

RESPONSE: *CVWP will take this comment under advisement as it develops Exhibit 35 for the Application.*

Comment: Section 2.20 Cultural Resources – Exhibit 20 describes the efforts to date to identify and assess any impacts to Historic and Cultural Resources. The studies have identified areas of significance in the Town of Lyme. They also raise the issue of view shed impacts on these historic spaces by ultra-modern kinetic wind generation equipment. The studies need to be expanded to include turbine and transmission line changes contemplated by the current applicant and the current project layout. The level of intensity of this work should be appropriate to evaluate impacts of both overhead and buried transmission facilities.

RESPONSE: CVWP will take this comment under advisement as it develops Exhibit 20 for the Application.

Comment: Section 2.22 Terrestrial Ecology and Wetlands – Exhibit 22 This entire section suggests post construction monitoring in many instances. Studies of existing Wind Farms should be completed prior to Certification to put in place proper mitigation plans.

RESPONSE: Consistent with the requirements of Article 11 of the NYS Environmental Conservation Law ("Article 11"), the Project's mitigation plan will be developed based on the best scientific information available from other studies, including those at existing wind farms. Among other things, post-construction monitoring is conducted at wind energy facilities to provide on-site verification that avoidance and minimization (and mitigation, where appropriate) measures are having the expected results. Monitoring also provides the basis for triggering adaptive management changes, as appropriate (i.e., changes can be made if unforeseen site-specific impacts are detected). For post-construction monitoring studies applicable to the proposed

Project, they would be conducted in accordance with the NYSDEC and USFWS guidelines and results of future coordination with the NYSDEC and USFWS would be conducted in regards to monitoring needs specific to rare, threatened, and endangered (RTE) species that may be impacted by the Project.

Comment: Section 2.24 Visual – Exhibit 24 The Visual Resource Assessment (VRA) studies are not complete. All studies and suggested studies should be completed and existing studies updated prior to Certification.

RESPONSE: CVWP will provide a complete VRA study and ensure it is submitted with the Application.

Comment: Section 2.35.1 – Potentially Significant Adverse Impacts “Significant exposure to high strength EMF has not been consistently shown to have negative health consequences. Due to a lack of credible evidence proving any impact from significant exposure to high strength EMF, as discussed in the NYSPSC Policy referenced above, generator interconnection lines are not considered to be hazardous to public health.” The Town of Lyme remains concerned and requests that any response on this issue be based on the most updated information worldwide.

RESPONSE: CVWP will ensure the Application contains a discussion regarding EMF (contained with Exhibit 35).

Comment: Section 3: Transmission Line The VRA studies are not complete. All studies and suggested studies should be completed and existing studies updated prior to Certification. All studies should be based on actual proposed materials for the project.

RESPONSE: CVWP will provide a complete VRA study and ensure it is submitted with the Application.

Comment: General Comments:

The proposed Generator Interconnect line parallels the DANC waterline in several areas. This is the source of water for several communities from Cape Vincent to Glen Park. A study should be undertaken to examine the potential impact of accidental damage during construction and any post construction maintenance issues.

RESPONSE: *The overhead generator interconnection line poles will be located a safe distance from the DANC water line and the underground collection line will be located sufficiently below the buried water line. Building off of the April 10, 2013 consultation held with DANC, CVWP will continue to consult with DANC regarding design.*

Comment: Exhibit A base map is out dated.

RESPONSE: *The USGS 1:24000 scale topographic maps were used to provide a uniform, general purpose map background for the project introduction. The same standards used to collect data for the 1:240000 USGS topographic maps were not used in creation of the US Topo maps (circa 2012). The data used for the US Topo maps has varying scale. In addition, the US Topo maps, with the aerial photography turned off, do not show any detail except contours. Although the intent is to add to the US Topo maps, certain features are not currently shown. For example, land cover and structures are omitted. For these reasons, the older USGS topographic maps were used in the PSS. As requested, the US Topo map background, with the aerial photography turned on in order to show more detail was used to revise the Location of Facilities Map (see Appendix A) and will be used in the Application, where applicable. Please note that the use of the US Topo map background will increase the file size of the maps*

significantly, potentially exceeding the thresholds outlined in the Guidelines for Filing Documents with the Secretary.

Comment: Based, however, on Exhibit A, it would appear that there are certain towers that are within 1,250 feet of Town of Lyme boundaries. Based on the Town of Lyme laws, these towers may be too close and an analyses needs to be done on this on how those towers will affect properties in the Town of Lyme. These specific towers being cited are towers numbered and we will get the numbers.

RESPONSE: Under New York State Law, the Town of Lyme's local laws regarding wind generating facilities do not extend beyond its municipal boundaries into an adjacent municipality. CVWP anticipates, however, entering into discussions with the Town of Lyme regarding impacts associated with turbines located in close proximity to the Town of Lyme.

d. All unfinished, suggested, and planned studies need to be completed prior to Certification.

e. The Town of Lyme wishes to have its own expert evaluate these studies.

CASE NO: 12-F-0410

**RESPONSES TO LYME CENTRAL SCHOOL DISTRICT COMMENTS ON THE
PRELIMINARY SCOPING STATEMENT**

COMMENT: To date, the Lyme Central School District has not consented to any type of PILOT Agreement for your proposed project or any other wind project. The Lyme Central School District is willing to meet with BP and the other affected taxing jurisdictions to discuss terms and conditions of a potential PILOT Agreement. We note that no effort has been made on the part of BP to engage in such negotiations to date.

Should Board President desire to enter into PILOT negotiations with the District and other taxing jurisdictions, the District is amenable to doing so as part of the stipulation process. Thank you for your courtesies.

RESPONSE: *CVWP appreciates the comment of the Lyme Central School District and would appreciate the opportunity to begin discussions with the District during the stipulations process.*

CASE NO: 12-F-0410

RESPONSES TO DEVELOPMENT AUTHORITY OF THE NORTH COUNTRY (DANC) COMMENTS ON THE PRELIMINARY SCOPING STATEMENT

DANC's first comment is that the PSS does not give sufficient detail as to the location, construction, and operation of the Project's proposed facilities relative to DANC's Waterline and operations. Exhibit A's large scale makes it difficult for DANC staff to know the relative locations of the proposed Project Facilities to DANC's facilities and operations. This lack of specificity limits DANC's ability to offer comprehensive details as to the rest of the PSS and as to how the proposed Project may or may not relate to DANC's Waterline and operations. The Final Application should provide greater clarification of the location, nature of the facilities, the location of and proposed uses of temporary construction easements and permanent access easements, and a detailed study of the potential adverse impacts of the Applicant's proposed Facilities and temporary and permanent easements, their construction and operation on DANC's facilities and operation of the Waterline. Data showing the exact location of the facilities should be provided to DANC in a format that will allow DANC's engineers to assess potential interferences and impacts.

RESPONSE: The Application will include a comprehensive analysis of the entire Project that complies with the requirements of Article 10. CVWP will provide DANC with the requested information this month. Building off of the April 10, 2013 consultation held with DANC, CVWP will continue to consult with DANC regarding design.

There are three major Project components that need more detailed study and analysis to insure the Project will not adversely impact the Waterline and its operations.

1. The proposed Electrical Collection System is underground and buried at a depth of three feet according to the PSS. DANC's staff has major concerns for its workers' safety and potential adverse physical impacts to its Waterline with this minimum separation and lack of construction details. The collection system appears to potentially cross the Waterline in two locations. One location is near Burnt Rock Road near tax parcels 50.00-1 -25 and 50.07-1-19, and the other is near Favret Road near to Tax Parcel No. 49.00-1-15.1. At a minimum the final application should have a full scale Basis of Design Report for the Electrical Collection System by a competent engineer, which should be developed in close consultation and collaboration with DANC's engineering department in regard to any crossings of the Waterline by this Project component.

Furthermore, the Basis of Design Report should include an analysis of the potential need of cathodic protection of DANC's facilities.

RESPONSE: CVWP will continue to consult with DANC regarding design. As part of these consultations with the DANC, the need for an analysis of cathodic protection will be discussed.

DANC would also note that it appears that the proposed Electrical Collection System crosses Town of Cape Vincent Water Districts Nos. 1 and 2 water mains in at least eight instances. It is unknown to DANC whether there are similar crossings of Town of Cape Vincent sewer lines. The final Basis of Design Report should be prepared with close consultation and collaboration with the Town of Cape Vincent's engineers and water department in regards to those crossings.

RESPONSE: CVWP will take DANC's comment under advisement.

2. Another major area of concern is the proposed Generator Interconnect Line and its potential impacts on the Waterline. The PSS shows at least one crossing of the Waterline with the Generator Interconnect Line. In addition, it is impossible to discern from the PSS if it is proposed to be on the same right-of-way as the Waterline or is immediately adjacent thereto from approximately tax parcel nos. 51.00-1-32 to 51.00-1-23.2. The PSS is deficient in that it fails to address the level of study or methodology to study the potential impacts this Project component may have on the Waterline and its operation. Again, the Final Application should have a detailed Basis of Design Report completed in close consultation and collaboration with DANC staff which addresses those potential impacts. That report should thoroughly analyze both the horizontal and vertical separations between DANC's facilities and the Generator Interconnect Line to ensure protection of DANC's Waterline facilities and persons working on and maintaining these facilities.

RESPONSE: *The Application will include a comprehensive analysis of the entire Project that complies with the requirements of Article 10. Building off of the April 10, 2013 consultation held with DANC, CVWP will continue to consult with DANC regarding design.*

At times DANC may be required to utilize heavy equipment to excavate and repair breaks in the line, this would pose a hazard to employees if the separation distance for overhead lines is not set taking this into account. The Basis of Design Report should also analyze whether cathodic protection is advisable and if so, what the methods and equipment should be used.

RESPONSE: CVWP will continue to consult with DANC regarding design. As part of these consultations with the DANC, the need for an analysis of cathodic protection will be discussed.

In addition, there needs to be an analysis of the proposed alternative routes to ensure the best alternative is chosen. This analysis should be to the level of detail no less than that which would be required under Article 7 of the Public Service Law.

RESPONSE: CVWP will take DANC's comment under advisement.

It should be noted that several of the proposed alternatives appear to involve crossing of waterlines (and possibly sewer lines) in the Town of Lyme, and the Applicant should similarly confer with the Town of Lyme in preparing its analysis of the alternatives and the Basis of Design Report.

RESPONSE: CVWP will take DANC's comment under advisement.

3. The third major project component of concern is the location of the Wind Turbines in close proximity to the Waterline. Again, after close consultation and collaboration with DANC Engineering Department, the Final Application should have sufficient analysis and study of the potential adverse impacts to the Waterline in the event of a catastrophic failure of a Wind Turbine or Tower.

RESPONSE: The Application will include a comprehensive analysis of the entire Project that complies with the requirements of Article 10. CVWP will continue to consult with DANC regarding design and potential adverse impacts to the Waterline.

In addition, to the comments on the three major components the Final Application should also address the potential impacts during both the construction and operation phases. This should include locating all access areas for all Project Components for persons, vehicles and equipment and a detailed analysis of the potential impacts on DANC's facilities. This analysis should be prepared in close consultation and collaboration with DANC staff.

RESPONSE: The transportation section of the Application will address vehicle construction traffic based on Road use.

This close consultation should also occur in the development of Blasting and Construction Plans by the Applicant for those areas which could potentially impact DANC's waterline.

RESPONSE: A blasting plan will be created for the Project and CVWP will consult with DANC regarding elements of that plan that could impact DANC facilities, if any.

CASE NO: 12-F-0410

RESPONSES TO SAVE THE RIVER COMMENTS ON THE PRELIMINARY SCOPING STATEMENT

COMMENT: In general we agree wholeheartedly with the NYS DEC assessment set out on page 2 of their comments that the PSS, “. . . although replete with redundancies, *is also lacking in reasonably available and necessary information, while containing a host of items needing further clarification.*” *emphasis added.* It is also apparent to us that, “. . . the PSS, is for the most part, very general in nature, lacking specificity of important local elements to this particular project, and devoid of ‘as much information as is reasonably available concerning the proposed facility’. Many of the Applicant’s responses to comments and questions raised during consultations remain *unanswered, or simply state that they will be addressed in the application.*” *emphasis added.*

RESPONSE: CVWP addressed this comment in response to NYSDEC’s comments. (please see response to NYSDEC comments in Section 2, page 1).

COMMENT: In our view it would be entirely appropriate for the DPS to stop here and declare the PSS as submitted inadequate and demand it be resubmitted when it complies with the requirements of 16 NYCRR section 1000.5. However, given that Save The River has consistently focused on the potential threat to birds and bats in the St. Lawrence River region by large scale, industrial wind development, we will offer additional specific comments to the CVWP’s attempts to deal with those concerns in this PSS.

Again, we believe it is appropriate to quote an oft-repeated observation made by the NYS DEC on sections throughout the PSS that,

“1. The Article 10 Application should take into account that the previous studies . . . , were for two separate projects *and were designed to assess the potential impacts of each separately and with markedly smaller turbines and layouts.* . . . 2. DEC recommends that the Applicant design and conduct new studies . . . *in order to more accurately assess the potential impacts the new CVWF Project may have based on the use of larger*

turbines. . . 3. DEC recommends including information from studies that have been and are being conducted at the nearby Canadian wind power project on Wolfe Island . . . to assess the potential cumulative effect on avian and bat resources, . . .” emphasis added.

This is critical due to the fact that the overall rotor sweep area for the Project is potentially 30% greater than what had been proposed previously and which was the basis of the studies cited in the PSS.

RESPONSE: CVWP addressed this comment in response to NYSDEC’s comments. (please see response to NYSDEC comment in Section 2, page 10).

COMMENT: Following is information from the PSS which highlights the significance of the potential harmful impacts to birds and bats that have been repeatedly brought to CVWP’s attention and the cursory manner in which CVWP has dealt with its responsibility as the Project proponent to do adequate and meaningful studies to understand and mitigate those impacts:

From the PSS, CVWP’s assessment of the bird and bat species in the Project area:

- The Project is located in the Atlantic Flyway migratory bird route and the habitats within the Project provide stop-over points for migratory species as well as breeding habitat for several species. page 7
- 44 species of birds have been documented in spring and 34 in fall. page 7
- The St. Lawrence Valley, in which the Project is located, contains grassland bird habitat, and has been designated as a management unit for waterfowl and grassland birds by both the U.S. Fish and Wildlife Service (“USFWS”) and the New York State Department of Environmental Conservation (“NYSDEC”). page 8
- Grassland bird species of concern in the valley include northern harrier, short-eared owl, upland sandpiper, Henslow’s sparrow, grasshopper sparrow, vesper sparrow and sedge wren. page 8
- Within the Project area, 94 species of breeding birds and 21 species of over

wintering birds have been documented during previous breeding bird and wintering bird surveys. page 8

- Two Wildlife Management Areas, Ashland Flats and French Creek, and two Wildlife Concentration Areas, the Fox Island-Grenadier Island Shoals and the Wilson Bay Marsh, are located near the Project area. These wildlife concentration areas incorporate all, or portions of, two fish and wildlife coastal habitats protected by the New York State Department of State (“NYSDOS”). page 8
- The National Audubon Society has identified one Important Bird Area (“IBA”) near the Project area. page 8
- Eight species of bats have been documented during previous mist net surveys in the Project area. In addition, the eastern small-footed myotis (*Myotis leibii*), a state species of special concern, has been documented within 25 miles of the Project. page 8
- The Indiana bat is a State-and Federally-listed endangered species. A documented hibernaculum containing Indiana bats is located approximately 17 miles southeast of the Project. Indiana bat spring/summer roosts have been documented within the Project area. page 8

Summarized in Table 1.3-1 of the PSS are:

State and Federal Listed Species Documented in Project Area

<u>Common Name</u>	<u>Scientific Name</u>	<u>Status</u>
Indiana Bat	<i>Myotis sodalis</i>	Federal & NY Endangered
Short-eared Owl	<i>Asio flammeus</i>	NY Endangered
Bald Eagle	<i>Haliaeetus leucocephalus</i>	BGEPA, NY Threatened
Northern Harrier	<i>Circus cyaneus</i>	NY Threatened
Henslow’s Sparrow	<i>Ammodramus henslowii</i>	NY Threatened
Sedge Wren	<i>Cistothorus platensis</i>	NY Threatened
Upland Sandpiper	<i>Bartramia longicauda</i>	NY Threatened

What does CVWB believe is likely to happen to these threatened and endangered species, and, of course, those species not currently threatened that travel the same flyway?

Wind energy facilities such as the Project may result in direct and indirect impacts to birds and bats.

Direct impacts of wind energy facilities refer to **fatalities** resulting from flying birds and bats being killed by collisions with wind turbine rotors or towers, Project meteorological towers or other means such as **barotrauma**, **electrocution** or **vehicle collision**. Indirect impacts of wind energy development refer to **disruptions of foraging behavior, breeding activities, and migratory patterns** resulting from presence of the Project facilities in landscapes used by birds and bats.

The most likely direct impact to birds and bats from wind energy facilities is **mortality** or **injury due to collisions** with turbines, which may occur with residents foraging and flying within the project area or with migrants seasonally moving through the project area. page 104

Despite this CVWP, believes it has done enough.

Based on extensive avian and bat studies completed within the Project area to date, additional studies for this group **are not proposed**. Potential avian mortality due to operation of the Project will be estimated using fatality rates derived from post-construction mortality monitoring studies conducted at operational wind energy facilities located in New York and the northeast U.S. page 111

Given all of this, what will CVWP offer in its Article 10 application to mitigate or, preferably, eliminate these threats?

The proposed Project will continue to be designed to reduce impacts to birds and bats. page 113

But we can all rest assured because:

CVWP will conduct **post-construction** fatality monitoring studies to determine the direct impact of operating wind turbines on birds and bats and confirm the estimated impacts of the Project.

Indirect impacts to grassland bird populations using portions of the Project may result from Project construction and/or operation. CVWP will conduct **post-construction** fatality monitoring studies to determine the direct impact of operating wind turbines on grassland birds as well as studies designed to estimate the indirect impact of operating wind turbines on grassland birds.

Concern for nesting bald eagles, has been expressed by state and federal agencies. CVWP conducted pre-construction bald eagle nest surveys and avian use studies. No bald eagle nests are within the Project area and use by bald eagles of the Project area was low. CVWP will conduct **post-construction** fatality monitoring studies to determine the direct impact, if any, of operating wind turbines on bald eagles. page 105

The CVWP will fund an operational (**post-construction**) monitoring program to estimate direct and indirect impacts of the wind farm on birds and bats. The objectives of the studies are to:

- **Estimate** direct impacts of the operating Project in terms of mortality rates of birds and bats caused by collisions with wind turbines.
- **Estimate** the potential avoidance or displacement effects of the Project on grassland birds.

The specific operational monitoring plan will be developed in consultation with the NYSDEC and USFWS and will meet the framework of the NYSDEC Guidelines (2009) and Tier 4 of USFWS Wind Energy Guidelines (USFWS 2012). At a minimum, the

monitoring plan will consist of the following components:

- Fatality monitoring studies including standardized carcass searches, carcass removal and searcher efficiency trials, and calculation of adjusted per turbine and per megawatt estimates of bird and bat fatality rates; and
- Grassland bird displacement surveys. page 111

Finally,

Under the no action alternative, the wind power turbines and associated infrastructure would not be constructed within this portion of the Town of Cape Vincent. Failure to construct this Project would avoid the impacts directly associated with the construction and operation of the Project but would not result in the environmental and economic development benefits and objectives of the Project to deliver renewable, clean energy. In its place, **New York State would fall short of its goal to increase renewable energy as part of its overall energy portfolio** while decreasing the State's dependence on fossil fuels, such as coal and natural gas. Additionally, the state would not reap the economic development benefits associated with the Project. Therefore, the no action alternative is not an effective alternative to this Project and is excluded from further analysis.

Save The River cannot accept the premise that this Project is so critical to reaching the State's renewable energy goals that there is an acceptable level of bird and bat deaths and disruption to the Atlantic Flyway which can be tolerated. However, it is not surprising CVWP was able to reach this conclusion given it is based on an analysis of data collected for two separate, different and smaller projects, not the Project proposed.

RESPONSE: CVWP addressed this comment in response to NYSDEC's comments. (Please see response to NYSDEC comment in Section 2, page 10).

Instead Save The River believes that the people of Cape Vincent, the River region and New York

State deserve and should demand new, comprehensive, cumulative studies of potential bird and bat mortality in order to better determine the true nature of the potential threat to this critical flyway. If the DPS demands CVWP undertake such studies it is likely a different conclusion will be reached in the “No Action” section of the resulting PSS.

CASE NO: 12-F-0410
INDIVIDUAL RESPONSES TO PUBLIC COMMENTS ON THE PRELIMINARY
SCOPING STATEMENT

Commenter: Frank J Giaquinto

Response: Cape Vincent Wind Power appreciates receiving your comments submitted on the PSS and looks forward to continuing to engage with you and all the wind farm's stakeholders to certify a project that will provide an economic stimulus to the region, local landowners, and the residents of the greater Cape Vincent community and further New York's renewable energy goals.

Commenter: Rick Lawrence

Response: Cape Vincent Wind Power appreciates receiving your comments submitted on the PSS and looks forward to continuing to engage with you and all the wind farm's stakeholders to certify a project that will provide an economic stimulus to the region, local landowners, and the residents of the greater Cape Vincent community and further New York's renewable energy goals.

Commenter: Tina Rocker

Response: Cape Vincent Wind Power appreciates receiving your comments submitted on the PSS and looks forward to continuing to engage with you and all the wind farm's stakeholders to certify a project that will provide an economic stimulus to the region, local landowners, and the residents of the greater Cape Vincent community and further New York's renewable energy goals.

Commenter: Kathy Rocker

Response: Cape Vincent Wind Power appreciates receiving your comments submitted on the PSS and looks forward to continuing to engage with you and all the wind farm's stakeholders to certify a project that will provide an economic stimulus to the region, local landowners, and the residents of the greater Cape Vincent community and further New York's renewable energy goals.

Commenter: David Gmeiner

Response: Cape Vincent Wind Power appreciates receiving your comments submitted on the PSS and looks forward to continuing to engage with you and all the wind farm's stakeholders to certify a project that will provide an economic stimulus to the region, local landowners, and the residents of the greater Cape Vincent community and further New York's renewable energy goals.

Commenter: Thomas K. Rienbeck

Response: Cape Vincent Wind Power appreciates receiving your comments submitted on the PSS and looks forward to continuing to engage with you and all the wind farm's stakeholders to certify a project that will provide an economic stimulus to the region, local landowners, and the residents of the greater Cape Vincent community and further New York's renewable energy goals.

Commenter: Joe Giaquinto

Response: Cape Vincent Wind Power appreciates receiving your comments submitted on the PSS and looks forward to continuing to engage with you and all the wind farm's stakeholders to certify a project that will provide an economic stimulus to the region, local landowners, and the residents of the greater Cape Vincent community and further New York's renewable energy goals.

Commenter: LTC Michael T Oeschger

Response: Cape Vincent Wind Power appreciates receiving your comments submitted on the PSS regarding the New York state Article 10 permitting process governing the siting of electric generating facilities in excess of 25 megawatts.

Commenter: Susan & Charles Peters

Response: Cape Vincent Wind Power appreciates receiving your comments submitted on the PSS regarding the New York state Article 10 permitting process governing the siting of electric generating facilities in excess of 25 megawatts.

Commenter: Barrie Gilbert

Cape Vincent Wind Power appreciates receiving your comments submitted on the PSS regarding the New York state Article 10 permitting process governing the siting of electric generating facilities in excess of 25 megawatts.

Commenter: Gary F. Brown

Response: Cape Vincent Wind Power (CVWP) appreciates receiving your comments submitted on the PSS regarding the New York state Article 10 permitting process governing the siting of electric generating facilities in excess of 25 megawatts.

With respect to the comment regarding additional property value studies and a decommissioning plan:

The U.S. Department of Energy study found that “proximity to wind energy facilities does not have a pervasive or widespread adverse effect on the property values of nearby homes.” This study covered 24 wind projects, across 9 states, covering almost 7,500 single family homes, and required three years to collect all the data. This issue has already been thoroughly examined and does not need to be revisited.

CVWP will submit a decommissioning plan for approval by the Siting Board.

Commenter: James Hill

Response: Cape Vincent Wind Power (CVWP) appreciates receiving your comments submitted on the PSS regarding the New York state Article 10 permitting

process governing the siting of electric generating facilities in excess of 25 megawatts.

With respect to the comments regarding land characterization, decommission plan, cumulative effect of wind turbines on communication of Fort Drum and the use of outdated maps:

CVWP will submit a decommissioning plan for approval by the Siting Board.

The USGS 1:24000 scale topographic maps were used to provide a uniform, general purpose map background for the project introduction. The maps, which have a scale, show turbines and project facilities in relationship to the property lines. Additional information, such as residences, will be provided in the Application. As requested, the US Topo map background, with the aerial photography turned on in order to show more detail, will be used for develop a new map which should be available shortly on our project webpage at www.capevincentwindfarm.com

CVWP will conduct an evaluation of potentially significant adverse impacts on wildlife, telecommunications, and many other topics will be covers as part of its Application to the Article 10 Siting Board.

Commenter: Sheila Daunt Escandon

Response: Cape Vincent Wind Power (CVWP) appreciates receiving your comments submitted on the PSS regarding the New York state Article 10 permitting process governing the siting of electric generating facilities in excess of 25 megawatts.

With respect to the comments regarding a request for additional property value studies, effect of turbines on bees, and a decommissioning plan:

The U.S. Department of Energy study found that “proximity to wind energy facilities does not have a pervasive or widespread adverse effect on the property values of nearby homes.” This study covered 24 wind projects, across 9 states, covering

almost 7,500 single family homes, and required three years to collect all the data. This issue has already been thoroughly examined and does not need to be revisited.

CVWP will conduct a comprehensive assessment of potentially significant environmental impacts associated with the Project. There is no indication that turbines have an impact on bees, however, and therefore this species will not be evaluated further in the Article 10 evaluation process.

CVWP will submit a decommissioning plan for approval by the Siting Board.