STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on February 12, 2026

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
James S. Alesi
David J. Valesky
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan
Radina R. Valova

CASE 24-M-0433 - In the Matter of the Rules and Regulations for the Environmental Review, Permitting, and Siting in this State of Major Renewable Energy Facilities and Major Electric Transmission Facilities Under the Renewable Action Through Project Interconnection and Deployment Act.

MEMORANDUM AND RESOLUTION
APPROVING ADOPTION OF PUBLIC SERVICE LAW
ARTICLE VIII REGULATIONS

(Issued and Effective February 12, 2026)

BY THE COMMISSION:

INTRODUCTION AND BACKGROUND

For many years, New York State has exercised regulatory oversight over the deployment of new renewable electric generation resources and transmission facility upgrades to deliver electricity to customers. Efforts to meet the targets of the Climate Leadership and Community Protection Act (or CLCPA) will require the deployment of new renewable generation and transmission upgrades to deliver that electricity to areas of customer demand. To accelerate the permitting of electric transmission and renewable generation, the Governor

signed into law the Renewable Action through Project Interconnection and Deployment, or RAPID, Act. The legislation amended provisions of the Public Service Law (PSL), including the enactment of a new PSL Article VIII. The RAPID Act consolidates review, siting, and permitting of major renewable energy facilities and major electric transmission facilities at the Office of Renewable Energy Siting and Electric Transmission, or the Office, within the New York State Department of Public Service. It authorizes the Office to approve, condition, or deny permits for renewable energy generation or electric transmission projects. The RAPID Act also authorizes the Office to adopt – subject to Public Service Commission approval – rules and regulations to effectuate PSL Article VIII.

Currently, two regulatory frameworks control the siting of new major renewable energy generation facilities and major electric transmission facilities.

Generation: Major renewable energy generation facilities are reviewed and sited pursuant to PSL Article VIII and the existing 16 NYCRR Part 1100. Formerly, the Office Renewable Energy Siting (ORES, as part of the Department of State) conducted siting review of renewable energy generation facilities pursuant to the 2020 Accelerated Renewable Energy Growth and Community Benefit Act and Executive Law §94-c.[1] On March 3, 2021, ORES promulgated 19 NYCRR Part 900, the regulations implementing Executive Law §94-c. On April 20, 2024, the RAPID Act transferred ORES to the Department of Public

[1] L. 2020, Ch. 58, Part JJJ (April 3, 2020). Prior to the enactment of Executive Law §94-c, the New York State Board on Electric Generation Siting and the Environment reviewed and sited major electric generating facilities (including renewable energy facilities) pursuant to PSL Article 10 and its implementing regulations at 16 NYCRR Part 1000, which became effective July 17, 2012. See generally PSL §§160-173.

Service and repealed Executive Law §94-c. ORES became part of the Department of Public Service and merged with the Department's Office of Environmental Certification and Compliance to form the Office of Renewable Energy Siting and Electric Transmission. Pursuant to that legislation, ORES's regulations continued in full force and effect and were transferred to 16 NYCRR Part 1100, effective July 17, 2024.

Transmission: Since 1970, major electric transmission facilities have been subject to PSL Article VII and its implementing regulations at 16 NYCRR Parts 85 through 88. Under Article VII, the Commission reviews and sites major electric transmission facilities.

As noted, the RAPID Act and the new PSL Article VIII combined review of renewable energy and electric transmission facilities within the Office. Pursuant to its statutory authorization, the Office has developed a final body of proposed regulations governing the review and permitting of major renewable energy facilities and major electric transmission facilities. These regulations are the culmination of nearly two years of development, consisting of consultation with the Commission and other state agencies, environmental review pursuant to the State Environmental Quality Review Act (SEQRA), and two rounds of public comments. The Commission has reviewed the public comments and the proposed regulations to further PSL Article VIII. The Commission approves the Office's adoption of the new 16 NYCRR Parts 1100, 1101, and 1102 to fulfill the RAPID Act's statutory objective.

LEGAL AUTHORITY

In 2024, the New York State Legislature approved and the Governor signed the RAPID Act.[2] Among other things, the RAPID Act authorizes the Office to "adopt, subject to the approval of the Public Service Commission such rules, regulations and procedures as may be necessary, or any amendments or modifications thereto, convenient, or desirable to effectuate the purposes of this section and article VIII of this chapter."[3] Subject to the approval of the Commission, the RAPID Act directs the Office to establish "a uniform set of standards and conditions for the siting, design, construction, and operation" of major renewable energy facilities and major electric transmission facilities.[4] Once the body of regulations becomes effective, the Office "shall accept applications and evaluate, issue, amend, and approve the assignment and/or transfer of siting permits pursuant to article VIII of this chapter."[5] Within the Department of Public Service, the Office exercises its authority through its Executive Director.[6]

In 2019, the Legislature enacted the Climate Leadership and Community Protection Act.[7] CLCPA Section 7(2) directs State agencies to consider, in the context of issuing

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[2] L. 2024, ch. 58, Transportation, Economic Development, Environmental Conservation, Part O (April 20, 2024). Various aspects of the RAPID Act were codified in the Public Service Law at PSL §§3-c, 136-148.

[3] PSL §3-c(2)(c).

[4] PSL §§138(1)(a) (major renewable energy facilities) and 139(1)(a) (major electric transmission facilities). Major electric transmission facilities and major renewable energy facilities are defined at PSL §137(3) and (4), respectively.

[5] PSL §3-c(2)(b).

[6] Id.

[7] L. 2019, Ch. 106 (July 17, 2019). Various provisions of the CLCPA were codified in the Public Service Law at PSL §66-p.

permits, licenses, administrative approvals, and decisions, "whether such decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits" established by DEC under the CLCPA. If such administrative approvals or decisions are found to be inconsistent or to interfere with those limits, agencies "shall provide a detailed statement of justification as to why such limits/criteria may not be met, and identify alternatives or greenhouse gas mitigation measures to be required where such project is located." In addition, CLCPA §7(3) provides that State agencies "not disproportionately burden disadvantaged communities."[8]

NOTICES OF PROPOSED RULEMAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking (NOPR) was published in the State Register on December 18, 2024 [SAPA No. 24-M-0433SP1]. The time for submission of comments pursuant to that SAPA Notice expired March 18, 2025. Subsequently, the comment deadline was extended for an additional month to April 18, 2025. In addition to soliciting written comments, the Office hosted 21 in-person public comment hearings across the State and two virtual hearings. Over 2,000 public comments were received on the initial draft regulations.

Thereafter, pursuant to SAPA §202(1), a revised NOPR was published in the State Register on October 22, 2025 [SAPA No. 24-M-0433SP1] that described the revisions to the initially proposed regulations. The time for submission of comments pursuant to that SAPA Notice expired on December 8, 2025. More than 400 comments were received on the revised rulemaking.

[8] L. 2019, Ch. 106, §7.

SUMMARY OF REGULATIONS

As drafted, the regulations establish the standards and processes relating to the siting, design, construction, and operation of major renewable energy generation facilities and major electric transmission facilities. These standards and processes will be codified in three parts – 16 NYCRR Parts 1100, 1101, and 1102. The proposed regulations will repeal the existing Part 1100.

16 NYCRR Part 1100

The new Part 1100 provides general procedural requirements. It details the procedures for pre-application consultations; notice, service, and publication requirements; application processing, including initial completeness review and amendments to applications; hearing procedures; standards for party status and intervenor funding; compliance filings and environmental management and construction plans (EM&CPs); and permit amendments and transfers. The new Part 1100 is attached here as Appendix A.

16 NYCRR Part 1101

Part 1101 provides the substantive requirements for major renewable energy generation facilities. It details the required pre-application studies, surveys, and consultations applicants for a permit must conduct; the information required in each exhibit for an application; the uniform standards and conditions for permits; and pre- and post-construction compliance filings. Part 1101 is attached here as Appendix B.

16 NYCRR Part 1102

Part 1102 provides the substantive requirements for major electric transmission facilities. It details the required pre-application studies, surveys, and consultations that applicants for a permit must conduct; the information required in each exhibit for an application; the uniform standards and

conditions for permits; and the requirements for EM&CPs and post-construction compliance filings. Part 1102 is attached here as Appendix C.

STATE ENVIRONMENTAL QUALITY REVIEW ACT

On December 18, 2024, in accordance with SEQRA, the Office, as the lead agency, issued a Draft Generic Environmental Impact Statement (DGEIS) that explored the potential environmental impacts associated with promulgating new siting procedures and standards to effectuate the RAPID Act. After evaluating comments, the Office finalized and published a Final Generic Environmental Impact Statement (FGEIS) on October 22, 2025. The FGEIS is available on DMM at Item No. 74.

The Commission, as an involved agency, has reviewed the FGEIS pursuant to SEQRA. The proposed regulations are intended to accelerate construction of the new renewable generation[9] and electric transmission infrastructure necessary to achieve the targets in the CLCPA. We conclude that the regulations provide substantial benefits in furtherance of these goals. Climate change contributes to extreme weather, such as powerful storms, cold snaps, and heat waves. Renewable generation coupled with enhanced transmission facilities will reduce carbon emissions. In turn, reducing carbon emissions will reduce the likelihood of these events, thereby reducing their societal cost. Other benefits of accelerating the State's progress on addressing climate change include reduced air pollution from reduced reliance on fossil fuels, and increased

[9] The environmental benefits and impacts of siting the new renewable generation needed to achieve the CLCPA targets were recently reviewed as part of the promulgation of 19 NYCRR Part 900, now codified at 16 NYCRR Part 1100. Case 24-M-0433, FGEIS (filed October 22, 2025), p. 42.

reliability and resiliency from upgrading ageing transmission to support new renewable generation.[10]

Electric transmission facilities have a potential to impact the environment and the communities in which they are located. Construction involves impacts along a project route, including potential tree clearing, potential disturbance of threatened and endangered species, potential disturbance of archaeological resources, potential wetland and waterbody impacts, and potential noise and visual impacts to surrounding communities. While most impacts are temporary and associated with construction, there can be permanent impacts. These can include the potential for permanent wetland conversion, the take of threatened and endangered species and habitat, ongoing noise impacts from substations, and the permanent aesthetic impacts of the transmission structures themselves.

In addition to the procedures for submitting an application for a permit and for the Office's review of permits, the regulations contain uniform standards and conditions applicable to transmission, including standards and conditions designed to minimize, to the extent practicable, environmental and community impacts arising from a major electric transmission facility. Such uniform standards and conditions can be modified should site-specific conditions warrant. The Commission has 55 years of experience in ensuring that significant adverse environmental impacts related to electric transmission are avoided or minimized to the extent practicable, and that

[10] Case 20-E-0197, Accelerated Renewable Energy Growth and Community Benefit Act Transmission Planning, Order on Phase 1 Local Transmission and Distribution Project Proposals (issued February 11, 2021), pp. 5 and 13 ("Although [certain CLCPA transmission upgrades] may be reprioritized to capture the coincidental CLCPA benefits earlier than might otherwise occur, their primary objective is to meet fundamental reliability, safety and/or other compliance requirements.").

unavoidable impacts are mitigated to the extent practicable.[11] The uniform standards and conditions in Part 1102 mitigate the identified environmental impacts associated with electric transmission. Indeed, they are modelled after the conditions the Commission has applied in the past when issuing Certificates of Environmental Compatibility and Public Need for major electric transmission facilities under PSL Article VII.

After reviewing the DGEIS and FGEIS the Office prepared,[12] the Commission concludes that promulgating the regulations avoids or minimizes adverse environmental impacts to the extent practicable. The Commission hereby adopts the SEQRA Findings Statement, attached here as Appendix D, prepared in accordance with Article 8 of the Environmental Conservation Law and 6 NYCRR Part 617.

CLCPA CONSISTENCY REVIEW

The RAPID Act and 16 NYCRR Parts 1100, 1101, and 1102 are intended to accelerate permitting the major renewable energy facilities and major electric transmission facilities necessary to achieve CLCPA targets. The regulations apply only to major renewable energy facilities and major electric transmission facilities. Because the regulations are designed to further the CLCPA targets and are inapplicable to fossil fuel infrastructure, the Commission finds — pursuant to CLCPA §7(2) — that approving adoption of the regulations is not inconsistent with the CLCPA targets.

The regulations do not themselves permit any major renewable energy facilities or major electric transmission facilities. Instead, the regulations are the procedures for

[11] PSL §126(1)(c) and (d).

[12] These are publicly available on DMM.

review and permitting of such facilities and the standards and conditions accompanying such permits. In and of themselves, the regulations do not disproportionately burden disadvantaged communities with any infrastructure or emissions sources.[13] Importantly, the regulations obligate applicants for permits to detail the impacts to disadvantaged communities arising from their proposed projects and to demonstrate that the projects do not impose a disproportionate burden on those communities.[14] Accordingly, the Commission finds – pursuant to CLCPA §7(3) – that approving adoption of the regulations does not disproportionately burden disadvantaged communities.

DISCUSSION AND ANALYSIS OF PUBLIC COMMENTS

Development of the regulations implementing PSL Article VIII involved robust stakeholder engagement. The Office received comments on both the initial and revised NOPRs and the DGEIS. Commenters included renewable energy and electric transmission developers, municipalities, environmental interest organizations, and landowners and community members in the vicinity of existing, proposed, or potential projects. Additionally, individuals from across the state shared their perspectives and offered recommendations through written comments and statements at the 21 public statement hearings. The Office reviewed and addressed comments received on both the December 18, 2024 initial NOPR and October 22, 2025 revised NOPR. The Office's assessment of public comments on the initial NOPR was publicly filed on DMM with the revised NOPR on October 22, 2025, and the Office's assessment of public comments on the

[13] Importantly, the operation of major renewable electric energy generation facilities are not greenhouse gas emissions sources.

[14] E.g., proposed 16 NYCRR §§1101-2.19 and 1102-2.23.

revised NOPR is attached here as Appendix E and likewise is included in the record of this rulemaking. The Commission has reviewed the Office's assessments of public comments as well as the resulting revisions to the regulations.

The Office determined that most comments on the initial NOPR did not require revisions to the proposed regulations. Nevertheless, various comments provided helpful suggestions to facilitate a streamlined permitting process to accelerate development of renewable generation and electric transmission. Key changes resulting from comments include clarifications of the requirements for consultations with disadvantaged communities and Indigenous Nations; refinement and standardization of application procedures, including the analysis of local laws and the content of exhibits; changes to the uniform standards and conditions, including environmental monitor qualifications and responsibilities, spill prevention and response requirements, and grassland bird mitigation site selection criteria; and refinements to the application and permit amendment process, such as filing timelines and clarifying when proposed amendments are major or minor amendments.

Turning to the revised NOPR, while the Office found that the majority of comments on the revised proposed regulations did not require revisions, some commenters provided suggestions that led to further clarification of the regulations. The clarifications the Office made based on the comments on the revised proposed regulations include: clarified pre-application procedures; clarified alternative route scoping procedures for major electric transmission facilities; clarified procedures for upgrades to major electric transmission facilities located substantially within existing electric transmission rights-of-way; replacement of the term

"environmental justice area" with the term "disadvantaged communities" to be consistent with the CLCPA; and clarified noise standards for both major renewable energy facilities and major electric transmission facilities.

After review of the NOPRs and the Office's assessment of public comments, the Commission finds that the Office addressed the comments concerning the NOPRs – both the initial notice and the revised notice. The Office's revisions based on comments reflect a commitment to the rulemaking process as well as to a streamlined and efficient siting process. The Commission believes the proposed regulations will contribute to accelerated renewable energy facility and electric transmission deployment, and progress towards achievement of the CLCPA targets.

CONCLUSION

The Commission has reviewed the Office's initial and revised NOPRs and associated documents and the final 16 NYCRR Parts 1100, 1101, and 1102. The Commission has reviewed the environmental benefits and impacts associated with promulgation of these regulations to effectuate PSL Article VIII and determined that there are substantial benefits, and that environmental impacts are avoided or mitigated to the extent practicable. The Commission has reviewed the Office's responses to public comments and the changes to the proposed regulations the Office made in response to these comments. Based on our review of the Office's assessments, we conclude that the views of stakeholders have been taken into account in developing the final regulations. The Commission finds that the final regulations prepared by the Office for 16 NYCRR Parts 1100, 1101, and 1102 effectuate PSL Article VIII. Ultimately, the Commission finds that the final 16 NYCRR Parts 1100, 1101, and

1102 represent a streamlined process for the accelerated permitting of major electric transmission facilities and major renewable energy facilities necessary to meet the targets of the CLCPA. Accordingly, consistent with and pursuant to PSL §§3-c(2)(b), 138(1)(a), and 139(1)(a), the Commission approves adoption of 16 NYCRR Parts 1100, 1101, and 1102 and directs the Executive Director of the Office to adopt 16 NYCRR Parts 1100, 1101, and 1102.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary

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CASE 24-M-0433 - In the Matter of the Rules and Regulations for the Environmental Review, Permitting, and Siting in this State of Major Renewable Energy Facilities and Major Electric Transmission Facilities Under the Renewable Action Through Project Interconnection and Deployment Act.

RESOLUTION OF THE COMMISSION

(Issued and Effective February 12, 2026)

STATUTORY AUTHORITY

Public Service Law §§ 3-c(2)(c), 138(1)(a), and 139(1)(a).

RESOLVED:

1. The provisions of §202(1) of the State Administrative Procedure Act and §101-a(2) of the Executive Law have been complied with.

2. The adoption of 16 NYCRR Parts 1100, 1101, and 1102 is approved.

3. The Executive Director of the Office of Renewable Energy Siting and Electric Transmission is directed to adopt the final 16 NYCRR Parts 1100, 1101, and 1102.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary

APPENDIX A

Part 1100

Part 1100 of Title 16 is repealed, and a new Part 1100 is added to read as follows:

Chapter XI, Title 16 of NYCRR Part 1100 General Procedures

Subpart 1100-1. General Provisions.

Section 1100-1.1. Purpose and applicability.

(a) The purpose of this Chapter is to establish procedural and substantive requirements for permits for major renewable energy facilities (as defined in section 1100-1.2(bb) of this Part) and major electric transmission facilities (as defined in section 1100-1.2(az) of this Part) issued by the Office of Renewable Energy Siting and Electric Transmission pursuant to article VIII of the New York State Public Service Law. Except as otherwise provided, the provisions of this Chapter supersede any conflicting provisions of this Title, including the Rules of Procedure of the Public Service Commission (contained in Subchapter A of Chapter I of this Title), that are in force on the effective date of this Chapter.

(b) All applications for a major renewable energy facility siting permit pending before the former Office of Renewable Energy Siting established pursuant to Executive Law former section 94-c on April 20, 2024, are considered and treated as applications pursuant to this Chapter as of the date of filing of such applications.

(c) All permits issued by the former Office of Renewable Energy Siting, established pursuant to Executive Law former section 94-c, and all certificates of environmental compatibility and public need issued by the Public Service Commission pursuant to Public Service Law article VII are considered for all legal purposes to be permits issued by the Office of Renewable Energy Siting and Electric Transmission.

(d) This Chapter shall not apply to the following:

(1) to a major renewable energy facility (as defined in section 1100-1.2(bb) of this Part), or a major electric transmission facility (as defined in section 1100-1.2(az) of this Part), or any portion thereof, over which any Federal agency or department has exclusive siting jurisdiction, or has siting jurisdiction concurrent with that of the State and has exercised such jurisdiction to the exclusion of regulation of such facility by the State. However, nothing herein shall be construed to expand

Federal jurisdiction;

(2) to normal repairs, maintenance, replacements, non-material modifications, and improvements of a major renewable energy facility (as defined in section 1100-1.2(bb) of this Part) or a major electric transmission facility (as defined in section 1100-1.2(az) of this Part), whenever built, which are performed in the ordinary course of business and which do not constitute a violation of any applicable existing permit, including permits issued pursuant to this Chapter;

(3) to a major renewable energy facility (as defined in section 1100-1.2(bb) of this Part) if, on or before the effective date of article VIII of the New York State Public Service Law, an application has been made or granted for a license, permit certificate, consent or approval from any Federal, State or local commission, agency, board or regulatory body, including the submission of a pre-application public involvement program plan under article 10 of the New York State Public Service Law, in which the location of the major renewable energy facility has been designated by the applicant, except where an applicant elects to be subject to this Chapter as authorized by Public Service Law section 162;

(4) to a major electric transmission facility (as defined in section 1100-1.2(az) of this Part) for which an application pursuant to article VII of the New York State Public Service Law and its implementing regulations is submitted on or before the establishment of the uniform standards and conditions required pursuant to Public Service Law article VIII; and

(5) any battery energy storage system not co-located with a major renewable energy facility as defined in section 1100-1.2(bb) of this Part.

Section 1100-1.2. Definitions.

Whenever used in this Chapter, unless otherwise expressly stated, the following terms shall have the meanings indicated below.

(a) *Adjudicatory hearing* means a hearing held pursuant to article VIII of the New York State Public Service Law, this Part or article 3

of the New York State Administrative Procedure Act, where parties may present evidence on issues of fact, and argument on issues of law and fact prior to the executive director (as defined in subdivision (ab) of this section) or their designee rendering a decision on the merits, but shall not include public comment hearings.

(b) *Administrative law judge* or *ALJ* means the designated representative authorized by the executive director (as defined in subdivision (ab) of this section) to conduct hearings pursuant to this Part.

(c) *Amicus* means a person who is not otherwise eligible for party status, but who is allowed to introduce written argument upon one or more specific issues.

(d) *APA* means the New York State Adirondack Park Agency.

(e) *Applicant* means a person (as defined in subdivision (by) of this section) filing appropriate applications and supporting materials for the purpose of obtaining a siting permit from the Office of Renewable Energy Siting and Electric Transmission.

(f) *Argument* means opinions or viewpoints, as distinguished from evidence.

(g) *Article VII certificate* or *certificate* means a certificate of environmental compatibility and public need issued by the Public Service Commission pursuant to article VII of the Public Service Law and this Chapter for an existing in-service major electric transmission facility.

(h) *Certificate of completion* or *COC* shall have the same meaning as set forth in 6 NYCRR Part 375.

(i) *Chief executive officer* means: for a county outside of a city, the executive of a county elected or appointed on a county-wide basis or, if there be none, the chairman of the board of supervisors of legislature; for a city, the mayor; for a village, the mayor; and for a town, the supervisor; or the highest elected or appointed official therein.

(j) *CLCPA targets* means the public policies established in the Climate Leadership and Community Protection Act enacted in chapter 106 of the Laws of 2019, including the requirement that a minimum of 70 percent of the statewide electric generation be produced by

renewable energy systems by 2030, that by the year 2040 the statewide electrical demand system will generate zero emissions and the procurement of at least nine gigawatts of offshore wind electricity generation by 2035, six gigawatts of photovoltaic solar generation by 2025 and to support three gigawatts of statewide energy storage capacity by 2030.

(k) *Coastal area* shall have the same meaning as defined in Executive Law section 911(1).

(l) *Coastal waters* or *coastal waterbody* means lakes Erie and Ontario, the St. Lawrence and Niagara rivers, the Hudson river south of the Federal dam at Troy, the East river, the Harlem river, the Kill von Kull and Arthur Kill, Long Island sound and the Atlantic ocean, and their connecting water bodies, bays, harbors, shallows and marshes.

(m) *Co-located infrastructure* means electric, gas, telecommunication, water, wastewater, sewer, and steam infrastructure and appurtenant facilities and associated equipment, whether above ground, below ground, or submerged that (1) are located within the approved limits of disturbance, and (2) are either owned by a State agency or municipality, or a subdivision thereof, or owned or operated for public utility purposes by a regulated electric, gas, telecommunication, water, wastewater, sewer, or steam service provider. Co-located infrastructure does not include railways, highways, roads, streets, or avenues.

(n) *Commencement of commercial operation* or *commercial operation date* is defined as the date on which the major renewable energy facility (as defined in subdivision (bb) of this section) as a whole first commences generating or transmitting electricity for sale, excluding electricity generated or transmitted during the period of on-site test operations and commissioning of the facility.

(o) *Commence construction* or *commencement of construction* means the beginning of ground disturbance, site preparation, or grading activities related to installation of the facility. Commencement of construction does not include soils or groundwater testing, surveying, and similar pre-construction activities to determine the adequacy of the site for construction and the preparation of filings pursuant to the permit. Commencement of construction also does not include other activities, such as limited staging and limited tree

cutting, which are required to perform such pre-construction activities.

(p) *Community intervenor* means a potential community intervenor (as defined in subdivision (cb) of this section) who has been granted party status pursuant to section 1100-8.3 of this Part.

(q) *Complete application* or *completeness of an application* means an application for a permit that is determined by the Office of Renewable Energy Siting and Electric Transmission, by issuance of a notice of complete application, to be sufficient for the purpose of preparing draft permit conditions, but which may need to be supplemented during the course of review in order to enable the Office of Renewable Energy Siting and Electric Transmission to make the findings and determinations required by law. Applications deemed compliant with section 164 of the New York State Public Service Law by the Chair of the New York State Board on Electric Generation Siting and the Environment shall be considered complete upon filing of a transfer application for a pending PSL article 10 facility (as defined in subdivision (di) of this section) pursuant to this Part.

(r) *Converter station* means a type of substation which converts electricity from direct current to alternating current or the reverse.

(s) *CPLR* means the New York State Civil Practice Law and Rules.

(t) *Delegated permit* means a permit issued by the New York State Department of Environmental Conservation which substitutes for a comparable permit required by Federal law and is recognized by the Federal agency responsible for administering the Federal program.

(u) *Department of Public Service* or *Department* means the New York State Department of Public Service.

(v) *Disadvantaged communities* or *DACs* means areas of New York State identified by the New York Climate Justice Working Group (CJWG) where communities bear burdens of negative public health effects, environmental pollution, and impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households, as identified by the CJWG pursuant to section 75-0111 of the New York State Environmental Conservation Law.

(w) *Disclosure* means the disclosure of facts, documents, or other things that are known by or in the possession of a person and that are material and necessary in the prosecution or defense of the proceeding regardless of the burden of proof.

(x) *Draft permit* means a document prepared by the Office of Renewable Energy Siting and Electric Transmission which contains terms and conditions staff find necessary for a proposed major renewable energy facility (as defined in subdivision (bb) of this section) or a proposed major electric transmission facility (as defined in subdivision (az) of this section) to meet all legal requirements associated with such a permit, but is subject to modification as a result of public comments or an adjudicatory hearing.

(y) *Dormant electric generation site* means a site at which one or more electric generating facilities produced electricity but has permanently ceased operating.

(z) *ECL* means the New York State Environmental Conservation Law.

(aa) *Electronically stored information* or *ESI* means any information that is created, stored, or utilized with computer technology of any type. ESI includes, but is not limited to, word-processing files, audio files, video files, spreadsheets, images, emails, and other electronic messaging information that are stored electronically.

(ab) *Executive director* or *director* means the executive director of the Office of Renewable Energy Siting and Electric Transmission.

(ac) *Executive Law* or *EL* means the New York State Executive Law.

(ad) *Evidence* means sworn or affirmed testimony of witnesses, and physical objects, documents, records or photographs that tend to prove or disprove the existence of an alleged fact.

(ae) *Facility centerline* means an imaginary line running through the exact center of the transmission line facility.

(af) *Facility corridor* means, unless otherwise proposed by the applicant, for facilities or segments proposed substantially within existing electric transmission rights-of-way, the limits of the proposed right-of-way occupied or to be occupied by electric transmission facilities. For new terrestrial facilities or segments outside of existing electric transmission rights-of-way and new in-

water facilities or segments, an area up to 500 feet on either side of a proposed centerline. For new projects proposed within existing roadways, the width of the road right-of-way (ROW).

(ag) *Feature dataset* means a collection of geographic information system (as defined in subdivision (aj) of this section) feature classes stored together that share a spatial reference (i.e., coordinate system) and a common geographic area.

(ah) *FHWA* means the Federal Highway Administration.

(ai) *Geodatabase* means a database or file structure used primarily to store, query, and manipulate spatial data. Geodatabases store geometry, a spatial reference (i.e., coordinate system), attributes, and behavioral rules for geographic information system (as defined in subdivision (aj) of this section) data.

(aj) *Geographic information system* or *GIS* means an integrated collection of computer software and data used to view and manage information about geographic places, analyze spatial relationships, and model spatial processes.

(ak) *Good utility practice* means any of the practices, methods, or acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, or acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to delineate acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act section 215(a)(4) (16 USC section 824*o*[a][4]).

(al) *Hearsay* means a statement, other than one made by a sworn witness testifying at the hearing, offered into evidence to prove the truth of the matter asserted.

(am) *Host community benefit* means a payment or other incentive for the benefit of the host community, as determined by the Public Service Commission pursuant to section eight of part JJJ of chapter 58 of the Laws of 2020, or such other payment or incentive as

determined by the Office of Renewable Energy Siting and Electric Transmission, or as subsequently agreed to between the applicant and the host community.

(an) *Indigenous Nation* means any state- or federally-recognized Indigenous Nations whose ancestral territories (as indicated on the New York State Office of Parks, Recreation and Historic Preservation "Indian Nation Areas of Interest" map dated January 2024), Nation-owned parcels, current reservation boundaries, or lands held in trust by the Federal government for that Indigenous Nation that fall within the facility study area (as defined in subdivision (dd) of this section) or facility corridor (as defined in subdivision (af) of this section).

(ao) *Inland waterways* means the inland waterways listed in Executive Law section 911(4).

(ap) *In-service date* means the date upon which the electric transmission facility is energized and available to provide transmission service. For electric transmission facilities proposed to be developed as part of an energy generation project, the date on which the generation facility as a whole first commences generating or transmitting electricity for sale, excluding electricity generated or transmitted during the period of on-site test operations and commissioning of the facility.

(aq) *Interconnections* means off-site electric transmission lines less than ten (10) miles in length, water supply lines, waste water lines, communications lines, steam lines, stormwater drainage lines, and appurtenances thereto, installed in New York State connecting to and servicing the site of a major renewable generating facility, that are not subject to the Public Service Commission's jurisdiction under article VII of the New York State Public Service Law or the office's jurisdiction under article VIII of the New York State Public Service Law, not including service lines designed and sized for household type usage such as for bathrooms or ordinary telephones.

(ar) *In-water facility* means any electric transmission facility installed within the Marine and Coastal District as defined pursuant to New York State Environmental Conservation Law section 13-0103, coastal waters, inland waterways, canal lands, or other freshwater waterbodies, except where such installations are limited to aerial or trenchless crossings of such waterbodies.

(as) *In-water sidecasting* means to remove sediment from one area of the bed of a waterbody and intentionally depositing it onto the bed of the same waterbody in an alternate location(s).

(at) *Landowner* means the holder of any ownership right, title, or interest in real property subject to a proposed site or right of way as identified from the most recent tax roll of the appropriate municipality.

(au) *Land used in agricultural production* means all lands involved in the production of crops, livestock, and livestock products for three (3) of the last five (5) years.

(av) *Limits of disturbance* or *LOD* means the geographical boundaries within which project construction activities, including access routes, laydown yards, and staging areas, are authorized.

(aw) *Local agency account* or *account* means the account established by the Office of Renewable Energy Siting and Electric Transmission and maintained by the New York State Energy Research and Development Authority pursuant to article VIII of the Public Service Law for local agencies and potential community intervenors which meet the eligibility and procedural requirements of this Part to participate in public comment periods or hearings.

(ax) *Local agency* means any local agency, board, district, commission, or governing body, including municipalities, and other political subdivision of the State.

(ay) *Major amendment:*

(1) *Major amendment* of a siting permit application or draft permit condition means a change in an application or draft permit condition likely to result in any material increase in any identified adverse environmental impacts, any significant adverse environmental impact not previously identified, or any new site-specific standards and conditions.

(2) *Major amendment* of an existing permit or certificate standard or condition means a change to an existing permit or certificate standard or condition likely to result in (i) any material increase in any identified adverse environmental or public health or safety impact, (ii) any significant adverse impact not previously addressed by uniform or site-specific standards or conditions, or (iii) otherwise involves a substantial change to an existing permit

or certificate standard or condition.

(i) If the change to an existing permit or certificate requires potential waivers of local laws or ordinances pursuant to section 1101-2.24(c) or section 1102-2.28(b) of this Title, as applicable, the amendment will be considered major unless the permittee or certificate holder has agreements from the affected municipalities consenting to the waivers.

(az) *Major electric transmission facility* means an electric transmission line of a design capacity of 125 kilovolts or more extending a distance of one mile or more, or of 100 kilovolts or more and less than 125 kilovolts, extending a distance of 10 miles or more, including associated equipment, but shall not include any such transmission line located wholly underground in a city with a population in excess of 125,000 or a primary transmission line approved by the Federal Energy Regulatory Commission in connection with a hydro-electric facility.

(ba) *Major electric transmission facility siting permit* means the siting permit issued to a major electric transmission facility by the executive director pursuant to article VIII of the Public Service Law, and this Chapter.

(bb) *Major renewable energy facility* means any renewable energy system, as such term is defined in section 66(p) of the New York State Public Service Law, with a nameplate generating capacity of 25,000 kilowatts or more, and any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission system, including all associated appurtenances to electric plants as defined under section 2 of the New York State Public Service Law, including electric transmission facilities less than ten (10) miles in length in order to provide access to load and to integrate such facilities into the State's bulk electrical transmission system.

(bc) *Major renewable energy facility siting permit* means the siting permit issued to a major renewable energy facility by the executive director pursuant to article VIII of the Public Service Law, and this Chapter.

(bd) *Minor amendment:*

(1) *Minor amendment* of a siting permit application or draft permit condition means a change in an application or draft permit condition that is not a major amendment.

(2) *Minor amendment* of an existing permit or certificate standard or condition means a change in an existing permit or certificate condition or an approved compliance filing that is not a major amendment, or that significant adverse impacts resulting from the change are addressed by the uniform standards and conditions.

(be) *Motion* means a request for a ruling or an order.

(bf) *Municipality* means a county, city, town, or village.

(bg) *Nameplate generating capacity* means, starting from the initial installation of a major renewable energy facility, the maximum alternating current electrical generating output that the facility is capable of production on a steady state basis and during continuous operation (when not restricted by seasonal or other de-ratings):

(1) as specified by the manufacturer of the generating units for a wind facility, or

(2) the design output of the inverters for a solar energy facility.

(bh) *No further action determination* means a written determination by the New York State Department of Environmental Conservation that a parcel of real property has been remedied to the NYSDEC's satisfaction.

(bi) *Non-participating property* means a parcel of real property owned by a person (as defined in subdivision (by) of this section) who has not executed an agreement with the applicant related to the facility.

(bj) *NYSAGM* means the New York State Department of Agriculture and Markets.

(bk) *NYSDEC* means the New York State Department of Environmental Conservation.

(bl) *NYSERDA* means the New York State Energy Research and Development Authority.

(bm) *NYSDOH* means the New York State Department of Health.

(bn) *NYSDOS* means the New York State Department of State.

(bo) *NYSDOT* means the New York State Department of Transportation.

(bp) *NYSDPS* means the New York State Department of Public Service.

(bq) *NYSTA* means the New York State Thruway Authority.

(br) *OPRHP* means the New York State Office of Parks, Recreation and Historic Preservation.

(bs) *Office* or *ORES* means the Office of Renewable Energy Siting and Electric Transmission within the Department of Public Service and established pursuant to article VIII of the Public Service Law.

(bt) *Office of hearings and alternative dispute resolution* or *office of hearings* means the office within DPS principally responsible for conducting adjudicatory hearings pursuant to this Part.

(bu) *Office staff* means those office personnel participating in a hearing, but does not include the executive director, or their designee, the ALJ or those personnel in the office of hearings and alternative dispute resolution advising or consulting with the executive director, or their designee, or the ALJ.

(bv) *Participating property* means a parcel of real property owned by a person who has executed a lease, easement or other agreement with the applicant related to a major renewable energy facility.

(bw) *Party* means any person granted full party status or *amicus* status in the adjudicatory portion of the hearing according to the procedures and standards set forth in this Part but does not include the ALJ, the office of hearings and alternative dispute resolution, or the executive director (or their designee).

(bx) *Pending article 10 facility* means a major renewable energy facility, which on or before the effective date of former section 94-c of the Executive Law, had submitted a draft public involvement program plan to the New York State Board on Electric Generation Siting and the Environment pursuant to article 10 of the PSL and its implementing regulations.

(by) *Person* means any individual, public, or private corporation, public benefit corporation, limited liability company, multi-state authority, political subdivision, government agency, department, or bureau of the State, federally/state recognized Indian Nation,

municipality, industry partnership, association, firm, trust, estate or any legal entity whatsoever.

(bz) *Plain language* means an eighth-grade reading level or language which is easily understandable to the lay public.

(ca) *Pollution* means the presence in the environment of conditions and or contaminants in quantities of characteristics which are or may be injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property throughout such areas of the State as shall be affected thereby.

(cb) *Potential community intervenor* means any person who owns property or resides within a municipality within which a major renewable electric generating facility or major electric transmission facility is proposed, or who owns property or resides outside the municipality within which the facility is proposed, but within one (1) mile of a proposed solar facility (as defined in subdivision (cz) of this section) or a major electric transmission facility (as defined in subdivision (az) of this section), or five (5) miles of a proposed wind facility (as defined in subdivision (dl) of this section), or any non-profit organization that can demonstrate a concrete and localized interest that may be affected by a proposed facility and that such interest has a significant nexus to their mission.

(cc) *Potential party* means any person who has filed a petition for party status whose petition has not received either final denial or acceptance.

(cd) *Project* means the physical activity or undertaking for which a siting permit is required from the office.

(ce) *Project area* or *facility site* means the area in which the permittee is authorized to construct, operate, maintain, repair, and decommission the facility, including any laydown yards and staging areas (including any portion of local contractor facilities used for project-specific purposes), pursuant to any permanent or temporary easements, leases, licenses, right-of-way (ROW) agreements, or other land use authorizations the permittee receives. The permittee shall confine construction, operation, maintenance, repair, and decommissioning activities to the project area or facility site.

(cf) *Project impact area* means the geographic area or areas within

which the proposed undertaking may cause any change, beneficial or adverse, in the character or use of an identified archaeological site, historic resource or cultural property.

(cg) *Prominent tones* means tones defined by using the constant level differences listed under ANSI/ASA S12.9-2005/Part 4 Annex C (sounds with tonal content) (see section 1100-17.1(a)(1)(iii) of this Part).

(ch) *Protected wetland* means any wetland regulated under articles 24 and 25 of the Environmental Conservation Law.

(ci) *Protected waterbody* means any stream or waterbody regulated under article 15 of the Environmental Conservation Law.

(cj) *Protective order* means an order denying, limiting, conditioning, or regulating the use of material requested through disclosure.

(ck) *Public comment hearing* means the portion of the hearing process during which unsworn statements are received from the host municipalities, the public, and the parties.

(cl) *Public Service Commission* or *PSC* means the New York State Public Service Commission.

(cm) *Public Service Law* or *PSL* means the New York State Public Service Law.

(cn) *Recommended decision and hearing report* means the ALJ's summary of the proceeding, including the ALJ's findings of fact, conclusions of law, and recommendations for the executive director's (or their designee's) consideration.

(co) *Regulated adjacent area* or *adjacent area* means those areas of land that are outside a wetland and within 100 feet (30.5 meters), measured horizontally, of the boundary of the wetland or beyond 100 feet (30.5 meters) pursuant to section 664.7 of Title 6 NYCRR associated with freshwater wetlands; or the 150-foot (or less due to the presence of a qualifying structure or contour as defined by section 661.4 of Title 6 NYCRR) adjacent area associated with tidal wetlands within the boundaries of New York City; and the 300-foot (or less due to the presence of a qualifying structure or contour as defined by section 661.4 of Title 6 NYCRR) adjacent area associated with tidal wetlands outside the boundaries of New York City.

(cp) *Relevant* means tending to make the existence of any fact that is of consequence to the determination of the proceeding more probable

or less probable.

(cq) *Repurposed site* means an existing or abandoned commercial or industrial use property, including without limitation, brownfields, landfills, dormant electric generating or other previously disturbed location.

(cr) *Resources of statewide concern* means wild, scenic, or recreational rivers administered respectively by either the NYSDEC or the APA pursuant to ECL article 15 or the Department of Interior pursuant to 16 USC section 1271; forest preserve lands; scenic vistas specifically identified in the Adirondack Park State Land Master Plan; scenic byways designated by the Federal or State governments; scenic districts and scenic roads, designated by the Commissioner of Environmental Conservation pursuant to ECL article 49; scenic areas of statewide significance; National Natural Landmarks; NYS and National Heritage Areas; State and National parks and historic sites; and properties listed or eligible for listing on the National or State Registers of Historic Places.

(cs) *Right-of-way* means:

(1) real property that is used or authorized to be used for electric utility purposes; or

(2) real property owned or controlled by or under the jurisdiction of the State, a distribution utility, or a State public authority including by means of ownership, lease or easement, that is used or authorized to be used for transportation or canal purposes.

(ct) *SAPA* means the New York State Administrative Procedure Act.

(cu) *Secretary* means the secretary to the Public Service Commission.

(cv) *Service* means the delivery of a document to a person by authorized means and, where applicable, the filing of a document with the ALJ, the office of hearings and alternative dispute resolution or the executive director (or their designee).

(cw) *SHPO* means the New York State Historic Preservation Office.

(cx) *Significant adverse environmental impact* means an impact that meets any of the criteria for significance provided for in section 617.7(c) of Title 6.

(cy) *Siting permit* or *permit* means authorization to construct and operate a major renewable energy facility or a major electric transmission facility issued by the office pursuant to article VIII of the Public Service Law and this Chapter.

(cz) *Solar facility* means a solar-powered major renewable energy facility.

(da) *Spatial data* means any data that can be mapped to a geographic location, including shapes of geographic features (such as points, lines, and polygons).

(db) *Statement of intent to deny* means a document prepared by office staff which identifies the reasons why the siting permit for the project may not be issued as proposed or conditionally.

(dc) *Stipulation* means an agreement between two or more parties to a proceeding, and entered into the hearing record, concerning one or more issues of fact or law that are the subject of the proceeding.

(dd) *Study area* means, with respect to a major renewable energy facility, the area generally related to the nature of the technology and the setting of the proposed site. Unless otherwise provided in this Chapter, in highly urbanized areas, the study area is a minimum one (1)-mile radius from the property boundaries of the facility site, interconnections and related facilities, and for facilities with components spread across a rural landscape, the study area shall at a minimum include the area within a radius of at least five (5) miles from all generating facility components, interconnections and related facilities.

(de) *Subpoena* means a legal document that requires a person to appear at a hearing and testify, to produce documents or physical objects, or both.

(df) *Substantially within existing electric transmission right-of-way* or *existing electric transmission right-of-way* means a major electric transmission facility occupying existing terrestrial electric transmission rights-of-way and any additional terrestrial rights-of-way that are required under applicable safety and reliability standards for the construction and operation of the proposed facility, or to avoid or minimize significant adverse impacts associated with the existing facility. Proposals for work within existing electric transmission rights-of-way are governed by sections

1100-11.2 and 1100-11.6 of this Part, as applicable.

(dg) *Substation* means an electrical station within which electricity flow is directed and voltage is either increased or decreased.

(dh) *Switchyard* means an electrical station within which electricity flow is directed and voltage remains unchanged.

(di) *Transfer application* means an application submitted for a siting permit for a pending PSL article VII facility or a pending PSL article 10 facility.

(dj) *USACE* means the United States Army Corps of Engineers.

(dk) *Wetland delineation* or *waterbody delineation* means the precise demarcation of a freshwater wetland, tidal wetland, regulated adjacent area, stream, or waterbody boundary using a field methodology prescribed by the NYSDEC, APA, or United States Army Corps of Engineers.

(dl) *Wind facility* means a land-based, wind-powered major renewable energy facility.

Section 1100-1.3. Pre-application procedures.

(a) *Consultation with local agencies*. No less than sixty (60) days before the date on which an applicant files an application for a major renewable energy facility, or files a transfer application other than for a pending article 10 facility for which the article 10 application has been deemed complete, the applicant shall conduct pre-application meeting(s) with the chief executive officer of the municipality(ies) in which the proposed facility will be located and any local agencies of such municipalities identified by the chief executive officer. No less than sixty (60) days before the date on which an applicant files an application for a major electric transmission facility, the applicant shall offer to conduct pre-application meeting(s) with the chief executive officer(s) of the municipality(ies) in which the proposed facility will be located and, if requested, shall conduct such meeting with the chief executive officer(s) and any local agencies of such municipalities identified by the chief executive officer. During such pre-application meeting(s), the applicant shall make good faith efforts to resolve any disputes regarding local law compliance and, for a major electric generation facility, consult on potential host

community benefits to be provided in the final siting permit. During such pre-application meeting(s), the applicant shall provide:

(1) a brief description of the proposed facility and its environmental setting;

(2) a map of the proposed facility showing project components located in the municipality(ies) and regulatory boundaries as they pertain to substantive law relevant to the proposed facility;

(3) a summary of the substantive provisions of local laws applicable to the construction, operation, maintenance, and, for a major renewable energy facility, decommissioning of the proposed facility;

(4) an identification of such substantive local law provisions for which the applicant will request that the office make a finding that compliance therewith would be unreasonably burdensome;

(5) an explanation of all efforts by the applicant to comply with such substantive local law provisions through the consideration of design changes to the proposed facility, or otherwise;

(6) an identification of any potential adverse impacts of the facility for which consultation with the municipality(ies) is required to inform the preparation of the exhibits to the application (including, but not necessarily limited to, transportation and visual resources);

(7) for a major electric generation facility, an identification of the potential host community benefits to be included in the final siting permit;

(8) a designated contact person, with telephone number, email address and mailing address, from whom information will be available on a going-forward basis, as well as a proposed project website to disseminate information to the public; and

(9) an anticipated application date and information regarding the future availability of local agency account funds, citing to the requirements set forth in Subpart 1100-5 of this Part, including, but not limited to, the requirement that any local agency or potential community intervenor shall submit a request for initial funding within thirty (30) days of the date of application filing and that such request be made to the Office of Renewable Energy Siting and Electric Transmission, at the Albany, New York office, Attention: Request for Local Agency Account Funding.

(10) *Notice of adoption of new substantive local law provisions*. Either at or any time after the pre-application meeting held pursuant to this subdivision, but no later than five (5) days after receipt of a 60-day notice of intent to file an application pursuant to subdivision (f) of this section, the municipalities in which the proposed facility will be located shall inform the applicant of any pending new substantive local law provisions that would be applicable to the construction, operation, maintenance and, for a major renewable energy facility, decommissioning of the proposed facility and the expected date of enactment by the municipality.

(b) *Meeting with community members.* No less than sixty (60) days before the date on which an applicant files an application for a major renewable energy facility or a major electric transmission facility, and following the meeting(s) held pursuant to subdivision (a) of this section, the applicant shall conduct at least one in-person meeting for community members who may be adversely impacted by the siting of the facility. The purpose of the meeting is to educate the public about the proposed project, including the anticipated application date and information regarding the future availability of local agency account funds, citing to the requirements set forth in Subpart 1100-5 of this Part, including, but not limited to, the requirement that any local agency or potential community intervenor shall submit a request for initial funding within thirty (30) days of the date of application filing and that such request be made to the Office of Renewable Energy Siting and Electric Transmission, at the Albany, New York office, Attention: Request for Local Agency Account Funding. The applicant shall provide notice of the meeting no sooner than thirty (30) days and no later than fourteen (14) days prior to

the meeting in accordance with the publication requirements of section 1100-1.6(c) of this Part.

(1) Where a disadvantaged community is identified within the study area as provided for in section 1.2(dd) or the facility corridor as provided for in section 1.2(af) of this Part, at least one in-person meeting shall be conducted in such community. If no suitable meeting venue is available within such community, the meeting shall be conducted in the nearest available suitable meeting venue.

(c) *Consultation with Indigenous Nations.*

(1) No less than ninety (90) days before the date on which an applicant files an application for a major renewable energy facility or a major electric transmission facility, and prior to publication of the 60-day notice required by subdivision (e) of this section, the applicant shall provide each Indigenous Nation with the following information:

(i) a brief description of the proposed facility and its environmental setting;

(ii) a map of the proposed facility showing project components and regulatory boundaries;

(iii)any potential impacts to environmental or cultural resources from the siting, construction, and operation of the facility;

(iv) an anticipated application date, a brief overview of Parts 1101 or 1102 of this Title, as applicable, and instructions and timeline for filing a petition for party status pursuant to sections 1100-8.3 and 1100-8.4 of this Part. The overview and instructions required by this subparagraph shall be consistent with guidance issued by the office;

(v) the applicant's designated contact person, with a telephone number, email address, and mailing address, from whom information will be available on a going-forward basis, as well as the project website; and

(vi) the ORES designated contact person, with a telephone number, email address, and mailing address, to whom

comments may be provided during the pre-application and application review phases, as well as the ORES application website.

(2) Upon request of any Indigenous Nation, the applicant shall conduct a meeting with any such Indigenous Nation.

(3) The applicant shall provide as part of the application copies of all correspondence with Indigenous Nations, including meeting minutes and notes as applicable. The applicant shall determine, in consultation with any such Indigenous Nations, whether copies of such correspondence shall be submitted with a request for confidential treatment.

(4) The applicant shall consider any comments provided by Indigenous Nations and address such comments within the applicable application exhibit(s).

(d) *Landowner notification for major electric transmission facilities.*

(1) No less than sixty (60) days before the date on which an applicant files an application for a major electric transmission facility, the applicant shall serve by first class mail notice to the landowners identified herein that the landowner's property may be impacted by the proposed facility. Landowners that must be noticed are: (i) landowners of land on which any portion of the proposed facility will be located; (ii) landowners of land on which any portion of the proposed facility will be located as identified in any alternative route that will be presented in the application; and (iii) landowners of land that directly abuts any land identified pursuant to (i) and (ii) immediately preceding.

(2) The notice to landowners shall include:

(i) a brief description of the proposed facility;

(ii) a designated contact person for the applicant, with telephone number, email address, and mailing address; and if the applicant maintains a webpage to disseminate information to the public, the address of that webpage; and

(iii) an anticipated application date and information regarding the availability of local agency account funding and the process for obtaining such funding as set forth in Subpart 1100-5 of this Part.

(e) *Documentation.* The applicant shall provide as part of the application information and documentation demonstrating compliance with the pre-application requirements set forth in this section including: copies of transcripts of any presentations, presentation materials, a summary of questions raised and responses provided during the pre-application meeting(s), and a description of the applicant's good faith efforts to resolve any disputes regarding compliance with applicable substantive local laws and any requests that the applicant anticipates making for a finding by the office that compliance with any particular local law would be unreasonably burdensome. In the event the applicant is unable to secure a meeting with a municipality, or effectuate service on any landowner if required, the application shall contain a detailed explanation of all of applicant's best efforts and reasonable attempts to secure such meeting or effectuate any required service, including, but not limited to, all written communications between the applicant and the municipality. In the event the applicant is required to conduct an in-person meeting with a disadvantaged community and no suitable meeting venue is available within such community, the application shall contain a detailed explanation of all of applicant's best efforts and reasonable attempts to secure a suitable meeting venue within such community.

(f) *Notice.*

(1) At least sixty (60) days before the date an applicant files an application, the applicant shall publish a 60-day notice of intent to file an application in accordance with the publication requirements of section 1100-1.6(c) of this Part and provide a copy thereof to the office, to the chief executive officer(s) of the municipality(ies) in which the proposed facility will be located, and to all local agencies in attendance at the pre-application meeting(s). The 60-day notice of intent to file an application may be included as part of the notice requirement of subdivision (b) of this section. The notice shall contain, at a minimum, the following:

(i) a brief summary of the proposed facility and location;

(ii) a designated contact person, with telephone number, email address and mailing address, from whom information will be available on a going-forward basis, as well as a proposed project website to disseminate information to the public;

(iii) the anticipated date of application filing; and

(iv) a statement of future availability of local agency account funds, citing to the requirements set forth in Subpart 1100-5 of this Part, including, but not limited to, the requirement that any local agency or potential community intervenor shall submit a request for initial funding within thirty (30) days of the date of application filing and that such request be made to the Office of Renewable Energy Siting and Electric Transmission, at the Albany, New York office, Attention: Request for Local Agency Account Funding.

(2) Failure of the applicant to file an application on the date of application filing identified in the 60-day notice of intent required by this subdivision will result in the notice being deemed withdrawn without prejudice pursuant to the following procedures:

(i) if the applicant fails to file an application on the date of application filing identified in the 60-day notice of intent required by this subdivision, the office may send a notice requesting that the applicant publish the notice of application required by section 1.6(c) of this Part and file and serve the application pursuant to section 1.6(a) of this Part within thirty (30) days; and

(ii) if the applicant fails to respond to the notice issued by the office pursuant to subparagraph (i) of this paragraph within thirty (30) days, the office will treat the 60-day notice as withdrawn without prejudice. The office shall publish a notice of withdrawal of the 60-day notice on the office's website and shall serve the notice upon the applicant; the chief executive officer of each

municipality in which any portion of the proposed facility is to be located, via electronic mail and, if requested, by regular mail; and any person who has previously expressed in writing an interest in receiving such notification, via the method of service requested by such person.

(g) *Consultation with the office*.

(1) *Major electric transmission facility applications.* For projects not proposed to be located substantially within existing electric transmission rights-of-way, at the earliest point possible in the applicant's preliminary project planning, and in any event no less than six (6) months before the date on which an applicant files an application, the applicant shall consult with the office regarding the preferred and reasonable alternative routes proposed by the applicant to be included for analysis in the application. For projects proposed to be located substantially within existing electric transmission rights-of-way, the applicant shall consult with the office regarding the preferred and reasonable alternative routes proposed by the applicant to be included for analysis in the application no less than sixty (60) days before the date on which the applicant files an application, in accordance with section 1100-11.6(b)(4) of this Part, and such consultation may also concern the application exhibits from which applicant seeks to be relieved, in whole or in part, and which pre-application surveys and screenings are required.

(i) After consultation with other relevant State agencies and authorities, the office may require an alternative route(s) be included for analysis in the application.

(2) Applicants seeking a siting permit for a major renewable energy facility other than a solar facility or a land-based wind facility shall consult with the office at least one (1) year prior to submitting an application in order to determine which exhibits the office will require, as well as any site-specific permit application requirements.

(3) At any time, the office may require a pre-application meeting(s) with the applicant. Any applicant may request a pre-

application meeting with the office, which request shall be granted or denied at the discretion of the office.

Section 1100-1.4. General requirements for applications.

(a) Each application for a major renewable energy facility siting permit or a major electric transmission facility siting permit shall:

(1) include a properly completed ORES application form;

(2) contain the exhibits required pursuant to Subpart 1100-2 of this Part;

(3) provide a website through which the applicant will disseminate information to the public, which shall include at least the following:

(i) a copy of the application and the executive summary as required in Parts 1101 and 1102 of this Title, as applicable;

(ii) a map(s) at a size and level of detail appropriate to substantially inform the public of the location of the proposed facility, including the location(s) of all components of the facility;

(iii) a statement that the application, when filed, may be examined during normal business hours at the Office of Renewable Energy Siting and Electric Transmission, and the local library(ies) served in accordance with section 1100-1.6(a)(6) of this Part, and the addresses thereof;

(iv) an explanation of the application review process, including information regarding the availability of local agency account funds, citing the requirements set forth in Subpart 1100-5 of this Part, including, but not limited to, the requirement that any local agency or potential community intervenor shall submit a request for initial funding within thirty (30) days of the date of application filing or an earlier date as otherwise provided in this Chapter, and that such request be made to the Office of Renewable Energy Siting and Electric Transmission, at the Albany, New York office, Attention: Request for Local Agency Account Funding;

(v) information as to how and where persons wishing to receive all notices concerning the application can file a request with the office to subscribe to receive such notices;

(vi) information as to how to access relevant documents from the ORES website;

(vii) copies of all notices required pursuant to this Part; and

(viii) the names, addresses, telephone numbers and e-mail addresses of a representative of the applicant and relevant ORES staff;

(4) identify any information that the applicant asserts is a trade secret, confidential commercial information, or critical infrastructure information pursuant to article 6 of the New York State Public Officers Law and section 6-1.3 of this Title, or other applicable State or Federal laws, which the applicant requests the office not to disclose and reasons why such information should be excepted from disclosure. Such information shall clearly be marked as trade secret, confidential commercial information, or critical infrastructure information and only included in applications filed with the office. All other copies of the application served pursuant to section 1100-1.6(a) of this Part shall contain information noting the location of redacted information that the applicant is asserting is a trade secret, confidential commercial information, or critical infrastructure information. Application materials subject to this paragraph include, but are not limited to:

(i) the Site Security Plan required by section 1101-2.6(b) of Part 1101 of this Title and sections 1102-2.8(b) and 1102-3.3(e) of Part 1102 of this Title;

(ii) any system reliability impacts study required by section 1101-2.21(b) and section 1101-3.5(e)(2) of Part 1101 of this Title; and

(iii) any system impact study required by section 1102-2.25(b) and section 1102-3.5(b)(2) of Part 1102 of this

Title;

(5) in compliance with the provisions of section 304 of the National Historic Preservation Act, and 9 NYCRR section 427.8, information about the location, character, or ownership of a cultural resource shall not be disclosed to the public, and shall only be disclosed pursuant to an appropriate protective order. Such information shall clearly be marked and only included in applications filed with the office. All other copies of the application served pursuant to section 1100-1.6(a) of this Part shall contain information noting the location of information redacted in accordance with section 304 of the National Historic Preservation Act, and 9 NYCRR section 427.8. Application materials subject to this paragraph include, but are not limited to:

(i) those portions of application exhibit 9 prepared pursuant to section 1101-2.9 of Part 1101 of this Title or application exhibit 11 prepared pursuant to section 1102-2.11 of Part 1102 of this Title that contain confidential cultural resource information;

(ii) archaeological studies, reports, and plans prepared pursuant to section 1101-1.1(d)(3) of Part 1101 of this Title, and section 1102-1.1(c)(2) of Part 1102 of this Title (e.g., Phase IA, Phase IB, Phase II, Phase III, Site Avoidance Plan(s));

(iii) Areas Proposed for Archaeological Survey figure prepared pursuant to section 1102-1.1(c)(3)(v) of Part 1102 this Title;

(iv) descriptions of archaeological resources, site locations, or summaries of reports containing such information included in application exhibits 9 (generation) or 11 (transmission) or other application exhibits;

(v) the Cultural Resources Avoidance, Minimization, and Mitigation Plan (CRAMMP) prepared pursuant to section 1101-4.2(g) of Part 1101 of this Title, or section 1102-4.4(p) of Part 1102 of this Title;

(vi) correspondence with the OPRHP or SHPO when such correspondence contains protected information; and

(vii) correspondence with Indigenous Nations when such correspondence contains protected information, or upon the nation's request;

(6) in compliance with the provisions of section 3-0301(r) of the Environmental Conservation Law and 6 NYCRR section 182.5, information about the location of New York State threatened or endangered species (T&E species) or their habitat (confidential T&E information) shall not be disclosed to the public, and shall only be disclosed pursuant to an appropriate protective order. Such information shall be clearly marked and only included in applications filed with the office. All other copies of the application served pursuant to section 1100-1.6(a) of this Part shall contain information noting the location of confidential T&E information redacted in accordance with section 3-0301(r) of the Environmental Conservation Law and 6 NYCRR section 182.5. Application materials subject to this paragraph include, but are not limited to:

(i) wildlife site characterization, pre-construction T&E species habitat assessment plans, and pre-construction T&E species/species of special concern survey plans required by section 1101-1.1(b) of Part 1101 of this Title, or section 1102-1.1(b) of Part 1102 of this Title;

(ii) those portions of application exhibits 11 (Terrestrial Ecology), 12 (NYS Threatened or Endangered Species), and 14 (Wetlands) as provided for in Part 1101 of this Title, or exhibits 13 (Terrestrial Ecology), 14 (NYS Threatened or Endangered Species), and 16 (Wetlands) as provided for in Part 1102 of this Title that contain confidential T&E information. Such information includes the net conservation benefit plan (NCBP) prepared pursuant to section 1101-2.13 of Part 1101 of this Title, or section 1102-2.14 of Part 1102 of this Title; and any T&E species jurisdictional letter prepared pursuant to section 1101-2.13(c) of Part 1101 of this Title, or section 1102-2.14(c) of Part 1102 of this Title; and

(iii) those portions of pre-construction compliance filings, including the final NCBP prepared pursuant to section 1101-3.4(x) and Subpart 1101-4 of Part 1101 of this Title, or section 1102-3.4(x) and Subpart 1102-4 of Part

1102 of this Title that contains confidential T&E information;

(7) include an affidavit of service showing that a copy of the application and accompanying documents were served on all those required by section 1100-1.6(a) of this Part;

(8) be accompanied by a fee to be deposited in the local agency account in an amount equal to the following, which may be adjusted from time to time by the office to account for inflation:

(i) for a major renewable energy facility, $1,000 dollars for each 1,000 kilowatts of capacity;

(ii) for a major electric transmission facility of 125 kilovolts or more extending a distance of over 100 miles, $450,000;

(iii)for a major electric transmission facility of 125 kilovolts or more extending a distance of over 50 miles to 100 miles, $350,000;

(iv) for a major electric transmission facility requiring a new right-of-way and 125 kilovolts or more extending a distance of 10 miles to 50 miles, $100,000; and

(v) for a major electric transmission facility utilizing an existing right-of-way and 125 kilovolts or more extending a distance of 10 miles to 50 miles, $50,000;

(9) be accompanied by the ORES fee required pursuant to section 1100-1.5 of this Part; and

(10) if requested of the applicant by the office, include any additional information that may be required to enable the office to make the findings and determinations required by law.

(b) *Certification by a responsible official.* Any application, report, or compliance filing submitted pursuant to this Part and Parts 1101 and 1102 of this Title shall contain certification of truth, accuracy, and completeness by a responsible official. This certification shall be in a form acceptable to the office and state that, based on information and belief formed after reasonable inquiry, the statements and information in the filing are true,

accurate, and complete.

(c) *Certification by a professional engineer.* Any application, report, or compliance filing submitted pursuant to this Part and Parts 1101 and 1102 of this Title that pertains to the practice of engineering shall contain certification of truth, accuracy, and completeness by a professional engineer. This certification shall be in a form acceptable to the office and state that the application, report, or compliance filing was prepared under the general supervision of a person licensed to practice professional engineering in the State of New York and, based on information and belief formed after reasonable inquiry, the statements and information in the filing are true, accurate, and complete.

Section 1100-1.5. Office of Renewable Energy Siting and Electric Transmission review fee.

(a) The office shall charge a fee to the applicant in order to recover the costs of reviewing and processing an application in an amount equal to the following, which shall be due at the time of application filing:

(1) for a major renewable energy facility, $1,000 for each 1,000 kilowatts of capacity;

(2) for a major electric transmission facility of 125 kilovolts or more extending a distance of over 100 miles, $450,000;

(3) for a major electric transmission facility of 125 kilovolts or more extending a distance of over 50 miles to 100 miles, $350,000;

(4) for a major electric transmission facility requiring a new right-of-way and 125 kilovolts or more extending a distance of 10 miles to 50 miles, $100,000;

(5) for a major electric transmission facility utilizing an existing right-of-way and 125 kilovolts or more extending a distance of 10 miles to 50 miles, $50,000;

(6) for a major electric transmission facility of 125 kilovolts or more extending a distance of one (1) mile or more and less than 10 miles, $50,000; and

(7) for a major electric transmission facility of 100 kilovolts

or more and less than 125 kilovolts extending 10 miles or more, $100,000.

(b) Public utilities that are subject to section 18-a of the Public Service Law are not subject to the review fee established by this section.

Section 1100-1.6. Filing, service, and publication of an application.

(a) The applicant shall serve an electronic copy and one (1) paper copy each of the public and confidential versions of the application on the Office of Renewable Energy Siting and Electric Transmission, Attention: Applicant Review, at the Albany, New York office and file an electronic copy of the public and confidential versions of the application with the secretary pursuant to subdivisions (a) through (d) of section 3.5 of this Title. The application shall be deemed filed when complete copies of the electronic versions of the application are received by the office in a format that meets all filing guidelines established by the secretary. The applicant shall concurrently serve the public version of the application on the following, as specified:

(1) an electronic copy on the NYSDEC at its central office and an electronic copy on each affected NYSDEC regional office;

(2) unless otherwise directed, an electronic copy on the commissioners of the NYSAGM, NYSDOH, NYSDOT, and OPRHP;

(3) unless otherwise directed, an electronic copy on the Secretary of State if any portion of the proposed facility would have a reasonably foreseeable effect on any land or water use or natural resource of the coastal area and Federal authorization is required or Federal funding is requested;

(4) an electronic copy on the chief executive officer of each municipality in which any portion of the proposed facility is to be located; and in New York City, an electronic copy upon the borough president of any affected borough, and upon the community board of any affected areas served by a community board;

(5) upon request, an electronic copy on any Indigenous Nation;

(6) an electronic copy on a library serving the district of

each member of the State Legislature in whose district any portion of the proposed facility is to be located or could be adversely impacted by the proposed facility;

(7) an electronic copy on the chief executive officer of any other agency, or local agency that would (absent article VIII of the Public Service Law) have permitting or approval authority with respect to any aspect of the proposed facility;

(8) an electronic copy on the APA if any portion of the proposed facility is located within the Adirondack Park, as defined in subdivision (1) of section 9-0101 of the ECL; and

(9) an electronic copy on the Tug Hill Commission if any portion of the proposed facility is located within the Tug Hill region, as defined in section 847-b of the Executive Law.

(b) Upon request from any of the entities set forth in paragraphs (a)(1)-(9) of this section, the applicant shall provide up to two (2) additional paper copies of the public version of the application within five (5) business days of receipt of the request.

(c) In addition to the above, the applicant shall publish notice of the application no less than three (3) days before the date on which an applicant intends to file the application with the office, in compliance with the following:

(1) provide a copy of the notice to the office;

(2) publish notice in newspapers designated for publication of official notices of each municipality in which the proposed facility is to be located, in the newspaper of largest circulation in the county(ies) in which the proposed facility is to be located and, if any are available, in a free newspaper publication that services the area in which the proposed facility is to be located. Newspaper publication may be in print or electronic form;

(3) for major renewable energy facilities, provide written notice by first class mail to all persons residing within one (1) mile of the proposed solar facility or within five (5) miles of the proposed wind facility;

(4) for major electric transmission facilities, provide written notice by first class mail (i) to each landowner of land on

which any portion of the proposed facility is to be located, or lands abutting parcels on which any portion of the proposed facility is to be located, explaining that the landowner's property may be impacted by the facility and provide instructions on how to participate in the hearing process under Subpart 1100-8 of this Part, and (ii) for facilities that are located within any disadvantaged community, to all persons residing within the facility corridor as provided for in section 1.2(af) of this Part;

(5) provide written notice to each member of the State Legislature in whose district any portion of the proposed facility is to be located; and

(6) provide written notice to each Indigenous Nation that did not request a copy of the application.

(d) Notices required pursuant to subdivision (c) of this section shall serve substantially to inform the public of such application and availability of local agency account funding as follows:

(1) contain a summary of the application and a website link which shall contain such a summary;

(2) contain the date on or about which the application will be filed with the office;

(3) contain a statement of availability of local agency account funds, including the date the notice of intent to file an application required pursuant to section 1100-1.3(f) of this Part was published, citing to the requirements set forth in Subpart 1100-5 of this Part, including, but not limited to, the requirement that any local agency or potential community intervenor shall submit a request for initial funding within thirty (30) days of the date of application filing and that such request be made to the Office of Renewable Energy Siting and Electric Transmission, at the Albany, New York office, Attention: Request for Local Agency Account Funding; and

(4) shall be in plain language, in English and in any other language spoken according to the United States Census data by five thousand (5,000) or more persons residing in any five (5)-digit zip code for the proposed facility. Notices published in languages other than English shall be published in newspapers,

if any are available, servicing the appropriate language community.

(e) If the office determines that any language not captured in paragraph (d)(4) of this section is spoken by a significant population of persons residing in close proximity to the proposed facility, interconnections or related facilities necessary to serve the proposed facility, the office shall direct the applicant to provide notice and summary of the application in the appropriate language and method.

Subpart 1100-2. Application Exhibits.

Section 1100-2.1. Filing instructions.

(a) Each application for a siting permit shall contain the exhibits described in Parts 1101 or 1102 of this Title as relevant to the proposed facility and such additional information as the applicant may consider relevant or as may be required by the office. Exhibits that are not relevant to the particular facility's technology or proposed location may be omitted from the application.

(b) Each exhibit shall contain a title page showing:

(1) the applicant's name;

(2) the title of the exhibit; and

(3) the proper designation of the exhibit.

(c) Each exhibit consisting of ten (10) or more pages of text shall contain a table of contents citing by page and section number or subdivision the elements or matters contained in the exhibit.

(d) In collecting, compiling, and reporting data required for the application, the applicant shall establish a basis for a statistical comparison with data which shall subsequently be obtained under any program of post-permit monitoring.

(e) If the same information is required for more than one exhibit, it may be supplied in a single exhibit and cross-referenced in the other exhibit(s) where it is also required.

(f) If maps are requested, the applicant shall provide both hard copy and digital files, including appropriate GIS spatial data and/or CAD, etc.

(g) *Application supplements.* Any application supplement shall include a clean and redlined version of all updated exhibits, a full set of plans submitted electronically with revisions clouded, and associated geographic information system (GIS) data.

Subpart 1100-3. Transfer Applications from PSL Article VII or 10 Proceedings.

Section 1100-3.1. Transfer applications for pending PSL article VII facilities.

(a) After the effective date of this section, any person intending to construct a major electric transmission facility excluded from this section pursuant to section 1100-1.1(d)(4) of this Part may elect to become subject to the provisions of this Chapter by filing an application for a major electric transmission facility siting permit pursuant to this Chapter.

(b) Applicants for a pending Public Service Law article VII facilities shall provide the following:

(1) written notice to ORES at least fourteen (14) days in advance of filing;

(2) a copy of the written notice to the secretary of the PSC advising of the applicant's election to be subject to Public Service Law article VIII;

(3) a copy of the written notice to the party list in the Public Service law article VII proceeding advising of the applicant's election to be subject to Public Service Law article VIII;

(4) a completed transfer of application form;

(5) the exhibits set forth in Subpart 1102-2 of Part 1102 of this Title;

(6) copies of documentation identifying those matters and

issues that have been identified and resolved in the PSL article VII process;

(7) any additional information that may be required in order to enable the office to make the findings and determinations required by law;

(8) the fee, which may be adjusted from time to time by the office to account for inflation, to be deposited in the local agency account in an amount equal to the following:

(i) for a facility of 125 kilovolts or more extending a distance of over 100 miles, $450,000;

(ii) for a facility of 125 kilovolts or more extending a distance of over 50 miles to 100 miles, $350,000;

(iii) for a facility requiring a new right-of-way and 125 kilovolts or more extending a distance of 10 miles to 50 miles, $100,000; and

(iv) for a facility utilizing an existing right-of-way and 125 kilovolts or more extending a distance of 10 miles to 50 miles, $50,000; and

(9) the ORES fee to recover the costs of reviewing and processing an application provided for in section 1100-1.5 of this Part.

(c) To the extent an applicant submitted intervenor funds pursuant to PSL article VII, any amounts held in an intervenor account established pursuant to PSL article VII for that project shall be applied to the intervenor account established by this Chapter.

(d) For any matters and issues that have been identified and resolved in the Public Service Law article VII process, the siting permit will reflect such resolution and those provisions will not be the subject of any adjudicatory hearing conducted pursuant to Subpart 1100-8 of this Part.

(e) The applicant shall comply with requirements for filing, service, and publication of the application pursuant to section 1100-1.6 of this Part.

Section 1100-3.2. Transfer applications for pending PSL article 10 facilities.

(a) For pending article 10 facilities for which a completeness determination has been issued pursuant to PSL article 10:

(1) The applicant shall provide the following:

(i) written notice to ORES at least fourteen (14) days in advance of filing;

(ii) a copy of the written notice to the secretary of the PSC advising of the applicant's election to be subject to Public Service Law article VIII;

(iii)a copy of the written notice to the party list in the PSL article 10 proceeding advising of the applicant's election to be subject to Public Service Law article VIII;

(iv) a completed transfer of application form;

(v) a copy of the application materials submitted pursuant to the PSL article 10; and, to the extent the applicant wishes to be subject to a uniform standard or condition set forth in Subpart 1101-3 of Part 1101 of this Title, an explanation as to how the PSL article 10 application materials demonstrate compliance with such permit condition;

(vi) copies of documentation identifying those matters and issues that have been identified and resolved in the PSL article 10 proceeding;

(vii)any additional information that may be required in order to enable the office to make the findings and determinations required by law;

(viii) the fee to be deposited in the local agency account in an amount equal to $1,000 for each 1,000 kilowatts of capacity, which may be adjusted from time to time by the office to account for inflation; and

(ix) the ORES fee to recover the costs of reviewing and processing an application in an amount equal to $1,000 for each 1,000 kilowatts of capacity.

(2) Such applications shall be deemed complete upon filing; provided, however, that if the office determines that the

applicant has not demonstrated compliance with the uniform standards and conditions set forth in Subpart 1101-3 of Part 1101 of this Title, the office will develop the necessary site-specific conditions to avoid, minimize, and mitigate significant adverse environmental impacts to the maximum extent practicable, including requirements for additional compliance filings beyond those set forth in Subpart 1101-4 of Part 1101 this Title, as necessary.

(b) Applicants for pending article 10 facilities for which the application has been filed, but has not yet been deemed to be in compliance with article 10 application requirements, shall provide the following:

(1) written notice to ORES at least fourteen (14) days in advance of filing;

(2) a copy of the written notice to the secretary of the PSC advising of the applicant's election to become subject to Public Service Law article VIII;

(3) a copy of the written notice to the party list in the PSL article 10 proceeding advising of the applicant's election to be subject to Public Service Law article VIII;

(4) a completed transfer of application form;

(5) the exhibits required in Subpart 1101-2 of Part 1101 of this Title;

(6) copies of documentation identifying those matters and issues that have been identified and resolved in the PSL article 10 process;

(7) any additional information that may be required in order to enable the office to make the findings and determinations required by law;

(8) the fee to be deposited in the local agency account in an amount equal to $1,000 for each 1,000 kilowatts of capacity, which may be adjusted from time to time by the office to account for inflation; and

(9) the ORES fee to recover the costs of reviewing and processing an application in an amount equal to $1,000 for each

1,000 kilowatts of capacity.

(c) To the extent an applicant submitted intervenor funds pursuant to PSL article 10, any amounts held in an intervenor account established pursuant to PSL article 10 for that project shall be applied to the intervenor account established by this Chapter.

(d) For any matters and issues that have been identified and resolved in the PSL article 10 process, the siting permit will reflect such resolution and those provisions will not be the subject of any adjudicatory hearing conducted pursuant to Subpart 1100-8 of this Part.

(e) The applicant shall comply with requirements for filing, service, and publication of the application pursuant to section 1100-1.6 of this Part.

Subpart 1100-4. Processing of Applications.

Section 1100-4.1. Office of Renewable Energy Siting and Electric Transmission action on applications.

(a) Applications shall be filed with the office pursuant to section 1100-1.6(a) of this Part for initiation of review and a determination of completeness. It is the responsibility of the applicant to ensure the office is notified of all address changes.

(b) The office reserves the right in its sole discretion to elect to inspect the site(s) and during an inspection, among other things, measurements may be made, physical characteristics of the site may be analyzed, including without limitation soils and vegetation, and photographs may be taken. Ordinarily, such site visit shall occur between 7:00 a.m. and 8:00 p.m. Monday through Friday. An applicant's failure to allow access to the site can be grounds for, and may result in, a notice of incomplete application or statement of intent to deny.

(c) The office shall make its determination of completeness or incompleteness on or before sixty (60) days of receipt of an application for a major renewable energy facility siting permit, or on or before one hundred twenty (120) days of receipt of an application for a major electric transmission facility permit, and provide notice of such determination to the applicant via electronic

mail and, if requested by the applicant, by regular mail.

(d) If the application is determined to be incomplete, the notice shall include a listing of all identified areas of incompleteness and a description of the specific deficiencies.

(e) Within 90 days of the date of a notice of incomplete application, the applicant shall serve and file an application supplement on the office pursuant to section 1100-1.6(a) of this Part providing all items requested in the notice, or provide, subject to the office's approval, the date by which the application supplement will be filed. A copy of all application supplements shall also be served on all entities entitled to receive a copy of the application pursuant to section 1100-1.6 of this Part.

(f) Applications shall remain incomplete until all requested items are received by the office in a format that meets all filing guidelines established by the secretary. A partial submission of the requested material shall not change the incomplete status. The office shall notify the applicant for a major renewable energy facility siting permit of the application status within sixty (60) days of receipt of all requested material. The office shall notify the applicant for a major electric transmission facility siting permit of the application status within one hundred twenty (120) days of receipt of all requested material.

(g) Failure of the applicant to respond in writing to the office's notice of incomplete application will result in the application being deemed withdrawn without prejudice pursuant to the following procedures:

(1) if the applicant fails to respond to a notice of incomplete application within ninety (90) days, the office may send a follow-up notice of incomplete application requesting that the necessary items for a complete application be provided within thirty (30) days; and

(2) if the applicant fails to respond to such follow-up notice of incomplete application within thirty (30) days, the office will treat the application as withdrawn without prejudice, and shall so notify the applicant.

(h) If the application is determined to be complete by the office, the office shall publish a notice of complete application on the

office's website and serve the notice upon:

(1) the applicant, as directed in subdivision (c) of this section;

(2) the chief executive officer of each municipality in which any portion of the proposed facility is to be located, via electronic mail and, if requested, by regular mail; and

(3) any person who has previously expressed in writing an interest in receiving such notification, via the method of service requested by such person.

(i) If the office fails to provide notice of its determination of completeness or incompleteness within the time period set forth in subdivision (c) of this section, the application shall be deemed complete; provided, however, that no application may be complete without proof of consultation with the municipality or political subdivision where the project is proposed to be located, or an agency thereof, prior to submission of an application to ORES, related to procedural and substantive requirements of local law. Nothing in this section waives any applicable statutory requirements to obtain other permits that may be required, including, but not limited to, Federal and federally-delegated permits, or precludes the office from requesting additional information as set forth in this Part.

(j) Time frames and deadlines set forth in this Chapter are calculated in accordance with General Construction Law section 20, where day one is the day after a pertinent time-sensitive event, such as date of receipt or day of publication, and General Construction Law section 25-a (Public holiday, Saturday or Sunday). Unless indicated otherwise, days are calculated as calendar days.

(k) Unless otherwise specified in this Part, the applicant and office may extend the time periods for a completeness determination or final determination on the application by mutual consent.

Subpart 1100-5.

Section 1100-5.1. Local agency account.

(a) Except as otherwise provided in this Chapter, local agencies and potential community intervenors seeking funds from the local agency

account shall serve and file a request to the office, as set forth in subdivision (h) of this section, within thirty (30) days after the date on which a siting permit application has been filed by the applicant pursuant to section 1100-1.6 of this Part.

(b) Except as otherwise provided in this Chapter, within thirty (30) days after the deadline for requests for funds from the local agency account, the ALJ shall award local agency funds, to local agencies and potential community intervenors whose requests comply with the provisions of subdivision (h) of this section, so long as use of the funds will contribute to a complete record leading to an informed permit decision as to the appropriateness of the site and the facility, and for local agencies, shall include the use of funds to determine whether a proposed facility is designed to be sited, constructed, and operated in compliance with applicable local laws and regulations.

(c) A local agency or potential community intervenor (except an applicant) may request funds from the local agency account to defray expenses for experts.

(d) Local agencies and potential community intervenors are encouraged to consider the consolidation of requests with similar funding proposals.

(e) Subject to the availability of funds in the local agency account, the office may fix additional dates for submission of fund requests.

(f) At the time vouchers are filed or as otherwise required by the office, any local agency or potential community intervenor receiving an award of funds shall serve and file with the office a report:

(1) detailing an accounting of the monies that have been spent; and

(2) showing:

(i) the results of any studies and a description of any activities conducted using such funds; and

(ii) whether the purpose for which the funds were awarded has been achieved; if the purpose for which the funds were awarded has not been achieved, whether reasonable progress toward the goal for which the funds were awarded is being

achieved; and if applicable, why further expenditures are warranted.

(g) Disbursement of funds from the local agency account.

(1) All disbursements from the local agency account to any local agency or potential community intervenor shall be made by NYSERDA, at the direction of the office, on vouchers approved by the office.

(2) The office shall reserve at least seventy-five (75) percent of the local agency account funds for each project for potential awards to local agencies.

(3) All vouchers shall be submitted for payment no later than the following:

(i) For local agency awardees, no later than six (6) months after the withdrawal of a permit application, the filing of a host community benefit agreement, or the issuance of the final notice to proceed, whichever event occurs first.

(ii) For community intervenor awardees, no later than six (6) months after the withdrawal of a permit application or the office's final determination on the application.

(4) Any funds that have not been disbursed after the expiration of time for final voucher submittals pursuant to paragraph (3) of this subdivision shall be returned to the applicant.

(h) Each request for funds from the local agency account shall be completed on an ORES-approved form and contain:

(1) a statement that the facility falls within the local agency's jurisdiction or that a permit or approval from the local agency would have been required in the absence of article VIII of the Public Service Law;

(2) for individual potential community intervenors, a statement of the number of persons and the nature of the interests the requesting person represents, and proof of residency (e.g., a New York State driver's license, permit or non-driver identification card, a recent bank statement, a recent pay stub or a recent utility bill);

(3) for any non-profit organization potential community intervenors, a statement of a concrete and localized interest that may be affected by a proposed facility and that such interest has a significant nexus to its mission;

(4) a statement of the availability of funds from the resources of the local agency or potential community intervenor and of the efforts that have been made to obtain such funds;

(5) the amount of funds being sought;

(6) to the extent possible, the name and qualifications of each expert to be employed, or at a minimum, a statement of the necessary professional qualifications;

(7) if known, the name of any other local agency, potential community intervenor or entity who may, or is intending to, employ such expert;

(8) a detailed statement of the services to be provided by expert witnesses, consultants, attorneys, or others (and the basis for the fees requested), including hourly fee, wage rate, and expenses, specifying how such services and expenses will contribute to the compilation of a complete record as to the appropriateness of the site and facility;

(9) if a study is to be performed, a description of the purpose, methodology and timing of the study, including a statement of the rationale supporting the methodology and timing proposed, including a detailed justification for any proposed methodology that is new or original explaining why pre-existing methodologies are insufficient or inappropriate;

(10) a copy of any contract or agreement or proposed contract or agreement with each expert witness, consultant or other person; and

(11) a completed authorization form for electronic Automated Clearing House payment, or payment instructions for payments by check.

Subpart 1100-6. Reserved.

Subpart 1100-7.

Section 1100-7.1. Amendment of an application.

(a) Pending applications may only be amended with the express written permission of the office, as set forth in this section.

(b) *Requests for permission to submit an amendment.*

(1) An applicant wishing to amend a pending application shall file a written request to the office, setting forth:

(i) the proposed change to the application;

(ii) a justification as to why such changes are required;

(iii) the applicant's assessment as to whether the amendment is minor or major; and

(iv) an anticipated timeframe for resubmission.

(2) The office shall review the request and, within fifteen (15) days of receipt thereof, inform the permittee in writing as to its determination whether such changes constitute a minor amendment to be processed by the office or a major amendment subject to subdivision (c) of this section.

(i) For requests to amend a pending application filed prior to the issuance of a notice of complete application, the time for the office to make its completeness determination on the original application shall be suspended while the office is reviewing the request. If the amendment is determined to be a minor amendment, the office shall continue to process the application forthwith.

(ii) For requests to amend a pending application filed after the issuance of a notice of complete application, but prior to issuance of a draft permit, the time for the office to issue a draft permit on the original application shall be suspended while the office is reviewing the request.

(a) If the amendment is determined to be a minor amendment, the applicant will be deemed to have consented to an extension of the applicable time frame for a final determination on the application,

and all applicable statutory time frames for publication of draft permit conditions, and final determination on the application shall run from the office's minor amendment determination.

(b) If the amendment is determined to be a major amendment, the applicant will be deemed to have consented to vacatur of the notice of complete application, and the applicable statutory time frames for completeness review of the major amendment application are governed by subdivision (e) of this section.

(iii) Any request to amend a pending application filed after the issuance of a draft permit or notice of intent to deny shall constitute a major amendment and the applicant will be deemed to have consented to a vacatur of the notice of complete application and draft permit or notice of intent to deny. The applicable statutory time frames for completeness review of the major amendment application are governed by subdivision (e) if this section.

(c) *Submission of a major amendment to an application.*

(1) An applicant shall submit only those application materials that reflect changes from the original submission, including a redlined version of the relevant materials.

(2) If the applicant for a major renewable energy facility siting permit proposes to increase the nameplate capacity of the facility, the applicant shall submit any additional required payment to the local agency account simultaneously with its request for a major amendment.

(3) If the applicant for a major electric transmission facility proposes to increase the length of the facility such that the project falls within a higher category pursuant to section 1100-1.4(a)(9) of this Part, the applicant shall submit any additional required payment to the local agency account simultaneously with its request for a major amendment.

(4) The applicant shall publish notice of the major amendment, clearly identifying the changes from the original application and notice thereof, in accordance with section 1100-1.6 of this

Part.

(d) *Additional local agency account fee.* At any time after submission of a major amendment application, upon written request of a local agency or potential community intervenor, the ALJ may require the applicant to submit an additional local agency account fee, which additional fee shall be awarded and disbursed pursuant to section 1100-5.1 of this Part. The additional fee to be deposited in the local agency account for the proceeding shall be in an amount equal to the following, as determined by the ALJ:

(1) for a major renewable energy facility, $1,000 dollars for each 1,000 kilowatts of capacity of the amended facility, but no more than $75,000;

(2) for a major electric transmission facility, the local agency account fee authorized pursuant to section 1100-1.4(a)(8)(ii) through (v) of this Part, as applicable, but no more than $125,000.

(e) All applicable statutory time frames for completeness determination, publication of draft permit conditions, and final determination on the application shall run from the submission of the entire major amendment application in accordance with subdivision (c) of this section.

Subpart 1100-8. Hearing Process.

Section 1100-8.1. Publication and notice of draft siting permit.

(a) No later than sixty (60) days following the date upon which an application has been deemed complete, and following consultation with any relevant State agency or authority, ORES shall publish on the office and NYSDPS website draft permit conditions prepared by the office, or a statement of intent to deny.

(b) No later than sixty (60) days following the date upon which an application has been deemed complete, ORES shall publish on the office and NYDPS website a combined notice of the availability of draft permit conditions or statement of intent to deny, public comment period and public comment hearing, and issues conference, as defined in section 1100-8.2(d) of this Part.

Section 1100-8.2. Hearing notices.

(a) *General requirements.* Unless otherwise provided by statute or regulation, the office of hearings and alternative dispute resolution shall publish notices required under this Subpart on both the office and the NYSDPS website, and shall provide copies of all such notices to the applicant and to all persons and entities on the party list for the proceeding. Where newspaper publication is required under this Subpart, the applicant shall provide for and bear the cost of publication in the newspapers specified in section 1100-1.6(c)(2) of this Part. Notices of public comment or adjudicatory hearing shall be published not less than twenty-one (21) days prior to the date of the public comment or adjudicatory hearing. These requirements are minimums and the assigned ALJ shall direct the applicant to provide additional notice or to provide the notice further in advance of a hearing where the ALJ finds it necessary to adequately inform the potentially affected public about the hearing. Where the ALJ finds that a large segment of the potentially affected public has a principal language other than English, the ALJ shall direct the publication of the notice in a foreign language newspaper(s) serving such persons. Nothing herein shall authorize the ALJ to delay the commencement of the hearing beyond the deadlines established in this Part without the applicant's consent.

(b) *Required contents.* All notices required under this Subpart shall be in the form specified by the office of hearings and alternative dispute resolution and shall contain the following information:

(1) the date of issuance of the notice of hearing, the date of the notice of complete application, and the date of publication of the draft siting permit conditions or statement of intent to deny;

(2) a URL to the project page on the NYSDPS document and matter management (DMM) system;

(3) the date, time, location and purpose of the hearing and any pre-hearing conference, if scheduled. The location of the hearing shall be as follows:

(i) for a major renewable energy facility, the location of any hearing required under this Subpart shall be in a town, village, or city in which any part of the project is located, or as reasonably near the site of the proposed

generation facility as practicable, depending upon the availability of suitable venues. For adjudicatory hearings held pursuant to section 1100-8.7 of this Part, another location, including by electronic webinar, may be selected based on the convenience of parties and witnesses at the discretion of the ALJ, provided that members of the public have reasonable access to attend the hearing;

(ii) for a major electric transmission facility, the ALJ, in the exercise of discretion, shall set the number and location of public comment hearings held pursuant to section 1100-8.3(a) of this Part to assure that members of the public have reasonable access to attend the hearing. The ALJ may require such additional public comment hearings as are necessary to assure that all statutory requirements are complied with;

(iii) for a major electric transmission facility, the location of any adjudicatory hearing held pursuant to section 1100-8.7 of this Part shall be determined by the ALJ, in the exercise of discretion;

(4) the name and address of the applicant or permittee;

(5) that the application is seeking a siting permit, pursuant to article VIII of the Public Service Law and this Part 1100;

(6) a description of the project; and

(7) a publicly accessible location for review of the available application materials, and the draft siting permit conditions or statement of intent to deny.

(c) *Optional contents.* The notice may also specify the issues of concern to the office and the public.

(d) *Combined notice of availability of draft permit conditions or statement of intent to deny, public comment period and public comment hearing, and issues conference.* In addition to the contents of a notice required by subdivisions (b) and (c) of this section, the combined notice shall contain the following information:

(1) the deadline and instructions for filing public comments on the draft permit conditions or statement of intent to deny electronically, by mail, or at a public comment hearing. The

period for filing public comments shall be a minimum of sixty (60) days from the date of issuance of the combined notice;

(2) the date, time, and location of the public comment hearing scheduled pursuant to section 1100-8.3(a) of this Part;

(3) notice of commencement of the issues conference procedure required by section 1100-8.3(b) of this Part and instructions for filing a petition for party status pursuant to sections 1100-8.3 and 1100-8.4 of this Part. The period for filing a petition for party status shall be a minimum of sixty (60) days from the date of issuance of the combined notice;

(4) the deadline and instructions to municipalities for filing the statement of compliance with local laws and regulations required by section 1100-8.4(d) of this Part; and

(5) for an application for a major electric transmission facility siting permit, any portion of which is to be located on the land of a landowner for which the applicant lacks a right-of-way agreement, the deadline and instructions for such landowners to file a statement challenging the explanation for the public need given in such application authorized by section 1100-8.4(e) of this Part.

(e) *Service on specific persons.* Not less than twenty-one (21) days prior to a hearing date, individual copies of any notice required under this Subpart shall be sent to:

(1) the chief executive officer of any municipality in which any part of the project is located;

(2) each member of the State Legislature in whose district the facility or any alternative proposed in the application would be located;

(3) all persons and entities required to receive copies of the application pursuant to section 1100-1.6(a) of this Part;

(4) all persons and entities required to received notice of the application pursuant to section 1100-1.6(c) of this Part;

(5) all persons and entities on the party list for the proceeding; and

(6) such other persons, including municipalities, as the office

deems to have an interest in the application.

The ALJ shall direct the applicant to provide notice further in advance of the hearing to those persons specified in this subdivision where the ALJ finds it necessary to adequately inform them about the hearing. Nothing herein shall authorize the ALJ to delay the commencement of the hearing beyond the deadlines established in this Part without the applicant's consent.

(f) *Landowner notification.* For an application for a major electric transmission facility siting permit, the applicant shall serve by first class mail the combined notice required by subdivision (d) of this section on each landowner of land on which any portion of the proposed facility is to be located together with a notice that such landowner’s property may be impacted by the project.

Section 1100-8.3. Public comment hearing and issues conference.

(a) *Public comment hearing.*

(1) Not less than sixty (60) days from the date of issuance of the combined notice required by section 1100-8.2(d) of this Part, a public comment hearing shall be convened to hear and receive the unsworn statements of parties, potential parties and non-parties relating to the siting permit application. A stenographic transcript of such statements shall be made but shall not be part of the record of the hearing, as defined by section 1100-8.11 of this Part.

(2) The ALJ may require that lengthy statements be submitted in writing and summarized for oral presentation.

(3) The statements and written submissions made at the public comment hearing or written comments submitted by the close of the public comment period shall not constitute evidence but may be used by the ALJ as a basis to inquire further of the parties and potential parties at the issues conference stage.

(b) *Issues conference*.

(1) *Purpose.* The purpose of the issues conference is:

(i) to narrow or resolve disputed issues of fact without resort to taking testimony;

(ii) to receive argument on whether disputed issues of fact that are not resolved meet the standards for adjudicable issues set forth in subdivision (d) of this section;

(iii) to receive argument on whether party status should be granted to any petitioner on disputed issues of fact;

(iv) to determine whether legal issues exist whose resolution is not dependent on facts that are in substantial dispute and, if so, to receive argument on the merits of those issues; and

(v) to decide any pending motions.

(2) *Procedures.*

(i) The ALJ shall preside over the issues conference. Participants shall include office staff, the applicant, and any person who has filed a petition for party status pursuant to section 1100-8.4(c) of this Part.

(ii) In the combined notice required by section 1100-8.2(d) of this Part, the mandatory parties identified in section 1100-8.4(b) of this Part, and any potential parties shall be provided with the opportunity to file petitions for party status and statements authorized pursuant to section 1100-8.4 of this Part concerning potential substantive and significant issues. The issues conference shall be conducted solely on papers, unless the ALJ, in their sole discretion, determines that oral argument is necessary to fully understand the issues proposed by the parties and potential parties.

(iii) Within twenty-one (21) days after the close of the public comment period, the filing of petitions for party status, or the filing of any statements authorized by section 1100-8.4 of this Part, whichever event occurs later, or by such later date established by the ALJ in the exercise of discretion:

(*a*) office staff may file and serve a response to any petitions for party status, any statement of issues by the applicant, any statement of compliance with local laws and regulations, and for applications for a major

electric transmission facility siting permit, any landowner statement challenging the explanation of public need;

(*b*) the applicant may file and serve a response to any petition for party status, statement of compliance with local laws and regulations, or for applications for a major electric transmission facility siting permit, any landowner statement challenging the explanation of public need. In addition, the applicant shall file and serve on office staff a response to public comments received during the public comment period, including any supplemental information.

(iv) At the ALJ's discretion, an issues conference may be revisited at any time prior to the issuance of a final decision to consider issues based on new information upon a showing that such information was not reasonably available at the time of the issues conference. Upon a demonstration that the public review period for the application prior to the issues conference was insufficient to allow potential parties to adequately prepare for the issues conference, the ALJ may adjourn the issues conference, extend the time for written submittals, or make some other fair and equitable provision to protect the rights of the potential parties.

(c) *Rulings on issues and party status.*

(1) In no event later than thirty (30) days after the date of receipt of written submissions for the issues conference and responses thereto, the ALJ shall:

(i) determine which issues satisfy the requirements for being adjudicable issues as set forth in subdivision (d) of this section, and define those issues as precisely as possible;

(ii) determine which persons satisfy the requirements for party status as set forth in subdivision (e) of this section for any adjudicatory hearing on the disputed issues of fact identified for adjudication;

(iii) rule on the merits of any legal issue where ruling

does not depend on the resolution of disputed issues of fact. Legal determinations made by ORES staff in the draft siting permit or notice of intent to deny are reviewed for an error of law. Exercises of discretion and policy decisions made by ORES staff are reviewed for an abuse of discretion;

(iv) decide any pending motions to the extent practicable; and

(v) summarize comments received on the application and draft permit conditions or notice of intent to deny.

(2) If the ALJ determines that there are no fact issues to adjudicate and finally determines all legal issues raised by the parties, the ALJ shall direct in writing that no adjudicatory hearing be held, make the findings required by section 1100-9.1(c) of this Part, and direct such actions as are necessary to continue processing the application to issue the requested siting permit, including issuance of a written summary and assessment of public comments received during the public comment period on issues not otherwise addressed in the ALJ's ruling.

(d) *Standards for adjudicable issues*.

(1) *Generally applicable rules.* Subject to the limitations set forth in paragraphs (5) and (6) of this subdivision, an issue is adjudicable if:

(i) it relates to a dispute between office staff and the applicant over a proposed term or condition of the draft siting permit, including uniform standards and conditions;

(ii) it relates to a matter cited by office staff as a basis to deny the siting permit and is contested by the applicant;

(iii) it is proposed by a potential party and is both substantive and significant; or

(iv) public comments, including comments provided by a municipality or a landowner, on a draft siting permit condition published by the office raise a substantive and significant issue.

(2) An issue is substantive if there is sufficient doubt about the applicant's ability to meet statutory or regulatory criteria applicable to the project, such that a reasonable person would require further inquiry. In determining whether such a demonstration has been made, the ALJ shall consider the proposed issue in light of the application and related documents, the standards and conditions, or draft siting permit, the statement of issues filed by the applicant, the content of any petitions filed for party status, the record of the issues conference, and any subsequent written or oral arguments authorized by the ALJ.

(3) An issue is significant if it has the potential to result in the denial of a siting permit, a major modification to the proposed project, or the imposition of significant permit conditions in addition to those proposed in the draft siting permit, including uniform standards and conditions.

(4) In situations where office staff has reviewed an application and finds that a component of the applicant's project, as proposed or as conditioned by the draft siting permit, conforms to all applicable requirements of statute and regulation, the burden of persuasion is on the potential party proposing any issue related to that component to demonstrate that it is both substantive and significant.

(5) The completeness of an application, as defined in this Part, shall not be an issue for adjudication.

(6) *ORES-initiated permit amendments.* Where the office proposes an amendment to an existing permit or certificate, the only issues that may be adjudicated are those related to the basis for amendment cited in the office's notice to the permittee or certificate holder. Whenever such issues are proposed for adjudication, the determination to require adjudication shall be made according to the standards set forth in paragraph (1) of this subdivision.

(e) *Standards for party status.* Rulings on party status shall be made by the ALJ after the deadline for receipt of petitions for party status and responses thereto and shall be set forth in the rulings on issues and party status provided for at subdivision (c) of this section.

(1) *Full party status.* The ALJ's ruling of entitlement to full party status shall be based upon:

(i) a finding that the petitioner has filed an acceptable petition pursuant to paragraphs (c)(1) and (2) of section 1100-8.4 of this Part;

(ii) a finding that the petitioner has raised a substantive and significant factual issue or that the petitioner can make a meaningful contribution to the record regarding a substantive and significant factual issue raised by another party; and

(iii) a demonstration of adequate interest related to the standards and conditions established by the office for the siting, design, operation, and construction of the project.

(2) *Amicus status*. The ALJ's ruling of entitlement to *amicus* status shall be based upon:

(i) a finding that the petitioner has filed an acceptable petition pursuant to paragraphs (c)(1) and (3) of section 1100-8.4 of this Part;

(ii) a finding that the petitioner has identified a legal or policy issue which needs to be resolved by the hearing; and

(iii) a finding that the petitioner has a sufficient interest in the resolution of such issue and through expertise, special knowledge or unique perspective may contribute materially to the record on such issue.

(3) *Inadequate petition*. If a potential party fails to file a petition in the form set forth in section 1100-8.4(c) of this Part, the ALJ may deny party status or may require additional information from the petitioner.

(4) *Supplementation of petitions*. Where the ALJ finds, based on good cause shown by the petitioner, that a potential party did not have adequate time to prepare its petition for party status, the ALJ shall provide an opportunity for supplementation of the petition.

(f) *Late-filed petitions for party status and late-raised issues.*

(1) Petitions filed after the date set in the combined notice provided for in section 1100-8.2(d) of this Part shall not be granted except under the limited circumstances outlined in paragraph (2) of this subdivision.

(2) In addition to the required contents of a petition for party status as set forth in section 1100-8.4(c) of this Part, a petition filed late shall include the following to receive any consideration:

(i) a demonstration that there is good cause for the late filing;

(ii) a demonstration that participation by the petitioner will not significantly delay the proceeding or unreasonably prejudice the other parties; and

(iii) a demonstration that participation will materially assist in the determination of adjudicable issues raised in the proceeding.

(3) Issues raised for the first time after the date set in the combined notice provided for in section 1100-8.2(d) of this Part for the filing of petitions or applicant's statement of issues authorized by section 1100-8.4 of this Part will not be considered except under the limited circumstances outlined in paragraph (2) of this subdivision and upon a demonstration that the late-raised issue meets the standards for adjudicable issues set forth in subdivision (d) of this section.

Section 1100-8.4. Hearing participation, petitions for party status, and statements.

(a) Participation in the adjudicatory hearing may be as a full party or as *amicus*, depending upon the demonstrated compliance with the criteria set forth in subdivisions (b) through (e) of this section. Non-parties who wish to have their comments recorded shall be permitted to submit oral or written comments during the public comment portion of the proceedings, or as otherwise provided by the ALJ, as set forth in this Part. Such public statements shall not constitute evidence in the adjudicatory hearing but may be used by the ALJ as a basis to inquire further of all parties and potential parties at the issues conference stage.

(b) *Mandatory parties.* The applicant and assigned office staff are

full parties to the proceeding. The office or NYSDPS shall designate members of its staff to represent the public interest at any adjudicatory hearing held pursuant to this Part, including with respect to the application of local and State laws. Any municipality, political subdivision, or an agency thereof are full parties to the proceeding if issues related to the jurisdiction or authority of those agencies are joined for adjudication in the rulings on issues provided for in section 1100-8.3(c) of this Part.

(1) *Applicant's statement of issues.* No later than the date set in the combined notice provided for in section 1100-8.2(d) of this Part for the filing of petitions for party status, or an earlier date set in the exercise of the ALJ's discretion, the applicant shall file and serve on office staff a statement of issues the applicant intends to raise with respect to any determination of the office. The applicant shall serve the statement of issues on persons filing petitions for party status within five (5) days of such filing. If office staff issues a notice of intent to deny, the filing of a statement challenging the denial will constitute consent to a one-year extension of the deadline for decision in the event of a reversal by the ALJ or the executive director. The extension will be counted from the ALJ ruling reversing the denial, or the executive director decision on appeal, whichever is later. The applicant's statement of issues shall:

(i) identify an issue for adjudication that meets the criteria of section 1100-8.3(d) of this Part;

(ii) present a statement of material facts sought to be adjudicated and an offer of proof specifying the witness(es), each witness's qualifications, the nature of the evidence the applicant expects to present, and the grounds upon which the assertion is made with respect to that issue; and

(iii) identify the permit conditions that are contested.

(c) *Other parties.* By the date set in the combined notice provided for in section 1100-8.2(d) of this Part, a person desiring either full-party or amicus status shall file a petition in writing which includes the requirements of either paragraphs (1) and (2) or paragraphs (1) and (3), as appropriate, of this subdivision.

(1) Required contents of petition for party status:

(i) identification of the proposed party together with the name(s), address, telephone number and email address of the person or persons who will act as representative of the party;

(ii) statement of the petitioner's interest related to the standards and conditions established by the ORES for the siting, design, operation, and construction of the project;

(iii) identification of any interest relating to statutes administered by other State agencies or ORES relevant to the project;

(iv) statement as to whether the petition is for full party or *amicus* status; and

(v) identification of the precise grounds for opposition or support.

(2) Additional contents required for petitions for full party status:

(i) identification of an adjudicable issue(s) which meets the criteria set forth in section 1100-8.3(d) of this Part; and

(ii) present a statement of material facts sought to be adjudicated and an offer of proof specifying the witness(es), each witness's qualification, the nature of the evidence the person expects to present, and the grounds upon which the assertion is made with respect to each issue identified;

(iii) to raise material issues of fact, the offer of proof must allege facts that are:

(a) contrary to what is in the application materials or draft siting permit;

(b) demonstrate an omission in the application or draft siting permit; or

(c) show that defective information was used in the

application or draft siting permit.

(3) Additional contents required for petitions for *amicus* status:

(i) identify the nature of the legal or policy issue(s) to be briefed which meets the criteria of section 1100-8.3(d) of this Part; and

(ii) provide a statement explaining why the proposed party is in a special position with respect to that issue.

(d) *Municipal statement of compliance with local laws and regulations.* At any time after an application is filed and no later than the date set in the combined notice provided for in section 1100-8.2(d) of this Part for the filing of petitions for party status, or an earlier date no less than sixty (60) days from the issuance of the combined notice set in the exercise of the ALJ's discretion, any municipality, political subdivision, or an agency thereof that has received notice of the filing of an application shall file and serve on office staff and the applicant a statement indicating whether the proposed facility is designed to be sited, constructed, and operated in compliance with applicable local laws and regulations, if any, concerning the environment, or public health and safety. The applicant shall serve the municipality's statement on persons filing petitions for party status within five (5) days of such filing. Any municipality, political subdivision, or an agency thereof that proposes to adjudicate any issues related to a facility's compliance with local laws and regulations shall file a petition for party status as provided for in subdivision (c) of this section, and shall include the statement of compliance with local laws and regulations in the petition. Statements of compliance with local laws and regulations without a petition are comments on the application or draft siting permit.

(e) *Landowner statement challenging explanation for public need.* For an application for a major electric transmission facility siting permit, any portion of which is to be located on the land of a landowner for which the applicant lacks a right-of-way agreement, at any time after an application is filed and no later than the date set in the combined notice provided for in section 1100-8.2(d) of this Part for the filing of petitions for party status, or an earlier date no less than sixty (60) days from the issuance of the combined notice

set in the exercise of the ALJ's discretion, any such landowner that has received notice of the filing of an application may file and serve on office staff and the applicant a statement challenging the explanation of public need given in such application. The applicant shall serve the landowner's statement on persons filing petitions for party status within five (5) days of such filing. Any such landowner challenging the explanation of public need that proposes to adjudicate any issues related to a facility's public need shall file a petition for party status as provided for in subdivision (c) of this section, and shall include the statement challenging the explanation of public need in the petition. Statements challenging the explanation of public need without a petition are comments on the application or draft siting permit.

(f) *Rights of parties.*

(1) A full party has the right to:

(i) engage in and conduct disclosure of any other party to the proceeding;

(ii) participate at the hearing in person or through an authorized representative;

(iii) present relevant evidence and cross-examine witnesses of other parties;

(iv) present argument on issues of law and fact;

(v) initiate motions, requests, briefs, or other written material in connection with the hearing, and receive all correspondence to and from the ALJ and to and from all other parties that is circulated to the parties generally;

(vi) appeal adverse rulings of the ALJ; and

(vii) exercise any other right conferred on parties by this Part or SAPA.

(2) A party with *amicus* status has the right to file a brief and, at the discretion of the ALJ, present oral argument on the issue(s) identified in the ALJ's ruling on its party status but does not have any other rights of participation or submission.

(g) *Loss of party status.* Upon determining that the party or its representative has failed to comply with the applicable laws, rules,

or directives of the ALJ and has substantially disrupted the hearing process or prejudiced the rights of another party to the proceeding, the ALJ may revoke the party status of the offending party.

Section 1100-8.5. General rules of practice.

(a) *Service and filing of papers*.

(1) CPLR 2103 governs service of papers except that papers may be served by a party and service upon the party's duly authorized representative may be made by the same means as provided for service upon an attorney. Notwithstanding any other rule to the contrary, service shall be made by electronic means, such as email or facsimile, unless the serving and receiving parties agree otherwise, or the ALJ, upon good cause shown, authorizes the use of a different means of service consistent with CPLR 2103.

(2) All parties who appear on the party list for the application are parties to be served consistent with CPLR 2103(e).

(3) Except as otherwise provided in this Part or Parts 1101 and 1102 of this Title, papers required to be filed shall be filed with the ALJ by electronic means and with the secretary pursuant to subdivisions (a) through (d) of section 3.5 of this Title. Papers will be deemed filed when a filing that meets all filing guidelines established by the secretary is received by the office.

(4) Proof of service shall be made in the same manner as under the CPLR and shall be filed with the ALJ and the secretary as provided in paragraph (3) of this subdivision.

(5) When papers are served by electronic transmission, the serving parties shall simultaneously send a copy of the papers transmitted electronically to the recipient by first class mail if requested by the receiving parties.

(b) *Computation of time limits*.

(1) The rules of New York State General Construction Law sections 20 and 25-a govern the computation of time limits.

Unless indicated otherwise, days are calculated as calendar days.

(2) If a period of time prescribed under this Part is measured from the date of service of a paper or the date of the issuance of a ruling, decision, or other communication instead of the date of service,

(i) five (5) days are added to the prescribed period if service or issuance is by first class mail;

(ii) one (1) day is added to the prescribed period if service or issuance is by overnight delivery;

(iii) if service or issuance is by facsimile transmission only, the service is complete upon the receipt by the sender of a signal from the equipment of the party served that the transmission was received; and

(iv) if service or issuance is by email only, the service is complete upon transmission. Service by email is not complete upon transmission if the serving party receives notification that the papers sent by email did not reach the person to be served.

(c) *Motion practice*.

(1) Motions and requests made at any time are part of the record. Motions and requests prior to any hearing shall be in writing. All motion papers shall be served and filed with the ALJ and the secretary. During the course of the adjudicatory hearing, motions may be made orally except where otherwise directed by the ALJ. If no ALJ has been assigned to the proceeding, the motion shall be filed with the Chief ALJ.

(2) Every motion shall clearly state the relief requested, and the legal arguments and any facts on which the motion is based.

(3) All parties have five (5) business days after a motion is served to serve and file a response. Thereafter no further responsive papers shall be allowed without permission of the ALJ. All responsive papers shall be filed with the ALJ and the secretary, together with proof of service on all parties.

(4) The ALJ should rule on a motion within five (5) business

days after a response has been served or the time to serve a response has expired. The ALJ shall rule on all pending motions prior to the close of any adjudicatory hearing. Any motion not ruled upon prior to the close of an adjudicatory hearing shall be deemed denied.

(5) Where a standard of review applicable to a motion or request is not otherwise provided for in this Part, other sources of standards, including statutory law such as SAPA and the CPLR, case law, and administrative precedent, may be consulted.

(d) *Office of Hearings and Alternative Dispute Resolution*.

(1) Prior to the appointment of an ALJ to hear a particular proceeding, the Chief ALJ may take any action which an ALJ is authorized to take.

(2) The Chief ALJ may establish a schedule for hearing pretrial motions and other matters for proceedings that have no assigned ALJ.

(e) *Interlocutory Appeals*. The time periods for interlocutory appeals filed pursuant to section 1100-8.7(d)(2) of this Part are as follows:

(1) Interlocutory appeals pursuant to section 1100-8.7(d)(2)(i) of this Part shall be served and filed with the executive director, the ALJ, and the secretary in writing within five (5) business days of the date of the disputed ruling. All parties have five (5) business days after a notice of interlocutory appeal is served to serve and file a response to the appeal. Only the executive director shall determine whether further responsive pleadings after the responses will be allowed.

(2) Motions for permission to file an interlocutory appeal pursuant to section 1100-8.7(d)(2)(ii) of this Part shall be served and filed with the executive director, the ALJ, and the secretary in writing within five (5) business days of the date of the disputed ruling. All parties have five (5) business days after a motion for permission to appeal is served to serve and file a response to the motion.

(3) Upon being granted permission to appeal, appellant shall

serve and file the appeal in writing within five (5) business days of permission being granted. Thereafter the other parties may serve and file a response in support of or in opposition to the appeal within five (5) business days of service of the appeal.

(f) Video recording or televising the adjudicatory hearing for rebroadcast is prohibited by section 52 of the New York State Civil Rights Law.

(g) All rules of practice involving time frames may be modified by direction of the ALJ or the executive director, and any other rule may be modified by the executive director upon recommendation of the ALJ or upon the executive director's own initiative.

Section 1100-8.6. Disclosure.

(a) *Prior to the issues conference.* Discovery is limited to what is afforded under the Freedom of Information Law (New York Public Officers Law – Access to Records). In the absence of extraordinary circumstances, the ALJ shall not grant petitions for further disclosure. This provision does not alter the rights of any person under the Freedom of Information Law, nor does it limit the ability of any party to seek disclosure after the issues conference.

(b) *Without permission of the ALJ.* Within ten (10) days after service of the final designation of the issues, any party has the right to serve a disclosure demand upon any other party demanding that party provide:

(1) documents, in general conformance with CPLR section 3120(a)(1)(i);

(2) a list of witnesses to be called, their addresses, and the scope and content of each witness's proposed testimony, and the qualifications and published works of each, in general conformance with CPLR section 3101(d)(1), except that disclosure of fact witnesses as well as expert witnesses may be demanded;

(3) an inspection of property, in general conformance with CPLR section 3120(a)(1)(ii), except that drilling and other intrusive sampling and testing is not provided as of right;

(4) a request for admission, in general conformance with CPLR

section 3123; or

(5) lists of documentary or physical evidence to be offered at the hearing;

(6) electronically stored information (ESI). Unless authorized by the ALJ, disclosure of ESI is limited only to ESI that is located in a computer's memory or in storage media (including servers, desktop or laptop computers, tablets, cellphones, hard drives, flash drives, compact discs, digital video discs, and portable media players) that is immediately available in the normal course of business.

(c) *By permission.* With permission of the ALJ, a party may:

(1) obtain discovery prior to the issues conference;

(2) use discovery devices from the CPLR not provided for in subdivision (b) of this section;

(3) submit late requests for discovery or vary the time for responding to requests; and

(4) access real property in the custody or control of another for the purpose of conducting drilling or other sampling or testing. In such instance, all parties shall be given notice of such activities and be allowed to observe and to take split samples or use other specified methods of verification;

(5) upon motion of any party demonstrating substantial prejudice, the ALJ may order additional disclosure of ESI beyond that provided for in subdivision (b) of this section, subject to any terms and conditions deemed appropriate by the ALJ. Such a motion shall be accompanied by an affirmation of an attorney, or an affidavit of the moving party if not represented by an attorney, describing the good faith efforts to resolve the dispute without resort to a motion.

(d) *Protective order and motion to compel.*

(1) A party against whom disclosure is demanded may make a motion to the ALJ for a protective order, in general conformance with CPLR 3103 to deny, limit, condition or regulate the use of any disclosure device in order to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other

prejudice. Such a motion shall be submitted within ten (10) days of the disclosure demand and shall be accompanied by an affidavit of counsel, or by the moving party or other authorized representative if not represented by counsel, reciting good faith efforts to resolve the dispute without resort to a motion.

(2) If a party fails to comply with a disclosure demand without having made a timely objection, the proponent of the disclosure demand may apply to the ALJ to compel disclosure. The ALJ may direct that any party failing to comply with disclosure after being directed to do so by the ALJ suffer preclusion from the hearing of the material demanded. Further, a failure to comply with the ALJ's direction will allow the ALJ or the executive director to draw the inference that the material demanded is unfavorable to the noncomplying party's position. The motion must be accompanied by an affirmation of an attorney, or an affidavit of the moving party or other authorized representative if not represented by an attorney, describing the good faith efforts to resolve the dispute without resort to a motion.

(3) *Sanctions.* Upon failure by a party to comply with a ruling or order by the ALJ or the executive director to produce material or information demanded in disclosure, the ALJ or executive director may exclude the material or information. In addition, the ALJ or the executive director may draw an adverse inference regarding the non-producing party with respect to the material or information the party did not produce or grant other appropriate relief consistent with CPLR 3126. The award of attorneys' fees or other costs is not authorized.

(e) *Pre-filed testimony.* The ALJ shall require the submission of pre-filed written testimony for fact and expert witnesses in advance of an adjudicatory hearing. Such testimony shall be attested to at the hearing and the witness shall be available to be cross-examined on the testimony, unless otherwise stipulated by the parties and directed by the ALJ. Pre-filed written testimony shall provide, or shall be accompanied by, a technical report which provides, a full explanation of the basis for the views set forth therein, including data, tables, protocols, computations, formulae, and any other information necessary for verification of the views set forth, as well as a bibliography of reports, studies, and other documents relied upon. Upon ten (10) days' notice (which time may be shortened

or extended by the ALJ), the party submitting pre-filed written testimony may also be required to make available all raw data, laboratory notes, and other basic materials, as well as all items on the bibliography provided.

(f) *Subpoenas.* Consistent with the CPLR, any attorney of record in a proceeding has the power to issue subpoenas. A party who is not represented by an attorney admitted to practice in New York State may request the ALJ or if no ALJ has been assigned to the proceeding, the Chief ALJ, to issue a subpoena, stating the items or witnesses needed by the party to present its case. A subpoena duces tecum to be served upon a library, other department or bureau of a municipal corporation or of the State, or an officer thereof, requiring the production of any books, papers or other things, may be issued consistent with CPLR 2307 by the ALJ assigned to the proceeding or, if no ALJ has been assigned to the proceeding, the Chief ALJ. The service of a subpoena is the responsibility of its sponsor. In addition, the sponsor shall be responsible for all costs arising from the issuance of or compliance with the subpoena. A subpoena shall give notice that the ALJ may quash or modify the subpoena pursuant to the standards set forth under CPLR article 23. This Part does not affect the authority of an attorney of record for any party to issue subpoenas under the provisions of CPLR 2302.

Section 1100-8.7. Conduct of the adjudicatory hearing.

(a) *Order of events.* The ALJ has discretion to determine and adjust the order of events and presentation of evidence, and to establish procedures to promote the conduct of a fair and efficient hearing. In general, the order of events at a hearing shall be as follows:

(1) *Formal opening.* The ALJ shall convene the hearing by opening the record, identifying the applications involved, and making appropriate procedural announcements.

(2) *Noting appearances.* The ALJ shall call the name of each person who has been granted status as a party.

(3) *Opening statements.* Prior to the commencement of the adjudicatory sessions, each party may, at its option, offer a brief opening statement of position on the application.

(4) *Admission of evidence.* The applicant shall present its direct case first and shall start by identifying all documents

which constitute the application, any supplements to the application, and all supporting documents which are relevant to the issues to be adjudicated. A panel of witnesses may be used for presenting testimony or for cross-examination at the ALJ's discretion. Cross-examination shall be conducted by parties in a sequence to be established by the ALJ, which normally will be the sequence in which the parties will present their direct cases. The evidence shall be confined to that which is relevant to issues identified in the ALJ's written determination following the issues conference.

(5) *Close of record.* Closing statements of position will be dealt with in the same manner as opening statements. At the concluding session of the hearing, the ALJ shall determine whether to allow the submission of written post-hearing briefs. The hearing record shall be officially closed upon the receipt of the stenographic record by the ALJ, the receipt of additional technical data or other material agreed at the hearing to be made available after the hearing, or the submission of briefs and reply briefs, conclusions of law, memoranda, and exceptions, if any, by the various parties, whichever occurs last. The ALJ shall notify the applicant and all other parties pursuant to section 1100-8.5(a) of this Part and file such notice with the secretary immediately upon official closing of the hearing record.

(6) Where the ALJ permits the filing of briefs, the ALJ shall also determine page limits for said briefs and whether replies will be permitted and the schedule for filing. Simultaneous filing shall normally be required. A party shall give specific reference to the portions of the record, whether transcript or otherwise, relied upon in support of the respective statements of fact made throughout the brief. Briefs shall be considered only as argument and shall not refer to or contain any evidentiary material outside of the administrative record.

(b) *The ALJ.*

(1) In proceedings pursuant to this Part, the ALJ has power to:

(i) rule upon all motions and requests, including those that decide the ultimate merits of the case;

(ii) set the time and place of the hearing, recesses, and

adjournments;

(iii)administer oaths and affirmations;

(iv) issue subpoenas upon request of a party not represented by an attorney admitted to practice in New York State. Subpoenas issued by the ALJ are regulated by the Civil Practice Law and Rules;

(v) upon the request of a party, issue a subpoena duces tecum to be served upon a library, other department or bureau of a municipal corporation or of the State, or an officer thereof, requiring the production of any books, papers or other things;

(vi) upon the request of a party, quash and modify subpoenas except that in the case of a non-party witness the ALJ may quash or modify a subpoena regardless of whether or not a party has so requested;

(vii) summon and examine witnesses;

(viii) establish rules for and direct disclosure at the request of any party or upon the ALJ's own motion pursuant to the procedures set out in section 1100-8.6 of this Part;

(ix) admit or exclude evidence including the exclusion of evidence on grounds of privilege or confidentiality;

(x) hear and determine arguments on fact or law;

(xi) preclude irrelevant, immaterial, or unduly repetitious, tangential or speculative evidence, argument, examination or cross-examination;

(xii) direct the consolidation of parties with similar viewpoints and input;

(xiii) limit the number of witnesses;

(xiv) utilize a panel of witnesses for purposes of direct testimony or cross-examination;

(xv) allow oral argument, so long as it is recorded;

(xvi) take any measures necessary for maintaining order and the efficient conduct of the proceeding;

(xvii) issue orders limiting the length of cross-examination, the form, length and content of motions and briefs and similar matters;

(xviii) order a site visit, on notice to all parties; and

(xix) exercise any other authority available to ALJs under this Part or to presiding officers under SAPA article 3.

(2) Impartiality of the ALJ and motions for recusal.

(i) The ALJ shall conduct the proceeding in a fair and impartial manner.

(ii) An ALJ shall not be assigned to any proceeding in which the ALJ has a personal interest.

(iii) Any party may file with the ALJ a motion in conformance with section 1100-8.5(c) of this Part, together with supporting affidavits, requesting that the ALJ be recused on the basis of personal bias or other good cause. Such motions shall be determined as part of the record of the proceeding.

(3) The designation of an ALJ as the executive director's representative shall be in writing and filed in the office of hearings and alternative dispute resolution.

(c) *Appearances.*

(1) A party may appear in person or be represented by an attorney licensed in New York State or any other jurisdiction, or by a non-attorney chosen by the party. Any representative of a party who is other than an attorney licensed to practice in New York State shall disclose their qualifications to the party. All persons appearing before the ALJ shall conform to the standards of conduct required of attorneys appearing before the courts of the State of New York. Any person signing any papers submitted in or entering an appearance in any proceeding shall be considered to have agreed to conform to those standards. A failure to conform to those standards shall be grounds for exclusion from that and any later proceeding. Nothing in this paragraph authorizes a non-lawyer to engage in the practice of law.

(2) Any person appearing on behalf of a party in a representative capacity may be required by the ALJ to show and state on the record the person's authority to act in such capacity and to file a notice of appearance with the ALJ and the secretary.

(3) If there is a change or withdrawal of a party's attorney or authorized representative, the party shall provide notice of the change or withdrawal to the ALJ and the secretary, and the attorneys or authorized representatives of all other parties, or, if a party appears without an attorney or authorized representative, to the party within ten (10) days of the change or withdrawal.

(d) *Appeals of ALJ rulings.*

(1) Any ALJ ruling may be appealed to the executive director after the completion of all testimony as part of a party's final brief or by notice of appeal and appeal where no final brief is provided for. Where no final brief is provided for, the appellant shall serve and file the notice of appeal and appeal within five (5) business days after service of the notice of the official closing of the hearing record.

(i) An ALJ ruling pursuant to section 1100-8.3(c)(2) of this Part that finally resolves all issues in a proceeding may be appealed to the executive director by notice of appeal and appeal. An ALJ ruling pursuant to section 1100-8.3(c) of this Part that finally resolves all issues as to a party may be appealed to the executive director by that party. The appellant shall serve and file the notice of appeal and appeal within five (5) business days of the ALJ's ruling.

(ii) The notice of appeal and appeal shall be served on all parties and filed with the executive director, the ALJ, and the secretary. All parties have five (5) business days after an appeal is served to serve and file a response to the appeal. Only the executive director shall determine whether further responsive pleadings after the responses will be allowed.

(2) During the course of the proceeding, in conformance with section 1100-8.5(e) of this Part, the following rulings may be

appealed to the executive director on an interlocutory basis:

(i) any ruling in which the ALJ has denied a motion for recusal; and

(ii) any other ruling of the ALJ that does not finally resolve all issues in the proceeding, by seeking permission to file an interlocutory appeal upon a demonstration that the failure to decide such an appeal would be unduly prejudicial to one of the parties or would result in significant inefficiency in the hearing process. In all such cases, the executive director's determination to entertain the appeal on an interlocutory basis is discretionary.

(3) A motion for permission to file an interlocutory appeal shall demonstrate that the ruling in question falls within the criteria set forth in subparagraph (ii) of paragraph (2) of this subdivision.

(4) The executive director may review any ruling of the ALJ on an interlocutory basis upon the executive director's determination or upon a determination by the ALJ that the ruling should be appealed.

(5) Whenever the executive director grants permission to file an interlocutory appeal, the parties shall be notified. The appellant shall be provided the opportunity to serve and file a brief on appeal and the other parties shall be provided with the opportunity to serve and file a response to the appeal.

(6) Failure to file an interlocutory appeal or the denial of permission to file an interlocutory appeal shall not preclude an appeal from the ruling to the executive director after the hearing.

(7) The hearing shall not be adjourned while an appeal or motion for permission to appeal is pending except by permission of the ALJ or the executive director.

(8) On administrative appeal pursuant to paragraph (1) or (2) of this subdivision, the executive director reviews the ALJ's ruling for any errors of law or fact, or abuses of discretion.

Section 1100-8.8. Evidence, burden of proof and standard of proof.

(a) *Evidence.*

(1) All evidence submitted shall be relevant and all rules of privilege shall be observed. However, other rules of evidence need not be strictly applied. Hearsay evidence may be admitted if it falls within one or more of the exceptions provided by CPLR article 45 or other law, or is shown to be reasonably reliable, relevant, and probative.

(2) Although relevant, evidence may be excluded if its value as proof is substantially outweighed by a potential for unfair prejudice, confusion of the issues, undue delay, waste of time, or needless presentation of repetitious or duplicative evidence.

(3) Where a part of a document is offered as evidence by one party, any party may offer the entire document as evidence.

(4) Each witness shall be sworn or make an affirmation before testifying. Opening, closing, and other unsworn statements are not evidence but shall be considered as arguments bearing on evidence.

(5) The ALJ or the executive director may take official notice of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the office. When official notice is taken of a material fact not appearing in the evidence in the record and of which judicial notice could not be taken, every party shall be given notice thereof and, on timely request, be afforded an opportunity, prior to the final decision of the executive director, to dispute the fact or its materiality.

(b) *Burden of proof.*

(1) The applicant has the burden of proof to demonstrate that its proposal shall be in compliance with all applicable laws and regulations administered by the office.

(2) Where the office has initiated a permit amendment, the office staff bears the burden of proof to show that the modification is supported by the preponderance of the evidence.

(3) Where an application is made for permit amendment, the permittee has the burden of proof to demonstrate that the modified permitted activity is in compliance with all applicable

laws and regulations administered by the office. A demonstration by the permittee that the there is no substantive change in the originally permitted activity, environmental conditions or applicable law and regulations constitutes a prima facie case for the permittee.

(4) The burden of proof to sustain a motion shall be on the party making the motion.

(c) *Standard of proof*. Whenever factual matters are involved, the party bearing the burden of proof shall sustain that burden by a preponderance of the evidence unless a higher standard has been established by statute or regulation. This subdivision does not modify or supplement the questions that may be raised in a proceeding brought pursuant to CPLR article 78.

Section 1100-8.9. Ex parte rule.

(a) Except as provided below, an ALJ shall not directly or through a representative, communicate with any person in connection with any issue that relates in any way to the merits of the proceeding without providing notice and an opportunity for all parties to participate.

(b) An ALJ may consult on questions of law or procedures with supervisors or other staff in the office of hearings and alternative dispute resolution, provided that such supervisors or staff have not been engaged in investigative or prosecutorial functions in connection with the adjudicatory proceeding under consideration or a factually related adjudicatory proceeding.

(c) An ALJ and the Chief ALJ may communicate with any person on ministerial matters, such as scheduling or the location of a hearing.

(d) Parties or their representatives shall not communicate with the ALJ, the Chief ALJ, or the executive director, or any person advising or consulting with any of them, in connection with any issue without providing proper notice to all the other parties.

Section 1100-8.10. Payment of hearing costs.

(a) Within thirty (30) days of the last day at which testimony is taken, the applicant shall pay for the cost of: physical accommodations, if not held in office or department facilities; publishing any required notices; and any necessary stenographic transcriptions. Except that, when a hearing is held pursuant to an

office initiated permit amendment, suspension, or revocation, the office shall be responsible for the costs listed above.

(b) The ALJ may require that the applicant post a bond or other acceptable financial guarantee for the costs of the hearing. Such guarantee shall be provided to the office prior to commencing the hearing or the hearing shall be adjourned until the guarantee is made available.

(c) If the applicant has not paid the costs of the hearing referred to in subdivision (a) of this section by the date on which the final siting permit is issued, a requirement to submit such payment shall be included as a pre-construction requirement in the final siting permit.

(d) Public utilities that are subject to section 18-a of the Public Service Law are not subject to the costs established by this section.

Section 1100-8.11. Record of the hearing.

(a) All proceedings at a hearing shall be stenographically reported. The ALJ may arrange for a certified reporter to produce a stenographic transcript of the hearing or may permit the applicant to make such arrangements. When a stenographic transcript is made, an electronic copy of the transcript shall be served and filed with the ALJ and the secretary at the expense of the applicant. At the ALJ's discretion, part or all of the transcripts may also be required in hard copy or other form.

(b) The record of the hearing shall include the application (including any supplements to the application); all notices (including the notice of hearing); any rulings, decisions, determinations, opinions or orders issued in the proceeding; conditions; any affidavit of publication of the notice of hearing; the transcript of the testimony taken at the hearing and the exhibits entered into evidence; any motions, appeals or petitions; any admissions, agreements or stipulations; a statement of matters officially noticed; offers of proof, objections thereto and rulings thereon; proposed findings; the recommended decision and hearing report; and briefs as may have been filed including any comments on the recommended decision and hearing report filed pursuant to section 1100-8.12 of this Part. Correspondence among the parties to a proceeding shall not be included in the record unless the ALJ

determines in the exercise of discretion that a document should be entered into the record.

(c) As soon as the record becomes available, the ALJ shall assure that a complete and current copy of the record is placed in an accessible location for the parties' reference and/or copying.

(d) *Affirmation of truth of statement.* The statement of any person wherever made, subscribed and affirmed by that person to be true under the penalties of perjury, may be used in a proceeding under this Part in lieu of and with the same force and effect as an affidavit. Such affirmation shall be in substantially the form provided for in SAPA section 302(4).

Section 1100-8.12. Final decision.

(a) *Recommended decision and hearing report.*

(1) The ALJ shall issue a recommended decision and hearing report to the executive director and the parties within forty-five (45) days after the close of the record. The report shall include findings of fact, conclusions of law and recommendations on all issues before the ALJ.

(2) All parties to the proceeding have fourteen (14) days after receipt of the recommended decision and hearing report to serve and file comments with the executive director. The executive director has the sole discretion to authorize responses to comments and any further responsive filings.

(3) Office staff has fourteen (14) days after receipt of the recommended decision and hearing report to file with the executive director a written summary and assessment of public comments received during the public comment period on issues not otherwise addressed in the recommended decision and hearing report.

(b) *Stipulations*. A stipulation executed by all parties resolving any or all issues removes such issue(s) from further consideration in the proceeding. Within five (5) days of the execution of a stipulation, the applicant shall serve a copy of the fully executed stipulation on all parties and file a copy of the fully executed stipulation with the ALJ and the Secretary. Upon receipt of an executed stipulation that resolves all issues in the proceeding, the

ALJ shall close the proceeding and direct such actions as are necessary to continue processing the application to issue the requested siting permit, including issuance of a written summary and assessment of public comments received during the public comment period on issues not otherwise addressed in the ALJ's ruling.

(c) *Final decision.* The final decision of the executive director shall be issued within thirty (30) days after receipt of all comments on the recommended decision and hearing report.

(d) *Reopening the record.* At any time prior to issuing the final decision, the executive director or the ALJ may direct that the hearing record be reopened to consider significant new evidence.

Subpart 1100-9.

Section 1100-9.1. Final determination on applications.

(a) The office shall serve on the applicant and its representative, if applicable, a determination in the form of: a permit, including all applicable uniform standards and conditions and any site-specific conditions, or a statement that the permit applied for has been denied, with an explanation for the denial, as follows:

(1) within six (6) months of the office deeming the application complete for major renewable energy facilities in which the proposed site is a repurposed site as defined by this Part; or

(2) within one (1) year of the office deeming the application complete for all other major renewable energy facilities.

(3) Within one (1) year of the office deeming the application complete for all major electric transmission facilities.

(b) Upon mutual consent of the applicant and the office, the time periods set forth in subdivision (a) of this section may be extended.

(c) A siting permit may only be issued if the office makes a finding that the proposed project, together with any applicable uniform standards and conditions, necessary site-specific conditions, and applicable compliance filings:

(1) complies with Public Service Law article VIII and applicable provisions of this Chapter;

(2) complies with substantive provisions of applicable State laws and regulations;

(3) complies with substantive provisions of applicable local laws and ordinances, except any local law or ordinance the office has elected not to apply, in whole or in part, based on a finding that, as applied to the proposed facility, is unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the facility and, in the case of a major electric transmission facility, the public need for the proposed project;

(4) avoids, minimizes, or mitigates to the maximum extent practicable potential significant adverse environmental impacts of the facility;

(5) achieves a net conservation benefit with respect to any impacted threatened or endangered species; and

(6) for a major electric transmission facility,

(i) demonstrates a qualified public need, including whether the proposed project conforms to plans related to the expansion or upgrade of the electric power grid and interconnected utility systems, or was included or considered in the power grid study required pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act (L 2020, ch 58, part JJJ, § 7), and

(ii) is in the public and ratepayer interest.

(7) In making the required findings, the office shall consider the CLCPA targets and the environmental benefits of the project and, in the case of a major electric transmission facility, the public need for the proposed project.

(d) The final siting permit for a major renewable energy facility shall include a provision requiring the permittee to provide a host community benefit, which may be a host community benefit as determined by the PSC pursuant to section 8 of part JJJ of chapter 58 of the Laws of 2020 or such other project as determined by ORES or as subsequently agreed to between the applicant and the host community.

(e) If a final siting permit decision has not been made by ORES within the time period provided for in subdivision (a) of this section or any extension agreed to by ORES and the applicant pursuant

to subdivision (b) of this section, whichever is later, the siting permit shall be deemed to have been automatically granted for all purposes set forth in this Chapter and all uniform conditions or site specific permit conditions contained in the draft permit issued for public comment shall constitute enforceable provisions of the siting permit and, if no draft permit was issued for public comment, the siting permit shall be deemed denied. Notwithstanding the foregoing:

(1) Any portion of a major renewable energy facility which is to be located on the land of a landowner for which the applicant lacks an existing right-of-way agreement or valid and enforceable lease or easement for use of such relevant property, no such permit shall be automatically granted.

(2) Any portion of a major electric transmission facility which is to be located on the land of a landowner for which the applicant lacks an existing right-of-way agreement and in which ORES has not made a public need determination, no such permit shall be automatically granted.

Subpart 1100-10. Compliance Filings.

Section 1100-10.1. Office decisions on compliance filings.

(a) Pre-construction compliance filings required pursuant to Subpart 1101-4 of Part 1101 of this Title or Subpart 1102-4 of Part 1102 of this Title shall be served on the office and filed with the secretary. The filing shall be deemed filed when an electronic copy of the filing that meets all filing guidelines established by the secretary is received by the office.

(1) Required compliance filings may be filed at any time after a draft siting permit is issued. The office shall review the filing and, within sixty (60) days of receipt thereof or thirty (30) days of final permit issuance, whichever is later, inform the permittee as to whether the compliance filing has been approved. The office shall not issue a *Notice to Proceed with Construction* until each such filing is received and approved, as necessary.

(2) If the office determines that a compliance filing cannot be approved, it shall detail all deficiencies identified and any

additional information that shall be provided by the permittee.

(3) The permittee shall resubmit the compliance filing within sixty (60) days of receipt of a notice of deficiency. If the permittee believes it will take more than sixty (60) days to address the deficiencies, it shall request an extension of the time to resubmit within fifty-five (55) days of receipt of the notice of deficiency.

(4) The office shall review the revised filing and, within sixty (60) days thereof, inform the permittee as to whether the revised filing has been approved.

(5) If the permittee believes that any action or lack thereof, or determination made, by a local agency in furtherance of such agency's review of any applicable regulatory permits or approvals, or actions or the lack thereof by a utility subject to the Public Service Commission's jurisdiction, is unreasonable or unreasonably delayed, conditioned, or withheld, the permittee may, upon reasonable notice to that agency or utility, request a determination from the executive director of any such unreasonable or unreasonably delayed, conditioned, or withheld action or determination. Such request shall include a description of the action or condition, the permittee's attempts to resolve the issue with the agency or utility, including copies of any relevant correspondence or communications, and the permittee's requested course of action. The office may suspend its review of any filed Environmental Management and Construction Plan (EM&CP) pending its response to the request. The executive director may take whatever action the director deems to be appropriate, in the exercise of discretion, to respond to the request to address the reasonableness of the action or determination. Such action may include, but is not limited to, granting relief from the requirement to obtain the subject approval as a condition of notice to proceed (NTP), limited NTP, or conditional NTP pending later approval of the subject authorization.

(b) Post-construction compliance filings required pursuant to Subpart 1101-5 of Part 1101 of this Title or Subpart 1102-5 of Part 1102 of this Title shall be served on the office and filed with the

secretary. The filing shall be deemed filed when an electronic copy of the filing that meets all filing guidelines established by the secretary is received by the office. The office shall review the filing and, within sixty (60) days of receipt thereof, inform the permittee whether the compliance filing has been approved.

(1) If the office determines that a compliance filing cannot be approved, it shall detail all deficiencies identified and any additional information that shall be provided by the permittee.

(2) The permittee shall resubmit the compliance filing within sixty (60) days of receipt of a notice of deficiency. If the permittee believes it will take more than sixty (60) days to address the deficiencies, it shall request an extension of the time to resubmit within thirty (30) days of receipt of the notice of deficiency.

(3) The office shall review the revised filing and, within sixty (60) days thereof, inform the permittee as to whether the revised filing has been approved.

Section 1100-10.2. General requirements for compliance filings.

(a) *Certification by a responsible official.* Any compliance filing submitted pursuant to this Part and Parts 1101 and 1102 of this Title shall contain certification of truth, accuracy, and completeness by a responsible official. This certification shall be in a form acceptable to the office and state that, based on information and belief formed after reasonable inquiry, the statements and information in the filing are true, accurate, and complete.

(b) *Certification by a professional engineer.* Any compliance filing submitted pursuant to this Part and Parts 1101 and 1102 of this Title that pertains to the practice of engineering shall contain certification of truth, accuracy, and completeness by a professional engineer. This certification shall be in a form acceptable to the office and state that the compliance filing was prepared under the general supervision of a person licensed to practice professional engineering in the State of New York and, based on information and belief formed after reasonable inquiry, the statements and information in the filing are true, accurate, and complete.

Subpart 1100-11. Amending, Transferring, or Relinquishing Permits.

Section 1100-11.1. Amendments to approved EM&CP or compliance filings requested by the permittee.

(a) An application by the permittee to amend an approved Environmental Management and Construction Plan (EM&CP) or compliance filing shall be served on the office and filed with the secretary. The filing shall contain:

(1) A statement, including supporting information, setting forth the approved compliance filing amendments, identifying the existing condition(s) the permittee is requesting to be amended and whether the permittee considers such change to be a minor or major amendment.

(2) The office may request additional information necessary to determine whether the request is for a minor or major change or amendment as provided below.

(b) If the permittee proposes any modification to an approved EM&CP or compliance filing that the office determines does not require any amendment of the permit, and is not likely to result in any material increase in any identified adverse environmental impact or any significant adverse environmental impact not previously identified, the office shall issue a written determination that the proposed change constitutes a "minor change." The minor change is not subject to further review or approval and is incorporated into the approved EM&CP or compliance filing.

(c) If the office determines that a proposed modification to an approved EM&CP or compliance filing is likely to result in any material increase in any identified adverse environmental impact or any significant environmental impact not previously identified, the office shall issue a written determination that the proposed modification constitutes a major amendment subject to subdivision (e) of this section.

(d) If the permittee proposes any modification to an approved EM&CP or compliance filing that the office determines requires amendment of the permit, the office shall review the request and issue a written determination within thirty (30) days whether such change constitutes

a minor amendment to be processed by the office or a major amendment subject to subdivision (e) of section 1100-11.2 of this Part. The office may require modifications to any compliance filings to demonstrate compliance with the minor amendment.

(e) *Major Amendments*.

(1) A request for a major amendment to an approved EM&CP or compliance filing shall be noticed, filed, and served in the same manner as an application.

(2) A major amendment to an approved EM&CP or compliance filing for a major renewable energy facility may require the permittee to supplement the local agency account to the extent that the permittee is seeking to increase the base nameplate capacity of the facility.

(3) A major amendment to an approved EM&CP or compliance filing for a major electric transmission facility may require the permittee to supplement the local agency account to the extent that the permittee is seeking to increase the length of the facility such that the project falls within a higher category pursuant to section 1100-1.4(a)(9) of this Part.

(4) A request for a major amendment is subject to the completeness determination procedures provided for at section 1100-4.1 of this Part.

(5) Major amendments shall be subject to the procedures provided for at Subpart 1100-8 of this Part, including a minimum sixty (60) day public comment period in which comments regarding the proposed modification will be accepted by the office. In determining whether a major amendment should be approved, the office shall only accept and consider comments with respect to the changes proposed by the permittee.

(6) An adjudicatory hearing held on a major amendment pursuant to Subpart 1100-8 of this Part is limited to only those changes proposed by the permittee for which substantive and significant issues have been identified.

(7) The office shall serve on the permittee a decision in the form of a revised EM&CP or compliance filing requirement, or a statement that the major amendment applied for has been denied, with an explanation for the denial.

(f) Nothing in this section shall prevent the permittee from implementing necessary actions in emergency situations threatening personal injury, property, severe adverse environmental impact, or system reliability. The permittee shall notify the office as soon as practicable and in event no later than two (2) days following the initiation of such actions.

Section 1100-11.2. Amendments to existing permit or certificate requested by the permittee.

(a) The procedures of this section apply to the following permits and certificates:

(1) a major renewable energy facility siting permit issued pursuant to article VIII of the Public Service Law, and this Chapter;

(2) a major electric transmission facility siting permit issued pursuant to article VIII of the Public Service Law and this Chapter;

(3) a certificate of environmental compatibility and public need issued pursuant to article VII of the Public Service Law and this Chapter to an existing in-service major electric transmission facility;

(4) a certificate of environmental compatibility and public need issued pursuant to article 10 of the Public Service Law to an existing in-service major renewable energy facility where the proposed amendments would increase the capacity of the existing major renewable energy facility;

(5) a permit issued to an existing in-service major renewable energy facility pursuant to permitting procedures other than pursuant to Public Service Law article VIII or article 10 where the proposed amendments would increase the capacity of the existing major renewable energy facility.

(b) An application by the permittee or certificate holder to amend an existing permit or certificate shall contain:

(1) A statement, including a copy of the permit or certificate and supporting information, identifying the existing

condition(s) the permittee or certificate holder is requesting to be amended and whether the permittee or certificate holder considers such change to be a minor or major amendment.

(2) A statement that there are no outstanding permit or certificate violations at the facility.

(3) For an application to amend an existing major electric transmission facility siting permit or certificate, the statement shall state whether the permittee or certificate holder has all necessary right-of-way agreements for the amendment.

(4) The office may request additional information necessary to determine whether the request is for a minor or major amendment as provided below.

(c) Except for applications for an amendment to an existing major electric transmission facility siting permit or certificate for which the permittee or certificate holder lacks all necessary right-of-way agreements for the amendment, the office shall review the request and issue a written determination within sixty (60) days whether such change constitutes a minor amendment to be processed by the office or a major amendment subject to subdivision (e) of this section. If the office determines that the change constitutes a minor amendment, the final siting permit will be issued within sixty (60) days after such determination.

(1) For applications for an amendment of a wetland jurisdictional determination for a major renewable energy facility, if the office determines to conduct a site visit pursuant to section 1101-1.1(a)(3) of this Title, the amended determination will be issued pursuant to the time frames provided for in that section.

(d) For applications for an amendment to an existing major electric transmission facility siting permit or certificate for which the permittee or certificate holder lacks all necessary right-of-way agreements for the amendment, the office will initiate a 60-day public comment period to allow landowners to challenge need. After the close of the public comment period, the office shall review the request and issue a written determination within thirty (30) days

whether the requested change constitutes a minor amendment to be processed by the office or a major amendment subject to subdivision (e) of this section. If the office determines that the change constitutes a minor amendment, the office will issue a final amended permit and a summary and assessment of public comments within sixty (60) days after such determination.

(e) *Major Amendments*.

(1) An application for a major amendment to an existing permit or certificate shall be noticed, filed, and served in the same manner as an application.

(2) A major amendment to a major renewable energy facility siting permit or certificate may require the permittee or certificate holder to supplement the local agency account to the extent that the permittee is seeking to increase the base nameplate capacity of the facility.

(3) A major amendment to a major electric transmission facility siting permit or certificate may require the permittee or certificate holder to supplement the local agency account to the extent that the permittee or certificate holder is seeking to increase the length of the facility such that the project falls within a higher category pursuant to section 1100-1.4(a)(9) of this Part.

(4) An application for a major amendment is subject to the completeness determination procedures provided for at section 1100-4.1 of this Part. The sixty (60) day period for major renewable energy facility siting permit or one hundred twenty (120)-day period for major electric transmission facility siting permit review pursuant to section 1100-4.1(c) of this Part shall run from the date of filing of the permit or certificate amendment application.

(5) Major amendments shall be subject to the procedures provided for at Subpart 1100-8 of this Part, including a minimum sixty (60) day public comment period in which comments regarding the proposed amendments will be accepted by the office. In determining whether a major amendment should be approved, the office shall only accept and consider comments with respect to

the changes proposed by the permittee or certificate holder.

(6) An adjudicatory hearing held on a major amendment pursuant to Subpart 1100-8 of this Part is limited to only those changes proposed by the permittee or certificate holder for which significant and substantive issues have been identified.

(7) The office shall serve on the permittee or certificate holder a decision in the form of an amended permit or a statement that the major permit amendment applied for has been denied, with an explanation for the denial.

(f) Nothing in this section shall prevent the permittee or certificate holder from implementing necessary actions in emergency situations threatening personal injury, property, severe adverse environmental impact, or system reliability. The permittee or certificate holder shall notify the office as soon as practicable and in event no later than two (2) days following the initiation of such actions.

Section 1100-11.3. Transfers of permit or certificate and pending applications.

(a) A permit or certificate in effect may only be transferred to a person, as defined by section 1100-1.2(by) of this Part, who agrees in writing to comply with the terms, limitations, or conditions contained in the permit or certificate, and upon the approval of the office.

(b) Applications for the transfer of permits or certificates in effect, or pending permit applications, to a different permittee, certificate holder, or applicant, or to change the name of the permittee, certificate holder, or applicant, shall be filed with the office and the secretary, and shall contain:

(1) a statement of the reasons supporting the transfer;

(2) a statement showing the transferee is qualified to carry out the provisions of the permit, certificate, or any pending permit application and requirements of this Part;

(3) a verification by all parties to the proposed transfer;

(4) if required by the office, a copy of the proposed transfer agreement; and

(5) name, address, telephone number and electronic mail address of an employee or representative of the permittee or applicant from whom further information may be obtained.

(c) Applications for transfer of permits or certificates in effect, or pending permit applications, should be filed with the office at least thirty (30) days prior to transfer, unless a different time period is authorized by the office.

(d) An application for a permit or certificate transfer shall not include or cause a significant change in the design or operation of the project as approved by the office in a siting permit issued pursuant to article VIII of the Public Service Law or certificate of environmental compatibility and public need issued pursuant to article VII of the Public Service Law to an existing in-service facility, or as described in an application pending before the office.

(e) The new permittee, certificate holder, or applicant shall satisfy any required financial obligations and insurance coverage prior to approval of a transfer of an issued permit, certificate, or pending application.

(f) A new permittee, certificate holder, or applicant may be subject to a record of compliance review before a decision on permit, certificate, or application transfer is rendered by the office.

(g) Any noncompliance by the existing permittee or certificate holder, associated with a permit or certificate proposed to be transferred, shall be resolved to the office's satisfaction prior to transfer of such permit or certificate.

Section 1100-11.4. Relinquishments.

(a) A person may relinquish a permit or certificate by filing a written notification with the office and the secretary. The notification shall:

(1) identify the permit or certificate to be relinquished by its permit or certificate number;

(2) state why the permit or certificate is being relinquished;

(3) describe how the provisions and conditions of the permit or certificate have been satisfied; and

(4) provide an explanation of any remaining actions

required at the site or facility prior to terminating the permit or certificate.

(b) In reviewing a request to relinquish a permit or certificate, the office shall confirm whether or not permit or certificate provisions and conditions have been satisfied, including post-operational and decommissioning requirements as set forth in Parts 1101 or 1102 of this Title, as applicable. The office shall provide written verification of its concurrence with permit or certificate relinquishment or provide reasons why the permit or certificate shall remain in effect.

Section 1100-11.5. Permit or certificate amendments by the office.

(a) Permits or certificates may be amended or terminated on the basis of any of the following:

(1) materially false or inaccurate statements in the permit or certificate application, compliance filings, or supporting papers;

(2) failure by the permittee or certificate holder to comply with any terms or conditions of the permit or certificate conditions, orders of the executive director, or any provisions of law or regulations related to the permitted or certified activity;

(3) exceeding the scope of the project as described in the permit or certificate application; or

(4) newly discovered material information or a material change in environmental conditions, relevant technology, or applicable law or regulations since the issuance of the existing permit or certificate.

(b) The office shall send a notice of intent to amend or terminate a permit or certificate to the permittee or certificate holder by certified mail return receipt requested or personal service consistent with CPLR article 3, and publish notice on the office's website. The notice shall state the alleged facts or conduct which appear to warrant the intended action and shall state the effective date, contingent upon administrative appeals, of the amendment.

(c) Within fifteen (15) days of mailing a notice of intent, the permittee or certificate holder may file a written statement with the

office and secretary, as directed, giving reasons why the permit or certificate should not be amended or terminated, requesting a hearing, or both. Failure by the permittee or certificate holder to timely file a statement shall result in the office's action becoming effective on the date specified in the notice of intent.

(d) Where the office proposes to amend or terminate a permit or certificate and the permittee or certificate holder requests a hearing on the proposed amendment or termination, the original permit or certificate conditions or permit status shall remain in effect until a decision is issued by the executive director pursuant to subdivision (f) of this section. At such time, the permit or certificate conditions or permit status supported by the executive director's decision shall take effect.

(e) Within fifteen (15) days of receipt of the permittee's or certificate holder's statement, the office shall either:

(1) rescind or confirm the notice of intent to amend or terminate based on a review of the information provided by the permittee or certificate holder, if a statement without a request for a hearing is submitted; or

(2) notify the permittee or certificate holder that a hearing shall be held at a date and place to be established by the office of hearings and alternative dispute resolution, if a statement with a request for a hearing has been submitted. The provisions of Subpart 1100-8 of this Part apply to hearings conducted pursuant to this section, except that the time periods provided for in section 1100-8.1 of this Part shall be measured from date of receipt of the permittee's or certificate holder's request for a hearing.

(f) In the event such a hearing is held, the executive director shall, within thirty (30) days of receipt of all comments on the recommended decision and hearing report of the ALJ, issue a decision which:

(1) continues the permit or certificate in effect as originally issued; or

(2) modifies the permit or certificate; or

(3) terminates the permit or certificate.

(g) Notice of such decision, stating the findings and reasons therefor, shall be provided to the permittee or certificate holder pursuant to the procedures set forth in Subpart 1100-9 of this Part.

Section 1100-11.6. Modifications of existing major electric transmission facilities without a Public Service Law article VII certificate or new work located substantially within existing electric transmission right-of-way.

(a) The provisions of this section apply to:

(1) changes to an existing in-service major electric transmission facility that does not have a certificate of environmental compatibility and public need issued pursuant to article VII of the Public Service Law and this Chapter. Changes subject to this subdivision do not include normal repairs, maintenance, replacements, non-material modifications and improvements of a major electric transmission facility which are performed in the ordinary course of business; and

(2) new work proposed to be located substantially within an existing electric transmission right-of-way.

(3) If modification of an existing in-service major electric transmission facility that does not have a certificate is being undertaken concurrently with an application to amend an existing permit or certificate, the office may process the modification application together with the amendment application pursuant to section 1100-11.2 of this Part.

(b) *Pre-application procedures.* Prior to filing an application pursuant to this section, the applicant shall comply with the following pre-application procedures and requirements:

(1) *Consultation with local agencies.* The applicant shall comply with the procedures provided for in section 1100-1.3(a) of this Part.

(i) The statement required by section 1100-1.3(a)(8) of this Part shall indicate that local agency account funds will be available in the event the office determines that the application is for a major modification as provided for in subdivision (f) of this section.

(2) *Consultation with Indigenous Nations.* The applicant shall comply with the procedures provided for in section 1100-1.3(c) of this Part.

(3) *Landowner notification.* The applicant shall provide notice to landowners as provided for in section 1100-1.3(d)(1) of this Part. The notice to landowners shall include:

(i) a brief description of the facility and the proposed changes;

(ii) a designated contact person for the applicant, with telephone number, email address, and mailing address; and if the applicant maintains a webpage to disseminate information to the public, the address of that webpage; and

(iii) an anticipated application date and information about how to provide written comments regarding the public need for the proposed facility.

(4) *Consultation with the office.* The applicant shall comply with the procedures provided for in section 1100-1.3(g)(1) of this Part, except that the consultation may occur no less than sixty (60) days before the date on which the applicant files an application pursuant to this section.

(5) *Cultural resource pre-application requirements.* The applicant shall comply with the pre-application requirements of section 1102-1.1(c)(3)(i) and (ii) of Part 1102 of this Title.

(6) *Visual resource pre-application requirement.* The applicant shall comply with the pre-application requirements of section 1102-1.1(d) of Part 1102 of this Title.

(c) *Application.* An application pursuant to this section to modify an existing facility without a certificate or for new work proposed to be located substantially within an existing right-of-way shall contain:

(1) a description of the existing facilities, the environmental setting, a plan for the proposed work, and an assessment of the incremental significant adverse environmental impacts over the existing facilities related to the construction and operation of

the project. The application shall identify all significant adverse impacts associated with the proposed changes to the existing infrastructure and shall describe the mitigation measures the applicant will apply to avoid or minimize such impacts. Mitigation measures must be consistent with all regulatory requirements and shall include compliance with applicable uniform standards and conditions. If the applicant determines there are no significant adverse impacts, or that all such impacts are mitigated, the request shall state and support that conclusion with relevant studies and screenings;

(2) the application exhibits and pre-application studies and screenings the applicant has determined are relevant, or which the office has determined are required after consultations pursuant to section 1100-1.3(g)(1) of this Part. Unless the office determines the following application exhibits are required by site-specific or project-specific conditions, the following application exhibits and pre-application procedures are not required for an application pursuant to this section:

(i) the alternative route scoping procedures pursuant to section 1102-1.1(f) of Part 1102 of this Title;

(ii) Exhibit 8: Public Health, Safety and Security pursuant to section 1102-2.8 of Part 1102 of this Title;

(iii) Exhibit 12: Geology, Seismology, and Soils pursuant to section 1102-2.12 of Part 1102 of this Title;

(iv) Exhibit 17: In-Water Facilities pursuant to section 1102-2.17 of Part 1102 of this Title; and

(v) Exhibit 22: Socioeconomic Effects pursuant to section 1102-2.22 of Part 1102 of this Title;

(3) a written request for exemptions from the application exhibits and pre-application studies and screenings the applicant has determined are not relevant or the office has determined are not required, and a justification for the exemptions requested; and

(4) a statement whether the applicant has all necessary right-of-way agreements for the application.

(d) An application pursuant to this section shall be filed with the office pursuant to section 1100-4.1 of this Part for initiation of review and a determination of completeness.

(1) If the application for modification of an existing facility without a certificate or new work in an existing electric transmission right-of-way reveals that the applicant does not have all right-of-way agreements, the office will initiate a sixty (60) day public comment period after application filing to allow landowners to challenge the need for the project. If the office concludes pursuant to subdivision (e) of this section that the application does not involve significant increased environmental impacts over existing conditions, or that significant impacts would be addressed by the uniform standards and conditions, the office will issue the summary and assessment of public comments with the final permit.

(e) After the office issues a notice of complete application pursuant to section 1100-4.1 of this Part, the office shall review the application to determine whether the application constitutes a major modification to existing facilities.

(1) If the office determines that the proposed changes to the existing facility or new work are not likely to result in any increased significant adverse environmental impacts or new significant adverse environmental impacts when compared to the existing electric transmission infrastructure, or that all significant adverse impacts are addressed by the uniform standards and conditions, the office will have sixty (60) days after issuance of the notice of complete application to issue a written determination that the change does not involve significant increased environmental impacts over existing conditions, and issue the final permit.

(2) If the office determines that the proposed changes to the existing facility or new work are likely to result in any increased significant adverse environmental impacts or new significant adverse environmental impacts when compared to the existing electric transmission infrastructure, the office will have sixty (60) days after issuance of the notice of complete application to issue a written determination that the project is a major modification subject to subdivision (f) of this section

and issue a draft permit for public comment and hearings.

(3) If the application requires the waiver of local laws or ordinances pursuant to section 1102-2.28(b) of Part 1102 of this Title, the office will determine that the changes involve increased significant adverse environmental impacts unless the applicant has agreements from the affected municipalities consenting to the waiver.

(f) *Major modifications.*

(1) An application for a major modification pursuant to this section shall be noticed, filed, and served in the same manner as an application pursuant to section 1100-1.6 of this Part.

(2) Each application for a major modification pursuant to this section shall be accompanied by a fee to be deposited in the local agency account in an amount equal to the following:

(i) for an application to modify an existing facility, the fee authorized by section 1100-1.4(a)(8) of this Part, up to a maximum of $125,000;

(ii) for an application for new work, the fee authorized by section 1100-1.4(a)(8) of this Part.

(3) Each application for a major modification pursuant to this section shall be accompanied by an application review fee in an amount equal to the following:

(i) for an application to modify an existing facility, the fee authorized by section 1100-1.5(a) of this Part, up to a maximum of $125,000;

(ii) for an application for new work, the fee authorized by section 1100-1.5(a) of this Part.

(iii) Public utilities that are subject to section 18-a of the Public Service Law are not subject to the review fee established by this paragraph.

(4) Major modification applications shall be subject to the procedures provided for at Subpart 1100-8 of this Part, including a minimum sixty (60) day public comment period in

which comments regarding the proposed modifications will be accepted by the office. In determining whether a major modification should be approved, the office shall only accept and consider comments with respect to the changes from existing conditions proposed by the applicant.

(5) An adjudicatory hearing held on a major modification application pursuant to Subpart 1100-8 of this Part is limited to only those changes from existing conditions proposed by the applicant for which significant and substantive issues have been identified.

(6) The office shall serve on the applicant a decision in the form of a permit or a statement that the application has been denied, with an explanation for the denial.

(g) Nothing in this section shall prevent the owner or operator of an existing facility without a certificate from implementing necessary actions in emergency situations threatening personal injury, property, severe adverse environmental impact, or system reliability. The owner or operator shall notify the office as soon as practicable and in event no later than two (2) days following the initiation of such actions.

Subpart 1100-12.

Section 1100-12.1. Enforcement.

(a) All final siting permits issued by the office pursuant to PSL article VIII or by the Office of Renewable Energy Siting established pursuant to former Executive Law § 94-c, and all certificates of environmental compatibility and public need issued by the PSC pursuant to Public Service Law article VII, are enforceable by ORES and the NYSDPS pursuant to sections 24, 25, and 26 of the Public Service Law and implementing regulations as if issued by the PSC. Final siting permits issued to combination gas and electric corporations are enforceable by the office and the NYSDPS pursuant to section 25-a of the Public Service Law and implementing regulations. The office and NYSDPS shall have the authority to monitor, enforce, and administer compliance with all terms and conditions set forth in a final siting permit or certificate and in doing so may use and rely on authority otherwise available under the Public Service Law and

implementing regulations. Notwithstanding any other provision of law to the contrary, the holder of a certificate or permit issued under Public Service Law article VIII, or a predecessor statute thereto, for a major renewable energy facility with an electric generating capacity between 25 and 80 megawatts or that otherwise opts into Public Service Law article VIII is subject to enforcement by ORES or the NYSDPS pursuant to sections 24, 25, and 26 of the Public Service Law and implementing regulations.

(b) Staff from ORES and the NYSDPS shall have the authority -- in the absence of responsible permittee supervisory personnel, or in the presence of such personnel who, after consultation with ORES or NYSDPS staff, refuses to take appropriate action -- to issue a stop work order and direct the field crews to stop the specific potentially harmful activity immediately, in the event of any emergency resulting from the specific construction or maintenance activities that violate, or may violate, the terms of a siting permit issued by the office, compliance filings submitted pursuant to Subpart of 1100-10 of this Part, or any other supplemental filings. Any stop work order shall be limited to the activity at issue and/or the affected areas of the facility.

(c) If responsible permittee personnel are not on site, ORES and/or NYSDPS staff shall immediately thereafter inform the permittee's construction supervisor(s) and/or environmental monitor(s) of the action taken.

(d) A stop work order shall expire twenty-four (24) hours after issuance, or earlier if the issue promoting the stop work order is resolved, unless confirmed by the executive director of the office or the chief executive officer of the DPS. ORES and/or NYSDPS staff shall give the permittee notice by electronic mail of any application to have a stop work order so confirmed. If a stop work order is confirmed, the permittee may seek reconsideration from the executive director of the office or the chief executive officer of the DPS.

(e) If the emergency prompting the issuance of a stop work order is resolved to the satisfaction of the office or the NYSDPS, the stop work order shall be lifted. If the emergency has not been satisfactorily resolved, the stop work order shall remain in effect.

(f) Stop work authority shall be exercised with due regard to potential environmental, public health, or safety impacts, economic costs involved, possible impact on construction activities, and whether an applicable statute, regulation, or permit condition or requirement is violated. Before exercising such authority, ORES and/or NYSDPS staff shall consult wherever practicable with the permittee's representative(s) possessing comparable authority. Within reasonable time constraints, all attempts will be made to address any issue and resolve any dispute in the field.

(g) Issuance of a stop work order shall not prevent the permittee nor the contractor from undertaking any safety-related activities as they deem necessary and appropriate under the circumstances.

(h) If ORES and/or NYSDPS staff determines that a significant threat exists such that protection of the public or the environment at a particular location requires the immediate implementation of specific measures, the respective staff may, in the absence of responsible permittee supervisory personnel, or in the presence of such personnel who refuse to take appropriate action, direct the permittee or the relevant contractors to implement the corrective measures identified in the approved siting permit or compliance filings. All such directives shall follow the protocol established for communication between parties as set forth in the approved Facility Communications Plan submitted pursuant to Parts 1101 or 1102 of this Title, as applicable. The field crews shall immediately comply with ORES and/or NYSDPS staff directives as provided through the communication protocol. ORES and/or NYSDPS staff shall immediately thereafter inform the permittee's construction manager(s) and/or environmental monitor(s) of the action taken.

Subpart 1100-13. Water Quality and Coastal Certification Procedures.

Section 1100-13.1. Water quality certification procedures.

(a) In accordance with section 401 of the Clean Water Act, if construction or operation of a proposed major renewable energy facility or major electric transmission facility would result in any discharge into the navigable waters of the United States and require a Federal license or permit, the applicant shall request and, prior

to commencing construction, obtain a water quality certification indicating that the proposed activity will be in compliance with water quality standards, as set forth in 6 NYCRR section 608.9.

(b) Generally, the request for the water quality certification shall be submitted to ORES when an application for a Federal license or permit is made, or any time thereafter.

(c) A copy of all pertinent State and Federal permit applications related to the water quality certification shall be submitted along with the request for the water quality certification.

(d) In support of any request for a water quality certification, an applicant shall demonstrate compliance with the provisions referenced in 6 NYCRR section 608.9. A request for a water quality certification will not be considered valid until the applicant serves on the office and files with the secretary a copy of its related Federal permit application. An applicant shall include in its request, the following:

(1) final wetlands and stream delineation reports;

(2) Federal wetlands and streams jurisdictional determinations;

(3) an identification and summary of proposed temporary and permanent impacts to wetlands (per cover type), streams, and regulated adjacent areas, including drawings and details showing impacts and site-specific crossing details; and

(4) a description of any proposed mitigation for wetland and stream impacts.

To the extent this information has already been provided to the office as part of another filing (e.g. application, supplement, EM&CP, and so on), appropriate citations may be provided indicating where that information has already been submitted to the office.

(e) Any applicant that applies for a Federal license or permit that will require a water quality certification shall provide the pertinent contact information for the district engineer of the U.S. Army Corps of Engineers or other Federal lead agency to use in contacting the office as to the applicable time period or any other issue.

(f) When an applicant or permittee has requested both a water quality certification from ORES and permits from the U.S. Army Corps of Engineers or other Federal agency, ORES shall provide information to the district engineer or other Federal agency to establish the reasonable period of time to act on the request for certification in order to avoid a waiver, consistent with applicable Federal regulations.

(g) A request for a water quality certification shall be filed and served and notice of it shall be given in the same manner as an application pursuant to section 1100-1.6 of this Part.

Section 1100-13.2. Coastal certification procedures.

(a) If a proposed major electric generating facility or major electric transmission facility would have any reasonably foreseeable effect on any land or water use or natural resource of the coastal area and Federal authorization is required or Federal funding is requested, the applicant shall, contemporaneously with submitting the application, submit to NYSDOS pursuant to section 1100-1.6 of this Part copies of the application, the applicant's draft Federal consistency certification, and data and information sufficient to initiate a pre-application review by NYSDOS pursuant to the Federal Coastal Zone Management Act and its regulations.

(b) The record of the hearing as provided for at section 1100-8.11 of this Part may provide data and information which the Secretary of State may consider during their Federal review of the applicant's coastal consistency certification.

(c) If the proposed facility has a reasonably foreseeable effect on any land or water use or natural resource of the coastal areas and inland waterways, the NYSDOS, pursuant to article 42 of the Executive Law, may review, evaluate, and issue recommendations and opinions to the office concerning the potential for the proposal to affect such coastal areas and inland waterways, and policies related thereto.

(d) NYSDOS’s recommendations and opinions regarding the completeness of the application pursuant to section 1100-4.1 of this Part shall be submitted to the office on or before sixty (60) days of receipt of the application for a major renewable energy facility, or on or

before one-hundred and twenty (120) days of receipt of the application for a major electric transmission facility.

Subpart 1100-14. Declaratory Rulings by the Office.

Section 1100-14.1. Availability.

(a) The executive director, on behalf of the office, may, on a petition filed pursuant to this Subpart, issue a declaratory ruling with respect to:

(1) the applicability to any person, property, or state of facts of any rule or statute enforceable by the office;

(2) whether any action by the office taken or to be taken pursuant to a rule or statute is within the authority of the office; or

(3) whether a person's compliance with a Federal requirement will be accepted as compliance with a similar State requirement applicable to that person.

(b) A declaratory ruling may also be issued whenever the executive director determines it is warranted by the public interest.

Section 1100-14.2. Procedure.

(a) A petition for declaratory ruling shall be filed with the executive director by electronic means and with the secretary pursuant to subdivisions (a) through (d) of section 3.5 of this Title.

(b) In addition to complying with the requirements of subdivisions (a) through (d) of section 3.5 of this Title, a petition for declaratory ruling shall contain:

(1) a caption and a complete statement of the facts and grounds prompting the petition, including a full disclosure of the petitioner's interest in the proceeding;

(2) a clear, concise statement of:

(i) the controversy or uncertainty that is the subject of

the petition and the request that it be resolved by declaratory ruling; and

(ii) the petitioner's proposed resolution of that controversy or uncertainty;

(3) copies of all relevant documents and supporting materials;

(4) reference to any pending administrative or judicial proceeding involving the same or similar set of facts, including the names and addresses of any other persons whose interests are reasonably likely to be affected by the ruling; and

(5) citations to any statutes, rules, or other authorities relevant to the determination.

(c) At the time it is filed, a petition for declaratory ruling shall be served on the affected utility company, if any, and any other entity known to be directly affected by or interested in the requested ruling. The executive director or designee may require service on other affected or interested persons.

(d) Responses to a petition for declaratory ruling may be filed within 21 days of the date the petition is filed, shall be served upon the petitioner, and shall comply with the requirements of subdivisions (a) through (d) of section 3.5 of this Title. All respondents, as well as the petitioner, shall be considered parties.

(e) A petitioner for a declaratory ruling shall promptly correct any deficiencies in a filed petition within 48 hours of being notified of such deficiency and shall make available for the office's use copies of all books, papers, and documents upon which the petitioner relies or as the office may require. Failure to do so may be grounds for declining to issue a declaratory ruling.

(f) *Public comments; oral argument and briefing.*

(1) If the executive director or designee finds that it is in the public interest to solicit public comments on the petition, notice of the petition and the due date for public comment, together with a brief summary of the facts and the issues presented, shall be placed on the office's website at the earliest available opportunity and emailed to all parties on the

party list for the matter. Notice may also be sent to any person whom the executive director or designee has reason to believe has a substantial interest in the petition. Public comments on the petition must be received by the office no later than 15 business days after publication on the office's website or such other date set by the executive director or designee in the exercise of discretion.

(2) All public comments received by the office shall be posted on the office's website. Within 10 business days after the due date for public comments, the petitioner may respond to such comments or request an extension of time to respond.

(3) In the exercise of discretion, the executive director or designee may authorize oral argument on a petition. Any oral argument shall be recorded.

(4) Upon request of any party or in the exercise of discretion, the executive director or designee may authorize such additional briefing as the executive director or designee deems appropriate. Any party may request additional briefing within five (5) days of the petitioner's response to public comments.

Section 1100-14.3. Issuance of declaratory ruling.

(a) Where a petition seeks a declaratory ruling with respect to whether an action should be taken pursuant to a rule, the ruling or a statement declining to issue a ruling will be issued within 60 days of the date responses to the petition are due, the conclusion of any public comment period, the conclusion of any oral argument, or the submission of any briefing authorized by the executive director or designee, whichever occurs last.

(b) Rulings will be made on the facts alleged in the petition and those facts will be assumed to be true unless demonstrated not to be true by the documents submitted. The executive director also may take official notice of a fact not subject to reasonable dispute if it is either generally known or can be accurately and readily verified.

(c) The executive director may decline to issue a declaratory ruling on the following grounds:

(1) the petition does not raise a question of the applicability

of any regulation or statute enforceable by the office;

(2) the petition raises issues which are, have been, or should have been the subject of office review pursuant to an application for a permit or other approval or are the subject of an enforcement proceeding;

(3) the petition raises issues that are the subject of pending rule making or litigation;

(4) a response to the petition is not in the public interest;

(5) the petition does not contain sufficient information or the petitioner has not adequately responded to the office's request for additional information needed to decide the issues presented; or

(6) the declaratory ruling is an inappropriate means of resolving the issues raised in the petition.

Section 1100-14.4. Effect.

A declaratory ruling shall be identified as such, shall be binding on the office, and shall not be retroactively changed.

Subpart 1100-15.

Section 1100-15.1. Severability.

If any provision of this Chapter or its application to any person or circumstance is determined to be contrary to law by a court of competent jurisdiction, such determination does not affect or impair the validity of the other provisions of this Chapter or the application to other persons and circumstances.

Subpart 1100-16.

Section 1100-16.1. Effective date.

This Chapter applies to applications received by the office on or after the effective date of this Chapter.

Subpart 1100-17.

Section 1100-17.1. Material incorporated by reference.

(a) Acoustical Society of America.

(1) The following publications accredited by the American National Standards Institute (ANSI) and published by the Acoustical Society of America (ASA) are incorporated herein by reference:

(i) Guide to the Evaluation of Human Exposure to Vibration in Buildings, publication date April 4, 1983, reaffirmed June 19, 2020 (ANSI/ASA Standard S2.71-1983);

(ii) Quantities and Procedures for Description and Measurement of Environmental Sound- Part 3: Short-term Measurements with an Observer Present, publication date 2013, reaffirmed June 29, 2018 (ANSI/ASA S12.9-2013/ Part 3);

(iii) Quantities and Procedures for Description and Measurement of Environmental Sound. Part 4: Noise Assessment and Prediction of Long-term Community Response, publication date 2005, reaffirmed June 19, 2020 (ANSI/ASA S12.9-2005/Part 4);

(iv) Methods to Define and Measure the Residual Sound in Protected Natural and Quiet Residential Areas, publication date 2014, reaffirmed May 28, 2020 (ANSI/ASA S3/SC1.100-2014-ANSI/ASA S12.100-2014);

(v) Acoustics – Attenuation of Sound During Propagation Outdoor-Part 2: General Method of Calculation, publication date 2012, reaffirmed June 22, 2020, (ANSI/ASA S12.62-2012 /ISO 9613-2:1996 (MOD); and

(vi) Wind Turbine Sound Modeling, publication date April 1, 2022 (ANSI/ACP 111-1-2022).

(2) Copies of said publications may be obtained from the publisher at the following address: Acoustical Society of America, Standards Secretariat, 1305 Walt Whitman Road, Suite

300, Melville, NY 11747-4300, or from the ANSI online webstore.

(b) International Electrotechnical Commission.

(1) The following publications published by the International Electrotechnical Commission (IEC) are incorporated herein by reference:

(i) Wind energy generation systems - Part 1: Design requirements. Fourth Edition, publication date 2019-02-08 (IEC 61400-1:2019);

(ii) Wind Turbines-Part 11: Acoustic Noise Measurement Techniques. Third Edition (3.1), publication date 2018-06-15 (IEC 61400-11:2012+AMD1:2018 CSV); and

(iii) Wind Turbines-Part 14: Declaration of Apparent Sound Power Level and Tonality Values, First Edition, publication date 2005-03-22 (IEC TS 61400-14:2005).

(2) Copies of said publications may be obtained from the publisher at the following address: IEC Regional Centre for North America (IEC-ReCNA), 446 Main Street, 16th Floor, Worcester, MA 01608, or from the IEC online webstore.

(c) Institute of Acoustics.

(1) The following publication published by the Institute of Acoustics is incorporated herein by reference:

(i) IOA Noise Working Group (Wind Turbine Noise), Amplitude Modulation Working Group, Final Report. "A Method for Rating Amplitude Modulation in Wind Turbine Noise", 09 August 2016, Version 1.

(2) Copies of said publication are readily available without charge on the internet at: https://dps.ny.gov/ores-resources, and may be obtained from the publisher at the following address: Institute of Acoustics, 3rd Floor St Peter's House, 45-49 Victoria Street, St. Albans, Hertfordshire, AL1 3WZ, United Kingdom.

(d) World Health Organization.

(1) The following publication published by the World Health Organization is incorporated herein by reference:

(i) Guidelines for Community Noise, publication date 1999.

(2) Copies of said publication are readily available without charge on the internet at: https://dps.ny.gov/ores-resouces, and may be obtained from the publisher at the following address: World Health Organization, Avenue Appia 20, 1202, Genève, Switzerland.

(e) North American Electric Reliability Corporation.

(1) The following publication published by the North American Electric Reliability Corporation is incorporated herein by reference:

(i) Bulk Electric System Definition Reference Document, Version 3 (August 2018).

(2) Copies of said publication are readily available without charge on the internet at: https://dps.ny.gov/ores-resources, and may be obtained from the publisher at the following address: North American Electric Reliability Corporation, 1325 G Street NW, Suite 600, Washington, DC 20005.

(f) Department of Defense.

(1) The following publications published by the Department of Defense are incorporated herein by reference:

(i) 32 Code of Federal Regulations 211.6, effective date 01/06/14, which is readily available without charge on the internet at: https://dps.ny.gov/ores-resources; and

(ii) 32 Code of Federal Regulations 211.7, effective date 01/06/14, which is readily available without charge on the internet at: https://dps.ny.gov/ores-resources.

(2) Copies of said publications may be obtained from the publisher at the following address: U.S. Government Publishing Office, 732 North Capital Street, NW, Washington, DC 20401-0001.

(g) International Organization for Standardization.

(1) The following publication published by the International Organization for Standardization (ISO) is incorporated herein by reference:

(i) Acoustics- Attenuation of Sound During Propagation Outdoors- Part 2: General Method of Calculation, First Edition, publication date 1996-12-15 (ISO 9613-2:1996).

(2) Copies of said publication may be obtained from the publisher at the following address: International Organization for Standardization, ISO Central Secretariat, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland, or from the ISO online webstore.

(h) Federal Aviation Administration.

(1) The following publication published by the Department of Transportation and Federal Aviation Administration is incorporated herein by reference:

(i) FAA 14 Code of Federal Regulations Part 77, effective date 02/15/2011.

(2) Copies of said publication are readily available without charge on the internet at: https://dps.ny.gov/ores-resources, and may be obtained from the publisher at the following address: U.S. Government Publishing Office, 732 North Capital Street, NW, Washington, DC 20401-0001.

(i) New York State Department of Environmental Conservation.

(1) The following publications published by the NYSDEC, are incorporated herein by reference:

(i) New York State Standards and Specifications for

Erosion and Sediment Control, November 2016, which is readily available without charge on the internet at: https://dps.ny.gov/ores-resources;

(ii) New York State Stormwater Management Design Manual, July 31, 2024, which is readily available without charge on the internet at: https://dps.ny.gov/ores-resources; and

(iii) NYSDEC Spill Reporting and Initial Notification Requirements Technical Field Guidance, undated, which is readily available without charge on the internet at: https://dps.ny.gov/ores-resources.

(2) Copies of said publications may be obtained from the publisher at the following address: New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-0001.

(j) United States Environmental Protection Agency.

(1) The following publication published by the United States Environmental Protection Agency is incorporated herein by reference:

(i) 2018 Edition of the Drinking Water Standards and Health Advisories Tables, March 2018.

(2) Copies of said publication are readily available without charge on the internet at: https://dps.ny.gov/ores-resources, and may be obtained from the publisher at the following address: United States Environmental Protection Agency, Office of Water, 4101M, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

(k) United States Bureau of Mines.

(1) The following publications published by the United States Bureau of Mines are incorporated herein by reference:

(i) United States Bureau of Mines Report of Investigation 8507, Structure Response and Damage Produced by Ground Vibration From Surface Mine Blasting, Figure B-1, undated, which is readily available without charge on the internet

at: https://dps.ny.gov/ores-resouces; and

(ii) United States Bureau of Mines Report of Investigation 8485, Structure Response and Damage Produced by Airblast From Surface Mining, including errata, undated, which is readily available without charge on the internet at: https://dps.ny.gov/ores-resources.

(2) Copies of said publications may be obtained from the publisher at the following address: United States Department of Interior, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Washington, DC 20240.

(l) New York State Department of Agriculture and Markets.

(1) The following publications published by the New York State Department of Agriculture and Markets are incorporated herein by reference:

(i) NYSAGM "Guidelines for Solar Energy Projects-Construction Mitigation for Agricultural Lands" (revision 10/18/2019), which is readily available without charge on the internet at: https://dps.ny.gov/ores-resources; and

(ii) NYSAGM "Construction Mitigation for Projects on Agricultural Lands" (July 2025), which is readily available without charge on the internet at: https://dps.ny.gov/ores-resources.

(2) Copies of said publications may be obtained from the publisher at the following address: New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235.

(m) New York Department of Transportation.

(1) The following publication published by the New York Department of Transportation is incorporated herein by reference:

(i) "Procedures for Blasting," issued August 2015, New York Department of Transportation, which is readily available without charge on the internet at: https://dps.ny.gov/ores-resources.

(n) New York State Public Service Commission.

(1) The following publication published by the New York Public Service Commission is incorporated herein by reference:

(i) "Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities," issued and effective September 11, 1990, New York State Public Service Commission, Cases 26529 and 26559, which is readily available without charge on the internet at: https://dps.ny.gov/ores-resources.

(2) Copies of said publication may be obtained from the publisher at the following address: the New York State Public Service Commission, Empire State Plaza, Agency Building 3, Albany, NY 12223-1350.

(o) New York State Office of Parks, Recreation and Historic Preservation.

(1) The following publication published by the New York State Office of Parks, Recreation and Historic Preservation is incorporated herein by reference:

(i) "Indian Nation Areas of Interest" (January 2024), which is readily available without charge on the internet at: https://dps.ny.gov/ores-resources.

(p) Institute of Electrical and Electronics Engineers, Inc.

(1) The following publication published by the Institute of Electrical and Electronics Engineers, Inc. (IEEE) is incorporated herein by reference:

(i) "IEEE Standard Test Code for Liquid-Immersed Distribution, Power, and Regulating Transformers," IEEE Std C57.12.90™-2021, which is readily available without charge on the internet at: https://dps.ny.gov/ores-resources.

(2) Copies of said publication may be obtained from the publisher at the following address: The Institute of Electrical and Electronic Engineers, Inc., 3 Park Avenue, New York, NY

10016-5997.

Section 1100-17.2. Office address.

The materials referenced above are available for public inspection and copying at the Office of Renewable Energy Siting and Electric Transmission, New York State Department of Public Service, Empire State Plaza, Agency Building 3, Albany, NY 12223-1350.

APPENDIX B

PART 1101

A new Part 1101 of Title 16 is added to read as follows:

Chapter XI, Title 16 of NYCRR Part 1101 Major Renewable Energy Facility Siting

Subpart 1101-1. Major Renewable Energy Facility Pre-application Requirements.

Section 1101-1.1. Pre-application requirements.

(a) *Wetland and surface water delineation*.

(1) At the earliest point possible in the applicant's preliminary project planning, the applicant shall conduct a wetland and surface water delineation to determine the boundaries of all wetlands and surface waters present on the facility site that are within one hundred (100) feet of areas to be disturbed by construction, including the interconnections, access roadways, and utility tie-ins. For adjacent properties without accessibility, delineation surveys shall be based on remote sensing data, interpretation of existing wetland, waterbody, and soils mapping, observations from adjacent accessible properties, and current and historical aerial imagery.

(2) The applicant shall submit to the office a draft wetland delineation report summarizing the wetland characteristics and Cowardin classifications of all delineated wetlands, and waterbody characteristics, NYS water quality classification of mapped features, the Fisheries Index Number (FIN) or Waterbody Index Number (WIN), and a description of stream flow (perennial, intermittent, or ephemeral) of all delineated surface waters. A summary of the field data collected, maps depicting all wetlands and surface waters, and associated spatial data of the field delineated wetland features shall also be included.

(3) The office may conduct a site visit to determine which wetlands and surface waters are jurisdictional pursuant to ECL article 24 and ECL article 15, and to advise with respect to potential impacts to jurisdictional wetlands and surface waters. The applicant shall coordinate with the office on the scheduling of site visits to provide access to the site and

landowner notification as needed. Site visits may be subject to seasonal restrictions between November 15 and May 15 depending on weather and ground conditions.

(4) The office shall determine if any additional information shall be submitted in support of a wetland and surface water jurisdictional determination. The office, with a copy to the NYSDEC or the APA, shall provide a jurisdictional determination to the applicant within sixty (60) days of receipt of the applicant's draft delineation report, provided that if a site visit is conducted between November 15 and May 15, the office shall provide a jurisdictional determination to the applicant within thirty (30) days of the site visit.

(5) Jurisdictional determinations, including those issued under former 19 NYCRR Part 900 and Part 1100 of this Title, shall remain valid for five (5) years from the date of issuance by the office.

(b) *NYS threatened or endangered species*.

(1) At the earliest point possible in the applicant's preliminary project planning and prior to proposing, designing, or commencing any wildlife surveys, the applicant shall conduct a wildlife site characterization summarizing existing public information on bird, bat, and other species, including, but not limited to, New York's Environmental Assessment Form (EAF) Mapper, New York Natural Heritage Program (NYNHP), United States Fish and Wildlife Service (USFWS) Information for Planning and Consultation(iPaC) and Environmental Conservation Online System (ECOs) databases, New York's Environmental Resource Mapper, NYSDEC Nature Explorer, eBird, Audubon Christmas Bird Counts, United States Geological Survey (USGS) breeding bird surveys, the current New York Breeding Bird Atlas III program, New York State Ornithological Association, local birding organizations, and North American Bat Monitoring Program's data on bat species ranges or NYSDEC bat information. With respect to NYS threatened or endangered species or species of special concern, the wildlife site characterization shall include:

(i) A list of NYS threatened or endangered, and species of special concern documented within one thousand two hundred (1,200) feet of the proposed facility, including access roads, interconnections, and connecting lines, from available data sources. Records of threatened and endangered species identified within the last five (5) years shall be highlighted or otherwise identified within the list.

(ii) For each listed species documented from available data sources, provide an evaluation of current habitat suitability for those species at the project site.

(iii) Landscape features and resources of potential concern within five (5) miles of the facility that may function to funnel or concentrate birds and bats, with a focus on NYS threatened or endangered species, during migration or for feeding, breeding, wintering, or roosting activities, such as national wildlife refuges, wildlife management areas, grassland focus areas, core forest blocks (contiguous areas one hundred fifty (150) acres or larger), Audubon Important Bird Areas, high elevation mountaintops, prominent ridgelines, forested riparian areas, known hibernacula, records of caves and sub-surface mines, or other significant habitat areas.

(iv) Geographical, topographical, and other physical features within five (5) miles of the facility, interconnections, connecting lines, and access roads.

(v) Wetlands, streams, waterbodies, and other resources that may be relevant to siting of the proposed facility.

(2) The applicant shall provide the results of the wildlife site characterization and project details, including as much information available at the time for facility component plans, as well as GIS spatial data, to the office and the NYSDEC. A meeting shall be held by these agencies

and the applicant within four (4) weeks of delivery of the draft wildlife site characterization, unless otherwise agreed upon by the applicant and the Office. At this meeting, the agencies shall:

(i) Provide feedback as to the content and conclusions of the wildlife characterization study.

(ii) Enter into a non-disclosure agreement with the applicant, if necessary, and provide all additional data points beyond those identified in the draft site characterization.

(iii) Indicate whether the agencies consider occupied habitat of NYS threatened or endangered species to be present within the proposed facility site based on existing information and, if so, indicate where such habitat is located.

(iv) Recommend habitat assessments and/or species-specific field surveys that can be completed in the appropriate seasonal windows within one year of the applicant's meeting with the agencies; and provide the applicant with current applicable protocols to conduct such surveys.

(3) If the applicant conducts a habitat assessment and believes suitable habitat for a given species is no longer present at the site, it shall provide a copy of the assessment report to the agencies for review and a determination as to whether surveys shall be required.

(4) If the applicant elects to conduct field surveys, the applicant shall develop a pre-construction study work plan in consultation with the office and the NYSDEC. Any pre-construction work plans shall be submitted prior to the start of the survey window. All surveys should follow current applicable protocols. If field surveys are conducted:

(i) As applicable for each documented species, the applicant shall provide draft reports and relevant spatial data to the office and the NYSDEC within six (6) weeks of the completion of each study. If sightings of

NYS threatened or endangered species were documented during the surveys, a summary of the detections with detailed information including surveyor name, coordinates of detection, species name, species behavior, flight path, and flight altitude, if applicable, shall be provided to the agencies in advance of the draft report and within three (3) weeks of the completion of each study.

(a) If subsequent to conducting surveys, additional surveys are recommended, or alternative parcels are proposed for inclusion, the applicant may not be required to conduct additional surveys. In newly proposed areas, or other areas not previously surveyed, located within a justifiable proximity of the original facility boundary, the office and the applicant may utilize the results of surveys previously conducted to extrapolate occupancy and designate such newly proposed areas as occupied habitat as appropriate. This determination of occupancy shall be used to inform the preliminary take estimate.

(ii) Within thirty (30) days of receipt of the survey reports, the Office shall provide preliminary occupied habitat maps for any listed species determined to occupy the proposed facility location, based on the applicant's surveys and any other relevant and credible data (e.g., NYS Natural Heritage Program record). The applicant shall utilize this information to design the facility to best avoid or minimize impacts to occupied habitat and listed species and to inform project impact assessments.

(5) If adverse impacts to listed species or occupied habitat are unavoidable, the applicant shall submit a preliminary take estimate that identifies the species impacted, an estimate of the number of acres or individual animals that may be taken, the actions taken to minimize that impact, and a map indicating where the take is expected to occur. The preliminary take estimate shall include consideration of the type of activities being conducted, and time of year these activities will occur.

(6) Within thirty (30) days of receipt of the applicant's preliminary take estimate, the office and the applicant shall hold a meeting to review the results of the habitat assessment(s) and survey(s), the current facility design, and a preliminary estimate of impact. The agencies and the applicant shall also discuss the requirements for the Net Conservation Benefit Plan, if applicable.

(7) Within thirty (30) days of such conference pursuant to paragraph (6) of this subdivision, the office shall provide its draft determination regarding whether occupied habitat for one or more NYS threatened or endangered species exists within the facility site, the boundary of the occupied habitat, whether de minimis levels as provided in section 1101-2.12 of this Part might be attainable for grassland birds, and, if applicable, the mitigation that may be necessary if impacts cannot be avoided or mitigated.

(8) If the applicant elects not to conduct recommended field surveys and the office agrees to foregoing surveys, the applicant shall submit to the office a proposed preliminary take estimate based on the potential presence of habitat of listed species based on existing information and subject to the office's approval and acceptance.

(9) The applicant shall provide the approved wildlife site characterization report, habitat assessment and/or survey reports, the office's take determination regarding impacts to listed species as described in paragraph (9) of this subdivision, and a Preliminary Net Conservation Benefit Plan (if required) in the permit application as provided in section 1101-2.12 of this Part.

(c) Cultural resources.

(1) During the development of initial studies of the impacts on cultural resources within the project impact area (PIA) and at least 60 days prior to the filing of an application, the applicant shall consult with local historic preservation groups and Indigenous Nations to identify cultural resources of concern which appear to be at least fifty (50) years old and are potentially eligible for listing in the State or National Register of Historic Places

(S/NRHP).

(2) All cultural resources studies, surveys, and reports, as may be required pursuant to paragraphs (3) and (4), of this subdivision, must be prepared by individuals meeting the 36 CFR 61 professional qualifications established by the Secretary of the Interior.

(3) *Archaeological resources consultation.*

(i) The applicant shall conduct a Phase IA archeological/cultural resources study for the PIA.

(ii) The applicant shall submit the results of the Phase IA study including a proposed Phase IB scope of work to the office, the Office of Parks, Recreation, and Historic Places/State Historic Preservation Office (OPRHP/SHPO), and each Indigenous Nation. Within sixty (60) days of the applicant's submittal of the Phase IA results, the office, in consultation with OPRHP/SHPO, shall inform the applicant as to whether a Phase IB field study will be required. The office may schedule a meeting with the applicant, OPRHP/SHPO, and any Indigenous Nations to discuss the scope and content of the Phase IB field study.

(iii) The applicant shall submit the results of the Phase IB study including a proposed Site Avoidance Plan to the office, OPRHP/SHPO, and each Indigenous Nation. Within sixty (60) days of applicant's submittal of the Phase IB results, the office, in consultation with OPRHP/SHPO, shall inform the applicant as to whether a Phase II site evaluation study will be required to assess the boundaries, integrity and significance of cultural resources identified in the Phase IB study that cannot be avoided.

(a) The application may not be filed less than sixty (60) days after receipt of the office's determination above or may be filed at any time following receipt of OPRHP/SHPO's effect or impact determination letter(s) consistent with section 1101-1.1(c)(5) of this Part, whichever is earlier.

(b) Any time prior to application filing, the office may schedule a meeting with the applicant, OPRHP/SHPO, and any Indigenous Nations to discuss the scope and content of the Phase II site evaluation study.

(iv) If warranted, the applicant shall submit the results of the Phase II study to the office, OPRHP/SHPO, and each Indigenous Nation. Within sixty (60) days of applicant's submittal of the Phase II results, the office, in consultation with OPRHP/SHPO, shall inform the applicant as to whether any S/NRHP listed or eligible sites are present that would require avoidance or mitigation.

(v) If warranted, for any sites that cannot be avoided the applicant shall conduct a Phase III data recovery investigation or propose alternative measures to mitigate impacts to any S/NRHP listed or eligible resources identified in Phase II studies. As required by section 1101-2.9(a) of this Part, the applicant shall provide in its permit application the Phase IA study, Phase IB study and, if applicable, Phase II study, Phase III study, site avoidance plan, and preliminary mitigation plan. These documents shall be submitted confidentially.

(4) *Above ground resources consultation.*

(i) The applicant shall complete a viewshed spatial analysis of areas within the Zone of Visual Impact (ZVI) and identify areas within the ZVI where the facility will be visible based upon topography and estimated existing vegetation and building heights.

(a) For solar facilities, the ZVI shall be two (2) miles.

(b) For wind facilities, the ZVI shall be five (5) miles.

(ii) The applicant shall submit the results of the ZVI spatial analysis along with an historic resources survey

methodology and proposed survey boundary to OPRHP/SHPO. A historic resources survey of all properties 50-years old or older with positive visibility based on the ZVI analysis will be required. Within sixty (60) days of applicant's submittal of the ZVI analysis, historic resources survey methodology, and proposed historic resources survey boundary, the office, in consultation with OPRHP/SHPO, shall provide comments and issue a historic resources survey request.

(iii) Upon completion of the field work, the applicant shall submit the digital data and the historic resources survey report to the Office, OPRHP/SHPO, and each Indigenous Nation. Within sixty (60) days of the applicant's submittal of the digital data and report, the office, in consultation with OPRHP/SHPO, shall inform the applicant as to whether any State/National Register of Historic Places (S/NRHP) listed or eligible properties have been identified. The application may not be filed less than sixty (60) days after receipt of the office's determination.

(iv) If warranted, the applicant shall prepare a historic resources effects assessment. The applicant shall submit the assessment to the office, OPRHP/SHPO, and each Indigenous Nation. The applicant shall provide the ZVI, historic resources survey methodology, historic resources survey report, and, if applicable, the historic resources effects assessment in the permit application as required by section 1102-2.9 of this Title.

(5) The applicant shall provide OPRHP/SHPO's effect or impact determination letter(s) in the permit application as required by section 1101-2.9 of this Part.

(d) *Visual impacts consultation with the office.*

(1) The applicant shall provide a preliminary visual impact assessment addressing the following for informal staff review:

(i) a description of the project setting consistent

with section 1101-2.8(a)(1) of this Part;

(ii) a description of the proposed facility consistent with section 1101-2.8(a)(4) of this Part;

(iii) a list and description of visual resources consistent with section 1101-2.8(b)(4)(ii) of this Part within the visual study area as defined in section 1101-2.8(b)(1) of this Part;

(iv) a viewshed analysis of the facility components consistent with section 1101-2.8(b) of this Part;

(v) a photolog of photographs depicting views from viewpoints identified consistent with criteria listed section 1101-2.8(b)(1)(iv) of this Part; and photographs of related identified above ground structures (if appropriate);

(vi) a preliminary list of resources with potential visibility of the facility to be studied in more detail in the application for permit.

Subpart 1101-2. Major Renewable Energy Facility Application Exhibits.

Section 1101-2.1. Exhibit 1: General Information Regarding Application, Overview, and Executive Summary.

Exhibit 1 shall contain:

(a) the name, address, telephone number, and e-mail address of the applicant;

(b) the address of the website established by the applicant to disseminate information to the public regarding the application;

(c) the name, address, telephone number, and e-mail address of a representative of the applicant that the public may contact for more information regarding the application;

(d) the name, business address, telephone number, and e-mail

address of the principal officer of the applicant;

(e) if the applicant desires service of documents or other correspondence upon an agent, the name, business address, telephone number, and e-mail address of the agent;

(f) a brief explanation of the type of business entity that the applicant is, including its date and location of formation and the name and address of any parent entities;

(g) if the facility is to be owned by a corporation, a certified copy of the charter of such corporation. If the facility is not to be owned by a corporation, a copy of the certificate or other documents of formation;

(h) an overview of the proposed facility, including a brief description of the major components of the facility, including collection lines, transmission lines, interconnections, access roads, and related facilities;

(i) an executive summary describing the proposed project, identifying the potential significant adverse environmental impacts of the proposed project, including environmental and public health and safety impacts, and explaining how such impacts will be avoided, minimized, or mitigated through the application of the relevant uniform standards and conditions, or site-specific conditions. The executive summary shall be a brief, clearly and concisely written overall analysis in plain language that assembles and presents relevant and material facts regarding the facility upon which the applicant proposes the office make its decision. The analysis shall be analytical and not encyclopedic and shall specifically address each required finding, determination and consideration the Office shall make or consider in its decision and explain the basis for granting the requested permit;

(j) identification of any site-specific adverse environmental impacts of the proposed facility that are not addressed by the uniform standards and conditions set forth in Subpart 1102-3 of this Title, as applicable; a proposed site-specific condition to address those site-specific adverse environmental impacts;

and an explanation as to why such site-specific condition is required; and

(k) a map and all related spatial data showing geophysical, environmental, cultural resource, local law, land use, and other constraints impacting facility design and layout within the project area. Constraints shall include but are not limited to: state regulated wetlands and waterbodies, lands used in agricultural production, mineral soils groups (MSG) 1-4, environmentally sensitive areas (e.g., threatened and endangered species locations, archaeologically sensitive areas), and ORES and local setbacks.

Section 1101-2.2. Exhibit 2: Public Involvement.

Exhibit 2 shall contain:

(a) proof of consultation with the municipality(ies) or political subdivision(s) where the proposed facility will be located as required by Public Service Law section 144(1), this Part, and Part 1100 of this Title, including a description of the applicant's good faith efforts to resolve any disputes regarding compliance with applicable substantive local laws and any requests for a finding by the office that, as applied to the proposed facility, such substantive local laws are unreasonably burdensome; and

(b) a brief description of applicant's local engagement and outreach efforts as required in section 1100-1.3 of Part 1100 of this Title.

Section 1101-2.3. Exhibit 3: Location of Facilities and Surrounding Land Use.

Exhibit 3 shall contain:

(a) A base map depicting recent-edition transportation network, topography, and built environment information, showing:

(1) the proposed location of the facility, including proposed electric collection and transmission lines and interconnections, as well as ancillary features located on the facility site such as roads, railroads, switchyards,

energy storage or regulation facilities, substations and similar facilities;

(2) the proposed location of any off-site utility interconnections, including all electric transmission lines, communications lines, stormwater drainage lines, and appurtenances thereto, to be installed in New York State connecting to and servicing the site of the facility;

(3) the proposed limits of clearing and disturbance for construction of all facility components and ancillary features.

(b) Maps clearly showing the location of the facility and all ancillary features not located on the facility site in relation to municipal boundaries and taxing jurisdictions, at a scale sufficient to determine and demonstrate relation of facilities to those geographic and political features.

(c) Written descriptions explaining the relation of the location of the facility site, and all ancillary features not located on the facility site, to the affected municipalities and taxing jurisdictions.

(d) A map showing existing land uses within the study area.

(e) A map of any existing overhead and underground major facilities for electric, gas or telecommunications transmission within the study area and a summary of any consultations with owners of major facilities for electric, gas or telecommunications that may be impacted by the facility (crossing existing utilities or otherwise).

(f) A map of all properties upon which any component of a facility or ancillary feature would be located, and for wind facilities, all properties within two thousand (2,000) feet of such properties, and for solar projects, all properties within one thousand (1,000) feet, that shows the current land use, tax parcel number and owner of record of each property, and any publicly known proposed land use plans for any of these properties.

(g) A map of existing zoning districts and proposed zoning

districts within the study area and a description of the permitted and the prohibited uses within each zone. For "floating" or "overlay" zones that are not specifically attributable to a specific mapped zoning district, describe the applicable substantive criteria that apply for establishment of the overlay zone.

(h) A statement as to whether any applicable local jurisdiction has an adopted comprehensive plan applicable to lands on which facility components or ancillary facilities are located and whether the proposed facility is consistent with such comprehensive plan. A copy of the plan shall be provided in the application, with an indication of plan sections applicable to the proposed uses.

(i) A map of all publicly known proposed land uses within the study area, as determined in consultation with State and local planning officials, from any public involvement process, or from other sources.

(j) Maps showing designated NYS coastal areas, inland waterways and local waterfront revitalization program areas (pursuant to 19 NYCRR Part 600, et seq.), groundwater management zones, designated agricultural districts, flood-prone areas, critical environmental areas designated pursuant to article 8 of the ECL, and coastal erosion hazard areas, that are located within the study area.

(k) Maps showing recreational and other land uses within the study area that might be affected by the sight or sound of the construction or operation of the facility, interconnections and related facilities, including wild, scenic and recreational river corridors, open space, and any known archaeological, geologic, historical or scenic area, park, designated wilderness, forest preserve lands, scenic vistas specifically identified in the Adirondack Park State Land Master Plan, NYS Parks, NYSDEC lands, conservation easement lands, Federal or State designated scenic byways , nature preserves, designated trails, and public-access fishing areas, major communication and utility uses and infrastructure, and institutional, community and municipal uses and facilities.

(l) A qualitative assessment of the compatibility of the

facility, including any off-site staging and storage areas, with existing, proposed and allowed land uses, and local and regional land use plans, located within a one (1)-mile radius of the facility site. The assessment shall identify the nearby land uses of particular concern to the community and shall address the land use impacts of the facility on residential areas, schools, civic facilities, recreational facilities, and commercial areas. The assessment and evaluation shall demonstrate that conflicts from facility-generated noise, traffic and visual impacts with current and planned uses have been minimized to the extent practicable.

(m) A qualitative assessment of the compatibility of proposed above-ground transmission lines, collection lines, and interconnections and related facilities with existing, potential, and proposed land uses within the study area.

(n) A qualitative assessment of the compatibility of proposed underground transmission lines, collection lines, interconnections and related facilities with existing, potential, and proposed land uses within three hundred (300) feet from the centerline of such interconnections or related facilities.

(o) For facilities at locations within NYS designated coastal areas, or in direct proximity of coastal areas or designated inland waterways, provide an analysis of conformance with relevant provisions of the New York State Coastal Management Program Policies, and proposed or adopted Local Waterfront Revitalization Plans (pursuant to 19 NYCRR Part 600, et seq.). For facilities located within or adjacent to areas mapped by the National Oceanographic and Atmospheric Administration (NOAA), mapping of the proposed facility's location on the most recent edition of NOAA navigation charts shall be provided.

(p) Aerial photographs of all properties within the study area of sufficient scale and detail to enable discrimination and identification of all natural and cultural features.

(q) Overlays on aerial photographs which clearly identify the facility site and any facility layout, interconnection route, the limits of proposed clearing or other changes to the topography, vegetation or human-made structures, and the location of access and maintenance routes.

(r) All aerial photographs shall reflect the current uses of the land. All aerial photographs shall indicate the source and the date photographs were taken.

(s) A description of community character in the area of the facility, an analysis of impacts of facility construction and operation on community character, and identification of avoidance or mitigation measures that will minimize adverse impacts on community character. For the purposes of this exhibit, community character includes defining features and interactions of the natural, built and social environment, and how those features are used and appreciated in the community.

(t) For repurposed sites with a history of environmental contamination only:

(1) For a site that has not been remediated under the oversight of the NYSDEC:

(i) a copy of a Phase 1 Environmental Site Assessment (ESA) and, if any Recognized Environmental Conditions were identified, a Phase 2 ESA; and

(ii) a determination by a qualified Licensed Professional Engineer, on the basis of the Phase I ESA and/or Phase 2 ESA, that it is not anticipated that hazardous substances would be encountered during construction and/or operation of the facility.

(2) For a site that has been remediated under the oversight of the NYSDEC and received a Certificate of Completion or No Further Action from the NYSDEC:

(i) a copy of the applicable Site Management Plan for the facility site and any deed or land use restrictions imposed; and

(ii) a certification by the applicant that it will implement and comply therewith.

(u) Where an oil, gas or mining solution well is known to exist

within five hundred (500) feet of proposed areas to be disturbed (based on records maintained by the NYSDEC) or within 1 mile of areas to be disturbed for any proposed facility located in NYSDEC regions 7, 8, or 9:

(1) An extraction well survey, setting forth the date(s) the survey occurred, the company that conducted it, and the methodology used. The purpose of the survey is to determine whether any NYSDEC-regulated wells are present within fifty (50) feet of proposed areas to be disturbed (excluding areas on non-participating parcels), and if so, identification of the wells and type, if known. Unless another method was authorized by the office, the survey shall have been done by the use of magnetometers, including aerial platform magnetometers, that are able to locate wells including those lacking surface expressions and any discovered wells should be recorded in decimal degrees, NAD 83, with six (6) decimal places of accuracy, and presented on the map identified in paragraph (2) of this subdivision. An extraction well survey will not be required upon written advice from the NYSDEC Regional Minerals Manager that the area of the facility has no known history of extraction well development.

(2) A map based on the survey required in paragraph (1) of this subdivision identifying the location of all wells and associated infrastructure (to the extent known), along with the facility boundaries, proposed areas to be disturbed, and proposed facility components. The map should also identify proposed setbacks from permanent structures and buildings of a minimum of fifty (50) feet from identified well(s) and minimum twenty (20) feet in width from nearest reasonable facility property access point to the well to permit inspections and other regulatory work as may be needed. The setback to a well may be reduced to twenty-five (25) feet for any wells plugged as a facility pre-construction activity.

(3) An explanation if the applicant cannot meet the setback and access requirements referenced in paragraph (2) of this subdivision.

Section 1101-2.4. Exhibit 4: Real Property.

Exhibit 4 shall contain:

(a) A map of the facility site showing property boundaries with tax map sheet, block and lot numbers; the owner of record of all parcels included in the facility site and for all adjacent properties; easements, grants, deed restrictions, and related encumbrances on the parcels comprising the facility site; public and private roads on or adjoining or planned for use as access to the facility site (including restrictions for access controlled roads); zoning and related designations applicable to the facility site and adjoining properties.

(b) A property/right-of-way map of all proposed transmission lines and interconnection facilities and off- property/right-of-way access drives and construction lay-down or preparation areas for such interconnections.

(c) A demonstration that the applicant has obtained title to or a leasehold interest in the facility site, including ingress and egress access to a public street, or is under binding contract or option to obtain such title or leasehold interest, or can obtain such title or leasehold interest. State whether the applicant is registered as a transportation corporation and plans to acquire necessary lands for generating or transmission line or other facility-related infrastructure pursuant to New York State Eminent Domain Procedure Law.

(d) A statement that the applicant has obtained, or can obtain (with commercially reasonable certainty), such deeds, easements, leases, licenses, or other real property rights or privileges as are necessary for all interconnections for the facility site.

(e) An identification of any improvement district extensions necessary for the facility and a demonstration that the applicant has obtained, or can obtain, such improvement district extensions.

Section 1101-2.5. Exhibit 5: Design Drawings.

(a) Drawings to be submitted pursuant to this section shall be prepared by or at the direction of a professional engineer, licensed and registered in New York State, whose name and license

number shall be clearly printed on the drawings.

(b) Wind facilities shall meet the setback requirements in Table 5-1 or manufacturer setbacks, whichever are more stringent. The setback distances shall be measured as a straight line from the centerline or mid-point of the wind turbine tower to the nearest point on the building foundation, property line or feature, as applicable. Compliance with such setbacks (based on the tallest wind turbine model under consideration) shall be shown in the site plan drawings (or as stand-alone mapping) as required by section 1101-2.5(f)(1)(ii) of this Part. Temporary and permanent laydown yards shall have a 100 feet setback from non-participating residential property lines.

Table 5-1: Setback Requirements for Wind Turbine Towers

Structure type	**Wind Turbine Towers setback***
Substation	1.5 times
Any Above-ground Bulk Electric System**	1.5 times
Gas Wells (unless waived by landowner and gas well operator)	1.1 times
Public Roads	1.1 times
Property Lines	1.1 times
Non-participating, non-residential Structures	1.5 times
Non-participating Residences	2 times
*1.0 times Wind Turbine Towers setback is equal to the Total Height of the Wind Facility (at the maximum blade tip height). **Operated at 100 kV or higher, and as defined by North American Electric Reliability Corporation Bulk Electric System Definition Reference Document Version 3, August 2018 (see section 1100-17.1(e)(1)(i) of this Title)	

(c) The applicant shall provide a table listing manufacturer provided specifications including rated power, hub height, rotor diameter, and total height of each wind turbine model under

consideration for the facility. Dimensions required by this subdivision shall be presented in both metric and United States Customary System units.

(d) Solar facilities shall meet the setback requirements set forth in Table 5-2. Compliance with such setbacks listed in Table 5-2 shall be shown in the site plan drawings (or as stand-alone mapping) required by section 1101-2.5(f)(1)(i) of this Part. Fencing, collection lines, access roads and landscaping may occur within the setback. Temporary and permanent laydown yards shall have a 100 feet setback from non-participating residential property lines.

Table 5-2: Setback Requirements for Solar Facility Components

Setback Type	Solar Facility Setback
Non-participating residential property lines	100 feet
Centerline of Public Roads	50 feet
Public Road Right of Way	25 feet
Non-participating property lines (non-residential)	50 feet
Non-participating occupied residences	250 feet

(e) The maximum height of solar facilities, exclusive of electric collection, transmission or substation/switchyard components, shall not exceed twenty (20) feet from finished grade. The height of arrays shall be measured from the highest natural grade below each solar panel to its maximum potential height.

(f) Exhibit 5 shall contain:

(1) Site plans of the proposed facility, including the following:

(i) For solar facilities, site plan drawings of all facility components at a legible common engineering scale (recommended at a scale minimum 1 inch = 200 feet or 1:2400, or other scale acceptable to the office). A full-size physical set (22" x 34" sheets) shall be

provided with the application) including the following proposed and existing features:

(a) block and lot numbers and the owner of record of all parcels included in the facility site and for all adjacent properties;

(b) solar panels, inverters, low-medium transformers, property lines, applicable setbacks of Table 5-2: Setback Requirements for Solar Facility Components and any applicable local setbacks;

(c) extents of proposed access road travel lanes (including indications of any existing access roads to be utilized) and any turn-around areas/temporary road improvements for component deliveries (may be included in site plans or as a stand-alone map set per the requirements of section 1101-2.16 of this Part);

(d) electric cable collection line corridors (including an indication of permanent rights-of-way (ROW)) and the approximate locations of any proposed splice vaults; overhead and underground cable routes shall be differentiated; mapping shall identify any locations of proposed trenchless collection line installations, including the approximate lengths of such electric line routes, information can be included in site plans or provided as a stand-alone map set);

(e) the existing electric transmission line (which the facility will interconnect to) and any known existing utilities (including pipelines) and associated rights of way within the facility site;

(f) approximate limits of disturbance for all facility components (panels, access roads, electric line corridors, etc.);

(g) approximate clearing limits for all facility

components (panels, access roads, buildings, electric lines, shading vegetation, etc.);

(h) any buildings or structures to be demolished;

(i) extents of collection and interconnection stations and any applicable local setbacks;

(j) any proposed energy storage system(s) and any applicable local setbacks;

(k) site security features, including approximate location of perimeter fencing;

(l) any berms, retaining walls, fences and other landscaping improvements (included in general site plans or provided as a stand-alone map set); and

(m) stormwater practices consistent with the draft Stormwater Pollution Prevention Plan (SWPPP) required in section 1101-2.13(c) of this Part (included in general site plans or provided as a stand-alone set).

(ii) For wind facilities, site plan drawings of all facility components at a reasonable legible scale (recommended at a scale minimum 1 inch = 200 feet or 1:2400, or other scale acceptable to the office). A full-size physical set (22" x 34" sheets) shall be provided with the application), including the following proposed and existing features:

(a) block and lot numbers and the owner of record of all parcels included in the facility site and for all adjacent properties;

(b) extents of proposed access roads (including an indication of any existing access roads to be utilized); turn-around areas/temporary road improvements for component deliveries or construction access (may be included in site plans or as a stand-alone map set per requirements of section 1101-2.16 of this Part);

(c) extents of wind turbines (based on approximate dimensions of foundations) and crane pads;

(d) electric collection corridors (including an indication of permanent ROW) and the approximate location of any proposed splice vaults; overhead and underground cable routes shall be differentiated; mapping shall include an identification of proposed trenchless collection line installations, including the approximate lengths of such electric line routes, (this information can be included in site plans or provided as a stand-alone map set);

(e) collection substation outline and any applicable local setbacks;

(f) extents of the switchyard station and any applicable local setbacks;

(g) the existing electric transmission line (which the facility will interconnect to) and any known existing utilities (including pipelines) and associated ROW within the facility site;

(h) approximate limits of disturbance for all facility components (turbines, access roads, electric line corridors, etc.);

(i) approximate clearing limits for all facility components (turbines, access roads, buildings, electric lines, etc.);

(j) any buildings or structures to be demolished;

(k) proposed wind turbines setbacks (based on the tallest wind turbine model under consideration), represented by radii (setback circles) offset from turbine locations, demonstrating compliance with manufacturers' setbacks or those listed in Table 5-1: Setback Requirements for Wind Turbine Towers, whichever is more stringent (setback circles can be

included in general site plans or provided as a stand-alone map set); participating residences shall also be shown;

(l) any proposed energy storage system(s) and any applicable local setbacks;

(m) any proposed berms, retaining walls, fences and other landscaping improvements (included in general site plans or provided as a stand-alone map set); and

(n) permanent meteorological towers and any applicable local setbacks.

(2) All drawings listed below are to be drawn to scale, or to an exaggerated scale, as appropriate. All such drawings are to be created using computer graphics or computer-aided design software; hand-drawn sketches and drawings may not be used. The following details and plans shall be provided:

(i) Typical elevation drawings indicating the length, width, height, material of construction, color and finish of all buildings, structures, and fixed equipment to be provided for the following:

(a) wind turbine elevations, for each proposed wind turbine model under consideration, including maximum blade tip height and turbine blade specifications with descriptions of the blade installation process (turbine height and blade detail may be substituted with manufacturer sheets, if documentation includes the required detail);

(b) switchyard station(s) and interconnection facilities (including fencing, gates, and all station equipment); a general arrangement plan shall be included in the elevation drawing set showing elevation mark pointers (arrows) with reference to associated elevation views (including views of all components of the station);

(c) collection substation(s) (including fencing, gates, and all substation equipment); a general arrangement plan shall be included in the elevation drawing set showing elevation mark pointers (arrows) with reference to associated elevation views (including views of all components of the substation); and

(d) energy storage system(s) (including fencing, gates, and buildings); a general arrangement plan shall be included in the elevation drawing set showing elevation mark pointers (arrows) with reference to associated elevation views (including views of all components of the energy storage system).

(ii) Each proposed permanent point of access or access type shall include a typical installation plan view, cross section and side view with appropriate dimensions (temporary and permanent width(s)) and identification of materials to be used along with corresponding material thickness. Such typical details shall depict any temporary condition necessary for construction traffic (i.e. stabilized construction entrances) as well as the post construction condition. Where existing accessways will be used, a description of proposed upgrades for facility construction shall be provided. Additionally, typical details of any other proposed access (e.g., helicopter or barge placement) shall be provided.

(iii) Typical underground infrastructure section details including single and multiple circuit layouts with dimensions of proposed depth, trench width, level of cover, separation requirements between circuits, clearing width limits for construction and operation of the facility, limits of disturbance, required permanent ROW and a description of the cable installation process; typical details of any proposed splice vaults shall also be provided, including vault dimensions, level of cover, required trench length, width and depth, clearing width limits for construction and operation of the facility, and limits of disturbance.

(iv) Details for typical overhead electric transmission and collection lines, including a profile of the centerlines at an exaggerated vertical scale and typical elevation plans including height above grade and structure layouts.

(3) Site suitability report from the original equipment manufacturer showing that turbine model(s) are compatible with existing facility conditions (i.e., site specific conditions).

(4) A list of engineering codes, standards, guidelines and practices that the applicant has or intends to conform with when planning, designing, constructing, operating and maintaining the wind turbines, solar arrays, electric collection system, substation, transmission line, inter-connection, energy storage systems (a summary of correspondence with local fire department representatives shall accompany proposals of such systems), and associated structures.

(5) Any manufacturer provided information regarding the design, safety and testing information for the turbines, solar panel, inverters, substations, transformers, and battery storage equipment to be installed during construction, or as related to any equipment installed during facility operation.

Section 1101-2.6. Exhibit 6: Public Health, Safety and Security.

Exhibit 6 shall contain:

(a) A statement and evaluation that identifies, describes, and discusses all efforts made to avoid and minimize potential adverse impacts of the construction and operation of the facility, the interconnections, and related facilities on the environment, public health, and safety, other than as already detailed in other relevant Exhibits, at a level of detail that reflects the severity of the impacts and the reasonable likelihood of their occurrence, identifies the current applicable statutory and regulatory framework, and also addresses:

(1) the anticipated gaseous, liquid and solid wastes to be produced at the facility during construction and under representative operating conditions of the facility, including their source, anticipated volumes (excluding estimates for minor waste volumes, such as concrete washout wastes), composition and temperature, and such meteorological, hydrological and other information needed to support such estimates and any studies, identifying the author and date thereof, used in the analysis;

(2) the anticipated volumes of such wastes to be released to the environment during construction and under any operating condition of the facility;

(3) the treatment processes to eliminate or minimize wastes to be released to the environment;

(4) the manner of collection, handling, storage, transport and disposal for wastes retained and not released at the site, or to be disposed of;

(5) maps of the study area and analysis showing relation of the facility site to: public water supply resources (to the extent locations are publicly available); community emergency response resources and facilities including police, fire and emergency medical response facilities and plans; emergency communications facilities; hospitals and emergency medical facilities; existing known hazard risks including flood hazard zones, storm surge zones, areas of coastal erosion hazard, landslide hazard areas, areas of geologic, geomorphic or hydrologic hazard; dams, bridges and related infrastructure; explosive or flammable materials transportation or storage facilities; contaminated sites; and other local risk factors;

(6) all significant impacts on the environment, public health, and safety associated with the information required to be identified pursuant to paragraphs (1) through (5) of this subdivision, including all reasonably related short-term and long-term effects;

(7) any measures proposed by the applicant to minimize such

impacts;

(8) any measures proposed by the applicant to mitigate such impacts; and

(9) any monitoring of such impacts proposed by the applicant.

(b) A Site Security Plan for the operation of proposed facility, including site plans and descriptions of the following site security features:

(1) access controls including fences, gates, bollards and other structural limitations;

(2) electronic security and surveillance facilities;

(3) security lighting, including specifications for lighting and controls to address work-site safety requirements and to avoid off-site light trespass;

(4) lighting of facility components to ensure aircraft safety, which complies with the required showing in section 1101-2.8 of this Part; and

(5) a description of a cyber security program for the protection of digital computer and communication systems and networks that supports the facility demonstrating compliance with current standards issued by a standards setting body generally recognized in the information technology industry, including, but not limited to, the Federal Department of Commerce's National Institute of Standards and Technology, the North American Electric Reliability Corporation, or the International Organization for Standardization, and providing for periodic validation of compliance with the applicable standard by an independent auditor.

(c) A Safety Response Plan to ensure the safety and security of the local community, including:

(1) an identification of contingencies that would constitute a safety or security emergency;

(2) emergency response measures by contingency;

(3) evacuation control measures by contingency;

(4) community notification procedures by contingency;

(5) a description of all on-site equipment, systems, components, and technical compliance with procedures to be provided to prevent or handle fire emergencies and hazardous substance incidents in compliance with the fire code section of the New York State Uniform Fire Prevention and Building Code adopted pursuant to article 18 of the Executive Law (including a description of any exceptions expected to be sought);

(6) for wind facilities, technologies to be employed, if any, for the detection and prevention of ice throw for each turbine model proposed;

(7) a description of all contingency plans to be implemented in response to the occurrence of a fire emergency or a hazardous substance incident; and

(8) a requirement to conduct training drills with emergency responders at least once per year and update the Safety Response Plan in response to applicable comments.

(d) If the facility is to be located within any part of a city with a population over one million (1,000,000), a statement that the applicant has provided a copy of the plans required in subdivisions (b) and (c) of this section to, and requested review of such plans and comment by, the local office of emergency management.

Section 1101-2.7. Exhibit 7: Noise and Vibration.

Exhibit 7 shall contain:

(a) A study of the noise and vibration impacts of the construction and operation of the facility, including the name(s) of the preparer(s) of the study and qualifications to perform such analyses. If the study is prepared by certified member(s) of a relevant professional society or state, the

details of such certification(s) shall be provided.

(b) *Design goals.* The study shall demonstrate that noise levels from noise sources at the facility will comply with the following:

(1) For wind facilities:

(i) all operational noise limits pursuant to section 1101-3.5(a) of this Part;

(ii) cumulative noise impacts obtained as specified in subdivision (c) of this section shall not:

(*a*) exceed any non-cumulative design goals; or

(*b*) cause an increase in cumulative noise impacts from any other wind and solar facilities and associated facility components existing and proposed as of the date of application filing that is equal to or greater than one (1) dBA Leq.

(2) For solar facilities: A maximum noise limit of forty-five (45) dBA Leq (1-hour), at the outside of any non-participating type 1 sensitive sound receptor existing as of the date of application filing (see subparagraph 1101-2.7(h)(1)(i) of this Part), subject to the prominent tone penalties specified in subparagraph 1101-2.7(b)(3)(iii) of this Part, and fifty-five (55) dBA Leq (1-hour) at the outside of any existing participating type 1 sensitive sound receptor (see subparagraph 1101-2.7(h)(1)(i) of this Part) existing as of the date of application filing.

(3) For all facilities:

(i) A maximum noise limit of fifty-five (55) dBA Leq (1-hour), short-term equivalent continuous average sound level from the facility across any portion of a non-participating type 2 sensitive sound receptor (see subparagraph 1101-2.7(h)(1)(ii) of this Part), except for portions delineated as wetlands pursuant to subdivision 1101-1.1(a) of this Part, industrial properties, electric generation or transmission

facilities, transportation corridors, or utility ROW. The applicant shall demonstrate compliance with this design goal through the filing of noise contour drawings and sound levels evaluated at discrete worst-case locations. No penalties for prominent tones will be added in this assessment.

(ii) A maximum noise limit of forty (40) dBA Leq (1-hour) at the outside of any non-participating type 1 sensitive sound receptor existing as of the date of application filing from the collector substation equipment.

(iii) Prominent tones are defined in and shall use the constant level differences listed under ANSI/ASA S12.9-2013/Part 3 Annex B, Section B.1 (see subparagraph 1100-17.1(a)(1)(ii) of this Title). Should a prominent tone occur or be expected to occur outside of any type 1 non-participating sensitive sound receptor existing as of the date of application filing (see subparagraph 1101-2.7(h)(1)(i) of this Part), the broadband overall (dBA) noise level at the evaluated sensitive sound receptor shall be increased by 5 dBA for evaluation of compliance with paragraphs 1101-2.7(b)(1) and (2) of this Part.

(c) *Sound study area and radius of evaluation.* Evaluation of the maximum noise levels to be produced during operation of the facility shall be conducted on a cumulative (if any) and non-cumulative basis for all sensitive sound receptors within the sound study area, as follows:

(1) For wind facilities, the evaluation shall include, at a minimum, a non-cumulative noise analysis for all proposed noise sources that includes any sensitive sound receptors existing as of the date of application filing, within a one and a half (1.5)-mile radius or within the 30 dBA noise contour whichever is greater, from the proposed wind turbines and any associated facility component locations.

(2) For solar facilities, the evaluation shall include, at a minimum, a non-cumulative noise analysis for all proposed

noise sources that includes any sensitive sound receptors existing as of the date of application filing, within the thirty (30) dBA noise contour from the proposed solar facility and any associated facility component locations.

(3) For wind and solar facilities, the cumulative noise analysis evaluation shall include, at a minimum, all noise sources and sensitive sound receptors existing as of the date of application filing, within the thirty (30) dBA noise contour from the proposed wind or solar facility and any associated facility components; and within the 30 dBA noise contours from any other wind and solar facilities and associated facility components existing and proposed as of the date of application filing that intersect or fall within the 30 dBA noise contour from the wind and solar facility and associated facility components proposed in the application.

(d) *Operational modeling standards, input parameters, assumptions, and reporting.*

(1) The evaluation shall use computer noise modeling software that follows the ANSI/ASA S12.62-2012/ISO 9613-2:1996 (MOD) (see section 1100-17.1(a)(1)(v) of this Title) or the ISO-9613-2:1996 propagation standards (see section 1100-17.1(g)(1)(i) of this Title) with no meteorological correction (Cmet) or additional types of attenuation (Amisc) added. The model shall:

(i) set all noise sources operating simultaneously at maximum sound power levels;

(ii) use a ground absorption factor of no more than G=0.5, and G=0 for hard ground and waterbodies; and

(iii) use a temperature of ten (10) degrees Celsius and seventy (70) percent relative humidity.

(2) For wind facilities, the model shall:

(i) be performed at a minimum for the turbine model with the highest broadband A- weighted apparent sound power level at any wind speed condition;

(ii) use a four (4.0) meter assessment point above the ground and the addition of a minimum uncertainty factor of two (2) dBA or greater following the sound modeling methodology provided in ANSI/ACP 111-1 (2022) (see subparagraph 1100-17.1(a)(1)(vi) of this Title) subsection 2.1.2., Option 2.

(3) For solar facilities and all substations, the model shall use a minimum height of one and a half (1.5) meters above the ground for single story receptors, four (4.0) meters above the ground for two story receptors, and one and a half (1.5) meters above the highest floor elevation for receptors with more than two stories. The addition of an uncertainty factor greater than zero (0) dBA is optional.

(4) Cut sheets and sound information from the manufacturers for all noise sources including overall (dBA and dB) and full-octave band (dB) sound power levels shall be provided as follows:

(i) For wind facilities:

(a) Sound power levels from the turbines proposed for the facility (including broadband, full (1/1), and one-third (1/3) octave frequency bands) associated with wind speed magnitudes shall be supported with information from the manufacturer(s) as obtained by following the International Electrotechnical Commission (IEC) 61400-11 standard (see subparagraph 1100-17.1(b)(1)(ii) of this Title). Information obtained by following the IEC TS 61400-14 Technical Specification (see subparagraph 1100-17.1(b)(1)(iii) of this Title) shall also be provided, to the extent this information is available.

(b) Sound power level information shall be

reported with angular speed of the rotor (e.g., revolutions per minute (rpm)), and rated power to the extent this information is available.

(c) Turbine dimensions to include hub height and diameter of the rotor shall be reported.

(d) The sound power level information for standard or normal operation, and any noise reduced operations and low-noise or serrated trailing edges, or any other noise reduction measures, will be provided if these are available or required to meet the design goals or noise limits indicated in subdivision 1101-2.7(b) of this Part, and any applicable substantive provision of local law.

(ii) For solar facilities, the application shall contain:

(*a*) The locations of all noise sources identified with geographic coordinates and spatial data.

(*b*) Sound power level information and cut sheets from the manufacturers for all noise sources as listed above, and any other relevant noise sources.

(iii) For electric transformers. If no manufacturer's information is available, sound power levels can be estimated by using acoustical formulas or pre-construction field test(s) as follows:

(*a*) Using the algorithms recommended by the Electric Power Plant Environmental Noise Guide (Volume 1, 2nd edition. Edison Electric Institute. Bolt Beranek and Newman Inc. Report 3637. 1983 Update) when only the electrical power is known (e.g., MVA).

(*b*) Using the formulas and guidelines specified in the IEEE C57.12.90-2021 standard (for the

loudest operational noise condition, at full electrical load, with all the fans operating) when the NEMA rating (or sound pressure level at associated distance), the dimensions, and the maximum electrical power is known. Full octave band sound power levels can be estimated by using correction factors approved by the office.

(*c*) NEMA ratings will be reported.

(iv) For any other noise sources. If no manufacturer's information is available, sound power levels can be estimated by using acoustical formulas or pre-construction field test(s) as follows:

(*a*) Estimated by using algorithms approved by the office.

(*b*) Obtained from test(s) of the same or similar equipment. Any such test shall include a narrative explaining any differences in equipment or testing conditions, and shall report, at a minimum, measured sound pressure levels along with clear explanations about how the test was conducted, any standards followed, and any correction factors applied.

(v) When acoustical formulas are used, the application will explain the algorithms used along with a clear derivation of how the sound power levels (dB) were obtained. All overall (dBA and dB) and full-octave band (dB) sound power levels shall be reported.

(5) The application shall contain sound power level information for all relevant noise sources. Software input parameters, assumptions, and associated data used for the computer modeling shall be provided as follows:

(i) Spatial data used for the computer noise modeling, including noise source, receptor, and barrier locations; heights above the ground or elevations; topography and final grading; boundary lines, and participation status shall be delivered by digital means.

(ii) Computer noise modeling files for all modeling runs shall be submitted by digital means.

(iii) For any substations, site plans and elevation drawings, including any details for all noise sources; sound and technical specifications from the manufacturers for any noise sources, and identified mitigation measures.

(6) Report, at a minimum, the maximum A-weighted dBA Leq (1-hour) sound pressure levels in a year, and the maximum linear/unweighted/Z dB (Leq 1-hour) sound pressure levels in a year from the thirty-one and a half (31.5) Hertz (Hz) up to the eight thousand (8,000) Hz full-octave band, at all sensitive sound receptors within the sound study area or radius of evaluation indicating the use, property type classification, and participation status of each receptor.

(7) Report the maximum A-weighted dBA Leq (1-hour) sound pressure levels in a year at the most critically impacted portion of each external boundary of the facility site within the sound study area or radius of evaluation indicating participation status.

(8) Report the information in tabular and spreadsheet compatible format differentiating between "unmitigated" and "mitigated" as well as "cumulative" and "non-cumulative" results, as applicable, and summarizing maximum and minimum values for each sound descriptor. A summary of the number of sensitive sound receptors exposed to sound levels greater than thirty-five (35) dBA (for evaluation of operational noise) or equal to or greater than 55 dBA (for construction noise) within the sound study area or radius of evaluation shall also be reported in tabular format grouped in one (1)-dB bins by use, property type classification, and participation status.

(9) The application shall report the absolute number of sensitive sound receptors that will be exposed to noise levels that are within 5 dB of or exceed any design goal or noise limit (in total as well as grouped in one (1)-dB bins by use, property type classification, and participation

status).

(e) *Evaluation of prominent tones for the design.*

(1) For wind facility, solar facility, and any substation noise sources, the evaluation shall be conducted by using:

(i) Manufacturer sound information or preconstruction field tests. For sound sources where no one-third octave band manufacturer's information or pre-construction field tests are available, sounds will be assumed to be tonal and prominent. Field test(s) shall report, at a minimum, sound pressure and sound power levels, and provide clear explanations of how the test was conducted and how sound power levels were obtained.

(ii) The ANSI/ASA S12.62-2012/ISO 9613-2:1996 (MOD) (see section 1100-17.1(a)(1)(v) of this Title) or the ISO 9613-2:1996 propagation standard (see section 1100-17.1(g)(1)(i) of this Title) attenuations (Adiv, Aatm, Agr, and Abar), and the definition of "prominent discrete tone" and constant level differences (Kt) specified in ANSI/ASA S12.9-2013/Part 3 Annex B, Section B.1 (see section 1100-17.1(a)(1)(ii) of this Title), as follows: fifteen (15) dB in low-frequency one-third-octave bands (from twenty-five (25) up to one hundred twenty-five (125) Hz); eight (8) dB in middle-frequency one-third-octave bands (from one hundred sixty (160) up to four hundred (400) Hz); and five (5) dB in high-frequency one-third-octave bands (from five hundred (500) up to ten thousand (10,000) Hz).

(2) Transformers shall be assumed tonal and prominent.

(f) *Evaluation of low frequency noise for wind facilities.* If other wind turbines considered for the facility have lower (or equal) broadband A-weighted sound power levels than the turbine modeled in the application, but greater maximum un-weighted sound power levels at the thirty-one and a half (31.5) Hz, or sixty-three (63) Hz full-octave bands, the estimate of low frequency noise levels at the thirty-one and a half (31.5) Hz, or sixty-three (63) Hz bands can be based on:

(1) Computer noise modeling that uses the maximum sound power levels at the thirty-one and a half (31.5) and sixty-three (63) Hz frequency bands at any wind speed among all turbines considered for each turbine location.

(2) Alternatively, if the noise modeling uses only one (1) wind turbine model across the site and if noise reduction operations are not used in the design, the noise levels at the thirty-one and a half (31.5) and sixty-three (63)Hz full octave bands can be estimated by applying corrections to the low-frequency band sound pressure results from the computer noise modeling for the turbine with the maximum overall broadband sound power level. These corrections will be equivalent to the differences between the maximum sound power levels at the thirty-one and a half (31.5) and sixty-three (63) Hz bands at any wind speed for all turbines considered for the facility and the sound power levels for the turbine used for computer noise modeling at the thirty-one and a half (31.5) and sixty-three (63) Hz full-octave bands respectively.

(3) The maximum linear/unweighted/Z Leq (1-hour) sound pressure levels (dB) in a year at the sixteen (16), thirty-one and a half (31.5) and sixty-three (63) Hz full octave bands for all receptors within the radius of evaluation shall be reported in tabular and spreadsheet compatible format. A list of all sensitive sound receptors with sound pressure levels (SPLs) equal to or greater than sixty (60) dB at sixteen (16), thirty-one and a half (31.5) or sixty-three (63) Hz, shall be provided along with their SPLs. The number of receptors greater than or equal to sixty (60) dB at sixteen (16), thirty-one and a half (31.5) or sixty-three (63) Hz shall also be reported, grouped in one (1)-dB bins by use, property type classification, and participation status.

(g) *Evaluation of infrasound for wind facilities.* Infrasound levels at the sixteen (16) Hz full-octave band can be based on computer noise modeling software with such capabilities or, by using extrapolated SPL data down to sixteen (16) Hz full-octave band. The extrapolation estimates can be based on corrections

applied to the sound pressure results at thirty-one and a half (31.5) Hz to obtain the sound pressure results at sixteen (16) Hz at each receptor as follows:

(1) If no information from the manufacturer is available for the sixteen (16) Hz full-octave frequency band for any turbine models considered for the facility, at a minimum four (4) dB shall be added to the SPLs at thirty-one and a half (31.5) Hz, to obtain SPLs at sixteen (16) Hz.

(2) If computer noise modeling uses only one (1) wind turbine model across the site, noise reduction operations are not used in the design or are the same, and the sound power levels at sixteen (16) Hz are available for all turbine models considered for the facility, the correction shall be equivalent to the difference between the highest manufacturer's sound power level at sixteen (16) Hz at any wind speed and the sound power level at thirty-one and a half (31.5) Hz used for computer noise modeling, and it shall be applied to the sound pressure results at thirty-one and a half (31.5) Hz to obtain the sound pressure results at sixteen (16) Hz.

(3) If computer noise modeling uses only one (1) wind turbine model across the site, noise reduction operations are not used in the design or are the same, and the sound power level information at sixteen (16) Hz is available for some but not all turbines considered for the facility, at a minimum four (4) dB, or the difference between the maximum sound power level at sixteen (16) Hz at any wind speed known for any turbines considered for the facility and the sound power level for the thirty- one and a half (31.5) Hz full-octave frequency band used for computer modeling, whichever is greater, shall be applied to the sound pressure results at thirty-one and a half (31.5) Hz to obtain the sound pressure results at sixteen (16) Hz.

(4) If computer noise modeling uses more than one (1) wind turbine model across the site and/or different noise reduction operations are used in the design, independent computer noise modeling runs can be performed for each group

of turbine models and each subgroup of noise reduction operations. Total sound pressure levels at sound sensitive receptors can then be obtained by summing up all the sound contributions from all independent computer modeling runs. When sound power levels at sixteen (16) Hz are available for the turbine model and all noise reduction operations to be modeled in an independent computer noise run, the sound pressure results at the sixteen (16) Hz full-octave frequency band can be obtained with computer noise modeling software with such capabilities or as indicated in paragraph (2) of this subdivision. When sound power levels at sixteen (16) Hz are not available for the turbine model or the noise reduction operations to be modeled in an independent computer noise run, the sound pressure results at the sixteen (16) Hz full-octave frequency band can be obtained as indicated in paragraph (3) of this subdivision.

(5) The procedures indicated in this subdivision do not restrict the applicant from using additional corrections that provide more conservative (i.e., higher) SPL's at receptors than as obtained as indicated in this subdivision.

(h) *Sensitive sound receptors and sound contour maps.*

(1) A sensitive sound receptors map(s) showing at a minimum the location of all sensitive sound receptors within the radius of evaluation or the sound study area shall be included as follows:

(i) Type 1 receptors: Are discrete sensitive sound receptors subject to the design goals specified in section 1101-2.7(b) of this Part as follows: residences including year-round residences and any seasonal residences with septic systems and running water identified by property type classification; places of hospitality (e.g., hotels, motels, inns); hospitals; schools; libraries; places of worship and any enclosed historic structures listed or eligible for listing on the State or National Register of Historic Places.

(ii) Type 2 receptors: Are any portion(s) of non-participating properties subject to the design goals

and exceptions specified in section 1101-2.7(b) of this Part: non-participating properties where Type 1 receptors are located; cemeteries; outdoor public facilities and public areas, parks; any public (federal, state, and local) lands; campgrounds; summer camps; commercial lands; and any historic resources listed or eligible for listing on the State or National Register of Historic Places with open areas or developed lands, but without enclosed structures.

(iii) Type 3 receptors: Are discrete sensitive sound receptors which shall be evaluated but will not be subject to design goals including uninhabitable structures, except any historic structures listed or eligible for listing on the State or National Register of Historic Places.

(2) All residences shall be included as sensitive sound receptors regardless of participation in the facility (e.g., participating, potentially participating, and non-participating residences) or occupancy (e.g., year-round, seasonal use).

(3) Only properties that have a signed contract with the applicant prior to the date of filing the application shall be identified as "participating." Other properties may be designated either as "non-participating" or "potentially participating," but will be evaluated as non-participating sensitive sound receptors. Updates in participation status may be filed at any time prior to issuance of a Notice of Complete Application.

(4) Sound contour maps shall include all sensitive sound receptors and boundary lines (differentiating use, property type classification, and participation status of receptor) and all noise sources.

(5) Sound contours shall be rendered at a minimum down to the 30 dBA contour for the sound study area or radius of evaluation in one (1) dBA steps, with sound contour multiples of five (5) dBA differentiated.

(6) Full-size hard copy maps (22 inches x 34 inches) of appropriate legible scale shall be provided.

(i) An evaluation of ambient pre-construction baseline noise conditions by using the L90 statistical and the Leq energy based noise descriptors with and without the application of the ANS frequency filter, and by following the recommendations included in ANSI/ASA S3/SC 1.100-2014-ANSI/ASA S12.100-2014 American National Standard entitled Methods to Define and Measure the Residual Sound in Protected Natural and Quiet Residential Areas (see section 1100-17.1(a)(1)(iv) of this Title). Sound surveys shall be conducted for, at a minimum, a seven (7) day-long period for wind facilities and a four (4) day-long period (including at a minimum one weekend) for solar facilities.

(j) An evaluation of future noise levels during construction of the facility and any associated substations, including predicted A- weighted/dBA sound levels using computer noise modeling as follows:

(1) The model shall use the ANSI/ASA S12.62-2012/ISO 9613-2:1996 (MOD) (see section 1100-17.1(a)(1)(v) of this Title) or the ISO-9613-2:1996 propagation standard (see section 1100-17.1(g)(1)(i) of this Title) for the main phases of construction, and from activities at any proposed batch plant area/laydown area.

(2) The model shall include, at a minimum, all noise sources and construction sites that may operate simultaneously for the most critical activities to meet the proposed construction schedule.

(3) For wind facilities, solar facilities, and substations, with the exception of sound levels in one-third octave band basis, the modeling and reporting requirements included in sections 1101-2.7(d)(1), 1101-2.7(d)(3), and 1101-2.7(d)(6) of this Part shall be used for modeling of construction noise.

(4) Sound impacts shall be reported with sound level contours (specified in section 1101-2.7(h)(5) of this Part)

on the map described in section 1101-2.7(h)(4) of this Part and sound levels at the most critically impacted receptors in tabular format (as specified in section 1101-2.7(k)of this Part).

(5) The evaluation shall indicate:

(i) the days of the week and hours of the day during which construction activities are proposed to take place, along with any exceptions to these schedules;

(ii) any identified exceedances to construction noise requirements and the magnitude of those exceedances, if any; and

(iii) an analysis of whether the construction sound levels will comply with the substantive requirements of local regulations indicated in section 1101-2.24 of this Part.

(k) A tabular comparison between maximum sound impacts and any design goals, noise limits, and local requirements for the facility, indicating the degree of compliance at all sensitive sound receptors and at the most impacted non-participating boundary lines within the sound study area or radius of evaluation.

(l) An evaluation as to whether any of the following potential community noise impacts will occur:

(1) Hearing loss for the public, as addressed by the World Health Organization (WHO) Guidelines for Community Noise published in 1999 (see section 1100-17.1(d)(1)(i) of this Title). The requirements for the public are not to exceed an average sound level of seventy (70) dBA from operation of the facility and one hundred twenty (120) dB-peak for children and one hundred forty (140) dB-peak for adults for impulsive sound levels (e.g., construction blasting).

(2) The potential for structural damage from some construction activities (e.g., blasting, pile driving, excavation, horizontal directional drilling, rock hammering)

to produce any cracks, settlements, or structural damage on any existing proximal buildings, including but not limited to any residences, Type 1 sensitive sound receptors, and public or private infrastructure.

(m) An identification and evaluation of reasonable noise abatement measures for construction activities. This will include measures to be taken to minimize noise impacts at sensitive sound receptors and any measures to reduce audible noise levels caused by construction to the maximum extent practicable, including but not limited to, any temporary movable sound barriers.

(n) An identification and evaluation of noise abatement measures for the design and operation of the facility to comply with the design limits set forth in section 1101-2.7(b) of this Part.

(1) For wind facilities:

(i) If noise reduction operations (NROs) are used to demonstrate conformance with any broadband overall dBA or dBZ noise limit, design goal, or local law on noise in computer noise modeling or any other filing, the design shall:

(a) not use more than half of the maximum dBA NRO available for each turbine model or leave at a minimum, three (3) dBA NRO available for postconstruction mitigation for the wind speeds where the exceedances occurred, if any;

(b) leave at a minimum two (2) dBZ NRO available for the sixteen (16) and the thirty-one and a half (31.5) Hz full-octave bands for each turbine model for postconstruction mitigation, for the wind speeds where the exceedances occur, if any; and

(c) for each turbine and wind speed where NROs are needed, specify the design goals, regulatory noise limits, or local noise limits that were exceeded.

(ii) The application shall report both "unmitigated"

(without NROs) and "mitigated" (with NROs) results, if any.

(iii) If NROs are necessary for the design, those NROs shall be implemented on or before the start date of operations. As feasible, NROs shall also be used during commissioning (e.g., pre-operational testing).

(iv) For each wind speed for which an NRO is necessary, the same NRO shall be used regardless of wind direction.

(v) Provide a description of any avoidance or minimization measures for icing noise that shall be implemented before commissioning and operation of the facility.

(2) For solar facilities and any substation for any solar or wind facility: If noise mitigation measures are necessary, those mitigation measures shall be described in the application and implemented before commissioning and operation of the facility.

(o) The application shall include a glossary of terminology, definitions, abbreviations, and references mentioned in the application.

Section 1101-2.8. Exhibit 8: Visual Impacts.

Exhibit 8 shall contain:

(a) A visual impact assessment (VIA) to determine the extent and assess the significance of facility visibility. The components of the VIA shall include identification of visually sensitive resources, viewshed mapping, confirmatory visual assessment fieldwork, visual simulations (photographic overlays), cumulative visual impact analysis, and proposed Visual Impacts Minimization and Mitigation Plan as outlined in subdivision (d) of this section. The VIA shall address the following issues:

(1) the character and visual quality of the existing landscape;

(2) the visibility of the facility, including visibility of facility operational characteristics, such as wind turbine lighting, visible plumes, shadow flickers and glare from solar panel arrays;

(3) the visibility of all above-ground interconnections and roadways to be constructed within the facility as determined by the viewshed analysis;

(4) the appearance of the facility upon completion, including building/structure size, architectural design, facade colors and texture, and site lighting;

(5) the proposed facility lighting;

(6) representative views (photographic overlays) of the facility, including relevant front, side, and rear views, indicating approximate elevations;

(7) the nature and degree of visual change resulting from construction of the facility and above-ground interconnections;

(8) the nature and degree of visual change resulting from operation of the facility and above-ground interconnections;

(9) a description of all visual resources that would be affected by the facility.

(b) The viewshed analysis component of the VIA shall be conducted as follows:

(1) Viewshed maps depicting areas of facility visibility within two (2) miles of a solar facility and five (5) miles of a wind facility, as well as any potential visibility from specific significant visual resources beyond the specified study area, shall be prepared and presented on a 1:24,000 scale recent edition topographic base map.

(i) A line-of-sight profile shall also be done for resources of statewide concern located within the VIA study area.

(ii) The viewshed maps shall provide an indication of

areas of potential visibility based on topography and vegetation, the highest elevation of facility structures, and distance zone (foreground, midground and background areas).

(iii) The potential screening effects of existing vegetation shall also be shown.

(iv) All visually sensitive resources identified in section 1101-2.8(b)(4)(ii) of this Part shall be included on the map(s) or an overlay.

(v) An overlay indicating landscape similarity zones shall be included.

(2) The VIA shall include a description of the methodology used to develop the viewshed maps, including software, baseline information, and sources of data.

(3) The viewshed mapping shall be used to determine the potential visibility from viewpoints to be analyzed (as indicated in the following paragraph (4) of this subdivision) and locations of viewer groups in the vicinity of the facility, as determined pursuant to the pre-application meeting(s) held pursuant to subdivision 1100-1.3(a) of this Title. These shall include recreational areas, residential and business locations, historic properties (listed or eligible for listing on the State or National Register of Historic Places), and travelers (interstate and other highway users).

(4) In developing the application, the applicant shall confer with municipal planning representatives, the office, and where appropriate, OPRHP, Indigenous Nations, and/or APA in its selection of important or representative viewpoints. Viewpoint selection is based upon the following criteria:

(i) representative or typical views from unobstructed or direct line-of-sight views;

(ii) significance of viewpoints, designated scenic resources, areas or features, which features typically include, but are not limited to: resources of statewide

concern; landmark landscapes; conservation easement lands; areas covered by scenic easements, public parks or recreation areas; locally designated historic or scenic districts and scenic overlooks; high-use public areas; and resources identified by local stakeholders;

(iii) level of viewer exposure (i.e., frequency of viewers or relative numbers, including residential areas, or high-volume roadways);

(iv) proposed land uses; and

(v) assessment of visual impacts pursuant to the requirements of adopted local laws or ordinances.

(c) Visual contrast evaluation.

(1) Photographic simulations of the facility shall be prepared from the representative viewpoints to demonstrate the post-construction appearance of the facility. Where vegetation screening is relied on for facility mitigation, leaf-off and leaf-on simulation shall be provided.

(2) Additional revised simulations illustrating mitigation shall be prepared for those observation points for which mitigation is proposed in the application. Where screen plantings are proposed, provide simulations illustrating growth at 0-2 years and 5-7 years post-installation. Where existing or proposed vegetation screening is relied on for facility mitigation, leaf-off and leaf-on simulation shall be provided. Background photos must be provided at leaf-on where existing vegetation is used for screening.

(3) Each set of existing and simulated views of the facility shall be compared and rated and the results of the VIA shall be summarized in the VIA. Ratings shall be conducted based on a nationally-recognized model that compares and rates contrast and change within the landscape. Documentation of the steps followed in the rating and assessment methodology shall be provided including results of rating impact panels and a description of the qualifications of the individuals serving on the panels. Panelists shall be independent, not part of the project

team, and trained in the methodology to be used. Where visual impacts from the facility are identified, contrast minimization and mitigation measures shall be identified, and the extent to which they effectively minimize such impact shall be discussed.

(d) *Visual Impacts Minimization and Mitigation Plan.* The Visual Impacts Minimization and Mitigation Plan shall include proposed minimization and mitigation alternatives based on an assessment of mitigation strategies, including screening (landscaping), architectural design, visual offsets, relocation or rearranging facility components, reduction of facility component profiles, alternative technologies, facility color and design, lighting options for work areas and safety requirements, and lighting options for FAA aviation hazard lighting. The facility design shall incorporate the following measures for the Visual Impacts Minimization and Mitigation Plan:

(1) Advertisements, conspicuous lettering, or logos identifying the facility owner, turbine manufacturer, solar module manufacturer, or any other supplier entity, other than warning and safety signs, shall not be allowed.

(2) The electrical collection system shall be located underground, to the extent practicable. Structures shall only be constructed overhead for portions where necessary based on engineering, construction, or environmental constraints.

(3) Electric collection and transmission facilities design shall specify use of either wood poles or steel pole structures.

(4) Non-specular conductors shall be used for any overhead portions of the transmission line and the electric collection system.

(5) For wind facilities, wind turbines, towers and blades shall be Federal Aviation Administration (FAA) approved white or off-white colors to avoid the need for daytime aviation hazard lighting, unless otherwise mandated by FAA, and non-reflective finishes shall be used on wind turbines to minimize reflected glare.

(6) *Shadow flicker for wind facilities.* Shadow Flicker shall be limited to thirty (30) hours per year at any non-participating residence, subject to verification using shadow prediction and operational controls at appropriate wind turbines. The Visual Impacts Minimization and Mitigation Plan shall include:

(i) analysis of a full year of hourly potential and realistic receptor-specific predicted flicker based on sunshine probabilities, operational projections, and facility design;

(ii) a protocol for monitoring operational conditions and potential flicker exposure at the wind turbine locations identified in the updated analysis, based on meteorological conditions;

(iii) details of the shadow detection and prevention technology that will be adopted for real-time meteorological monitoring and operational control of turbines;

(iv) schedule and protocol for temporary turbine shutdowns during periods that produce flicker to meet required shadow flicker limits; and

(v) shielding or blocking measures (such as landscape plantings and window treatments) may also be implemented at receptor locations that exceed the thirty (30)-hour annual limit, with approval by the resident receptor.

(7) *Glare for solar facilities.* Solar panels shall have anti-reflective coatings and the Visual Impacts Minimization and Mitigation Plan shall include an analysis using Sandia National Laboratories Solar Glare Hazard Analysis Tool (SGHAT) methodology or equivalent, as follows:

(i) that solar glare exposure at any non-participating residence, airport or public roadway within the study area as defined in 1100-8(b)(1) of this Title demonstrating that glint and glare will be avoided or minimized, and will not result in complaints, impede

traffic movement or create safety hazards;

(ii) the study area shall include analysis of viewers from eye levels representative of each visual receptor. Each array shall be analyzed individually unless surrounding arrays are consistently sloped based on existing topography;

(iii) analysis shall not assume obstacles unless a justification acceptable to the office is provided.

(8) A Planting Plan which shall include the facility fenceline; facility substation; energy storage structures; and the POI Switchyard; and other components of solar generating facilities as appropriate to facility setting.

(9) A lighting plan(s), which shall address:

(i) security lighting needs at substation and switchyard sites, and any exterior equipment storage yards;

(ii) plan and profile figures to demonstrate the lighting area needs and proposed lighting arrangement and illumination levels to provide safe working conditions at the collection substation site, and any exterior equipment storage yards or other locations;

(iii) exterior lighting design shall be limited to lighting required for health, safety, security, emergencies and operational purposes and shall be specified to avoid off-site lighting effects as follows:

(a) using task lighting as appropriate to perform specific tasks; limiting the maximum total outdoor lighting output based on the lowest allowable OSHA limits; task lighting fixtures shall be designed to be placed at the lowest practical height and directed to the ground and/or work areas to avoid being cast skyward or over long distances, incorporate shields and/or louvers where practicable, and capable of manual or auto-shut off switch activation rather than motion detection;

(b) requiring full cutoff fixtures, with no drop-down optical elements for permanent exterior lighting, consistent with OSHA requirements and adopted local laws or ordinances, including development standards for exterior industrial lighting, manufacturer's cut sheets of all proposed lighting fixtures shall be provided; and

(c) for wind facilities, lighting shall be installed on turbines for aviation hazard marking as specified by FAA. The applicant shall file a Notice for a Marking and Lighting Study of Aircraft Detection Lighting System(s) (ADLS) and dimmable lighting options with the FAA/Department of Defense (DOD) seeking a written determination approving the use of ADLS or other dimmable lighting option at the Project. If FAA/DOD determine that ADLS or dimmable lighting options are not appropriate for the project, or if the applicant determines installation of ADLS or dimmable lighting options are not technically feasible, the applicant shall consider other means of minimizing lighting effects.

Section 1101-2.9. Exhibit 9: Cultural Resources.

Exhibit 9 shall contain:

(a) A study of the impacts of the construction and operation of the facility, interconnections and related facilities on archeological/cultural resources within the project impact area, including:

(1) a summary of the nature of the probable impact on any archeological/cultural resources identified, addressing how those impacts shall be avoided or minimized;

(2) as required pursuant to section 1101-1.1(c)(3)(ii) of this Part, a Phase IA archeological/cultural resources study for the proposed facility;

(3) if required pursuant to section 1101-1.1(c)(3)(iii) of

this Part, a Phase IB field study;

(4) if required by the Phase IB study results, as determined pursuant to section 1101-1.1(c)(3)(iii) of this Part, a Site Avoidance Plan and/or Phase II site evaluation study to assess the boundaries, integrity and significance of identified cultural resources;

(5) if required by the Phase II study results, as determined pursuant to sections 1101-1.1(c)(3)(iv) of this Part, a Site Avoidance Plan and/or Phase III data recovery investigation or alternative measures to mitigate impacts to identified cultural resources.

(b) A study of the impacts of the construction and operation of the facility, interconnections, and related facilities on historical/ above ground cultural resources within the project impact area, including:

(1) a summary of the nature of the probable impact on any historical/ above ground cultural resources identified, addressing how those impacts shall be avoided or minimized;

(2) as required pursuant to section 1101-1.1(c)(4)(i) of this Part, a zone of visual impact (ZVI) analysis for the proposed facility;

(3) as required pursuant to section 1101-1.1(c)(4)(ii) of this Part, a historic resources survey methodology for the proposed facility;

(4) as required pursuant to section 1101-1.1(c)(4)(iii) of this Part, a historic resources survey for the proposed facility;

(5) if required pursuant to section 1101-1.1(c)(4)(iv) of this Part, a historic resources effects assessment for the proposed facility. If historical / above ground cultural resources impacts are determined to be adverse by OPRHP/SHPO, describe the proposed or required measures to mitigate impacts to identified cultural resources.

(c) An Unanticipated Discovery Plan that shall identify the actions to be taken in the unexpected event that resources of cultural, historical, or archaeological importance, or human remains, are encountered during the excavation process. This plan shall include a provision for work stoppage upon the discovery of possible cultural, historical, or archaeological resources or human remains and be prepared by a professional archaeologist meeting the 36 CFR 61 standards.

(d) A description and documentation of the applicant's consultation with OPRHP/SHPO, local historic preservation groups, and Indigenous Nations as required in section 1101-1.1(c) of this Part and section 1100-1.3(c) of Part 1100 of this Title.

(e) OPRHP/SHPO's effect or impact determination letter(s) pursuant to section 1101-1.1(c)(5) of this Part.

Section 1101-2.10. Exhibit 10: Geology, Seismology and Soils.

Exhibit 10 shall contain:

(a) A study of the geology, seismology, and soils impacts of the facility consisting of the identification and mapping of existing conditions, an impact analysis, and proposed impact avoidance and mitigation measures, including:

(1) a map delineating existing slopes (0-3 percent, 3-8 percent, 8-15 percent, 15-25 percent, 25-35 percent, greater than 35 percent) on the drainage area potentially influenced by or influencing the facility site and interconnections;

(2) a proposed site plan showing existing and proposed contours at two-foot intervals, for the facility site and interconnections, at a scale sufficient to show all proposed buildings, structures, paved and vegetative areas, and construction areas (features may be provided in stand-alone mapping or included as part of site plans required in 1100-2.6(f)(1)(i) and (ii) of this Title);

(3) a description of excavation techniques to be employed;

(4) a description of the characteristics and suitability

for construction of the material excavated for the facility and of the conditions at foundation level, including factors such as soil corrosivity (for both steel and concrete), soil resistivity, bedrock competence, and subsurface hydrologic characteristics and groundwater levels; analysis should be based on a geotechnical engineering report verifying subsurface conditions, including the results of borings and/or test pits at a subset of proposed turbine locations (for wind facilities) or solar array locations (for solar facilities) and proposed horizontal directional drilling locations that are representative of known soil and bedrock formations within the facility site. Identify appropriate mitigation measures required in locations with highly corrosive soils, soils with a high frost risk, soils with high shrink/swell potential, and soil with significant inadvertent returns potential. Identify all locations where blasting operations will be required;

(5) a map and plan describing all blasting operations consistent with NYSDOT "Geotechnical Engineering Manual GEM-22" including location, minimum blasting contractor qualifications, hours of blasting operations, estimates of amounts of rock to be blasted, warning measures, measures to ensure safe transportation, storage and handling of explosives, use of blasting mats, conduct of a pre-blasting condition survey of nearby buildings and improvements, and coordination with local safety officials, and measures to protect nearby structures and groundwater wells;

(6) an assessment of potential impacts of blasting to environmental features, above-ground structures and below-ground structures such as pipelines and wells;

(7) an identification and evaluation of reasonable mitigation measures regarding blasting impacts, including the use of alternative technologies and/or location of structures, and including a plan for securing compensation for damages that may occur due to blasting;

(8) a description of the regional geology, tectonic setting and seismology of the facility site;

(9) an analysis of the expected impacts of construction and operation of the facility with respect to regional geology, including analysis of potential impacts in areas of known or anticipated karst, and a description of measures to minimize and/or mitigate risks from construction (including blasting and pile driving) in karst areas;

(10) an analysis of the impacts of typical seismic activity experienced in the facility site based on current seismic hazards maps, on the location and operation of the facility identifying potential receptors in the event of failure, and if the facility is proposed to be located near a young fault or a fault that has had displacement in Holocene time, demonstration of a suitable setback from such fault;

(11) a map delineating soil types on the facility site and interconnection sites;

(12) a description of the characteristics and suitability for construction of each soil type identified above, including a description of the soil structure, texture, percentage of organic matter, and recharge/infiltration capacity of each soil type and a discussion of any de-watering that may be necessary during construction and whether the facility shall contain any facilities below grade that would require continuous dewatering; and

(13) maps, figures, and analyses delineating depth to bedrock and underlying bedrock types, including vertical profiles showing soils, bedrock, water table, and typical foundation depths on the facility site, karst, highly erodible or highly corrosive soils, high groundwater, artesian conditions, or other conditions for which mitigation measures may be required based on information to be obtained from available published maps and scientific literature, review of studies conducted on the facility site, and on-site field observations, test pits and/or borings as available.

(b) An evaluation to determine suitable building and equipment foundations, including:

(1) a preliminary engineering assessment to determine the types and locations of potential foundations to be employed. The assessment shall investigate and present the suitability of such foundation types as spread footings, caissons, or piles, including a list of applicable building code requirements or industry standards by foundation type;

(2) if piles are used, a description and preliminary calculation of the number and length of piles to be driven, the daily and overall total number of hours of pile driving work to be undertaken to construct the facility, and an assessment of pile driving impacts on surrounding properties and structures due to vibration;

(3) 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; and

(4) an evaluation of the vulnerability of the facility site and the operation of the facility to an earthquake event and a tsunami event.

Section 1101-2.11. Exhibit 11: Terrestrial Ecology.

Exhibit 11 shall contain:

(a) An identification and description of the type of vegetative and ecological communities present on the facility site, and adjacent properties within one hundred (100) feet of areas to be disturbed by construction, including the interconnections, based upon field observations and data collection. Ecological communities shall be categorized according to the current edition of the New York Natural Heritage Program's "Ecological Communities of New York State."

(b) An analysis of the temporary and permanent impact of the construction and operation of the facility and the interconnections on the vegetation identified, including a mapped depiction of the vegetation areas showing the areas to be removed or disturbed, categorized according to "Ecological Communities of

New York".

(c) An identification and evaluation of avoidance measures or, where impacts are unavoidable, minimization measures, including the use of alternative technologies, regarding vegetation impacts identified. Ecological communities categorized as vulnerable or rare shall be prioritized for avoidance and minimization of impacts.

(d) A list of the species of mammals, birds, amphibians, terrestrial invertebrates, and reptiles that are likely to occur based on ecological communities present at, and bird and bat migration routes through, the facility, supplemented as necessary by site surveys, site observations and publicly available sources.

(e) An analysis of the impact of the construction and operation of the facility and interconnections on wildlife, wildlife habitats, and wildlife travel corridors, other than a NYS threatened or endangered species or species of special concern (which will be addressed pursuant to section 1101-2.12 of this Part).

(f) An identification and evaluation of avoidance measures or, where impacts are unavoidable, minimization measures, including the use of alternative technologies, regarding impacts to wildlife and wildlife habitat.

Section 1101-2.12. Exhibit 12: NYS Threatened or Endangered Species.

Exhibit 12 shall contain:

(a) A wildlife site characterization report prepared pursuant to section 1101-1.1(b)(2) of this Part.

(b) Any reports detailing the results of pre-application survey(s).

(c) A copy of the office's determination pursuant to section 1101-1.1(b)(4)(ii) of this Part as to the existence of occupied habitat at the facility site.

(d) If the office determined that there is confirmed or presumed occupied habitat at the site, an identification and evaluation of avoidance and minimization measures incorporated into the facility design, as well as any unavoidable potential impacts to NYS threatened or endangered species or species of special concern. Adverse impacts shall be summarized by species impacted and include an assessment of the acreage and/or an estimate number of individual members of each such species affected.

(e) For a facility to be determined to have only de minimis impacts to NYS threatened or endangered grassland birds or their habitat, the applicant shall submit a demonstration that the facility has been designed to meet one or more of the following criteria, as applicable:

(1) the facility has been designed such that the only impacts would be to occupied habitat identified based on records greater than five (5) years old from the time of the wildlife site characterization report, but for which the applicant conducted appropriate surveys as approved by the office that demonstrate that the species is not present at the facility site; or

(2) construction of the facility within each mapped area of listed bird occupied habitat (based on the documented area of species' use prior to addition of buffers) will only impact grasslands less than twenty-five (25) acres in size and will not include a recent (i.e., less than five (5) years) confirmed nesting or roosting location; or

(i) the facility has been designed such that the only impacts would be to occupied habitat identified for NYS threatened or endangered species for which the NYSDEC has issued a Notice of Adoption of regulations delisting or downlisting to Special Concern.

(f) For a facility that would adversely impact any NYS threatened or endangered species or their habitat, a preliminary Net Conservation Benefit Plan (NCBP) prepared in compliance with section 1101-3.4(x) of this Part. The following components of a

preliminary Net Conservation Benefit Plan at a minimum are required to determine application completeness:

(1) Objective of NCBP, including identification of the affected NYS threatened or endangered species for which mitigation is proposed, including the details and level of impact.

(2) Avoidance and minimization measures proposed to reduce impacts to the identified NYS threatened and endangered species.

(3) Type of mitigation proposed, and as applicable, the number of individuals proposed to be mitigated, or number of acres proposed in mitigation for the identified impacts.

(4) Analysis of how the proposed mitigation would provide a net conservation benefit, as defined by 6 NYCRR section 182.2 to the identified NYS threatened or endangered species which may, if applicable, include payment of a mitigation fee into the Endangered and Threatened Species Mitigation Fund established pursuant to section 99(hh) of the New York State Finance Law. The office may give the permittee credit for any mitigation fee paid to another State or Federal agency or authority.

(5) If mitigation is proposed, a proposed mitigation site:

(i) A consideration of location, tax parcel identification, and spatial data for land proposed as mitigation. If an applicant is unable to propose a parcel or location for mitigation but provides documentation of a substantive and specific effort to identify parcels, this requirement for proposed mitigation site will be considered met.

(a) If a parcel or location is proposed, a description of current land use and general vegetative cover, preferably including representative ground-level photography should be provided to the office for review.

Section 1101-2.13. Exhibit 13: Water Resources and Aquatic Ecology.

Exhibit 13 shall contain:

(a) *Groundwater.*

(1) Hydrologic information reporting depths to high groundwater and bedrock, including a site map based on publicly available information and any field investigations completed by the applicant, showing depth to high groundwater and bedrock in increments appropriate for the facility site.

(2) A survey based on publicly available information and the results of a private, active groundwater well survey distributed to non-participating property owners and residents within one thousand (1,000) feet of the facility site. The groundwater well survey materials will include a summary of the project, contact information, and a description of where the well owner can get more information about the project, an invitation to join the stakeholder list, and questions regarding any wells on the property. Survey respondents that indicate an active well on their property shall be added to the stakeholder list if not already included. The application shall include information on groundwater quality, and the location, depth, yield and use of all public and private groundwater wells or other points of extraction of groundwater, and a delineation and description of well head and aquifer protection zones, to the extent such information is publicly available or obtained through the private well survey. Parcel-based maps shall be provided based on publicly available information and the results of the private well survey, showing the locations of all identified public and private groundwater wells, delineating all groundwater aquifers and groundwater recharge areas, and identifying groundwater flow direction, and shall distinguish the following features:

(i) all existing, active water supply wells or water supply intakes located within one hundred (100) feet of any collection lines or access roads;

(ii) all existing, active water supply wells or water supply intakes located within five hundred (500) feet of horizontal directional drilling operations (HDD);

(iii) all existing, active water supply wells or water supply intakes located within two hundred (200) feet of solar pier/post driving locations and turbine excavations not requiring blasting; and

(iv) all existing, active water supply wells or water supply intakes located within one thousand (1,000) feet of any blasting operations.

(3) An analysis and evaluation of potential impacts (during normal and drought conditions) from the construction of the facility on all water supplies and uses, groundwater quality and quantity in the facility area, including potential impacts on public and private groundwater sourced water supplies, including private wells within a one (1)-mile radius of the facility site, and wellhead and aquifer protection zones.

(b) *Surface water.*

(1) A map or series of maps showing delineated boundaries of all Federal, State, and locally regulated surface waters present on the facility site that are within one hundred (100) feet of areas to be disturbed by construction, including the interconnections, as determined by the office pursuant to section 1101-1.1(a)(1) of this Part. For adjacent properties without accessibility, surface water delineations may be based on remote sensing data, interpretation of wetlands and soils mapping, observations from adjacent accessible properties, and aerial imagery.

(2) Any reports and summary tables detailing the results of the surface water delineation survey(s) conducted pursuant to section 1101-1.1(a)(2) of this Part. Maps and reports previously filed may be incorporated by reference.

(3) For the surface waters depicted on the map(s) required in paragraph (1) of this subdivision, a description of the New York State listed Water Quality Standards and

Classification, ambient standards and guidance values, flow, presence of aquatic invasive species and other characteristics of such surface waters, including intermittent streams, based on actual on-site surface water observations conducted pursuant to section 1101-1.1(a)(1) of this Part.

(4) An identification of any surface water drinking-water supply intakes within one (1) mile, or if none within one (1) mile, an identification and location of the nearest intake, including characterization of the type, nature, and extent of service provided from the identified source.

(5) If the office determines pursuant to section 1101-1.1(a)(4) of this Part that there are jurisdictional surface waters at the site, a demonstration of avoidance and minimization of impacts to such NYS protected waters by siting all components and construction activity more than fifty (50) feet from any delineated NYS protected waterbody, and avoids excavation or fill below the mean high water elevation of navigable waterbodies.

(6) If the applicant cannot avoid all impacts to NYS protected waterbodies, an explanation of all efforts the applicant made to minimize the impacts, including a discussion of all best management practices used during design, including the following:

(i) no solar panel racking, or perimeter fence shall span a NYS protected waterbody unless it is a first order stream;

(ii) excavation, grading, or placement of fill within the bed shall only occur for access roads at locations in compliance with all uniform standards and conditions set forth in Subpart 1101-3 of this Part;

(iii) stream crossings are located in the straight sections of the channel/bed and as perpendicular to the direction of flow as practicable;

(iv) how the facility design minimizes all tree

clearing requirements to the extent practicable within fifty (50) feet of NYS protected waters;

(v) how the facility design takes into account the slopes of the NYS protected waters, as well as surrounding surface slope and erosion potential, when siting within fifty (50)- feet of NYS protected waters;

(vi) how the facility design minimizes surface grading requirements to the extent practicable within fifty (50) feet of NYS protected waters; and

(vii) how the facility will incorporate and maintain low height stabilizing vegetation with fine root biomass and some stream shading potential (e.g., low scrub shrub like willows or dogwood).

(c) *Stormwater.*

(1) A draft Stormwater Pollution Prevention Plan (SWPPP) for the collection and management of stormwater discharges from the facility site during construction. The draft SWPPP will be prepared in accordance with the applicable New York State Pollution Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity and the New York State Standards and Specifications for Erosion and Sediment Control (see section 1100-17.1(i)(1)(i) of this Title). If the facility is not eligible for coverage under the SPDES General Permit, a draft application for an individual SPDES Permit shall be provided.

(2) To the extent not covered in paragraph (1) of this subdivision, a preliminary plan, prepared in accordance with the New York State Stormwater Management Design Manual (see section 1100-17.1(i)(1)(ii) of this Title), which identifies the post-construction stormwater management practices that will be used to manage stormwater runoff from the developed facility site. This can include runoff reduction/green infrastructure practices, water quality treatment practices, and practices that control the volume and rate of runoff.

(d) *Chemical and petroleum bulk storage.*

(1) A description of the spill prevention and control measures to be in place for ammonia storage, fuel oil storage, wastewater storage, and other chemical, petroleum or hazardous substances stored on the facility site, including an evaluation of alternatives and mitigation measures.

(2) An identification of whether the storage of ammonia, fuel oil, wastewater, other chemicals, petroleum or hazardous substances, or disposal of solid wastes on the facility site is subject to regulation under the State's chemical and petroleum bulk storage programs, and, if so, a demonstration of compliance with such regulations.

(3) An identification whether the storage of ammonia, fuel oil, wastewater, other chemicals, petroleum, or hazardous substances on the facility site is subject to regulation under local law (county, city, town, or village), and if so, a demonstration of the degree of compliance with such local laws.

(4) Plans to comply with section 175 of the Navigation Law and Part 611 (petroleum spills), Subpart 613-7 (petroleum bulk storage), and Subpart 598-6 (hazardous substance bulk storage) of Title 6 NYCRR, as applicable.

(e) *Aquatic species and invasive species.*

(1) An analysis of the impact of the construction and operation of the facility on aquatic biota, including species listed as endangered, threatened, or species of special concern in 6 NYCRR Part 182, and including the potential for introducing and/or spreading invasive species listed in 6 NYCRR Part 575.

(2) An identification and evaluation of reasonable avoidance measures and, where impacts are unavoidable, mitigation measures regarding impacts on such aquatic biota, including species and invasive species impacts to be addressed pursuant to the Invasive Species Control and

Management Plan to be prepared pursuant to section 1101-4.2(f)(4) of this Part (if any) and assure compliance with applicable water quality standards (6 NYCRR Part 703).

Section 1101-2.14. Exhibit 14: Wetlands.

Exhibit 14 shall contain:

(a) A map or series of maps showing jurisdictional boundaries of all Federal, State and locally regulated wetlands and regulated adjacent areas present on the facility site that are within one hundred (100) feet of areas to be disturbed by construction, including the interconnections, as determined by the office pursuant to section 1101-1.1(a)(i) of this Part, and provide Federal jurisdictional determination, if available. For adjacent properties without accessibility, initial surveys may be based on remote-sensing data, interpretation of existing wetlands and soils mapping, observation from adjacent accessible properties, and current and historical aerial imagery.

(b) Any reports and summary tables detailing the results of the delineation survey(s) pursuant to section 1101-1.1(a)(i) of this Part.

(c) A qualitative and descriptive wetland functional assessment, including seasonal variations, for all delineated wetlands that would be impacted for groundwater recharge/discharge, flood flow alteration, fish and shellfish habitat, sediment/toxicant retention, nutrient removal, sediment/shoreline stabilization, wildlife habitat, recreation, uniqueness/heritage, visual quality/aesthetics, and protected species habitat.

(d) An analysis of all off-site wetlands within 100 feet beyond the LOD that may be hydrologically or ecologically influenced by development of the facility and the wetlands identified on the map required by subdivision (a) of this section, observed in the field where accessible to determine their general characteristics and relationship, if any, to delineated wetlands.

(e) If the office has determined pursuant to section 1101-1.1(a) of this Part that there are NYS-regulated wetlands at the site, a demonstration of avoidance of impacts to such wetlands

and their regulated adjacent areas by siting all components more than one hundred (100) feet from any delineated NYS–regulated wetlands.

(f) If the applicant cannot avoid impacts to all wetlands and adjacent areas, an explanation of all efforts the applicant made to minimize the impacts to wetlands and adjacent areas identified during wetland surveys. The impact minimization summary shall further address the following criteria for each proposed impact area:

(1) why the facility design and siting cannot avoid NYS-regulated wetlands and adjacent areas, as applicable;

(2) how the facility design has minimized the spatial extent of proposed impacts to protected wetlands and regulated adjacent areas, as applicable; and

(3) how the facility design and siting minimize impacts to the functions and values currently provided by these wetlands and/or regulated adjacent areas.

(g) For permanent or long-term impacts to NYS-regulated wetlands and/or regulated adjacent areas for which compensatory mitigation is required in Table 14-1 of this subdivision, unless determined otherwise by the office, the applicant shall submit a Wetland Restoration and Mitigation Plan pursuant to section 1101-4.2(f)(3) of this Part, in accordance with the following:

(1) subject to the approval of the office, payment of wetland mitigation credits for unavoidable wetland impacts into:

(i) an existing wetland mitigation bank, or

(ii) an in-lieu fee program, or

(iii) any other wetland mitigation fee program.

The purchase of mitigation banking credits or payments into an in-lieu fee program or other mitigation fee program shall occur, to the maximum extent practicable,

within the same HUC 8 Watershed within which the facility is located. The Office may give the applicant credit, in whole or in part, for mitigation fees paid to another state or federal agency or authority; or

(2) unless determined otherwise by the office, implement applicant-responsible wetland and/or adjacent area mitigation at the ratios as set forth in Table 14-1 of this subdivision and subject to the following:

(i) *Category: Prescribed mitigation ratio and type.*

(a) X: Not an allowable feature or activity, unless the applicant demonstrates that the proposed feature or activity meets each of the following standards for the class of wetland affected, in which case the mitigation standard of A(M1), as described in this section shall apply:

(1) For wetland Classes I, II, III and IV, the proposed activity must be the only practicable alternative that could accomplish the applicant's objectives and have no practicable alternative on a site that is not a NYS-regulated wetland or adjacent area.

(2) For wetland Classes I, II, and III, the proposed activity must minimize degradation to, or loss of, any part of the wetland or its adjacent area and must minimize any adverse impacts on the functions and benefits that the wetland provides.

(3) For wetland Class IV, the proposed activity must make a reasonable effort to minimize degradation to, or loss of, any part of the wetland or its adjacent area.

(b) A: Allowed; no mitigation or enhancement required.

(c) A(M1): Allowed, mitigation required (3:1 mitigation ratio by area of impact - creation

only, broken down by cover type).
(d) A(M2): Allowed, mitigation required (2:1 mitigation ratio by area of impact - creation, restoration, and enhancement).
(e) A(M3): Allowed, mitigation required (1:1 mitigation ratio by area of impact – creation, restoration and enhancement).
(f) A(E): Allowed, enhancements required (no mitigation ratio; e.g., planting of adjacent area, mitigating hydrological changes).

(ii) within the same HUC 8 sub-basin; and

(iii) within a location that is subject to jurisdiction under ECL article 24, which includes the following:

(a) contiguous with an existing NYS-regulated wetland; or

(b) within fifty (50) meters (one hundred sixty-four (164) feet) of an existing NYS-regulated wetland;

(iv) Where creation, enhancement, and restoration mean the following:

(a) creation, in cases of activities requiring fill, means making a new wetland or expanding an existing wetland in lands that were not previously occupied by a wetland. Creation, in cases of activities not requiring fill, can include planting trees and/or shrubs in an existing wetland currently devoid of trees and shrubs.

(b) restoration means reclaiming a degraded wetland or adjacent area to bring back one or more functions that have been partially or completely lost.

(c) enhancement means altering an existing functional wetland or adjacent area to increase

selected functions and benefits that offsets losses of these functions or benefits in another wetland or adjacent area or parts of the same wetland or adjacent area.

(3) Implement a combination of the mitigation required pursuant to paragraphs (1) and (2) of this subdivision to meet the mitigation requirement.

Table 14-1: Wetland Mitigation Requirements

	Class I[a]		Class II[a]		Class III & IV[a]	
Feature/Activity	FWW	AA	FWW	AA	FWW	AA
Major Activities						
Wind Turbines	X	A(M3) **	X	A(E)	A(M3)	A
Solar Panels*	X	A(E) **	A(M2)	A(E)	A(M3)	A
Energy Storage	X	A(M3) **	X	A(E)	A(M3)	A
Access Roads	A(M1)	A(E)	A(M2)	A(E)	A(M3)	A
Power interconnections*(including clearing for interconnections)	A(M1)	A(E)	A(M2)	A(E)	A(M3)	A
Clearing of forest	X	A(M3) **	A(M2)	A(E	A(M3)	A
Other activities and structures integral to the project involving placement of fill	X	A(M3) **	A(M2)	A(E)	A(M3)	A
Intermediate Activities						
Security fence*	X	A(E)	A(M3)	A	A	A
Clearing and manipulation of undisturbed herbaceous vegetation*	X	A(E)	A(M3)	A	A(M3)	A
Other activities integral to the project involving grading*	X	A(E)	A(M3)	A	A(M3)	A
Minor Activities						
Grading and manipulation of disturbed areas*	A(E)	A(E)	A(E)	A	A(E)	A
Selective cutting of trees and shrubs	A	A	A	A	A	A

* A(E) "in place" when located within a disturbed area (i.e. active hay/row crops, existing commercial/industrial development) of all wetland classes

** 75-foot setback from wetland boundary required in undisturbed adjacent area

[a] ECL article 24 classification as determined under 6 NYCRR Part 664.

Section 1101-2.15. Exhibit 15: Agricultural Resources.

Exhibit 15 shall contain:

(a) An assessment of agricultural resources within the county(ies), town(s), and facility site which shall include the following data sets and illustrations:

(1) An analysis of temporary impacts and/or permanent impacts to land used in agricultural production within the facility site, the proposed limits of disturbance, and the facility footprint (including all planned structures, fenced facility areas, etc.). Analysis should identify NYS Certified Agricultural Districts, lands with NYS Agricultural Land Classification Mineral Soil Groups 1-4, and municipal boundaries.

(2) Methods available to facilitate farming activity during construction, areas where it will not be feasible to continue farming both during construction and during operation, and areas which will remain in agricultural use during operation.

(3) A discussion of the efforts that were taken to avoid or minimize the impact of the facility on land used in agricultural production, with additional consideration for lands located within NYS Certified Agricultural Districts and containing NYS Agricultural Land Classification Mineral Soil Groups 1-4.

(b) Maps showing the following:

(1) the location of the proposed facility and all ancillary features in relation to land used in agricultural production, NYS certified Agricultural Districts, and Mineral Soil Groups 1-4 within the facility site;

(2) temporary and permanent impacts to land used in agricultural production and all agricultural production

acreage proposed to remain in agricultural use within the facility site;

(3) any agreed upon landowner-imposed development restrictions (e.g., locations within the facility site on which the landowner will not allow facility development);

(4) locations of known or suspected sub-surface drainage systems (including outlets), surface drainages, irrigation lines, or other unique agricultural facilities; and

(5) USDA soil mapping for the facility site.

(c) An Agricultural Plan to avoid, minimize, or mitigate significant adverse impacts to land used in agricultural production to the maximum extent practicable, with additional consideration for land within a NYS Certified Agricultural District or land that contains NYS Agricultural Land Classification Mineral Soil Groups 1 through 4. The Agricultural Plan shall be consistent with the New York State Department of Agriculture and Markets Guidelines (see sections 1100-17.1(l)(1)(i) and (ii) of this Title) to the maximum extent practicable. The Agricultural Plan shall include identification and detailed description of any necessary mitigation actions that will be undertaken by the permittee. To the extent the office has determined that the facility would result in impacts to lands used in agricultural production requiring mitigation, the office may authorize the permittee to pay a mitigation fee into the Agricultural and Farmland Viability Protection Fund established by State Finance Law section 99-pp. The office may also give the applicant credit for any agricultural mitigation fee paid to another state or Federal agency or authority.

(d) A Drainage Remediation Plan to address inadvertent damages to surface or sub-surface drainage, including:

(1) a demonstration of the likelihood of impacts to surface of subsurface drainage and how the interruption of drainage may impact farmland within and outside of the facility site; and

(2) an identification of methods of repair for damaged

drainage features.

(e) Any agricultural co-utilization plan for the lifespan of the facility shall demonstrate that the proposed agricultural co-utilization will be feasible. The plan shall be assembled by a qualified or accredited third party agricultural professional. The plan should include an itemization of the investments made by the applicant to facilitate the agricultural co-utilization (e.g., grazing plan, planting pasture species, development of watering facilities, modified access for livestock trailers, panel spacing, additional fencing, access roads, gates, housing, etc.).

Section 1101-2.16. Exhibit 16: Effect on Transportation.

Exhibit 16 shall contain:

(a) A conceptual site plan, drawn at an appropriate scale, depicting all facility site driveway and roadway intersections, showing:

(1) horizontal and vertical geometry, the number of approach lanes, the lane widths, shoulder widths, traffic control devices by approaches, and sight distances; and

(2) for wind facilities, access road locations and widths, including characterizations of road intersection suitability.

(b) A description and mapping as needed of the pre-construction characteristics of the public roadways in the vicinity of the facility, as determined pursuant to the pre-application meeting(s) required pursuant to section 1100-1.3(a) of this Title, including:

(1) a review of existing data on vehicle traffic, use levels and accidents;

(2) a review of transit facilities and routes, including areas of school bus service;

(3) an identification of potential approach and departure routes to and from the facility site for police, fire,

ambulance and other emergency vehicles; and

(4) a review of available load bearing and structural rating information for expected facility traffic routes (existing culverts to be traversed by construction vehicles shall also be considered in the analyses).

(c) An estimate of the trip generation characteristics of the facility during construction, including:

(1) for each major phase of construction, and for the operation phase, an estimate of the number and frequency of vehicle trips, including an estimation of daily trips (identifying whether trips will occur during day or night) by size, weight and type of vehicle;

(2) for major cut or fill activity (spoil removal or deposition at the facility site and affected interconnection areas), a separate estimate of the number and frequency of vehicle trips, including time of day and day of week arrival and departure distribution, and including a delineation of approach and departure routes, by size, weight and type of vehicle; and

(3) an identification of approach and departure routes to and from the facility site for construction workers and employees of the facility.

(d) An analysis and evaluation of the traffic and transportation impacts of the facility, including:

(1) for wind facilities, a discussion of projected future traffic conditions with and without the facility, the analysis to be conducted separately for the peak construction impacts of the facility and for the typical operations of the completed facility, including in congested urbanized areas a calculation and comparison of the level of service for each representative intersection, giving detail for each turning movement;

(2) an evaluation of the adequacy of the road system, using publicly available and site-specific data, to accommodate the projected traffic, the analysis to be conducted

separately for the peak construction impacts of the facility (for both wind and solar facilities) and for the typical operations of the completed facility (analyses to be provided only for operational wind generation) and to include an identification of the extent and duration of traffic interferences during construction of the facility and any interconnections;

(3) an assessment of over-size load deliveries, and the adequacy of roadway systems (including known height restrictions) to accommodate oversize and over-weight vehicles, improvements necessary to accommodate oversize or overweight deliveries, impacts associated with such improvements, and mitigation measures appropriate to minimize such impacts;

(4) an identification and evaluation of practicable mitigation measures regarding traffic and transportation impacts, including time restrictions, the use of alternative technologies, the construction of physical roadway improvements, the installation of new traffic control devices, and the repair of local roads or other features due to damage by heavy equipment or construction activities during construction or operation of the facility; and

(5) an identification of any other transportation facilities to be used and associated transportation impacts, including air and marine based facilities.

(e) An analysis and evaluation of the impacts of the facility on airports and airstrips, railroads, buses and any other mass transit systems in the vicinity of the facility, as determined pursuant to the pre-application meeting(s) held pursuant to section 1100-1.3(a)(6) of this Title. The analysis and evaluation shall include impacts on military training and frequent military operations in the National Airspace System and Special Use Airspace designated by the FAA.

(f) If any construction or alteration is proposed that requires a Notice of Proposed Construction to be submitted to the administrator of the FAA in accordance with 14 Code of Federal

Regulations Part 77 (see section 1100-17.1(h)(1)(i) of this Title):

(1) The application shall include a statement that the applicant has:

(i) received an informal Department of Defense review of the proposed construction or alteration in accordance with 32 Code of Federal Regulations section 211.7 (see section 1100-17.1(f)(1)(ii) of this Title); or

(ii) received a formal Department of Defense review of the proposed construction or alteration in accordance with 32 Code of Federal Regulations section 211.6 (see section 1100-17.1(f)(1)(i) of this Title).

(2) If such construction or alteration of a wind facility is proposed to be located:

(i) within twelve (12) miles of the nearest point of the nearest runway of a commercial service, cargo service, reliever or general aviation (public use) airport or a military airport with at least one (1) runway more than three thousand two hundred (3,200) feet in actual length; or

(ii) within six (6) miles of the nearest point of the nearest runway of a commercial service, cargo service, reliever or general aviation (public use) airport or a military airport with its longest runway no more than three thousand two hundred (3,200) feet in actual length; or

(iii) within three (3) miles of the nearest point of the nearest point of the nearest landing and takeoff area of a commercial service, cargo service, reliever or general aviation (public use) heliport or military heliport:

(a) the application shall include a statement that the applicant has consulted with the operators of such airports and heliports that are non-military facilities, has provided a detailed map and description of such construction or alteration to

such operators, and has requested review of and comment on such construction or alteration by such operators; and

(b) the application shall include a statement that the applicant has provided a detailed map and description of such construction or alteration to the operators (base commanders) of such airports and heliports that are military facilities.

(3) The application shall include a detailed description of the responses received in such reviews and consultations required in paragraphs (1) and (2) of this subdivision, including specifically whether and why such operators believe such construction or alteration should be:

(i) unrestricted;

(ii) subject to site-specific requirements; or

(iii) excluded from certain areas.

Section 1101-2.17. Exhibit 17: Consistency with Energy Planning Objectives.

Exhibit 17 shall contain:

(a) A statement demonstrating the degree of consistency of the construction and operation of the facility with New York State energy policies, including CLCPA targets and long-range energy planning objectives and strategies contained in the most recent State Energy Plan at the time of filing the application, including consideration of the information required by subdivisions (b) through (g) of this section.

(b) A description of the impact the facility would have on reliability in the State.

(c) A description of the impact the facility would have on fuel diversity in the State.

(d) A description of the impact the facility would have on regional requirements for capacity.

(e) A description of the impact the facility would have on electric transmission constraints.

(f) An analysis of the comparative advantages and disadvantages of reasonable and available alternative locations or properties identified for construction of the facility.

(g) A statement of the reasons why the facility will promote public health and welfare, including minimizing the public health and environmental impacts related to climate change.

Section 1101-2.18. Exhibit 18: Socioeconomic Effects.

Exhibit 18 shall contain:

(a) An estimate of the average construction work force, by discipline, for each quarter, during the period of construction; and an estimate of the peak construction employment level.

(b) An estimate of the annual construction payroll, by trade, for each year of construction and an estimate of annual direct non-payroll expenditures likely to be made in the host municipality(ies) (materials, services, rentals, and similar categories) during the period of construction.

(c) An estimate of the number of jobs and the on-site payroll, by discipline, during a typical year once the facility is in operation, and an estimate of other expenditures likely to be made in the host municipality(ies) during a typical year of operation.

(d) An estimate of incremental school district operating and infrastructure costs due to the construction and operation of the facility, this estimate to be made after consultation with the affected school districts.

(e) An estimate of incremental municipal, public authority, or utility operating and infrastructure costs that will be incurred for police, fire, emergency, water, sewer, solid waste disposal, highway maintenance and other municipal, public authority, or utility services during the construction and operation the facility (this estimate to be made after consultation with the

affected municipalities, public authorities, and utilities).

(f) An identification of all jurisdictions (including benefit assessment districts and user fee jurisdictions) that levy real property taxes or benefit assessments or user fees upon the facility site, its improvements and appurtenances and any entity from which payments in lieu of taxes will or may be negotiated.

(g) For each jurisdiction, a description of the host community benefits to be provided, including 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, payments to be made pursuant to a host community agreement or other project agreed to with the host community.

(h) 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.

(i) An analysis of whether all contingency plans to be implemented in response to the occurrence of a fire emergency or a hazardous substance incident can be fulfilled by existing local emergency response capacity, and in that regard identifying any specific equipment or training deficiencies in local emergency response capacity (this analysis to be made after consultation with the affected local emergency response organizations).

(j) A statement summarizing all host community benefit(s) to be provided by the applicant and an estimate of their dollar value per MW by jurisdiction.

(k) A description of the applicant’s good faith efforts to negotiate a potential host community agreement or other project agreed to with the host community. In the event the applicant is unable to secure a meeting with a municipality, the application shall contain a detailed explanation of all of applicant’s best efforts and reasonable attempts to secure such meeting including, but not limited to, all written communications

between the applicant and the municipality.

(l) The host community benefits shall be in a form and amount acceptable to the office.

Section 1101-2.19. Exhibit 19: Disadvantaged Communities.

Exhibit 19 shall contain:

(a) An identification and description of any disadvantaged community located within the impact study area of the proposed facility. The impact study area for purposes of disproportionate burden analysis shall be at a minimum, within one half mile (0.5) radius around the proposed facility.

(b) A figure identifying the location of any disadvantaged communities within the impact study area.

(c) A list of census tracts or block groups comprising each disadvantaged community within the impact study area in tabular format.

(d) An identification and evaluation of the nature and magnitude of potential and significant adverse disproportionate pollution impacts occurring within or impacting disadvantaged communities resulting from the construction and operation of the proposed facility.

(e) Any analysis required hereunder shall include supporting information, facts, and figures, and provide the proportion of pollution impacts proposed to occur within any disadvantaged communities and the proportion of impacts outside of disadvantaged communities. The applicant shall provide any studies which were used in the evaluation and identify the author and dates thereof.

(f) The applicant shall articulate the reasons why the proposed measures to avoid, minimize, or offset any disproportionate pollution impacts of the proposed facility will, to the maximum extent practicable, avoid, minimize, or offset any identified significant and adverse disproportionate pollution impacts, including a description of the manner in which such measures can be verified and a statement of the cost of such measures.

Section 1101-2.20. Exhibit 20: Effect on Communications.

Exhibit 20 shall contain:

(a) A detailed description of the proposed telecommunications interconnection, including all interconnecting facilities, line route, design details, size, functions, and operating characteristics.

(b) For wind facilities, an identification of all existing broadcast communication sources within a two (2)- mile radius of the facility and the electric interconnection between the facility and the point of interconnection, unless otherwise noted, including:

(1) AM radio;

(2) FM radio;

(3) television;

(4) telephone;

(5) microwave transmission (all affected sources, not limited to a two-mile radius);

(6) emergency services;

(7) municipal/school district services;

(8) public utility services;

(9) doppler/weather radar (all affected sources, not limited to a two (2)-mile radius);

(10) air traffic control (all affected sources, not limited to a two (2)-mile radius);

(11) armed forces (all affected sources, not limited to a two (2)-mile radius);

(12) global positioning systems (GPS); and

(13) amateur radio licenses registered to users.

(c) For solar and wind facilities, an identification of all

existing underground cable and fiber optic major transmission telecommunication lines within a one (1)-mile radius of the facility and the electric interconnection between the facility and the point of interconnection.

(d) A statement describing the anticipated effects of the facility and the electric interconnection between the facility and the point of interconnection on the communications systems required to be identified pursuant to subdivisions (b) and/or (c) of this section, including the potential for:

(1) facility structures to interfere with broadcast patterns by re-radiating the broadcasts in other directions;

(2) structures to block necessary lines-of-sight;

(3) physical disturbance by construction activities;

(4) adverse impacts to co-located lines due to unintended bonding; and

(5) any other potential for interference.

(e) An analysis demonstrating that there will be sufficient capacity to support the requirements of the facility.

(f) An evaluation of the design configuration of the facility and electric interconnection between the facility and the point of interconnection demonstrating that there shall be no adverse effects on the communications systems required to be identified pursuant to subdivisions (b) and/or (c) of this section.

(g) A description of post-construction activities that shall be undertaken to identify and mitigate any adverse effects on the communications systems required to be identified pursuant to subdivisions (b) and/or (c) of this section that occur despite the design configuration of the proposed facility and electric interconnection between the facility and the point of interconnection.

(h) A description of the status of negotiations, or a copy of agreements that have been executed, with companies or individuals

for providing the communications interconnection including any restrictions or conditions of approval placed on the facility imposed by the provider, and a description of how the interconnection and any necessary system upgrades will be installed, owned, maintained and funded.

Section 1101-2.21. Exhibit 21: Electric System Effects and Interconnection.

Exhibit 21 shall contain:

(a) A detailed description of the proposed electric interconnection, including:

(1) the design voltage and voltage of initial operation;

(2) the type, size, number and materials of conductors;

(3) the insulator design;

(4) the length of the transmission line;

(5) the typical dimensions and construction materials of the towers;

(6) the design standards for each type of tower and tower foundation;

(7) for underground construction, the type of cable system to be used and the design standards for that system;

(8) for underground construction, indicate on a profile of the line the depth of the cable and the location of any oil pumping stations and manholes;

(9) equipment to be installed in any proposed switching station or substation including an explanation of the necessity for any such switching station or substation;

(10) any terminal facility; and

(11) the need for cathodic protection measures.

(b) An analysis of system reliability impacts that shows expected flows on the system under normal, peak and emergency conditions and effects on stability of the interconnected system, including the necessary technical analyses (thermal, voltage, short circuit and stability) to evaluate the impact of the interconnection. The study shall include the new electric interconnection between the facility and the point of interconnection, as well as any other system upgrades required.

(c) An evaluation of the potential significant impacts of the facility and its interconnection to transmission system reliability at a level of detail that reflects the magnitude of the impacts.

(d) A discussion of the benefits and detriments of the facility on ancillary services and the electric transmission system, including impacts associated with reinforcements and new construction necessary as a result of the facility.

(e) An estimate of the increase or decrease in the total transfer capacity across each affected interface, and if a forecasted reduction in transfer capability across affected interfaces violates reliability requirements, an evaluation of reasonable corrective measures that could be employed to mitigate or eliminate said reduction.

(f) A description of criteria, plans, and protocols for generation and ancillary facilities' design, construction, commissioning, and operation, including as appropriate to generation technology:

(1) engineering codes, standards, guidelines and practices that apply;

(2) generation facility type certification;

(3) procedures and controls for facility inspection, testing and commissioning; and

(4) maintenance and management plans, procedures and criteria.

(g) For facilities where it is contemplated that a portion of a new interconnection substation to be built will be transferred

to the transmission owner:

(1) describe the substation facilities to be transferred and the contemplated future transaction, including a timetable for the future transfer;

(2) describe how the substation-interconnection design will meet the transmission owner's requirements; and

(3) define the operational and maintenance responsibilities for the substation and how they will meet the transmission owner's standards.

(h) If the applicant will entertain proposals for sharing above-ground infrastructure with other utilities (communications, cable, phone, cell phone relays, and similar facilities), criteria and procedures for review of such proposals.

(i) A status report on equipment availability and expected delivery dates for major components including towers, turbines, solar panels, inverters, transformers, and related major equipment.

Section 1101-2.22. Exhibit 22: Electric and Magnetic Fields.

Exhibit 22 shall contain:

(a) For the entire ROW of the proposed interconnection line rated over sixty-nine (69) kV, or any collection line rated over sixty-nine (69) kV, providing the electrical interconnection between the facility, and any transmission line between the facility and the existing electric transmission and distribution system: identify every ROW segment having unique electric and magnetic field (EMF) characteristics due to structure types and average heights, ROW widths, and co-location of other transmission facilities in the ROW.

(b) For each identified ROW segment, provide both "base case" and "proposed" cross-sections to scale showing:

(1) all overhead electric transmission, sub-transmission and distribution facilities including the proposed facility

showing structural details and dimensions and identifying phase spacing, phasing, and any other characteristics affecting EMF emissions;

(2) all underground electric transmission, sub-transmission and distribution facilities;

(3) all underground gas transmission facilities;

(4) all right-of-way boundaries; and

(5) structural details and dimensions for all structures (dimensions, phase spacing, phasing, and similar categories) and include a station number identifying the location.

(c) A set of the aerial photos/drawings enhanced by showing the exact location of each:

(1) identified ROW segment;

(2) cross-section; and

(3) nearest residence or occupied non-residential building in each identified ROW segment with a stated measurement of the distance between the edge of ROW and the nearest edge of the residence or building.

(d) An EMF study by a professional engineer with calculation tables and field strength graphs for each identified ROW segment cross-section, as follows:

(1) provide the name of the computer software program used to model the facilities and make the calculations;

(2) regarding electric fields, model the circuits at rated voltage and provide electric field calculation tables and field strength graphs calculated at one (1) meter above ground level with five (5)-foot measurement intervals depicting the width of the entire ROW and out to five hundred (500) feet from the edge of the ROW on both sides, including digital copies of all input assumptions and outputs for the calculations;

(3) regarding magnetic fields, model the circuit phase

currents equal to the summer normal, summer short term emergency (STE sum), winter-normal, and winter-short term emergency (STE win) loading conditions and provide magnetic field calculation tables and field strength graphs calculated at one (1) meter above ground level with five (5)-foot measurement intervals depicting the width of the entire ROW and out to five hundred (500) feet from the edge of the ROW on both sides, including digital copies of all input assumptions and outputs for the calculations;

(4) regarding magnetic fields, also model the circuit phase currents equal to the maximum average annual load estimated to be occurring on the power lines within ten (10) years after the proposed facility is put in operation and provide magnetic field calculation tables and field strength graphs calculated at one (1) meter above ground level with five (5)-foot measurement intervals depicting the width of the entire ROW and out to five hundred (500) feet from the edge of the ROW on both sides, including digital copies of all input assumptions and outputs for the calculations;

(5) regarding magnetic fields, also model an "existing condition" with the circuit phase currents equal to the maximum average annual load currently estimated to be occurring on the existing power lines within the ROW (without construction or operation of the proposed facility) and provide magnetic field calculation tables and field strength graphs calculated at one (1) meter above ground level with five (5)-foot measurement intervals depicting the width of the entire ROW and out to five hundred (500) feet from the edge of the ROW on both sides, including digital copies of all input assumptions and outputs for the calculations; and

(6) provide a demonstration that the proposed facilities, including interconnection transmission lines, will conform with the Public Service Commission's Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities (see section 1100-17.1(n)(1)(i) of this Title) at the proposed ROW edges.

Section 1101-2.23. Exhibit 23: Decommissioning and Site Restoration.

Exhibit 23 shall contain a Decommissioning and Site Restoration Plan consistent with the requirements in section 1101-3.6(a) of this Part.

Section 1101-2.24. Exhibit 24: Local Laws and Ordinances.

Exhibit 24 shall contain:

(a) A list of all local ordinances, laws, resolutions, regulations, standards, and other requirements adopted and in effect prior to the date of the notice of the filing of an application and applicable to the construction or operation of the facility, which includes interconnection electric transmission lines, that are of a substantive nature, together with a statement that the location of the facility as proposed conforms to all such local substantive requirements, except any the applicant requests that the Office elect not to apply. Copies of zoning, flood plain and similar maps, tables and/or documents shall be included in the exhibit when such are referenced in such local substantive requirements.

(b) A list of all local ordinances, laws, resolutions, regulations, standards and other requirements adopted and in effect prior to the date of the notice of the filing of an application and applicable to the interconnection to or use of water, sewer, and telecommunication lines in public rights of way that are of a substantive nature, together with a statement that the location of the facility as proposed conforms to all such local substantive requirements, except any the applicant requests that the office elect not to apply.

(c) A list of all local substantive requirements identified pursuant to subdivision (a) or (b) of this section for which the applicant requests that the office elect to not apply to the facility. Pursuant to Public Service Law article VIII, the office may elect to not apply, in whole or in part, any local law or ordinance that would otherwise be applicable if it makes a finding that, as applied to the proposed facility, it is unreasonably burdensome in view of the CLCPA targets and the

environmental benefits of the proposed facility. For each local substantive requirement identified by the applicant, 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 facility, that the request is the minimum necessary, and that the adverse impacts of granting the request shall be mitigated to the maximum extent practicable consistent with applicable requirements set forth in this Part. If applicable, the statement may include a demonstration:

(1) for requests grounded in the existing technology, that there are technological limitations (including governmentally imposed technological limitations) related to necessary facility component bulk, height, process or materials that make compliance by the applicant technically impossible, impractical or otherwise unreasonable;

(2) for requests grounded in factors of costs or economics (likely involving economic modeling), that the costs to consumers associated with applying the identified local substantive requirements would outweigh the benefits of applying such provisions; and

(3) for requests grounded in the needs of consumers, that the needs of consumers for the facility outweigh the impacts on the community that would result from refusal to apply the identified local substantive requirements.

(d) A summary table of all local substantive requirements identified pursuant to subdivisions (a) and (b) of this section in two columns listing the provisions in the first column, and a discussion or other showing demonstrating the degree of compliance with the substantive provisions in the second column.

(e) A statement identifying the public entity or entities that are responsible for administration and enforcement of the New York State Uniform Fire Prevention and Building Code, the Energy Conservation Construction Code of New York State, and the substantive provisions of any applicable local electrical,

plumbing, fire, or building code. The statement should identify any local government that has declined responsibility for the Uniform Code and Energy Code pursuant to 19 NYCRR section 1202.1, and whether the responsibility falls with the county in which the local government is located or with the State. The statement of identification shall include a description of the preliminary arrangement made between the applicant and the entity that shall perform the review, approval, inspection, and compliance certification, including arrangements made to pay for the costs thereof including the costs for any consultant services necessary due to the complex nature of such facilities.

(f) An identification of the zoning designation or classification of all lands constituting the facility site and a statement of the language in the zoning ordinance or local law by which it is indicated that the facility is a permitted use at the facility site. If the language of the zoning ordinance or local law indicates that the facility is a permitted use at the facility site subject to the grant of a special exception, a statement of the criteria in the zoning ordinance or local law by which qualification for such a special exception is to be determined.

Section 1101-2.25. Exhibit 25: Other Permits and Approvals.

Exhibit 25 shall contain:

(a) A list of any Federal or federally-delegated, or Federal or State recognized Indian Nation, permit, consent, approval or license, including any permit or approval required by local flood plain management regulations adopted pursuant to the National Flood Insurance Program, that will be required for the construction or operation of the facility, which shall specify the date on which an application for any such approval was made or the estimated date on which it will be made. The applicant shall notify the Office of any significant change in the status of each such application.

(b) A statement as to whether the applicant knows of others who have any pending applications or filings for any Federal or federally-delegated, Federal or State recognized Indian Nation, State or local permit, consent, approval or license, including any permit or approval required by local flood plain management

regulations adopted pursuant to the National Flood Insurance Program, which concerns the facility. If any such applications or filings are identified, the applicant shall indicate whether the granting of any such application or filing will have any effect on the grant or denial of a siting permit, and whether the grant or denial of a siting permit will have any effect upon the grant or denial of any such other application or filing. The applicant shall notify the office of any significant change in the status of each such application or filing.

Subpart 1101-3. Major Renewable Energy Facility Uniform Standards and Conditions.

Section 1101-3.1. Facility authorization.

(a) *Compliance*. The permittee is authorized to construct and operate the facility as described in the application and as clarified by the permittee's subsequent filings and any approved amendments or modifications, except as waived, modified, or supplemented by this permit or other permits. The permittee shall implement any impact avoidance, minimization and/or mitigation measures identified in the exhibits, compliance filings and/or contained in a specific plan required under Part 1100 of this Title, as approved by the office. If there is any discrepancy between an exhibit or compliance filing and a permit condition, the permittee shall comply with the permit condition and notify the office immediately for resolution.

(b) *Property rights*. Issuance of a siting permit does not convey any rights or interests in public or private property. The permittee shall be responsible for obtaining all real property, rights-of-way (ROW), access rights and other interests or licenses in real property required for the construction and operation of the facility.

(c) *Eminent domain*. Issuance of a siting permit to a permittee that is an entity in the nature of a merchant generator and not in the nature of a fully regulated public utility company with an obligation to serve customers does not constitute a finding of public need for any particular parcel of land such that a condemner would be entitled to an exemption from the provisions of article 2 of the New York State Eminent Domain Procedure Law

("EDPL") pursuant to section 206 of the EDPL.

(d) *Other permits and approvals.* Prior to the permittee's commencement of construction, the permittee shall be responsible for obtaining all necessary federal and federally-delegated permits and any other approvals that may be required for the facility and which the office is not empowered to provide or has expressly authorized. In addition, the office expressly authorizes:

(1) the PSC to require approvals, consents, permits, other conditions for the construction or operation of the facility under PSL sections 68, 69, 70, and article VII, as applicable, with the understanding that the PSC will not duplicate any issue already addressed by the office, will only act on its police power functions related to the entity as described in the body of this siting permit, and will retain the authority to authorize the exercise or expansion of franchise rights; provided however that the verified statement of the president and secretary of the corporation showing that it has received the required consent of the proper municipal authorities shall be limited to agreements related to franchise rights. All other agreements with municipal authorities shall be submitted to the office and shall not be subject to review under PSL section 68;

(2) the NYSDOT to administer permits associated with oversize/overweight vehicles and deliveries, highway work permits, and associated use and occupancy approvals as needed to construct and operate the facility;

(3) the city, town, village, county, or State agency or authority to be responsible for administration and enforcement of the New York State Uniform Fire Prevention and Building Code (Uniform Code), or other applicable local fire or building code, and State Energy Conservation Construction Code (State Energy Code), or other applicable local energy conservation construction code, with respect to the proposed facility; and

(4) the pertinent agency to implement any applicable State law for the protection of employees engaged in the construction and operation of the project.

(5) The permittee shall file copies of all Federal and federally-delegated permits and approvals required for construction and operation of the facility, as well as any other permits and approvals which the office is not empowered to provide, consistent with section 1101-2.25 of this Part. The permittee shall inform the pertinent permitting agency of any changes in the design of the project that have the potential to impact an issued permit or authorization and shall file a copy of such correspondence with the office. The permittee shall file with the office a copy of any amendments or modifications for any permits or authorizations within fifteen (15) days of issuance.

(e) *Water quality certification*. Prior to commencing construction, the permittee shall request and obtain from the office a water quality certification pursuant to section 401 of the Clean Water Act, if required.

(f) *Host community benefits*. The permittee shall provide host community benefits, such as Payments in Lieu of Taxes (PILOTs), other payments pursuant to a host community agreement or other project(s) agreed to by the host community.

(g) *Notice to proceed with construction*. The permittee and its contractors shall not commence construction until a "Notice to Proceed with Construction" or "Conditional Notice to Proceed with Construction" (NTP) has been issued by the office. Such NTP will be issued after all applicable pre-construction compliance filings have been filed by the permittee and approved by the office.

(h) *Project phasing.*

(1) The permittee may request phased construction by submitting a comprehensive Project Phasing Plan, including a detailed narrative of the scope of work, and anticipated compliance filings for each phase, in consultation with the office. Such Phasing Plan shall be submitted no later than upon filing of the first pre-construction compliance filing.

(2) To receive a NTP approval for any phase, the permittee shall have submitted to the office all applicable pre-

construction compliance filings consistent with the Project Phasing Plan.

(i) *Expiration*. The siting permit will automatically expire if the facility does not achieve commencement of commercial operation within five (5) years from the date of issuance.

(j) *Partial cancellation*. If the permittee decides not to commence construction of any portion of the facility, it shall so notify the office within thirty (30) days after making such decision. Such decisions shall not require a modification to the siting permit unless the office determines that such change constitutes a major modification to the siting permit pursuant to section 1100-11.1 of this Title.

(k) *Deadline extensions*. The office may extend any deadlines established by the siting permit for good cause shown. Any request for an extension shall be in writing, include a justification for the extension, and be filed at least fourteen (14) days prior to the applicable deadline. The office may decline to consider any request for extension received less than fourteen (14) days prior to applicable deadline.

(l) *Force majeure*. Notwithstanding other conditions in the siting permit to the contrary, following receipt of an NTP, during unforeseen circumstances the permittee may conduct limited construction, operations, and maintenance activities, where and when otherwise prohibited, only as necessary to protect human life. If the permittee intends to conduct or has conducted otherwise prohibited construction, operations, or maintenance activities pursuant to this paragraph, the permittee must inform office staff as soon as possible and provide a written description of the activities performed and the justification for such activities, within two business days following the initiation of such activities. Upon protecting human life, the permittee shall cease all prohibited construction, operation, and maintenance activities.

(m) *Enforcement authority*. The permittee shall regard the office and NYSDPS staff, authorized pursuant to PSL section 66(8) and 144(4), as the office's representatives in the field. In the event of any emergency resulting from the specific construction or maintenance activities that violate, or may violate, the terms

of the siting permit, compliance filings, or any other supplemental filings, such Staff may issue a stop work order for that location or activity pursuant to section 1100-12.1 of this Title.

Section 1101-3.2. Notifications.

(a) *Pre-Construction notice methods*. At least fourteen (14) business days prior to the permittee's commencement of construction date, the permittee shall notify the public as follows:

(1) provide notice on the facility's website;

(2) provide notice by mail to all persons residing within one (1) mile of a solar facility or within five (5) miles of a wind facility;

(3) provide notice to local town and county officials and emergency personnel;

(4) provide notice for display in public places, which shall include, but not be limited to, the town halls of the host municipalities, at least one (1) library in each host municipality, at least one (1) post office in each host municipality, the facility website, and the facility construction trailers/offices; and

(5) file notice with the office for posting on the office website.

(b) *Proof of notice to office.* At least fourteen (14) business days prior to commencement of construction, the permittee shall file with the office an affirmation that it has provided the notifications required by subdivision (a) of this section and include a copy of the notice(s), as well as a distribution list.

(c) Post-construction notice. Within ten (10) days of the completion of final project site restoration, the permittee shall file such notice with the office that all such restoration has been completed in compliance with the siting permit and applicable compliance filings.

(d) Commercial Operation Notice. Within ten (10) days after the project commences commercial operation, the permittee shall provide notice to the office and the entities identified in

paragraphs (a)(1)-(5) of this section, along with the contact name, telephone number, email and mailing address of the facility operations manager, as well as all information required in paragraphs (e)(1)-(2) and (4)-(7) of this section.

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

(1) a map of the facility;

(2) a brief description of the facility;

(3) the construction schedule and transportation routes;

(4) the name, mailing address, local or toll-free telephone number, and email address of the appropriate facility contact for development, construction and operations;

(5) the procedure and contact information for registering a complaint, consistent with section 1101-4.2(e)(7) of this Part;

(6) contact information for the office;

(7) the facility website; and

(8) a list of public locations where information on the facility, construction, and the permittee will be posted.

Section 1101-3.3. General requirements.

(a) *Local laws*. The permittee shall construct and operate the facility in accordance with the substantive provisions of the applicable local laws as identified in section 1101-2.24 of this Part, except for those provisions of local laws that the office determined to be unreasonably burdensome, as stated in the siting permit.

(b) *Federal requirements*. The permittee shall construct and operate the facility in a manner that conforms to all applicable Federal and federally-delegated permits identified in section 1101-2.25 of this Part. If relevant facility plans require modifications due to conditions of Federal permits, the final design drawings and all applicable compliance filings shall be

revised accordingly and submitted for review and approval pursuant to sections 1100-11.1 or 1100-11.2 of this Title, as applicable.

(c) *Traffic coordination.* The permittee shall coordinate with State, county, and local highway agencies to respond to and apply applicable traffic control measures to any locations that may experience any traffic flow or capacity issues.

Section 1101-3.4. Facility construction and maintenance.

(a) *Construction hours.* Construction and routine maintenance activities at the facility shall be limited to 7 a.m. to 7 p.m. Monday through Saturday except deliveries, which may occur during extended hours beyond this schedule on an as-needed basis. Extended hours include work before 7 a.m. and after 8 p.m., on Sundays, and on the following State and Federal Holidays: Independence Day, Thanksgiving Day, Christmas Day, and New Year's Day.

(1) Construction work hour limits apply to facility construction and construction related activities; routine maintenance; maintenance and repairs of construction equipment at outdoor locations; large vehicles idling for extended periods at roadside locations; and related disturbances. This condition shall not apply to vehicles used for transporting construction or maintenance workers, small equipment, and tools used at the facility site for construction or maintenance activities.

(2) If, due to safety, planned outage restrictions, or continuous construction or operation requirements, construction activities are required to occur beyond the allowable work hours, the permittee shall notify the office, affected landowners, and affected municipalities. Such notice shall be given at least twenty-four (24) hours in advance, unless such construction activities are required to address emergency situations threatening personal injury, property, or severe adverse environmental impact that arise less than twenty-four (24) hours in advance. In such cases, as much advance notice as is practical shall be provided.

(b) *Environmental and agricultural monitoring.*

(1) The permittee shall retain an independent, third-party

environmental monitor to oversee compliance with environmental commitments and siting permit requirements. The environmental monitor(s) shall satisfy the qualifications of a "qualified inspector" pursuant to the State Pollutant Discharge Elimination System Construction General Permit (SPDES Construction General Permit). The environmental monitor shall perform regular site inspections of construction work sites and, in consultation with the office, issue regular reporting and compliance audits.

(2) When project activities will occur within land used in agricultural production, the permittee shall also retain an independent, third-party agriculture-specific environmental monitor as required in section 1101-3.4(ab)(1) of this Part. The environmental monitor in paragraph (1) of this subdivision may serve as the agricultural monitor, if qualified.

(3) At least fourteen (14) days prior to the start of construction the permittee shall identify and provide the following information to the office:

(i) qualifications, contact information, and organization structure, including specific names, duties, and responsibilities for all independent, third-party monitor(s);

(ii) a statement confirming independence of the monitor(s) from the permittee.

(4) The office may disqualify any independent third-party monitor or monitoring staff. Any monitor or monitoring staff disqualified by the office shall be promptly substituted.

(5) The monitor(s) shall be authorized to access all facility areas and communicate directly with office staff.

(6) The environmental monitor shall have stop work authority over all aspects of the facility. Any stop work orders shall be limited to affected areas of the facility.

(7) The permittee shall ensure that its environmental monitor and agricultural monitor are equipped with

sufficient access to documentation, transportation, and communication equipment to effectively monitor the permittee's contractor's compliance with the provisions of the siting permit with respect to such permittee's facility components and to applicable sections of the Public Service Law, Executive Law, Environmental Conservation Law, and Clean Water Act section 401 Water Quality Certification. Additional monitors or monitoring staff shall be retained as determined necessary by the permittee or the office to assure protection of resources and adequate compliance oversight. During periods of relative inactivity on the project, after consultation with and approval from the office, the permittee may temporarily decrease the number of hours worked by monitors and the extent of their presence at the project site commensurate with the decline in project activity.

(c) *Pre-construction meeting.* At least fourteen (14) days before the commencement of construction, the permittee shall hold a pre-construction meeting with office staff, NYSDEC, NYSAGM, NYSDOT, APA (if applicable), municipal supervisors/mayors and highway departments, county highway departments, the POI utility owner, and other entities as required by the office. The balance of plant (BOP) construction contractor, the agricultural monitor and environmental monitor shall be required to attend the pre-construction meeting.

(1) An agenda, the location, and an attendee list shall be agreed upon between staff of the office and the permittee and distributed to the attendee list at least one (1) week prior to the meeting.

(2) Maps showing designated travel routes, construction worker parking and access road locations and a general facility schedule shall be distributed to the attendee list at least ten (10) days prior to the meeting.

(3) The permittee shall supply draft minutes from this meeting to the attendee list for corrections or comments, and thereafter the permittee shall issue the finalized meeting minutes.

(4) If, for any reason, the BOP contractor cannot finish the construction of the facility, and one (1) or more new BOP contractors are needed, there shall be another pre-

construction meeting with the same format as outlined in this section.

(d) *Contractor notification*.

(1) The permittee shall provide all project contractors with complete copies of the siting permit, the approved EM&CP and compliance filings, approved changes to the EM&CP and compliance filings, Notices to Proceed issued for the project, any site-specific plans, any executed crossing agreements (including associated details and drawings exhibiting construction provisions and measures to be implemented for protection of existing utilities), the SWPPP, the SPDES Construction General Permit and/or SPDES Individual Permit applicable the project, any permit issued pursuant to section 404 of the Federal Clean Water Act, and the Section 401 Water Quality Certification. To the extent that the listed documents are available before contracts for construction services are executed, such copies shall be provided by the permittee to its contractors prior to the execution of such contracts.

(2) The permittee shall notify its contractors that the office may seek to recover penalties for any violation of the siting permit, approved EM&CP and compliance filings, and Notices to Proceed. The office may seek to recover such penalties from the permittee and its contractors, and contractors may also be liable for additional fines, penalties, and environmental damage.

(e) *Construction reporting and inspections*. During facility construction, the permittee shall report construction status and support inspections as follows:

(1) Every two (2) weeks, the permittee shall provide office staff and the host municipalities with a report summarizing the status of construction activities, and the schedule and locations of construction activities for the next two (2) weeks. The office may require interim reports regarding the progress of construction.

(2) Prior to entry onto the facility site for on-site inspections, the permittee shall conduct a tailgate meeting

to communicate required safety procedures and worksite hazards to site inspectors.

(3) The permittee shall review the following during a monthly meeting with the office and other involved agencies, and at other times as may be determined by office staff:

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

(ii) field reviews of the facility site;

(iii) actual or planned resolutions of complaints;

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

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

(vi) other items the permittee or office staff consider appropriate.

(4) Within five (5) business days after every monthly compliance meeting, the permittee shall provide the agencies involved in the meeting and the host municipalities (if requested) with written meeting minutes and a written summary of the results of any inspections completed during the past month, including resolution of issues and additional measures to be taken. Copies of the reporting and compliance audits shall be provided to the host town(s) upon request.

(f) *Report of accidents*. As soon as possible, but in any event no later than within twenty-four (24) hours, the permittee shall report to the office:

(1) Any damage to public or private property, damage to equipment, or damage to any sensitive resource incurred as a result of project activities.

(2) Any Occupational Safety and Health Administration

(OSHA)-recordable construction accident in connection with work on the project. A copy of the accident report shall be provided to the office after it has been finalized.

(g) *Flagging.* At least two (2) weeks before tree clearing or ground disturbing activities, the permittee shall stake or flag the planned limits of disturbance (LOD), all on or off ROW access roads, limits of clearing and other areas needed for construction, including, but not limited to, turbine or solar array work areas, proposed infiltration areas for post-construction stormwater management, and laydown and storage areas. The permittee shall mark the boundaries of any delineated NYS-regulated wetlands, waterbodies, or streams in the LOD (as identified in the delineations prepared pursuant to section 1101-1.1(a) of this Part), and any known archeological sites identified in the approved Cultural Resources Avoidance, Minimization and Mitigation Plan (CRAMMP) required in section 1101-4.2(g) of this Part and section 1102-4.4(p) of this Title, with colored flagging, "protected area" signs, or erosion and sediment control measures specified by the SWPPP. In addition, archeological sites and ESAs where no construction is planned shall be surrounded with construction fencing and a sign stating, "No Equipment Access."

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

(i) *Natural gas pipeline cathodic protection*. The permittee shall contact all pipeline operators within the facility site and land owners, if necessary, on which facility components are to be located or whose property lines are within the zone of safe siting clearance, if any, and shall reach an agreement with each operator to provide that the facility's collection and interconnection systems will not damage any identified pipeline's cathodic protection system or produce damage to the pipeline, either with fault current or from a direct strike of lightning to the collection and interconnection systems, specifically addressing section 255.467 of this Title (External corrosion control; electrical isolation).

(j) *Pole numbering*. The permittee shall comply with all

requirements of the PSC's regulations regarding identification and numbering of above ground utility poles at Part 217 of this Title.

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

(l) *Air emissions.* To minimize air emissions during construction, the permittee shall:

(1) prohibit contractors from leaving generators idling when electricity is not needed and from leaving diesel engines idling when equipment is not actively being used;

(2) implement dust control procedures to minimize the amount of dust generated by construction activities in a manner consistent with the Standards and Specifications for Dust Control, as outlined in the New York State Standards and Specifications for Erosion and Sediment Control (see section 1100-17.1(i)(1)(i) of this Title);

(3) use construction equipment powered by electric motors where feasible, or by ultra-low sulfur diesel; and

(4) dispose or reuse cleared vegetation in such a way that that minimizes greenhouse gas emissions (e.g., lumber production or composting).

(m) *Construction noise*. To minimize noise impacts during construction, the permittee shall:

(1) Implement noise or vibration mitigation measures associated with specific construction activity(ies) as identified in the application or EM&CP on or before the start of such activity(ies).

(2) Maintain functioning mufflers on all transportation and construction machinery.

(3) Respond to noise and vibration complaints according to the noise complaint resolution protocol approved by the office (see section 1101-3.5(a)(3) of this Part).

(4) If turbines need to be commissioned without NROs,

perform such testing in a way that minimizes noise impacts, during construction hours in compliance with section 1101-3.4(a) of this Part.

(n) *Visual mitigation.*

(1) *Wind facilities.* The permittee shall implement the approved Visual Impacts Minimization and Mitigation Plan required in section 1101-2.8(d) of this Part, including the following:

(i) adoption of visual design features requirements;

(ii) visual contrast minimization and mitigation measures;

(iii) operational effects minimization measures, including shadow flicker minimization mitigation and other measures necessary to achieve a maximum of thirty (30) hours annually at any non-participating residential receptor, subject to verification using shadow prediction and operational controls at appropriate wind turbines;

(iv) Lighting Plan; and

(v) Screen Planting Plans.

(2) *Solar facilities*. The permittee shall implement the approved Visual Impacts Minimization and Mitigation Plan as required in section 1101-2.8(d) of this Part, including the following:

(i) visual contrast minimization and mitigation measures;

(ii) Lighting Plan;

(iii) solar glare mitigation requirements; and

(iv) Screen Planting Plans.

(3) *Screen planting plans.* The permittee shall retain a qualified landscape architect, arborist, or ecologist to inspect the screen plantings for two (2) years following installation to identify any plant material that did not

survive, appears unhealthy, and/or otherwise needs to be replaced. The permittee shall remove and replace plantings that fail in materials, workmanship or growth within two (2) years following the completion of installing the plantings.

(o) *Limits of disturbance (LOD).* Construction shall not directly disturb areas outside the construction limits shown on the design drawings.

(p) *Blasting*. Blasting shall be designed and controlled to meet the limits for ground vibration set forth in United States Bureau of Mines Report of Investigation 8507 Figure B-1 (see section 1100-17.1(k)(1)(i) of this Title) and air overpressure shall be under the limits set forth in the Conclusion Section in United States Bureau of Mines Report of Investigation 8485 (USBM RI 8507 and USBM RI 8485 (see section 1100-17.1(k)(1)(ii) of this Title) to protect structures from damage.

(1) Blasting shall be prohibited within five hundred (500) feet of any known existing, active water supply well or water supply intake on a non-participating property.

(2) No blasting may occur within distances identified in approved NCBPs for listed species.

(3) Blasting times shall be limited to 9:00 a.m. to dusk on non-holiday weekdays, unless otherwise approved by the office consistent with section 1101-3.4(a)(2) of this Part.

(4) Where blasting will occur in agricultural areas, the permittee shall ensure that:

(i) in agricultural areas of till over bedrock, matting or controlled blasting shall be used to limit the dispersion of blast rock fragments;

(ii) all blasted rock not used as backfill shall be removed from croplands, haylands, and improved pastures; and

(iii) the till and topsoil shall be returned in sequence to restore the soil profile.

(5) Blasting operations in locations where geotechnical

investigations confirm the presence of subsurface karst features shall be limited or performed under specific procedures recommended for those locations by a geotechnical engineer licensed to practice in the State of New York.

(q) *Erosion and sedimentation materials.* Permanent erosion control fabric or netting used to stabilize soils prior to establishment of vegetative cover or other permanent measures shall be one hundred (100) percent biodegradable natural product, excluding silt fence and geotextile used for road construction. Use of hay for erosion control or other construction-related purposes is prohibited to minimize the risk of introduction of invasive plant species.

(r) *Petroleum and hazardous substances*. Consistent with section 1101-2.13(d) of this Part:

(1) All hazardous chemicals and waste shall be secured in a locked and controlled area.

(2) All construction vehicles and equipment shall be equipped with a spill kit. All equipment shall be inspected daily for leaks of petroleum, other fluids, or contaminants; equipment may only enter a stream channel if found to be free of any leakage. Any leaks shall be stopped and cleaned up immediately.

(3) Field personnel and contractors shall be trained in spill response procedures, including the deployment and maintenance of spill containment and response materials, which shall be readily available on-site.

(4) Spillage of fuels, waste oils, other petroleum products or hazardous materials shall be reported to the NYSDEC's Spill Hotline within two (2) hours of discovery, in accordance with the NYSDEC Spill Reporting and Initial Notification Requirements Technical Field Guidance (see section 1100-17.1(i)(1)(iii) of this Title). The office shall also be notified of all reported spills in a timely manner, generally, upon discovery to within 2 hours depending on substance.

(5) The permittee shall keep local fire department and

emergency management teams apprised of on-site hazardous chemicals and waste.

(s) *Construction debris*. Any debris or excess construction materials shall be removed to a facility or location legally authorized to receive such material. No burying or burning of construction debris or excess construction materials is allowed.

(t) *Clearing areas*. Tree and vegetation clearing shall be limited to the minimum necessary for facility construction and operation, and as detailed on final construction plans.

(u) *Clearing methods*. When conducting clearing, the permittee shall:

(1) leave stumps and root systems in place within fifty (50) feet of NYS-protected waterbodies, unless construction of an access road or work pad necessitates removal;

(2) comply with the provisions of 6 NYCRR Part 192, Forest Insect and Disease Control, and ECL section 9-1303 and any quarantine orders issued thereunder;

(3) not create a maximum wood chip depth greater than three (3) inches, except for chip roads (if applicable), nor store or dispose wood chips within wetlands, stream banks, delineated floodways, active agricultural fields, or improved pasture;

(4) not dispose of vegetation or slash by burning anywhere or burying within a wetland or adjacent area; and

(5) coordinate with landowners to salvage merchantable logs and fuel wood. Where merchantable logs and fuel wood will not be removed from the facility site during clearing activities, final design drawings shall indicate locations of stockpiles to be established for removal from site or future landowner resource recovery.

(v) *Invasive insects*. To control the spread of invasive insects, the permittee shall provide training for clearing and construction crews to identify the Asian Longhorn Beetle, the Emerald Ash Borer, and other invasive insects of concern as a potential problem at the facility site. If these insects are found, they shall be reported to the NYSDEC as soon as

practicable.

(w) *Water supply protection.*

(1) For wind facilities:

(i) No wind turbine shall be located within one hundred (100) feet of an existing, active water supply well or water supply intake.

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

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

(b) blasting within one thousand (1,000) feet of an existing, active water supply well on a non-participating property; and

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

(iii) Should the third-party testing, as required by subparagraph (iii) of this paragraph, conclude that the water supplied by an existing, active water supply well met Federal (see section 1100-17.1(j)(1)(i) of this Title) and State standards for potable water (see 10 NYCRR Part 75, Appendix 75-c) prior to construction, but failed to meet such standards after construction as a result of facility activities, the permittee shall cause a new water well to be constructed, in consultation with the property owner, at least one hundred (100) feet from collection lines and access roads, and at least five hundred (500) feet from wind turbines, as

practicable given siting constraints and landowner preferences. The results of such tests and reports shall be made available to the relevant municipalities upon request.

(2) For solar facilities:

(i) Pier and post driving activities, except for fence and utility poles, shall be prohibited within one hundred (100) feet of any existing, active drinking water supply well; use of earth screws is permitted.

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

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

(b) blasting within one thousand (1,000) feet of an existing, active water supply well on a non-participating property;

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

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

(iii) Should the third-party testing conclude that the water supplied by an existing, active water supply well met Federal (see section 1100-17.1(j)(1)(i) of this Title) and State standards for potable water (see 10 NYCRR Part 75, Appendix 75-c) prior to construction, but failed to meet such standards post construction as a result of facility activities, the permittee shall

cause a new water well to be constructed, in consultation with the property owner, at least one hundred (100) feet from collection lines and access roads, and at least two hundred (200) feet from all other facility components. The results of such tests and reports shall be made available to the relevant municipalities upon request.

(x) *Threatened and endangered species.*

(1) For facilities that would cause an adverse impact on NYS threatened or endangered species other than NYS threatened or endangered grassland birds or their habitat that would result in a take determination, the permittee shall implement a final Net Conservation Benefit Plan (NCBP) that is approved by the office which shall include:

(i) an identification of each affected NYS threatened or endangered species for which mitigation is proposed, details regarding level of impact, and a demonstration that the NCBP results in a benefit for each of the affected species as defined by 6 NYCRR 182.2;

(ii) a detailed explanation of avoidance and minimization measures to be taken for each of the affected species;

(iii) amount of impact each mitigation measure is proposed to offset; as applicable, identifying either the number of individuals proposed to be mitigated, or the number of acres proposed for mitigation;

(iv) full source citation information supporting a determination as to the net conservation benefit for each of the affected species consistent with subparagraph (iii) of this paragraph;

(v) a detailed description of the mitigation actions that will be undertaken by the permittee to achieve a net conservation benefit to the affected NYS threatened or endangered species. This shall include the methods of implementation, management, monitoring, and reporting, and may, if applicable, include payment of an approved mitigation fee into the Endangered and Threatened Species Mitigation Fund established pursuant

to section 99(hh) of the New York State Finance Law. The office may give the permittee credit for any mitigation fee paid to another State or Federal agency or authority;

(vi) to the extent that physical mitigation will be performed, a letter or other indication of the permittee's financial and technical capability and commitment to fund such mitigation; and

(vii) an executed implementation agreement committing to implement required management, maintenance, and monitoring for the life of the siting permit.

(2) For facilities determined pursuant to the procedures set forth in section 1101-2.12 of this Part to have de minimis impacts to NYS threatened or endangered grassland birds, if an active nest is identified within the facility site prior to or during construction, and the facility results in adverse impacts to the nest or grasslands twenty-five (25) acres or more in size that were previously (during pre-application) or newly (prior or during construction) determined to be occupied habitat, then the permittee shall coordinate with the office and NYSDEC to adjust the limits of disturbance and/or adjust the construction schedule to avoid work in the area until nesting has been completed or the permittee shall pay into the Endangered and Threatened Species Mitigation Bank Fund the required mitigation fee commensurate with the acreage of mitigation that would be required for permittee-implemented grassland bird habitat conservation, calculated pursuant to subparagraph (ix) of paragraph (3) of this subdivision. The office may give the permittee credit, in whole or in part, for any mitigation fee paid to another State or Federal agency or authority.

(3) For facilities that will have more than a de minimis impact on NYS threatened or endangered grassland birds, the permittee shall implement the following as part of the approved final NCBP:

(i) The permittee shall implement environmental monitoring immediately prior to and during construction in the occupied habitat to search for NYS threatened or endangered species occurrence based on the species'

seasonal windows for presence.

(ii) If active nests of the NYS threatened or endangered species are found within the occupied habitat, then the permittee shall coordinate with the office to adjust the limits of disturbance and/or adjust the construction schedule to avoid work in the area until nesting has been completed.

(iii) To avoid direct impacts to NYS threatened or endangered grassland bird species, the following work windows apply for all ground disturbance and construction-related activities, including restoration and equipment/component staging, storage, and transportation, within occupied habitat:

(a) in NYS threatened or endangered grassland bird occupied breeding habitat, work shall be conducted only between August 16 and April 22;

(b) in NYS threatened or endangered grassland bird occupied wintering habitat, work shall be conducted only between April 1 and November 14;

(c) in areas of the facility where both breeding and wintering occupied habitat occurs, work shall be conducted only between August 16 and November 14, and between April 1 and 22.

(iv) If fields within identified occupied breeding habitat are planted with row crops (e.g., corn, beans, or vegetables) in the farming season prior to the commencement of facility construction and such fields were historically used for row crops during at least one of the prior five (5) years, these fields will not be subject to the construction timing restrictions set forth in subparagraphs (iii)(*a*) and (*c*) of this paragraph.

(v) If the permittee has identified construction activities that must occur between November 15 and March 31 in identified NYS threatened or endangered grassland bird occupied wintering habitat, or between April 23 and August 15 in identified NYS threatened or endangered grassland bird occupied breeding habitat

outside of row crop areas described in subparagraph (iv) of this paragraph, the occupied habitat area(s) proposed for active construction shall be assessed by an on-site environmental monitor or biologist who shall conduct surveys for NYS threatened or endangered grassland bird species. The surveys shall occur weekly until construction activities have been completed in the occupied habitat area, unless otherwise agreed to by the office. If no NYS threatened or endangered grassland bird species are detected during the survey, the area shall be considered clear for seven (7) days, when another survey shall be performed. If NYS threatened or endangered grassland bird species are detected, the permittee shall comply with paragraphs (8) and (9) of this subdivision.

(vi) All temporary disturbance or modification of established grassland vegetation communities that occurs as a result of facility construction, restoration, or maintenance activities shall be restored utilizing a native or naturalized herbaceous seed mix or the pre-existing grassland vegetative conditions by re-grading and re-seeding with an appropriate native or naturalized seed mix after disturbance activities are completed, unless returning to agricultural production or otherwise specified by the landowner. These temporarily disturbed or modified areas include all areas within the facility site that do not have impervious cover, such as temporary roads, material and equipment staging and storage areas, and electric line rights of way.

(vii) The permittee shall implement the avoidance and minimization measures identified in section 1101-2.12 of this Part and the other conditions herein to minimize potential take of the species.

(viii) To the extent that the office has determined that the facility would result in impacts to grassland bird occupied habitat requiring mitigation, the permittee shall pay the required mitigation fee commensurate with the acreage of mitigation that would be required for permittee-implemented grassland bird habitat conservation, calculated pursuant to subparagraph (ix) of this paragraph. The mitigation fee shall be paid into the

Endangered and Threatened Species Mitigation Bank Fund with the sole purpose to conserve habitat of similar or higher quality or otherwise achieve a net conservation benefit to the impacted species. The Office may give the permittee credit for any mitigation fee paid to another State or Federal agency or authority.

(ix) If the permittee proposes a NCBP involving permittee-implemented grassland bird habitat conservation in lieu of payment of a mitigation fee pursuant to subparagraph (viii) of this paragraph, the required mitigation ratio shall be 0.4 acres of mitigation for every acre of occupied grassland bird breeding habitat determined to be taken and 0.2 acres of mitigation for every acre of occupied grassland bird wintering habitat determined to be taken. These mitigation requirements are based upon multiplying impacts by the ratios described above and dividing impacts by five lifecycles of habitat succession (e.g., a 30-year mitigation project term and 5-year timeframe in which unmanaged grassland would naturally succeed into scrub/shrub habitat, minus one lifecycle to provide a net conservation benefit).

(x) Sites selected for mitigation of grassland bird impacts shall be managed to provide conditions conducive to successful reproduction during the breeding season (April 23 to August 15) and overwintering (November 1 to March 31).

(4) To avoid and minimize impacts to NYS threatened or endangered bat species, the permittee shall implement the following conditions during facility construction and operation:

(i) No facility component shall be sited or located within one hundred fifty (150) feet of any known northern long-eared bat roost tree, within five hundred (500) feet of any known Indiana bat roost tree, or one quarter (0.25) mile of any known northern long-eared bat or Indiana bat hibernaculum.

(ii) If at any time during the life of the facility, an active NYS threatened or endangered bat species roost tree (or structure) is discovered within the

facility site, the office shall be notified within twenty-four (24) hours of discovery , and the colony site shall be marked. A five hundred (500)-foot radius around the colony shall be posted and avoided until notice to continue construction, ground clearing, grading, non-emergency maintenance or restoration activities, as applicable, at that site is granted by the office. A re-evaluation of the potential impacts of the project on listed bat species shall be provided to the office.

(iii) *Tree clearing limitations for Northern Long-eared bats:*

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

(b) All tree clearing activities (except for hazard tree removal to protect human life or property) occurring within one and a half (1.5) miles of a roost site or five (5) miles of a hibernaculum site, but not subject to clause (*a*) of this subparagraph, shall be conducted during the hibernation season (between December 1 and February 28 for Nassau and Suffolk Counties; or, between November 1 and March 31 for all other counties) without further restrictions unless otherwise approved by the office. This limitation does not include trees less than or equal to four (4) inches in diameter at breast height (DBH).

(c) From April 1 to October 31, the following restrictions shall be implemented for all tree clearing activities in the facility site, unless otherwise agreed by the office:

(1) The permittee shall leave uncut all snag and cavity trees, as defined under the NYSDEC Program Policy ONRDLF-2 Retention on State Forests, unless their removal is necessary for protection of human life and property. This restriction pertains to trees that are greater than or equal to four (4) inches DBH.

When necessary, a limited number of snag or cavity trees may be removed as approved by the environmental monitor with concurrence by the office. A qualified environmental monitor shall conduct a survey for bats exiting the tree. This survey shall begin thirty (30) minutes before sunset and continue until at least one (1) hour after sunset or until it is otherwise too dark to see emerging bats. Unoccupied snag and cavity trees in the approved clearing area shall be removed within twenty-four (24) hours of negative survey results.

(2) If any bats are observed flying from a tree, or from a tree that has been cut, tree clearing activities within distances required in clause (*a*) of this subparagraph, depending on the potential species present, shall be suspended and the office shall be notified as soon as possible. The permittee shall have an environmental monitor present on site during all tree clearing activities. If any bat activity is noted, a stop work order will immediately be issued and shall remain in place until such time as the office has been consulted and authorizes resumption of work.

(iv) *Tree clearing limitations for Indiana bats:*

(a) No tree clearing activities shall occur at any time within five hundred (500) feet of any known roost tree or one quarter (0.25) mile of any known hibernaculum.

(b) All tree clearing activities (except for hazard tree removal to protect human life or property) occurring within two and a half (2.5) miles of a roost site or hibernaculum site, but not subject to clause (*a*) of this subparagraph, shall be conducted during the hibernation season (between November 1 and March 31), without further restrictions unless otherwise approved by the office. This limitation does not include trees less than or equal to four (4) inches in DBH or

locations above three hundred (300) meters in elevation.

(c) From April 1 to October 31, tree clearing within two and a half (2.5) miles of a roost site or hibernaculum site is limited to trees less than or equal to four (4) inches in DBH or locations above three hundred (300) meters in elevation.

(d) Tree clearing may not reduce forest habitat below thirty-five (35) percent of the landcover within two and a half (2.5) miles of the roost site or hibernaculum site.

(v) To minimize impacts to bats from wind facilities, the permittee shall comply with the following requirements:

(a) Curtailment is required for all wind facilities from July 1 – October 1 when wind speeds are at or below five and a half (5.5) m/s and temperatures are at or above ten (10) degrees Celsius (fifty (50) degrees Fahrenheit) from thirty (30) minutes before sunset to thirty (30) minutes after sunrise. Curtailment shall be on an individual turbine basis and shall be determined by weather conditions as measured by each individual weather station on the turbine nacelle.

(b) The permittee shall submit a review of curtailment operations to the office as part of the post-construction bat mortality monitoring requirements set forth in the NCBP or every five (5) years (or sooner if requested by the permittee). The review shall assess if changes in technology or knowledge of impacts to bats supports modification of the existing curtailment regime. Modifications to the existing curtailment regime that further decrease mortality may be proposed or negotiated. Any such modifications shall not be costlier than the existing curtailment regime, unless voluntarily supported by the permittee.

(5) To avoid and minimize impacts to NYS threatened or

endangered reptile and amphibian species, the permittee shall implement the following conditions during facility construction:

(i) Avoid construction activities within occupied habitat(s) to the maximum extent practicable. Avoid construction activities within breeding areas for NYS threatened or endangered species during the peak breeding season. Where avoidance is not possible, the permittee will implement an Avoidance and Minimization Plan identified in section 1101-2.12 of this Part that meets the requirements of 6 NYCRR Part 182, including a Monitoring and Handling Protocol.

(ii) Employ dedicated threatened or endangered species monitor(s) (T&E monitor) to be present for all work within known occupied and identified habitats, and implement a Monitoring and Handling Protocol.

(iii) The T&E monitor(s) shall have the necessary Endangered/Threatened Species License obtained from NYSDEC's Special License Unit or be listed as a Designated Agent on such a license.

(iv) The number of necessary T&E monitor(s) shall be determined in consultation with the office staff.

(v) The T&E monitor(s) shall be present to inspect work areas ahead of daily construction activities and shall continue to inspect periodically until construction activities stop for the workday. A daily inspection log shall be maintained and provided to the office staff upon request.

(vi) For all unavoidable impacts to threatened or endangered reptile and amphibian species, the permittee shall prepare a NCBP approved by the office.

(vii) Avoid construction activities within occupied habitat(s) to the maximum extent practicable. Where avoidance is not possible, the permittee will implement an Avoidance and Minimization Plan consistent with section 1101-2.12 of this Part that meets the requirements of 6 NYCRR Part 182.

(6) To avoid and minimize impacts to bald eagles, the permittee shall implement the following:

(i) At least fourteen (14) days prior to construction activities, the permittee shall conduct a visual inspection in the area in which construction will take place to determine if any active bald eagle nests are present.

(ii) If, at any time during construction and operation of the facility, an active bald eagle nest or roost is identified within the facility site, and the office shall be notified within twenty-four (24) hours of discovery and prior to any disturbance of the nest or immediate area.

(iii) An area one quarter (0.25) mile for nests without a visual buffer and six hundred sixty (660) feet in radius for nests with a visual buffer from the nest tree shall be posted and avoided to the maximum extent practicable until notice to continue construction at that site is granted by the office.

(iv) Tree removal is not allowed:

(a) within six hundred sixty (660) feet from an active nest during breeding season (January 1 – September 30);

(b) within one quarter (0.25) mile from an important winter roost during the wintering period (December 1 – March 31); or

(c) of overstory trees within three hundred thirty (330) feet of an active nest at any time.

(v) *Operational Impacts from Wind Facilities.* If at any time during the operation of the facility a bald eagle is injured or killed due to collision with project components, the permittee shall pay the required mitigation fee into the Endangered and Threatened Species Mitigation Bank Fund commensurate with number of eagles taken with the sole purpose to achieve a net conservation benefit to the impacted species.

(7) *Record all observations of NYS threatened or endangered species*. During construction and restoration of the facility and associated facilities, the permittee shall maintain a record of all observations of NYS threatened or endangered species as follows:

(i) *Construction*. During construction, the on-site environmental monitor shall be responsible for recording all occurrences of NYS threatened or endangered species within the facility site. All occurrences shall be reported in a biweekly monitoring report submitted to office staff, and such reports shall include the information described in subparagraph (iii) of this paragraph. If a NYS threatened or endangered bird species is demonstrating breeding behavior, it shall be reported to office staff within twenty-four (24) hours.

(ii) *Restoration.* After construction is complete, incidental observations of any NYS threatened or endangered species shall be documented and reported to office staff, in accordance with the reporting requirements in subparagraph (iv) of this paragraph.

(iii) *Unanticipated discovery.* For any NYS threatened or endangered species not otherwise addressed in the siting permit, to protect the identified species or its potentially occupied habitat from immediate harm, the permittee shall secure the immediate area to the extent the permittee has property rights, and cease construction in that area until office staff authorizes recommencement of activities.

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

activity.

(8) *Discovery of nests or dead or injured NYS threatened or endangered species.*

(i) Excluding Bald Eagles, if an active nest of a Federal or NYS threatened or endangered species is discovered (by the permittee's environmental monitor or other designated agents) within the facility site, the following actions shall be taken:

(a) office staff shall be notified within twenty-four (24) hours of discovery and prior to any further disturbance around the nest, eggs, roost, or area where the species were seen exhibiting any breeding or roosting behavior;

(b) an area at least five hundred (500) feet in radius around the active nest shall be posted and avoided until notice to continue construction, ground clearing, grading, maintenance or restoration activities are granted by the office; and

(c) the active nest(s) or nest tree(s) shall not be approached under any circumstances unless authorized by office staff.

(ii) If any dead or injured Federal or NYS threatened or endangered species, or eggs or nests thereof, are discovered by the permittee's on-site environmental monitor or other designated agent at any time during the life of the facility, the permittee shall immediately (within twenty four (24) hours) contact the NYSDEC and the USFWS for federally-listed species, to arrange for recovery and transfer of the specimen(s). The office shall also be notified. The following information pertaining to the find shall be recorded:

(a) species;

(b) number, age, and sex of the individual(s), if known;

(c) date of discovery of the animal or nest;

(d) condition of the carcass, or state of the nest or live animal;

(e) GPS coordinates of the location(s) of discovery;

(f) name(s) and contact information of the person(s) involved with the incident(s) and find(s);

(g) weather conditions at the facility site for the previous forty-eight (48) hours;

(h) photographs, including scale and of sufficient quality to allow for later identification of the animal or nest; and

(i) an explanation of how the mortality/injury/damage occurred, if known.

(iii) Electronic copies of each record, including photographs, shall be kept with the container holding the specimen(s) and given to the NYSDEC or the USFWS at the time of transfer. If the discovery is followed by a non-business day, the permittee shall ensure all the information listed above is properly documented and stored with the specimen(s). Unless otherwise directed by the NYSDEC or the USFWS, after all information has been collected in the field, the fatality specimen(s) shall be placed in a freezer, or in a cooler on ice until transported to a freezer, until it can be retrieved by the proper authorities.

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

(y) *Wetlands, waterbodies, and streams*. The permittee shall implement the following procedures for construction within, or potentially affecting, wetlands (and adjacent areas as applicable), and waterbodies and streams regulated pursuant to ECL articles 24 and 15 respectively (as identified in the jurisdictional determination issued by the office pursuant to section 1101-1.1(a) of this Part)and Waters of the United States pursuant the Federal Clean Water Act :

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

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

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

(4) *Turbid water*. Turbid water resulting from dewatering operations shall not be allowed to enter any wetland, waterbody, or stream. Water resulting from dewatering operations shall be discharged directly to settling basins, filter bags, or other approved device. Construction and maintenance activities shall not result in substantial visible contrast due to turbidity or sedimentation downstream of the work site.

(5) *Equipment washing*. Washing of trucks and equipment shall occur one hundred (100) feet or more from an ESA, and waste concrete and water from such activities shall be controlled to avoid it flowing into a wetland or adjacent area, waterbody or stream. If runoff from such activities flows into any wetlands and adjacent areas subject to ECL article

24, or waterbodies and streams regulated pursuant to ECL article 15, the NYSDEC Regional Supervisor of Natural Resources shall be contacted within two (2) hours.

(6) *Concrete washouts*. Concrete washouts and batch plants, or concrete from truck cleanout activity, any wash water from trucks, equipment, or tools, if done on site, shall be located and installed to minimize impacts to water resources. Locations should be at least one hundred (100) feet from any wetland, waterbody or stream, and located outside wetland adjacent areas to the maximum extent practicable. Waste concrete and wash water shall be disposed of as construction debris.

(7) *Use of Horizontal Directional Drilling (HDD)*. Installation of underground collection lines across wetlands, waterbodies and streams shall be performed via HDD to the maximum extent practicable.

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

(9) *Discharge notice and response*. If construction activities undertaken by the permittee result in a discharge to a wetland, waterbody or stream that violates New York Water Quality Standards at 6 NYCRR Part 703, the permittee shall notify the office within two 2 (hours) and, in coordination with the environmental monitor, take appropriate corrective action. Following the implementation of appropriate corrective actions, if New York Water Quality Standards are not met the permittee shall stop work in the affected area of the Facility until authorized to proceed by the environmental monitor in consultation with the office.

(z) *Wetlands*. The permittee shall implement the following requirements for freshwater wetlands and adjacent areas delineated pursuant to 1101-1.1(a) of this Part:

(1) *Construction in wetlands and adjacent areas*. All construction activities completed within wetlands and/or adjacent areas shall adhere to the following requirements:

(i) In breeding areas for NYS threatened or endangered

amphibian species, construction should not occur during the peak amphibian breeding season (April 1 to June 15) unless additional measures are implemented to prevent impacts or exclude species from the workspace, such as silt fences.

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

(iii) Excavation, installation, and backfilling in wetlands shall be performed in one continuous operation.

(iv) Temporary construction matting in wetlands shall be used as necessary to minimize disturbance to the wetland soil profile during all construction and maintenance activities. All temporary construction matting shall be removed when it is no longer needed as a best management practice (BMP). Matted wetland crossings shall be monitored to assure correct functioning of the mats. Mats that become covered with soils or construction debris shall be cleaned and the materials removed and disposed of in an upland location. Where necessary, mats that become embedded shall be reset or layered to prevent mud from covering them or water passing over them. Following removal from the wetland, mats shall be cleaned of any invasive species (seed, plant materials, insects, etc.). Matting shall be removed by equipment stationed on a mat or areas outside the wetland.

(v) In the event that construction results in an unanticipated alteration to the hydrology of a wetland (i.e., lowering), the breach shall be immediately sealed, and no further activity shall take place until the office is notified and a remediation plan to restore the wetland and prevent future dewatering of the wetland has been approved.

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

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

during construction.

(viii) In wetland areas, the topsoil shall be removed and stored separate from subsoil. Both the topsoil and subsoil shall be placed adjacent to the trench on geo-textile blankets.

(ix) Trenches and excavations shall be backfilled with wetland subsoil and then covered with wetland topsoil, such that the restored topsoil is the same depth as prior to disturbance. Only the excavated wetland topsoil and subsoil shall be utilized as backfill, except where clean bedding material for electrical collection lines and/or conduits is required or where trenches or excavations occur in areas with permanent fill. All excess materials shall be completely removed to upland areas and suitably stabilized.

(x) All temporarily disturbed wetlands not located on land where agricultural production will resume during operations shall be seeded with an appropriate native wetland seed mix, shrubs, live stakes, or tree planting, as site conditions and design allow, as appropriate for existing land uses. Straw mulch shall be maintained until the disturbed area is permanently stabilized. Hay shall not be used for mulching of wetlands.

(xi) All temporarily disturbed wetlands located on lands where agricultural practices will resume during operations, shall be managed in accordance with the NYSAGM "Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands."

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

(a) the permittee shall implement best management practices to minimize soil compaction;

(b) during excavation, all topsoil shall be stripped and segregated from subsoils. The permittee shall consolidate trenching areas to the maximum extent practicable to minimize impacts to agricultural soils;

(c) all reasonable efforts shall be made to

conduct excavation, installation, and backfilling activities in one continuous operation; open trenches shall be backfilled within the same workday if rain is predicted, wherever practicable; and

(d) all excess wetland subsoil shall be completely removed to upland areas.

(2) *Wetland restoration.*

(i) Wetland restoration shall be completed according to the approved Wetland Restoration and Mitigation Plan submitted pursuant to section 1101-4.2(f)(2) of this Part.

(ii) The permittee shall restore all temporarily disturbed areas within wetlands to original grades and conditions with permanent native re-vegetation and erosion controls appropriate for those locations.

(iii) Restoration of temporary impacts to wetlands to pre- construction contours shall be completed within forty-eight (48) hours of final backfilling of the trench/excavated areas.

(iv) Immediately upon completion of grading, and as consistent with existing land use/land cover, the area shall be seeded with an appropriate native species mix for wetlands and upland areas adjacent to wetlands, except that adjacent areas may be reseeded differently at the request of the landowner.

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

(3) *Cut vegetation*. Cut vegetation in wetlands, with the

exception of invasive species, may be left in place (i.e., drop and lop or piled in dry or seasonally saturated portions of wetlands and adjacent areas to create wildlife brush piles).

(4) *Access roads through wetlands*. Installation of access roads through wetlands shall be performed using the following methods:

(i) Temporary access roads shall use timber/construction matting that is completely removed after construction/maintenance activities are completed and removal shall be verified with the office by the on-site environmental monitor after construction, or by the facility operator after maintenance work is completed.

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

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

(6) *Tree clearing*. Tree clearing shall be minimized to the extent practicable in wetlands and adjacent areas.

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

(8) *Concrete use*. For activities involving the placement of

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

(9) *Stormwater setback*. Any new stormwater management infrastructure shall be located outside of the wetland and adjacent area to the extent practicable.

(10) *Mitigation*. The permittee shall implement the approved Wetland Restoration and Mitigation Plan submitted pursuant to section 1101-4.2(f)(2) of this Part.

(aa) *Work in streams*. The permittee shall implement the following:

(1) *Dry conditions*. In-stream work shall only occur in dry conditions, using appropriate water handling measures to isolate work areas and direct stream flow around the work area. Any waters accumulated in isolated work areas shall be discharged to an upland settling basin, field, or wooded area to provide for settling and filtering of solids and sediment before water is return to the stream. If measures fail to divert all flow around the work area, in-stream work shall stop until dewatering measures are functioning properly.

(2) *In-water work windows*. In-stream work shall be prohibited from September 15 through May 31 in cold water fisheries and March 15 through July 15 in warm water fisheries unless the permittee receives site-specific approval from the office.

(3) *Stream channels*. The restored stream channel shall be equal in width, depth, gradient, length and character to the pre-existing stream channel and tie in smoothly to the profile of the stream channel upstream and downstream of the disturbance. The planform of any permanent stream shall not be changed, unless dictated by restoration or mitigation objectives. All disturbed stream banks shall be mulched within two (2) days of final grading, stabilized with one hundred (100) percent natural or biodegradable fiber matting, and seeded with an appropriate riparian seed mix.

(4) *Felled trees in an ESA*. Trees shall not be felled into an ESA stream or its stream bank. Snags which provide

shelter in streams for fish shall not be disturbed unless they cause serious obstructions, scouring or erosion.

(5) *Culvert repairs*. If a culvert is blocked or crushed, or otherwise damaged by construction or maintenance activities, the permittee shall repair the culvert or replace it with alternative measures appropriate to maintaining proper drainage, embedment and aquatic connectivity.

(6) *Access road crossings of streams*. The creation, modification or improvement of any permanent road crossing of a regulated waterbody shall meet the following requirements:

(i) culvert pipes shall be embedded beneath the existing grade of the stream channel;

(ii) width of the structure shall be a minimum of one and a quarter (1.25) times the width of the mean high-water channel, as practicable; and

(iii) the culvert slope shall remain consistent with the slope of the adjacent stream channel. For slopes greater than three (3) percent, an open bottom culvert shall be used.

(7) *Overhead lines across protected streams*. If construction of overhead power line crossings requires cutting of trees or shrubs within fifty (50) feet of a regulated waterbody, cut materials shall be left on the ground.

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

(9) *No aquatic impediments*. In-stream work, including the installation of structures and bed material, but excluding dewatering associated with dry trench crossings, shall not result in an impediment to aquatic organisms. All fish trapped within cofferdams shall be netted and returned, alive and unharmed, to the water outside the confines of the cofferdam, in the same stream.

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

(ab) *Agricultural resources*.

In all instances in which the applicant for a solar or wind facility proposes to permanently or temporarily impact land used in agricultural production the permittee shall:

(1) Hire an independent, third-party agricultural monitor to oversee compliance with agricultural conditions and requirements, including the approved Agricultural Plan required pursuant to section 1101-2.15(c) of this Part, the approved Drainage Remediation Plan required pursuant to section 1101-2.15(d) of this Part and any approved co-utilization plan prepared according to section 1101-2.15(e) of this Part. The office, in consultation with the NYSAGM, shall verify and approve the qualifications required to fulfill the role of the agricultural monitor have been met. If the office, in consultation with the NYSAGM, agrees that the independent third-party monitor is qualified on agricultural issues, one monitor can act as both the general environmental monitor as well as the agricultural-specific environmental monitor.

(2) Implement the approved Agricultural Plan required pursuant to section 1101-2.15(c) of this Part.

(3) Implement the approved Drainage Remediation Plan required pursuant to section 1101-2.15(d) of this Part.

(ac) *Hazardous materials.* The permittee shall comply with the NYSDEC-approved Site Management Plan for the facility site, or any portion thereof, if applicable.

(ad) *Cultural Resources Avoidance, Minimization, and Mitigation Plan*. The permittee shall implement the approved Cultural Resources Avoidance, Minimization and Mitigation Plan (CRAMMP) required in section 1101-4.2(g) of this Part, and shall ensure consistency between the CRAMMP, the approved Site Avoidance Plans, and the project location, design, and construction and vegetation management measures specified in the EM&CP.

Section 1101-3.5. Facility operation.

(a) *Noise limits for wind facilities.*

(1) Noise levels by all noise sources from the wind facility(ies) shall:

(i) comply with a maximum noise limit of forty-five (45) dBA Leq (2-hour) outside of any non-participating type 1 sensitive sound receptors (see section 1101-2.7(h)(1)(i)) of this Part, subject to the prominent tone penalties specified (in section 1101 2.7(b)(3)(iii) of this Part), and fifty-five (55) dBA Leq (2-hour) outside of any participating type 1 sensitive sound receptors existing as of the date of application filing;

(ii) comply with a maximum noise limit of sixty-five (65) dB Leq (1-hour) at the full octave frequency bands of sixteen (16), thirty-one and a half (31.5), and sixty-three (63) Hertz (Hz) in accordance with Annex D of ANSI/ASA standard S12.9-2005/Part 4 Section D.2.(1) (Analysis of sounds with strong low-frequency content) (see section 1100-17.1(a)(1)(iii) of this Title) outside of any non-participating type 1 sensitive sound receptor existing as of the date of application filing; and

(iii) not produce human perceptible vibrations inside any non-participating type 1 sensitive sound receptor existing as of the date of application filing that exceed the limits for residential use recommended in ANSI/ASA Standard S2.71-1983 "Guide to the evaluation of human exposure to vibration in buildings" (see section 1100-17.1(a)(1)(i) of this Title).

(2) *Noise exceedances from wind facilities*. If the results of the first or second post-construction sound compliance test, or any subsequent test, or any compliance or violation test, indicate that the facility does not comply with any siting permit conditions on noise and vibration, the permittee shall:

(i) Present minimization options to the office, within sixty (60) days after the filing of a non-compliant test result or the finding of a noncompliance or a violation of siting permit conditions on noise, as follows:

(a) operational minimization options related to noise or vibrations caused by the wind turbines that shall be considered, including, at a minimum, modifying or reducing times or duration of turbine operation, incorporating noise reduced operations, shutting down relevant turbines, and modifying operational conditions of the turbines;

(b) physical minimization options related to noise or vibration caused by the wind turbines that shall be considered, including installation of serrated edge trails on the turbine blades, replacement or maintenance of noisy components of the equipment, and any other measures as feasible and appropriate; and

(c) if applicable, any minimization measures related to noise from transformers (such as walls or barriers), diesel, gasoline, or natural gas generators (such as installation of noise walls or barriers, adding or replacing enclosures or silencers to the generator), or any other noise sources (such as HVAC equipment or energy storage systems), shall be considered, as well as any other mitigation measures as feasible and appropriate.

(ii) Upon approval from the office, the permittee shall implement any operational noise or vibration mitigation measures within ninety (90) days after the finding of a non-compliance or siting permit violation, as necessary to achieve compliance.

(iii) Upon approval from the office, the permittee shall implement any physical noise or vibration mitigation measures within one hundred fifty (150) days after the finding of a non-compliance or siting permit violation, as necessary to achieve compliance.

(iv) If the permittee cannot meet the timelines for implementation of mitigation measures set forth in subparagraphs (ii) and (iii) of this paragraph, permittee shall cease operation of the turbines of the facility that caused the non-compliance or siting

permit violation until the operational or physical minimization measures that are presented and approved by the office have been implemented.

(v) Once implemented, the permittee shall not operate the facility without the mitigation measures presented and approved by the office.

(vi) Test, document, and present results of any minimization measures and compliance with all siting permit conditions on noise, no later than ninety (90) days after the minimization measures are implemented.

(3) *Noise and vibration complaints from wind facilities.* The permittee shall adhere to the following conditions regarding noise complaints:

(i) The permittee is required to maintain a log of complaints received relating to noise and vibrations caused by the construction, commissioning, operation, and decommissioning of the facility. The log shall include name and contact information of the person that lodges the complaint, name of the property owner(s), address of the property where the complaint originated, the date and time the event occurred, and a summary of the complaint.

(ii) The permittee shall provide the host municipalities with a phone number, email address, and mailing address where complaints can be notified.

(iii) All complaints received shall be reported to the office, monthly during construction, commissioning, and the first year of commercial operations and quarterly thereafter, by filing during the first ten (10) days of each month (or the first ten (10) days of each quarter after the first year of operation). Reports shall include copies of the complaints and, if available, a description of the noise or vibration, and probable cause (e.g., outdoor or indoor noise, tones, low frequency noise, amplitude modulation [e.g., "swishing", "whooshing", "pulsating", "thumping" sounds], vibrations, rumbles, rattles, icing noise) if known; the status of the investigation (indicating dates of the most recent testing), summary of findings

and whether the facility has been tested and found in compliance with applicable siting permit conditions on noise and applicable substantive local noise limits; and whether operational or physical minimization measures have been implemented. If no noise or vibration complaints are received, the permittee shall submit a letter indicating that no complaints were received during the reporting period.

(iv) Should complaints related to excessive and persistent amplitude modulation occur (e.g., "swishing", "whooshing", "pulsating", "thumping" sounds) at any non-participating type 1 sensitive sound receptor indicated in section 1101-2.7(h)(1)(i) of this Part, existing as of the date of application filing, with measured or modeled sound levels exceeding forty (40) dBA Leq (1-hour), the permittee shall investigate and measure amplitude modulation at the affected receptors during the time frame when the worst amplitude modulation conditions are known, or, if not known, expected to occur. To the extent practicable, the permittee shall identify the conditions associated with the worst amplitude modulation, as well as the frequency of occurrence. If the Leq-10-minute noise levels (dBA), including any amplitude modulation and prominent tone penalties exceed a noise level of forty-five (45) dBA and amplitude modulation is in excess of a five (5) dB modulation depth at the evaluated receptor(s) for more than five (5) percent of the time during the identified time frame of evaluation (which shall not exceed two (2) consecutive hours), the permittee shall propose minimization measures indicated in section 1101-3.5 a)(2)(i) of this Part as appropriate. Minimization measures shall be identified and filed with the office for review and approval. Compliance shall be demonstrated by conducting a test that shows that the Leq-10-minute sound levels (dBA), including a five (5)-dBA penalty for amplitude modulation (if amplitude modulation depth is in excess of five (5) dB for more than five (5) percent of the time in any two (2) consecutive hours) at that particular location and any additional prominent tone penalties when combined in a two (2) hour period, are lower than or equal to forty-five (45) dBA Leq 2-hour. Amplitude modulation depth

will be evaluated as indicated in the document entitled "A Method for Rating Amplitude Modulation in Wind Turbine Noise", 09 August 2016, Version 1 (see section 1100-17.1(c)(1)(i) of this Title).

(v) The permittee shall investigate all other noise and vibration complaints by following the noise complaint resolution protocol approved by the office, and consistent with the limits imposed by the siting permit.

(5) *Facility logs for wind facilities.* The permittee shall maintain a log of operational conditions of all the turbines to include, at a minimum, wind velocity and wind direction at the hub heights, angular speed of the rotors, and generated power with a ten (10) minute time interval, including notes indicating operational conditions that could have affected the noise levels (e.g., maintenance, shutdown, icing). A schedule and log of noise-reduced operations applied for individual wind turbines shall also be kept and updated as necessary. These records shall be maintained by the permittee for at a minimum five (5) years from occurrence.

(b) *Noise mitigation measures*. To minimize noise impacts during facility operation, the permittee shall:

(1) For wind facilities: If noise reduction operations (NROs) were utilized to demonstrate conformance with any design goal, limit, or local law on noise, those NROs shall be implemented on or before the start date of operations.

(2) For wind facilities, solar facilities, and substations: the permittee shall implement any operational noise or vibration mitigation measures on or before the start date of operations.

(c) *Operational compliance*. The permittee shall operate the facility to abide by applicable rules and regulations of the PSL and this Title with respect to matters such as enforcement, investigation, safety and reliability. The permittee shall abide by standard Good Utility Practice, and abide by all rules, guidelines and standards of the interconnection utility(ies), the New York Independent System Operator (NYISO), the Northeast Power Coordinating Council (NPCC), the New York State Reliability Council (NYSRC), the North American Electric Reliability

Corporation (NERC) and successors. The permittee shall obey operational orders issued by the NYISO. When applied to the permittee, the term "Good Utility Practice" shall mean the standards applicable to an independent power producer connecting to the distribution or transmission facilities or system of a utility.

(d) *Annual inspection*. The permittee shall have an annual inspection program for its facilities. An annual inspection report shall summarize maintenance and inspection activities performed and include details of any repairs undertaken. Reports shall identify any major damage, defects or other problems, or indicate that no such damage, defect or problem was found. Reports shall be made readily available upon request by the office.

(e) *Interconnection changes*. Throughout the life of the facility, the permittee shall provide a copy of the following interconnection documents to the secretary of the NYSDPS, with a copy to the office:

(1) any updates or revisions to the Interconnection Agreement or Facility Agreements between the permittee, the serving utilities and NYISO; and

(2) any system reliability impact study required as part of a future facility modification or uprate.

(f) *Facility transmission interconnection related incidents.*

(1) The permittee shall contact the NYSDPS Emergency Line within one (1) hour to report any transmission related incident on its owned and operated interconnection facilities which affects the operation of the facility, or that poses a public safety concern, and shall provide notification to the office within twenty-four (24) hours.

(2) The permittee shall provide the secretary of the NYSDPS a report on any such incident, upon request of the office within seven (7) days, and provide a copy of the report to the serving utility and the office. The report shall contain, when available, copies of applicable drawings, descriptions of the equipment involved, a description of the incident and a discussion of how future occurrences will be prevented.

(g) *Facility malfunction.*

(1) In the event of any unforeseen incident, including fire, flood, blade failure, and tower damage, at the facility or its associated equipment, that results in a partial or complete unplanned shutdown of the facility, the permittee shall notify the office no later than twelve (12) hours following such an event.

(2) In the event of a malfunction of the facility or facility components which causes a significant reduction in the capability of such facility to generate power for an extended duration (i.e., expected to last longer than one (1) month), the permittee shall promptly file with the office, and provide to the serving utility and the office, copies of all notices, filings, and other substantive written communications with the NYISO as to such reduction, any plans for making repairs to remedy the reduction, and the schedule for any such repairs.

Section 1101-3.6. Decommissioning.

(a) The permittee shall implement an approved Decommissioning and Site Restoration Plan for site restoration in the event the facility cannot be completed or after the end of the useful life of the facility. The permittee shall adhere to all state laws and regulations in effect at the time of decommissioning regarding the removal, disposal, and recycling of all facility components. The Decommissioning and Site Restoration Plan shall, at minimum, address the following:

(1) The anticipated useful life of the proposed facility, including all facility components.

(2) Safety and the removal of hazardous conditions.

(3) Environmental impacts.

(4) Aesthetics.

(5) Recycling.

(6) Potential future uses for the site.

(7) Funding.

(8) Schedule.

(9) For facilities to be located on lands owned by others, the permittee shall provide:

(i) procedures and timeframes for notifying municipal officials and landowners and residents (if different from landowners) of all properties hosting facility components, of plans for decommissioning activities; and

(ii) a description of all site restoration, decommissioning, and security agreements between the permittee and landowner and resident (if different from landowner) and/or the permittee and the municipality including provisions for turbines, panel arrays, foundations, electrical collection, transmission, and interconnection facilities.

(10) For facilities located on lands owned by the permittee, the permittee shall provide:

(i) procedures and timeframes for notifying municipal officials in whose jurisdiction the facility is located of plans for decommissioning activities; and

(ii) a description of all plans for site restoration and decommissioning municipality including provisions for turbines, panel arrays, foundations, electrical collection, transmission, and interconnection facilities.

(b) The Decommissioning and Site Restoration Plan shall include gross and net decommissioning and site restoration estimates. The net cost estimate may include salvage value (providing reference to cost and value data sources and assumptions).

(c) The gross cost estimates shall include line items and associated dollar amounts for decommissioning of all facility components removed four (4) feet below grade in lands used in agricultural production and three (3) feet below grade in non-agricultural land, and site restoration, including permitting and other overhead costs (providing reference to cost and value data sources and assumptions).

(d) The net cost estimates shall include a fifteen (15) percent contingency on the gross decommissioning and site restoration estimates. The net amount shall be shown in aggregate and as allocated between each city, town, or village based on the estimated cost associated with the removal and restoration of the facilities located in the jurisdiction of each city, town, or village.

(e) The financial security agreements shall provide that, subject to the conditions of the siting permit, if the permittee is not diligently implementing the Decommissioning Plan, the beneficiary thereof may exercise its right to draw on the financial security and carry out the Decommissioning Plan following the occurrence of any of the following events:

(1) the project's construction has halted for a period of twelve (12) continuous months, unless the 12-month period of inactivity is the result of reasonably unforeseen circumstances, recommencement is being actively pursued in good faith by the permittee, or the permittee otherwise obtains approval from the office for such construction inactivity; or

(2) after commercial operation of the project commences, the project has not generated electricity for a period of eighteen (18) continuous months, unless the 18-month period of no energy output is due to Force Majeure event or the result of a repair, restoration, or improvement to an integral part of the project that affects the generation of electricity and that repair, restoration, or improvement is being actively pursued in good faith by the permittee, or the permittee otherwise obtains approval from the office that the project may not generate electricity for such period of time.

(f) The financial security regarding decommissioning and site restoration activities shall be in the form of a letter of credit (LOC) or other financial assurance approved by the office, and shall be established by the permittee to be held by each municipality hosting facility components.

(1) The financial security shall remain active until the facility is fully decommissioned. The LOC shall be

irrevocable and state on its face that it is expressly held by and for the sole benefit of each specific host municipality.

(2) If the permittee and the host municipality(ies) cannot come to an agreement as to the appropriate amount or form of financial security to be provided, the office shall make the final determination.

(g) The permittee shall file notice with the office and each municipality hosting facility components if it is anticipated that repairs or completion of construction (or similar) will extend beyond a 12-month inactive period or lack of generation will extend beyond an 18-month period. Such notice shall be provided prior to the conclusion of the inactive period and within thirty (30) days of the permittee becoming aware of the anticipated need for additional time to complete the repairs, construction, or similar. The permittee shall describe the circumstances, the permittee's good faith efforts to complete construction or restore electric generation, or intent to decommission the facility.

Subpart 1101-4. Pre-Construction Compliance Filings.

Section 1101-4.1. Environmental management and construction plans.

(a) Prior to commencement of construction, the permittee shall file for approval by the office an Environmental Management and Construction Plan (EM&CP). The EM&CP may be phased by project construction activities or segmented by project construction locations to facilitate construction sequencing, provided that the first EM&CP identify the remaining EM&CP phases or segments and expected filings. Each EM&CP shall clearly describe the associated locations and scopes of work for all segments and phases, and shall include any updates or revisions to the segmenting or phasing plans described in the first EM&CP.

(b) The EM&CP for each phase or segment shall include the pre-construction compliance filings required in this section as applicable to the project phase and scope of work proposed in the EM&CP as a single filing package. If any particular requirement of the EM&CP is not applicable, not provided, or otherwise not addressed, the permittee shall so indicate and include supporting justification.

(c) The EM&CP shall include a narrative description of the scope of work and a statement of objectives, techniques, procedures, requirements, and impacts avoidance, minimization, and mitigation. A table of contents will be included for the EM&CP and each section, appendix, or exhibit containing ten or more pages. The narrative shall include a description of construction techniques, vegetation clearing and disposal methods, site restoration methods, agricultural and archeological avoidance/ protection methods, and other measures to be used to ensure compliance with the permit.

(d) The EM&CP may include any refinements to maps, plans, and other components of the application, to reflect updates to the final design and construction plans for the facility within the approved LOD and in a manner that complies with the permit. The EM&CP shall include a narrative description of such refinements and an explanation with supporting information as to why they are consistent with section 1100-11.1(a) of this Title.

Section 1101-4.2. Pre-construction compliance filings.

(a) Copies of all Federal and federally-delegated permits and approvals required for construction and operation of the facility must be filed prior to the activity for which the permit or approval is required.

(b) *Final decommissioning.*

(1) Final Decommissioning and Site Restoration Plan consistent with the requirements in section 1101-3.6 of this Part.

(2) Proof of executed financial security for municipality hosting facility components based on the estimated cost associated with the removal and restoration of the facilities located within each such city, town, or village, in accordance with section 1101-3.6 of this Part.

(c) *Plans, profiles, and detail drawings.*

(1) Final design plans, profiles, and detail drawings shall be signed and sealed by the professional engineer responsible for their design. If the drawings submitted

pursuant to section 1101-2.5 of this Part are unaltered, a statement shall be provided indicating that a professional engineer has reviewed facility details and attests to the accuracy of the final design as reflected in revised and initially filed (unaffected material) maps, site plans, profile figures, and environmental controls and construction details in accordance with section 1101-2.5 of this Part and section 1102-2.6 of this Title.

(2) Foundation drawings, including plan and sections details, to be used for wind turbines or solar facility installations; if multiple foundation designs are to be utilized for the facility, the foundation type at each location will be specified on foundation plans (listed in a table or indicated on corresponding site plans). Applicable criteria regarding foundation design and installation shall be listed and described in the drawings. Foundation drawings shall be stamped and signed by a professional engineer, licensed and registered in New York State.

(3) Updated design, safety, and testing information consistent with section 1101-2.5(f)(5) of this Part.

(4) Copies of any agreements entered with the owners/operators of existing high-pressure gas pipelines regarding the protection of those facilities.

(d) *Wind turbine certifications.*

(1) A design verification, confirming that the wind turbines were designed in accordance with the applicable ANSI safety standards, including International Electrotechnical Commission (IEC) 61400-1:2019 (see section 1100-17.1(b)(1)(i) of this Title).

(e) *Construction management.*

(1) A Quality Assurance and Control Plan, which shall include job titles and qualifications necessary, demonstrating how the permittee will monitor and assure conformance of facility design, engineering and installation, including general concrete testing procedures with a plan outlining the monitoring and testing of concrete procedures in conformance with and reference to all applicable codes and standards.

(2) A Construction Operations Plan, which shall indicate all material lay-down areas, construction preparation areas, temporary concrete batch location, major excavation and soil storage areas, and construction equipment.

(3) A Facility Maintenance and Management Plan, which shall include plans, procedures and criteria specifically addressing the following topics:

(i) inspections, maintenance, and repairs of turbines, solar panels, inverters, and associated equipment, including conformance with manufacturer's required maintenance schedules, safety inspections, and tower integrity; and

(ii) electric collection, transmission, and interconnect line inspections, maintenance, and repairs.

(4) A Vegetation Management Plan, which shall include, at a minimum, the following:

(i) vegetation management practices for switchyard and substation yards and for transmission and interconnection facilities, including danger trees (trees that due to location and condition are a particular threat to fall on and damage electrical equipment) around transmission and interconnection facilities, specifications for clearances, inspection and treatment schedules, and environmental controls to avoid off-site effects;

(ii) vegetation management recommendations, based on on-site surveys of vegetation cover types and growth habits of undesirable vegetation species;

(iii) planting of native vegetation, based on on-site surveys of vegetation cover types and growth habits of undesirable vegetation species;

(iv) restoration of disturbed areas, ruts, and rills to original grades and conditions with permanent re-vegetation and erosion controls appropriate for those locations;

(v) all proposed chemical and mechanical techniques for managing undesirable vegetation. Herbicide use and limitations, specifications, and control measures shall be included;

(vi) substation fence-line clearances, and overhead wire security clearance zone specifications, indicating applicable safety, reliability and operational criteria;

(vii) inspection and target treatment schedules and exceptions;

(viii) standards and practices for inspection of facilities easements for erosion hazard, failure of drainage facilities, hazardous conditions after storm events or other incidents;

(ix) review and response procedures to avoid conflicts with future use encroachment or infrastructure development; and

(x) host landowner notification procedures.

(5) Facility Communications Plan, which shall include the permittee's construction organizational structure, contact list, and protocol for communication between parties. The permittee shall provide to office staff and the municipalities the names and contact information of all individuals responsible for facility oversight.

(6) Environmental Monitoring Plan, including names and qualifications of companies that will serve as environmental monitors (including agricultural monitor).

(7) A Complaint Management Plan, which shall describe,

at a minimum, the following:

(i) methods for registering a complaint, which shall include a phone number, email address, mailing address, and a form to report complaints;

(ii) notification to the public of the complaint procedures;

(iii) process for responding to and resolving complaints in a consistent, timely, and respectful manner;

(iv) logging and tracking of all complaints received and resolutions achieved, with records of the following for each complaint containing:

(a) the name and contact information of the person filing the complaint;

(b) location and owner of the property where the complaint originated;

(c) date and time of the underlying event causing the complaint;

(d) description of the complaint; and

(e) current status and description of measures taken to resolve complaint.

(v) reporting to the office any complaints not resolved within thirty (30) days of receipt;

(vi) mediating complaints not resolved within sixty (60) days; and

(vii) providing annual reports of complaint resolution tracking to office staff and the secretary of the NYSDPS.

(8) A Traffic Control Plan shall be in effect during facility construction, to ensure safety and minimize potential delays to local traffic during construction, which shall describe, at a minimum, the following:

(i) Maps and plans showing final haul routes developed in consultation with the host municipalities and State, county and municipal highway officials in coordination with the turbine manufacturer. Final haul routes shall be accurately depicted in drawings submitted with the Traffic Control Plan.

(ii) Copies of all necessary transportation permits from the relevant State, county, and municipal agencies for such equipment and/or materials on such route. Such permits include but are not limited to: Highway Work Permits to work within the ROW, permits to exceed posted weight limits, Highway Utility Permits to construct facilities within ROW, Traffic Signal Permits to work within ROW, Special Haul Permits for oversize/overweight vehicles, and Divisible Load overweight Permits.

(iii) Copies of all necessary agreements with utility companies for raising or relocating overhead wires where necessary to accommodate the oversize/overweight delivery vehicles, if applicable.

(iv) A copy of all road use and restoration agreements, if applicable, between the permittee and landowners, municipalities, or other entities, regarding repair of local roads damaged by heavy equipment, construction or maintenance activities during construction and operation of the facility.

(f) *Environmental.*

(1) Proof that the required payment was made into the Endangered and Threatened Species Mitigation Bank Fund, if required.

(2) A copy of the Wetland Restoration and Mitigation Plan,

if required.

(3) A copy of the Invasive Species Control and Management Plan (ISCMP), prepared in compliance with 6 NYCRR Part 575, which shall include the following information:

(i) Baseline mapping of all invasive species within the facility area and for one hundred (100) feet beyond the facility's limit of disturbance (LOD). The baseline mapping and data shall include the relative abundance and distribution of each invasive species prior to the commencement of any construction activities.

(ii) Identification of specific control, removal, and disposal measures to be implemented for each identified and mapped invasive species/plant community during construction activities. The ISCMP shall include a detailed sequence and schedule for all mechanical and chemical control measures to be implemented during construction activities.

(iii) A detailed monitoring plan and specific sampling protocols for each identified and mapped invasive species/plant community within the facility area and for one hundred (100) feet beyond the LOD.

(iv) Identification of specific control contingency measures to be implemented as part of the ISCMP for each identified and mapped invasive species for the duration of the facility adaptive management and monitoring period (i.e., 5 years, unless extended). The ISCMP shall include a detailed sequence and schedule for all contingency mechanical and chemical control measures to be implemented during the monitoring period.

(v) Specific contingency measures to be implemented (i.e., regrading, re-planting of native species etc.) to achieve the final site restoration

criteria (i.e., eighty (80) percent survivorship of appropriate native species reestablishment over all portions of the replanted areas, unless the baseline survey indicates a smaller percentage of appropriate species exists prior to construction).

(vi) Details regarding the responsible party or parties designated to implement the ISCMP and what financial assurances exist to ensure successful monitoring and ISCMP implementation.

(4) A copy of an Inadvertent Returns Plan containing the following requirements:

(i) Erosion and sediment control shall be used at the point of horizontal directional drilling (HDD), so that drilling fluid shall not escape the drill site and enter NYS-regulated wetlands, waterbodies and streams (as delineated pursuant to section 1101-1.1(a) and (b) of this Part). The disturbed area shall be restored to original grade and reseeded upon completion of HDD.

(ii) Drilling fluid circulation shall be maintained to the extent practical.

(iii) If inadvertent returns occur in upland areas, the fluids shall be immediately contained and collected.

(iv) If the amount of drilling fluids released is not enough to allow practical collection, the affected area shall be diluted with freshwater and allowed to dry and dissipate naturally.

(5) For wind facilities, a Final Geotechnical Engineering Report verifying subsurface conditions within the facility site, including the results of borings and/or test pits at each turbine location.

(g) *Cultural Resources Avoidance, Minimization, and Mitigation Plan.* A copy of a Cultural Resources Avoidance, Minimization and

Mitigation Plan (CRAMMP), providing:

(1) A narrative summary and demonstration that impacts of construction and operation of the facilities on cultural resources (including archeological sites and historic/above ground resources) will be avoided or minimized to the extent practicable by selection the proposed facility's location, design and/or implementation of identified mitigation measures. At a minimum, the Cultural Resources Avoidance, Minimization and Mitigation Plan shall consist of any approved Site Avoidance Plan prepared pursuant to section 1101-1.1(c) of this Part, and incorporate any additional avoidance, minimization, or mitigation measures identified by the office, in consultation with OPRHP/SHPO and any Indigenous Nations.

(2) A Final Unanticipated Discovery Plan pursuant to section 1101-2.9(c) of this Part, which shall be updated, at a minimum, to include the current names, titles, and contact information of individuals within the permittee's construction organizational structure, agency contacts, and Indigenous Nation contacts as referenced within the Unanticipated Discovery Plan.

(3) A Cultural Resources Mitigation and Offset Plan, either as adopted by Federal permitting agency in subsequent National Historic Preservation Act (NHPA) section 106 review, or as required by the office, in consultation with OPRHP/SHPO and any Indigenous Nations, in the event that the NHPA section 106 review does not require that the mitigation plan be implemented. Proof of mitigation funding awards for offset facility implementation to be provided within two (2) years of the start of construction of the facility shall be included.

(h) *Visual Impacts Minimization and Mitigation Plan (VIMMP).*

(1) The permittee shall implement the approved Final Visual Impacts Minimization and Mitigation Plan required by section 1101-2.8(d) of this Part, including the following:

(i) adoption of visual design feature requirements;

(ii) visual contrast minimization and mitigation measures; and

(iii) final Screen Planting Plans, details, specifications, and master plant list.

(2) *Construction period oversight.* The permittee shall retain a qualified landscape architect, arborist, or certified nursery and landscape professional (CNLP), to inspect the screen plantings for two (2) years following installation to identify any plant material that did not survive, appears unhealthy, is damaged, and/or otherwise needs to be replaced. Such plant material that fails to provide proper mitigation shall be removed and replaced within two years following the completion of the installation of the plantings and maintained accordingly for the life of the project.

(3) *Long term/operational screen plantings management*. Provide an inspection and maintenance program for the life of the project, including plans for replacement of failed plantings if needed to provide visual mitigation. The permittee shall at a minimum provide detailed maintenance measures for screen plantings; make any required updates to the master plant list of replacement plants; provide a regular inspection schedule; and provide a schedule for screening effectiveness review.

(i) *Real property rights.*

(1) A copy of all necessary titles to or leasehold interests in the facility, including ingress and egress access to public streets, and such deeds, easements, leases, licenses, or other real property rights or privileges as are necessary for all interconnections for the facility.

(2) Map of survey of facility site properties with property lines based on metes and bounds survey.

(3) Notarized memos or similar proof of agreement for any

participating property whose owner has signed a participation agreement or other type of agreement addressing potential facility impacts (e.g., noise, shadow flicker, setback, etc.).

(j) A copy of any Interconnection Agreements (IA).

(k) Documentation of all host community benefits to be provided by the permittee.

Subpart 1101-5. Post-Construction Compliance Filings.

Section 1101-5.1. Post-construction compliance filings.

(a) Any updated information regarding the design, safety and testing for the wind turbines, solar panel, inverters, substation, transformer, and battery storage equipment to be installed during construction as well as information regarding the design, safety, and testing for any equipment installed during facility operation as a replacement of failed or outdated equipment shall be filed within fourteen (14) days of completion of all final post-construction restoration. Replacement of major facility components with different make, model, size, or other material modification shall be subject to review and approval of the office pursuant to section 1100-11.1 of Part 1100 of this Title.

(b) As-built plans in both physical and electronic copies shall be filed within nine (9) months of the commencement of commercial operations of the facility and shall include the following:

(1) spatial data showing all components of the facility (wind turbine locations, solar panel array locations, electrical collection system, substation, buildings, access roads, met towers, point of interconnection, etc.);

(2) collection circuit layout map; and

(3) details for all facility component crossings of,

and co-located installations of facility components with, existing utility infrastructure and assets: showing cover, separation distances, any protection measures installed, and locations of such crossings and co-located installations.

(c) The decommissioning and site restoration estimates contained in the approved Final Decommissioning and Site Restoration Plan required by section 1101-4.2(b) of this Part shall be updated based on the as-built project, and to reflect inflation and any other increases due to labor or other costs, by an engineer licensed in the State of New York, after one (1) year of project operation, and every fifth year thereafter, provided that the permittee may submit an attestation with appropriate justification if there are no material changes to the previously filed decommissioning estimates.

(1) The value of the letters of credit, or other financial security, secured for decommissioning purposes shall not be reduced below the initial Final Decommissioning Cost Estimate submitted in compliance with section 1101-4.2(b) of this Part without the express approval of the office, based on a new analysis demonstrating a significant change in market conditions.

(2) Letter(s) of credit (or other financial assurance approved by the office) and copies of agreements between the permittee and the towns, cities, and villages, establishing a right for each municipality to draw on the letters of credit dedicated to its portion of the facility shall be provided to the Office of Renewable Energy Siting and Electric Transmission after one (1) year of facility operation and updated every fifth year thereafter describing any changes to the structure or amount of the letters of credit or other financial assurance approved by the office (due to inflation or other factors).

(d) *Noise.*

(1) *Post-construction noise compliance and monitoring for*

wind facilities. To evaluate compliance with noise-related conditions, the permittee shall comply with the following requirements:

(i) use the Sound Testing Compliance Protocol (STCP) approved by the office for post-construction noise performance evaluations;

(ii) at least two sound compliance tests conforming to the sound testing compliance protocol shall be performed by the permittee after the commercial operation date of the facility: one during the "leaf-off" season and one during the "leaf-on" season;

(iii) within eight (8) months after the commercial operation date of the facility, the permittee shall perform the first sound compliance test and submit a report indicating whether the facility complies with all noise-related permit conditions during the "leaf-off" or "leaf-on" season as applicable; and

(iv) within fourteen (14) months after the commercial operation date of the facility, the permittee shall perform a second sound compliance test and submit a report indicating whether the facility complies with all noise-related permit conditions during the "leaf-off" or "leaf-on" season as applicable.

(2) *Noise exceedances from wind facilities*. If the results of the first or second post-construction sound compliance test, or any subsequent test(s), indicate that the facility does not comply with any noise-related permit conditions, the permittee shall:

(i) Present minimization options to the office, within sixty (60) days after the filing of a non-compliant test result, or a finding of noncompliance with the siting permit, as follows:

(a) operational minimization options related to noise or vibrations caused by the wind turbines that shall be considered, including, at a minimum,

modifying or reducing times or duration of turbine operation, incorporating noise reduced operations, shutting down relevant turbines, and modifying operational conditions of the turbines;

(b) physical minimization options related to noise or vibration caused by the wind turbines that shall be considered, including installation of serrated edge trails on the turbine blades, replacement, or maintenance of noisy components of the equipment, and any other measures as feasible and appropriate; and

(c) if applicable, any minimization measures related to noise from transformers (such as walls or barriers), diesel, gasoline, or natural gas generators (such as installation of noise barriers, adding or replacing enclosures or silencers to the generator), or any other noise sources (such as HVAC equipment or energy storage systems), shall be considered, as well as any other mitigation measures as feasible and appropriate.

(ii) Upon approval from the office, the permittee shall implement any operational noise or vibration mitigation measures within ninety (90) days after the finding of a non-compliance or siting permit violation, as necessary to achieve compliance.

(iii) Upon approval from the office, the permittee shall implement any physical noise or vibration mitigation measures within one hundred fifty (150) days after the finding of a non-compliance or siting permit violation, as necessary to achieve compliance.

(iv) If the permittee cannot meet the timelines for implementation of mitigation measures set forth in sections 1101-5(c)(3)(ii) and (iii) of this Part, permittee shall cease operation of the turbines of the facility that caused the non-compliance or siting permit violation until the operational or physical

minimization measures that are presented and approved by the office have been implemented.

(v) Once implemented, the permittee shall not operate the facility without the mitigation measures presented and approved by the office.

(vi) Test, document and present results of any minimization measures and compliance with all siting permit conditions on noise, no later than ninety (90) days after the minimization measures are implemented.

APPENDIX C

PART 1102

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A new Part 1102 of Title 16 is added to read as follows:

Chapter XI, Title 16 of NYCRR Part 1102 Major Electric Transmission Facility Siting

Subpart 1102-1. Major Electric Transmission Facility General Requirements.

Section 1102-1.1. Pre-application requirements.

(a) *Wetlands and surface waters.*

(1) *Wetlands and surface water preliminary screening.* The applicant shall conduct a wetland and surface water screening to determine the approximate boundaries of all freshwater and tidal wetlands and surface waters that intersect with the applicant's proposed transmission facility corridor. Screening shall be based on available data, including maps promulgated or developed pursuant to NYS ECL articles 15, 24 and 25, National Wetland Inventory (NWI) maps, the United States Geological Survey (USGS) National Hydrography Dataset, United States Department of Agriculture (USDA) soil maps, Federal Emergency Management Agency (FEMA) flood maps, and interpretation of current and historical aerial imagery. The applicant shall provide maps and associated spatial data depicting all wetlands and surface waters identified in the preliminary screening.

(2) *A*gency *consultation.* No less than 30 days after submittal of wetland and surface water preliminary screening maps, the applicant shall request a consultation with the office, which shall be scheduled by the office within 30 days of receiving the request. The office, in consultation with other relevant State and Federal agencies (e.g., NYSDEC, APA, USACE), shall determine additional information to be submitted in support of a wetlands and surface water detailed screening.

(3) *Wetlands and surface water detailed screening.* No less than six (6) months prior to filing an Article VIII application the applicant shall submit to ORES, with a copy to NYSDEC, and where applicable, the APA, a detailed screening that provides the applicant's assessment of the

jurisdictional status (State, Federal, and Local) of the wetlands and surface waters identified in the preliminary screening consistent with the substantive standards of 6 NYCRR Part 664 for freshwater wetlands for projects located outside of the Adirondack Park, 9 NYCRR Part 578 for projects located within the Adirondack Park, and 6 NYCRR 661 for tidal wetlands. In addition, the detailed screening shall include summary tables describing potential impacts to each jurisdictional category of wetland and surface waters (State, Federal, local) from the proposed project.

(4) *Alternative route screening.* For any alternative routing options that are identified and accepted by ORES as part of the pre-application procedures pursuant to this Part, the applicant shall follow the preliminary screening and detailed screening processes outlined in paragraphs (1) through (3) of this subdivision except that the timeframe for submittal of screening results shall be no less than three (3) months prior to application submission.

(5) *Application.* The applicant shall utilize the approved wetland and surface water detailed screenings to develop application exhibits and provide the detailed screening results and summary tables in the application as required in sections 1102-2.15 and 1102-2.16 of this Part.

(b) *NYS threatened or endangered species.*

(1) At the earliest point possible in the applicant's preliminary project planning and prior to proposing, designing, or commencing any wildlife surveys, the applicant shall conduct a wildlife site characterization summarizing existing public information on bird, bat, and other species, including, but not limited to, New York's Environmental Assessment Form (EAF) Mapper, New York Natural Heritage Program (NYNHP), United States Fish and Wildlife Service (USFWS) Information for Planning and Consultation(iPaC) and Environmental Conservation Online System (ECOs) databases, New York's Environmental Resource Mapper, NYSDEC Nature Explorer, eBird, Audubon Christmas Bird Counts, United States Geological Survey (USGS) breeding bird surveys, the current New York Breeding Bird Atlas III program, New York State Ornithological Association, local birding organizations, and North American Bat Monitoring Program's data on bat species

ranges or NYSDEC bat information. With respect to NYS threatened and endangered species or species of special concern, the wildlife site characterization shall include:

(i) A list of NYS threatened or endangered species, and species of special concern documented within one thousand two hundred (1,200) feet on either side of the proposed facility corridor from available data sources. Species records identified within the last five (5) years shall be highlighted or otherwise identified within the list.

(ii) For each listed species documented from available data sources, provide an evaluation of current habitat suitability for those species within the proposed facility corridor.

(iii) Geographical, topographical, and other physical features within one thousand two hundred (1,200) feet on either side of the proposed facility corridor.

(iv) Wetlands, streams, waterbodies, and other resources that may be relevant to siting of the proposed facility.

(2) The applicant shall provide the results of the wildlife site characterization and project details, including as much information as is available for facility component plans, as well as spatial data, to the office and NYSDEC. A meeting shall be held by these agencies and the applicant within four (4) weeks of delivery of the draft wildlife site characterization, unless otherwise agreed upon by the applicant and the office. At this meeting, the agencies shall:

(i) Provide feedback as to the content and conclusions of the wildlife characterization study.

(ii) Enter into a non-disclosure agreement with the applicant, if necessary, and provide all additional

data points beyond those identified in the draft site characterization.

(iii) Indicate whether the agencies consider occupied habitat of NYS threatened or endangered species to be present within the proposed facility corridor based on existing information and, if so, indicate where such habitat is located.

(iv) Recommend habitat assessments (including directing the applicant to provide information regarding recent and planned future land uses) and/or species-specific field surveys that can be completed in the appropriate seasonal windows within one year of the applicant's meeting with the agencies; and provide the applicant with current applicable protocols to conduct such surveys.

(3) If the applicant conducts a habitat assessment and believes suitable habitat for a given species is no longer present within the proposed facility corridor, it shall provide a copy of the assessment report to the office and NYSDEC for review and a determination as to whether surveys shall be required.

(4) If the applicant elects to conduct field surveys, the applicant shall develop a pre-construction study work plan in consultation with the office and NYSDEC. Any preconstruction work plans shall be submitted before the start of the survey window. All surveys must follow current applicable protocols. If recommended field surveys are conducted:

(i) As applicable for each of the field surveys conducted, the applicant shall provide draft reports and relevant spatial data to the office and the NYSDEC within six (6) weeks of the completion of each study. If NYS threatened or endangered species are documented during the surveys, a summary of the detections (e.g., visual, acoustic, etc.) with detailed information including surveyor name, coordinates of detection, species name, species behavior, flight path, and flight altitude, if applicable, and photographs, shall be provided.

(a) If subsequent to conducting surveys, additional surveys are recommended, or an alternative route alignment is proposed for inclusion the applicant may not be required to conduct additional surveys. In newly proposed areas, or other areas not previously surveyed, located within a justifiable proximity of the original facility boundary the office and the applicant may utilize the results of surveys previously conducted to extrapolate occupancy and designate such newly proposed areas as occupied habitat as appropriate. This determination of occupancy shall be used to inform the preliminary take estimate.

(ii) Within thirty (30) days of receipt of any survey reports, the office shall provide preliminary occupied habitat maps for any listed species determined to occupy the proposed transmission facility corridor, based on the applicant's surveys and any other relevant and credible data (e.g., New York Natural Heritage Program record). The applicant shall utilize this information to route the proposed facility corridor or design the facility to best avoid or minimize impacts to occupied habitat and listed species, and to inform project impact assessments.

(5) If adverse impacts to listed species or occupied habitat are unavoidable, the applicant shall submit a preliminary take estimate that identifies the species impacted, an estimate of the number of acres or individual animals that may be taken, the actions taken to minimize that impact, and a map indicating where the take is expected to occur. The preliminary take estimate shall include consideration of the type of activities being conducted, and time of year these activities will occur.

(6) Within thirty (30) days of receipt of the applicant's preliminary take estimate, the office and the applicant shall hold a meeting to review the results of the habitat assessment(s) and any survey(s), the current facility design, and a preliminary estimate of impact. The office and the applicant shall also discuss the requirements for the Net

Conservation Benefit Plan, if applicable.

(7) Within thirty (30) days of such conference pursuant to paragraph (6) of this subdivision, the office shall provide its draft determination regarding whether occupied habitat for one or more NYS threatened or endangered species exists within the proposed facility site, the boundary of the occupied habitat, whether de minimis levels as provided in section 1102-2.14 of this Part might be attainable for grassland birds, and, if applicable, the mitigation requirements that may be necessary if impacts cannot be avoided.

(8) If the applicant elects not to conduct recommended field surveys and the office agrees to foregoing the surveys, the applicant shall submit to the office a proposed preliminary take estimate based on the potential presence of habitat of listed species, based on existing information and subject to the office's approval and acceptance.

(9) The applicant shall provide the approved wildlife site characterization report, habitat assessment and/or survey reports, the office's take determination regarding impacts to listed species as required by paragraph (4)(iv) of this subdivision or preliminary take estimate as required by paragraph (5) of this subdivision, and a Preliminary Net Conservation Benefit Plan (if required) in the siting permit application as provided in section 1102-2.14 of this Part.

(c) *Cultural resources.*

(1) During the development of initial studies of the impacts on cultural resources within the project impact area (PIA) and at least 60 days prior to the filing of an application, the applicant shall consult with local historic preservation groups and any Indigenous Nations to identify cultural resources of concern which appear to be at least fifty (50) years old and are potentially eligible for listing in the State/National Register of Historic Places (S/NRHP).

(2) All cultural resources studies, surveys, and reports must be prepared by individuals meeting the 36 CFR 61 professional

qualifications established by the Secretary of the Interior.

(3) *Archaeological resources consultation.*

(i) The applicant shall conduct a Phase IA archeological/cultural resources study for the proposed facility corridor.

(ii) The applicant shall submit the results of the Phase IA study, a proposed Phase IB scope of work for areas where the applicant has secured access permissions, and an Areas Proposed for Archaeological Survey figure (depicting any areas where additional survey is proposed to occur prior to submission of the Environmental Management & Construction Plan (EM&CP) per section 1102-1.1(c)(5) of this Part) to the office, the Office of Parks, Recreation, and Historic Places/State Historic Preservation Office (OPRHP/SHPO), and each Indigenous Nation. A separate Phase IB Scope of Work may be required for facilities with both terrestrial and offshore components. Within sixty (60) days of the applicant's submittal of the Phase IA results, the office, in consultation with OPRHP/SHPO, shall inform the applicant as to whether a Phase IB field study will be required.

(a) The application may not be filed less than sixty (60) days after receipt of the office's determination as described in this subparagraph or may be filed at any time following receipt of OPRHP/SHPO's effect or impact determination letter(s) consistent with section 1102-1.1(c)(5) of this Part, whichever is earlier.

(b) Any time prior to application filing, the office may schedule a meeting with the applicant, OPRHP/SHPO, and any Indigenous Nations to discuss the scope and content of the Phase IB field study.

(iii) If warranted, the applicant shall submit the results of the Phase IB study for areas where the applicant has secured access permissions, including a proposed Site Avoidance Plan, to the office, OPRHP/SHPO, and each Indigenous Nation. Within sixty (60) days of

the applicant's submittal of the Phase IB results, the office, in consultation with OPRHP/SHPO, shall inform the applicant as to whether a Phase II site evaluation study will be required to assess the boundaries, integrity, and significance of cultural resources identified in the Phase IB study that cannot be avoided.

(a) The application may not be filed less than sixty (60) days after receipt of the office's determination as described in this subparagraph, or may be filed at any time following receipt of OPRHP/SHPO's effect or impact determination letter(s) consistent with section 1102-1.1(c)(7) of this Part, whichever is earlier.

(b) Any time prior to application filing, the office may schedule a meeting with the applicant, OPRHP/SHPO, and any Indigenous Nations to discuss the scope and content of the Phase II site evaluation study.

(iv) If warranted, the applicant shall submit the results of the Phase II study to the office, OPRHP/SHPO, and each Indigenous Nation. Within sixty (60) days of applicant's submittal of the Phase II study, the office, in consultation with OPRHP/SHPO, shall inform the applicant as to whether any S/NRHP listed or eligible sites are present that would require avoidance or mitigation.

(v) If warranted, for any sites that cannot be avoided the applicant shall conduct a Phase III data recovery investigation or propose alternative measures to mitigate impacts to any S/NRHP listed or eligible resources identified in Phase II studies. As required by section 1102-2.11(a)(6) of this Part the applicant shall provide in its permit application the Phase IA study, Phase IB study, and, if applicable, Phase II study, Phase III study, site avoidance plan, preliminary mitigation plan, and an Areas Proposed for Archaeological Survey figure (depicting any areas where additional survey is proposed to occur prior to EM&CP submission per section 1102-1.1(c)(5) of this Part).

These documents shall be submitted confidentially.

(4) *Above-ground resources consultation*.

(i) At least 60 days prior to the filing of an application, the applicant shall consult with the office and OPRHP/SHPO to establish a one- to three-mile Zone of Visual Impact (ZVI) for the proposed facility.

(ii) The applicant shall complete a viewshed spatial analysis and identify areas within the ZVI where the facility will be visible based upon topography and estimated existing vegetation and building heights.

(iii) The applicant shall submit the results of the ZVI spatial analysis along with a historic resources survey methodology and proposed survey boundary to the office and OPRHP/SHPO. A historic resources survey of all properties 50-years old or older with positive visibility based on the ZVI analysis may be required. Within sixty (60) days of applicant's submittal of the ZVI analysis, historic resources survey methodology, and proposed historic resources survey boundary, the office, in consultation with OPRHP/SHPO, shall provide comments and issue a historic resources survey request.

(iv) Upon completion of the field work, the applicant shall submit the digital data and the historic resources survey report to the office, OPRHP/SHPO, and each Indigenous Nation. Within sixty (60) days of the applicant's submittal of the digital data and report, the office, in consultation with OPRHP/SHPO, shall inform the applicant as to whether any S/NRHP listed or eligible properties have been identified.

(a) The application may not be filed less than sixty (60) days after receipt of the office's determination above.

(v) If warranted, the applicant shall prepare a historic resources effects assessment. The applicant shall submit the assessment to the office, OPRHP/SHPO, and each Indigenous Nation. The applicant shall provide the ZVI, historic resources survey methodology, historic resources survey report, and, if applicable, the historic resources effects assessment in the permit application as required by section 1102-2.11(b) of this Part.

(5) For any areas where the applicant could not obtain access permissions during the pre-application phase, the applicant shall provide a narrative explanation and figure distinguishing areas where survey has been completed pursuant to sections 1102-1.1(c)(3) and (4) of this Part from areas where additional survey is proposed to occur prior to EM&CP submission. The applicant shall provide a proposed schedule for completing any required studies in the permit application as required by section 1102-2.11(a)(7) of this Part.

(6) For any areas of the proposed electric transmission facility where documents, correspondence, and studies have been adopted as part of a Federal agency's National Historic Preservation Act section 106 review, the applicant may propose that such studies be used to satisfy the requirements of section 1100-1.3(c) of this Title, or sections 1102-1.1(c) or 1102-2.11 of this Part by providing:

(i) copies of such documents, correspondence, and studies, as applicable;

(ii) documentation confirming that such information has been adopted by a Federal agency pursuant to its National Historic Preservation Act Section 106 review;

(iii) a narrative explanation detailing which documents, correspondence, and studies satisfy each applicable regulatory requirement; and

(iv) a narrative explanation and figure distinguishing areas where the applicant proposes that documents, correspondence, and studies produced as part of a Federal agency's National Historic Preservation Act

Section 106 review satisfy each applicable regulatory requirement from areas where such studies shall be prepared in accordance with section 1100-1.3(c) of this Title, or sections 1102-1.1(c) or 1102-2.11 of this Part.

Within sixty (60) days of the applicant's submittal of information satisfying section 1102-1.1(c)(6) of this Part, the office, in consultation with OPRHP/SHPO, shall inform the applicant as to which, if any regulatory requirements have been satisfied as part of a Federal agency's National Historic Preservation Act Section 106 review, and which, if any, documents, correspondence, and studies shall be prepared in accordance with section 1100-1.3(c) of this Title, or sections 1102-1.1(c) or 1102-2.11 of this Part.

(7) As required by section 1102-2.11 of this Part, the applicant shall provide in the permit application the effect or impact determination letter(s) for the areas where survey has been completed pursuant to sections 1102-1.1(c)(3) and (4) of this Part.

(d) *Visual resources*.

(1) For all projects, at least sixty (60) days before filing an application, the applicant shall consult with the office to establish a visual resources study area for the proposed facility.

(2) For all projects, excluding facilities proposed substantially within existing electric transmission rights-of-way, at least sixty (60) days before filing an application, the applicant shall provide a preliminary visual impact assessment addressing the following:

(i) a description of the project setting consistent with section 1102-2.10(a)(1)(i) of this Part;

(ii) a description of the proposed facility consistent with section 1102-2.10(a)(2)(ii) of this Part;

(iii) a preliminary list and description of visual resources consistent with section 1102-2.10(b)(1) within

the visual study area;

(iv) a viewshed analysis of the facility components consistent with sections 1102-2.10(b)of this Part;

(v) a photolog of photographs depicting views from viewpoints identified consistent with 1102-2.10(b) of this Part; and photographs of existing or co-located structures;

(vi) a preliminary list of resources with potential visibility of the facility to be studied in more detail in the application for permit; and

(vii) a preliminary summary of potential visual impacts of the project consistent with section 1102-2.10(c) of this Part.

(e) *In-water facilities*. Prior to filing an application for an in-water transmission facility, the applicant shall engage in the following pre-application consultations:

(1) *State agencies*.

(i) The applicant shall consult with ORES, NYSDEC, and NYSDOS (as applicable) for in-water facilities to identify sediment sampling and modeling requirements.

(ii) The applicant shall consult with ORES, NYSDEC, and NYSDOS (as applicable) on resources and data sources used for desktop analysis of benthic habitat and fisheries resources.

(a) At the earliest point possible in the applicant's preliminary project planning, the applicant shall conduct a benthic habitat site characterization summarizing existing public information on benthic characteristics including, but not limited to, sediment type, including the percent sand and gravel, Coastal and Marine Ecological Classification Standard (CMECS) classification, submerged aquatic vegetation (SAV), complex and sensitive habitats, proximity to

artificial reefs, known shipwrecks, hard bottom habitats, commercial shellfish beds, salt marshes, corals, and mobile sediments (i.e., sandwaves and megaripples). Benthic habitat site characterization shall contain the entirety of the proposed in-water facility corridor, landfall locations, and any intercoastal waterways, if applicable.

(b) The applicant shall consult with NYSDEC, NYSDOS, and ORES to discuss items identified in the benthic habitat site characterization and to identify any additional critical data sources that should be included. This consultation shall also serve as an opportunity to discuss parameters for benthic sampling and the development of a Benthic Monitoring Plan, as well as any other surveys necessary given the results of the benthic habitat site characterization.

(c) At the earliest point possible in the applicant's preliminary project planning, the applicant shall conduct a desktop analysis of available data on sediment conditions within the in-water facility corridor. The applicant shall consult with NYSDEC, NYSDOS, and ORES to discuss this information, and to identify any additional critical data sources that should be included. This consultation shall also serve as an opportunity to discuss parameters for geotechnical and geophysical surveys, as well as any other surveys necessary to characterize the sediment conditions within the in-water facility corridor.

(d) At the earliest point possible in the applicant's preliminary project planning, the applicant shall conduct a desktop analysis of available data on commercial and for-hire fishing activity within the in-water facility corridor. The applicant shall consult with NYSDEC, NYSDOS, NYSAGM and ORES to discuss this information, as well as parameters for any fisheries compensation plans and to identify any additional critical data sources

that are missing from the desktop analysis of commercial fishing activity.

(2) Consultation with the host municipalities of the proposed landfall location(s) and any terrestrial route(s), as well as with adjacent municipalities and counties if the jurisdictional boundaries of the adjacent municipality or county is located within one (1) mile of the facility corridor.

(3) Consultation with NYSDOS regarding Federal coastal consistency for all components requiring Federal authorization within or affecting the New York State Coastal Area.

(f) *Alternative route scoping.*

(1) *Applicability.* This subdivision applies to major electric transmission facilities except:

(i) a proposed major electric transmission facility that would be constructed substantially within existing electric transmission rights-of-way.

(2) *Alternative route scoping procedure.*

(i) *Consultation with local agencies.* No less than six (6) months before the date on which an applicant files an application, the applicant shall offer to conduct pre-application meeting(s), at a reasonable time and in a reasonable location, with the chief executive officer of the municipality(ies) in which the proposed facility will be located and any local agencies of such municipalities identified by the chief executive officer or their designee to identify reasonable alternative routes for study and consideration in the application. For any project proposed within the New York City watershed, New York City shall be treated as a municipality in which the proposed facility will be located. In the event the applicant is unable to secure a meeting with a municipality, the applicant shall provide the office with a detailed explanation of all of the applicant's best efforts and reasonable attempts to

secure such meeting, including, but not limited to, all written communications between the applicant and the municipality. Meetings required by this paragraph may be conducted together with any other pre-application meetings required by Parts 1100 and 1102 of this Title. During such pre-application meeting(s), the applicant shall provide:

(a) a summary of the preliminary preferred and reasonable alternative routes, including identification of all publicly-owned property, proposed to be included for analysis in the application; and

(b) an anticipated application date and information regarding the availability of local agency account funds, citing to the requirements set forth in Subpart 1100-5 of Part 1100 of this Title, including, but not limited to, the requirement that any local agency or potential community intervenor shall submit a request for initial funding within thirty (30) days of the date of the six-month notice of intent to file an application and that such request be made to the Office of Renewable Energy Siting and Electric Transmission, at the Albany, New York office, Attention: Request for Local Agency Account Funding.

(ii) *Meeting with community members.* No less than six (6) months before the date on which an applicant files an application, and following the meeting(s) held pursuant to subparagraph (i) of this paragraph, the applicant shall conduct at least one meeting with arrangements to include an in-person meeting location meeting all State and Federal accessibility requirements along with a concurrent remote option for community members who may be adversely impacted by the siting of the facility. The purpose of the meeting is to educate the public about the preliminary preferred and reasonable alternative routes proposed for study and consideration in the application, including the anticipated application date and information regarding

the future availability of local agency account funds, citing to the requirements set forth in Subpart 1100-5 of Part 1100 of this Title, including, but not limited to, the requirement that any local agency or potential community intervenor shall submit a request for initial funding within thirty (30) days of the date of the six-month notice of intent to file an application and that such request be made to the Office of Renewable Energy Siting and Electric Transmission, at the Albany, New York office, Attention: Request for Local Agency Account Funding. The applicant shall provide notice of the meeting no sooner than thirty (30) days and no later than fourteen (14) days prior to the meeting in accordance with the publication requirements of section 1100-1.6(c) of Part 1100 of this Title. Meetings required by this paragraph may be conducted together with any other pre-application meetings required by Parts 1100 and 1102 of this Title.

(iii) At least six (6) months before the date an applicant files an application, the applicant shall publish a notice of intent to file an application in accordance with the publication requirements of section 1100-1.6(c) of Part 1100 of this Title and provide a copy thereof to the office, to all local agencies in attendance at the pre-application meeting(s), and to any reasonably identifiable stakeholders. The notice of intent to file an application may be included as part of the notice requirement of paragraph (2) of this subdivision. The notice shall contain, at a minimum, the following:

(a) a summary of the preferred and reasonable alternative routes proposed to be included for analysis in the application;

(b) a designated contact person, with a telephone number, email address and mailing address, from whom information will be available on a going-forward basis, and the address of a project website or webpage to disseminate information to the public; and

(c) a statement of future availability of local agency account funds, citing to the requirements set forth in Subpart 1100-5 of Part 1100 of this Title, including, but not limited to, the requirement that any local agency or potential community intervenor shall submit a request for initial funding within thirty (30) days of the date of the six-month notice of intent to file an application and that such request be made to the Office of Renewable Energy Siting and Electric Transmission, at the Albany, New York office, Attention: Request for Local Agency Account Funding.

(iv) The copy of the six (6) month notice of intent to file an application required by subparagraph (iii) of this paragraph provided to the office shall be accompanied by the local agency account fee required by section 1100-1.4(a)(8) of Part 1100 of this Title.

(v) The administrative law judge shall award local agency account funds pursuant to section 1100-5.1 of Part 1100 of this Title within five (5) days after the deadline for requests for funds from the local agency account pursuant to this subdivision.

(vi) Within sixty-five (65) days following the date of the six (6) month notice of intent to file an application, any municipality, person, or potential party may serve on the office and the applicant, and file with the secretary, proposed reasonable alternative routes for analysis in the application and include a description of additional data and information needed to propose such alternative if not known during this timeframe. A reasonable alternative route is a route that would reasonably be expected to avoid and minimize significant adverse impacts to identified environmental resources, or public health and safety, or is in the public and ratepayer interest.

(a) In support of any proposed alternative route, the proponent shall provide a statement that describes the proposed alternative route,

identifies the environmental or public health and safety impacts sought to be avoided or minimized, or the public and ratepayer interest to be served, and describes how the alternative would likely avoid or minimize the identified impacts or would further the identified public and ratepayer interest.

(b) Any municipality, relevant stakeholder, or potential party that fails to raise a proposed alternative route for analysis in the application pursuant to this subparagraph shall be barred from raising their proposed alternative route in any hearing conducted on the application unless the party complies with the provisions of paragraph (3) of this subdivision.

(vii) The applicant and any municipality, person, or potential party may respond to any alternative route proposed within fifteen (15) days.

(viii) Within thirty (30) days following the deadline for responses authorized by subparagraph (vii) of this paragraph, office staff shall issue a final written scope specifying the alternative routes that must be presented and analyzed in the application. Prior to issuing any decision hereunder, office staff may request assignment of an administrative law judge to conduct an alternative route scoping conference.

(3) *Late-raised alternative routes.*

(i) All proposed alternative routes should be raised before issuance of a final written scope pursuant to subparagraph (viii) of paragraph (2) of this subdivision to be considered in any subsequent proceedings on the application. Any municipality, relevant stakeholder, or potential party proposing an alternative route after that time, and in any event no later than sixty (60) days after the date of application filing, must serve on the office and the applicant, and file with the secretary, a written statement that identifies:

(a) the proposed alternative route;

(b) the environmental or public health and safety impacts sought to be avoided or minimized, or the public and ratepayer interest to be served, and describes how the alternative route would likely avoid or minimize the identified impacts or would further the identified public and ratepayer interest; and

(c) the reason(s) why the alternative route could not reasonably have been identified during scoping and a compelling reason why it should be included at this stage of the review.

(ii) The applicant and any municipality, person, or potential party may respond to any late-raised alternative route proposed within thirty (30) days.

(iii) Within thirty (30) days following the deadline for responses authorized by subparagraph (ii) of this paragraph, office staff shall issue a final written scope specifying whether the late-raised alternative route must be presented and analyzed in the application.

(iv) No alternative route proposed more than sixty (60) days after the date an application is filed will be considered.

Subpart 1102-2. Major Electric Transmission Facility Application Exhibits.

Section 1102-2.1. Exhibit 1: General Information Regarding Application, Overview, and Executive Summary.

Exhibit 1 shall contain:

(a) the name, address, telephone number, and e-mail address of the applicant;

(b) the address of the website or webpage established by the applicant to disseminate information to the public regarding the application;

(c) the name, address, telephone number, and e-mail address of

a representative of the applicant that the public may contact for more information regarding the application;

(d) the name, business address, telephone number, and e-mail address of the principal officer of the applicant;

(e) if the applicant desires service of a document or other correspondence upon an agent, the name, business address, telephone number, and e-mail address of the agent for service;

(f) an overview of the proposed facility including a brief description of the major components of the facility, which may include conductors, structures/towers, insulators, splice vaults, transition vaults, interconnection facilities, substations and switching stations, converter stations, access roads, and related facilities;

(g) an executive summary describing the proposed project, identifying the potential significant adverse environmental impacts of the proposed project, including environmental, and public health and safety impacts, and explaining how such impacts will be avoided, minimized, or mitigated through the application of the relevant uniform standards and conditions, or site-specific conditions. The executive summary shall be a brief, clearly, and concisely written overall analysis in plain language that assembles and presents relevant and material facts regarding the facility upon which the applicant proposes that the office make its decision. The analysis shall be analytical and not encyclopedic and shall specifically address each required finding, determination, and consideration the office shall make or consider in its decision and explain why the applicant believes that the requested permit should be granted;

(h) an identification of any site-specific adverse environmental impacts of the proposed facility that are unable to be addressed by the uniform standards and conditions set forth in Subpart 1102-3 of this Part, as applicable, a site-specific condition the applicant proposes to address those site-specific adverse environmental impacts, and an explanation as to why such site-specific condition is required;

(i) a map and all related spatial data showing geophysical, environmental, cultural resource, local law, land use, and

other constraints impacting facility design and layout within the facility corridor. Constraints shall include but are not limited to: state protected wetlands and waterbodies, lands used in agricultural production, mineral soils groups (MSG) 1-4, environmentally sensitive areas (e.g., threatened or endangered species locations, archaeologically sensitive areas), and ORES and local setbacks; and

(j) a detailed summary identifying any particular requirement(s) of the application exhibits that are not applicable, or not available based on the applicant's preliminary design and desktop analysis, including supporting justification and confirmation that such information, as applicable, will be provided in the EM&CP.

Section 1102-2.2. Exhibit 2: Public Involvement.

Exhibit 2 shall contain:

(a) proof of consultation with the municipality(ies) or political subdivision(s) where the proposed facility will be installed as required by Public Service Law section 144(1), including a description of the applicant's good faith efforts to resolve any disputes regarding compliance with applicable substantive local laws and any requests for a finding by the office that as applied to the proposed facility, such substantive local laws are unreasonably burdensome; and

(b) a brief description of the applicant's local engagement and outreach efforts as required in section 1100-1.3 of Part 1100 of this Title.

Section 1102-2.3. Exhibit 3: Location of Facilities and Surrounding Land Use.

Exhibit 3 shall contain:

(a) A base map depicting recent-edition transportation network, topography, and built environment information, showing:

(1) the proposed facility corridor, including proposed substations, switchyards, points of interconnection, and converter stations (if applicable), as well as ancillary infrastructure associated with the facility to the extent

known and envisaged, such as access roads and laydown yards, co-located infrastructure and asset crossings, and similar facilities;

(2) known environmental, cultural, and visual resources within one thousand two hundred (1,200) feet of either side of the facility corridor, based on publicly available information;

(3) the proposed limits of clearing and disturbance for construction of all facility components and ancillary features; and

(4) nearby, crossing, or connecting rights-of-way or facilities of other utilities, including confirmed or approximate locations of known ECL article 23 regulated wells within one hundred (100) feet of any areas to be disturbed during construction of the facility.

(b) Most recent publicly available aerial imagery, showing at least one thousand two hundred (1,200) feet on either side of the proposed facility corridor, showing, to the extent known, access routes, limits of disturbance (LOD), areas requiring vegetative clearing, and the proposed permanent right-of-way. Aerial imagery shall reflect current land conditions to the extent practicable and shall indicate the source and date of the imagery.

(c) Maps clearly showing the location of the proposed facility, including all ancillary features, in relation to municipal boundaries, taxing jurisdictions, and transportation agency jurisdictions, at a scale sufficient to determine and demonstrate relation of facilities to those geographic and political features.

(d) A map showing existing land or water uses within and adjacent to the proposed facility corridor.

(e) A map of all properties within the facility corridor, including properties adjacent thereto, that shows the current land or water uses, tax parcel number and owner of record of each property, and any publicly known proposed land or water use plans for any of these properties.

(f) A map of all publicly known proposed land or water uses within and adjacent to the facility corridor, as determined in consultation with State and local planning officials, from any public involvement process, or from other sources.

(g) Maps showing designated NYS coastal areas; significant coastal fish and wildlife habitats; scenic areas of statewide significance; inland waterways; regional coastal management programs and any other special management area enumerated in a local waterfront revitalization program; local waterfront revitalization program boundaries (pursuant to 19 NYCRR Part 600, et seq.); groundwater management zones; agricultural districts designated pursuant to Agriculture and Markets Law article 25-AA; flood-prone areas; critical environmental areas designated pursuant to article 8 of the ECL; and coastal erosion hazard areas designated pursuant to article 34 of the ECL, including whether or not the coastal erosion hazard area is locally delegated, that are located within one thousand two hundred (1,200) feet of either side of the proposed facility corridor; existing and planned flood risk reduction projects.

(h) Maps showing recreational and other land or water uses within and adjacent to the facility corridor that might be affected by the sight or sound of the construction or operation of the facility, interconnections and related facilities, including wild, scenic and recreational river corridors, open space, and any known archaeological, geologic, historical or scenic area, park, designated wilderness, forest preserve lands, scenic vistas specifically identified in the Adirondack Park State Land Master Plan, State parks, NYSDEC lands, conservation easement lands, Federal or State designated scenic byways, nature preserves, designated trails, public-access fishing areas, major communication and utility uses and infrastructure, and institutional, community, and municipal uses and facilities.

(i) For facilities at locations within the boundary of the federally approved NYS designated coastal area, which may include a locally adopted, state-approved and federally-approved Local Waterfront Revitalization Programs or regional coastal management Programs (19 NYCRR Part 601), or within the boundaries of a locally-adopted and state-approved Local Waterfront Revitalization Program or regional coastal management

Program adjacent to a designated inland waterway, provide an analysis of impacts to coastal resources and uses with the relevant policies of the article 42 of the Executive Law and the relevant implementing regulations at 19 NYCRR sections 600.5 and 600.6, Local Waterfront Revitalization Program and regional coastal management programs, as applicable, including an assessment of the project's impacts to any designated Significant Coastal Fish and Wildlife Habitats (SCFWH) and Scenic Areas of Statewide Significance (SASS) where geographically available. For facilities located within or adjacent to areas mapped by the National Oceanographic and Atmospheric Administration (NOAA), mapping of the proposed facility's location on the most recent edition of NOAA navigation charts shall be provided. The applicant shall separately submit to NYSDOS a Federal consistency certification and data and information as required pursuant to the NYS Coastal Management Program and the Federal regulations at 15 CFR Part 930 for their review and issuance of a determination in accordance with sections 912(9) and 913 of the Executive Law and applicable Federal law.

(j) A map delineating existing slopes (0-3 percent, 3-8 percent, 8-15 percent, 15-25 percent, 25- 35 percent, greater than 35 percent) along the facility corridor.

(k) Spatial data for all maps, exhibits and analysis shall be provided to the office in an ArcGIS Geodatabase, organized in Feature Datasets by exhibit number. Hard copies of all maps shall be provided at the office's request.

Section 1102-2.4. Exhibit 4: Real Property.

Exhibit 4 shall contain:

(a) A map(s) of the proposed right-of-way depicting: (1) any parcel where facility components are proposed, including parcels where ancillary facility components are proposed, such as interconnection facilities, converter station, substation, access roads, construction laydown yards, and preparation areas for interconnection; and (2) all parcels adjacent thereto. Such map(s) shall show property boundaries and include parcel identification number(s), as well as the name(s) of the owner(s) of record. Additionally, for any parcel where facility components

or ancillary facility components are proposed such map(s) shall depict any/all easements, grants, deed restrictions, and/or encumbrances on such parcel, including location of collocated infrastructure.

(b) A demonstration that the applicant has or will obtain site control over any real property within the proposed right-of-way that is required to construct, operate, and/or maintain the facility. Site control may be demonstrated through fee ownership, lease, easement, option, license, permit, or equivalent. State whether the applicant is registered as a transportation corporation.

(c) An identification of any parklands indicating whether such lands are State or municipal parks and whether use of such lands may require alienation, conversion, or other legislation.

(1) Identify whether any State funding for acquisition and improvement of municipal parkland or Federal Land and Water Conservation funding restricts the ability to convey land for installation of electric transmission facilities.

(2) Discuss all efforts made to avoid and minimize use of State parkland.

(d) A table summarizing the information required by subdivision (a) and (b) of this section.

Section 1102-2.5. Exhibit 5: Route Selection and Alternatives.

Exhibit 5 shall contain:

(a) A statement describing any reasonable alternatives, such as alternative routes, facility types (e.g., overhead versus underground), installation methods, and location or locations for the proposed facility for the entire length, or portions of, the proposed facility. The description of reasonable alternatives shall include all alternative routes identified in the determination by the office regarding the scope of alternative routes issued during the pre-application process pursuant to section 1100-1.3(g)(1) of Part 1100 of this Title and section 1102-1.1(f) of this Part, a description of the comparative merits and detriments of each alternative route identified, including

cost and environmental impact, and a statement of justification supporting addressing whether the preferred route is best-suited for the proposed facility.

(b) A base map depicting recent-edition transportation network, topography, and built environment information, showing:

(1) the preferred route and reasonable alternative(s), including proposed substations, switchyards, points of interconnection, and converter stations (if applicable), as well as ancillary infrastructure associated with the facility to the extent known, such as access roads and laydown yards, co-located infrastructure and asset crossings, and similar facilities; and

(2) cultural, environmental, and visual resources within one thousand two hundred (1,200) feet on either side of the proposed facility corridor for the preferred route and reasonable alternative(s). The proposed limits of clearing and disturbance for construction of all facility components and ancillary features for all alternative locations identified; and

(3) latest- or recent-edition maps (USGS 100K topographic edition to the extent available or equivalent, created with GIS), showing:

(i) the preferred route and reasonable alternative(s), including proposed substations, switchyards, points of interconnection, and converter stations (if applicable); and

(ii) nearby, crossing, or connecting rights-of-way or facilities of other utilities.

(c) Most recent publicly available aerial imagery, showing at least one thousand two hundred (1,200) feet on either side of the proposed right-of-way or facility corridor, for the preferred route and reasonable alternative(s), showing, to the extent known, access routes, limits of disturbance, areas requiring vegetative clearing, and the proposed permanent right-of-way. Aerial imagery shall reflect current land conditions to the extent practicable

and shall indicate the source and date of the imagery.

(d) Written descriptions of:

(1) pre-application consultations regarding alternative locations with the office pursuant to section 1102-1.1(f) of this Part, and the outcome of those consultations;

(2) pre-application consultations regarding alternative locations with local agencies pursuant to section 1102-1.1(f)(2)(i) of this Part and meetings with community members pursuant to section 1102-1.1(f)(2)(ii) of this Part, if any. The applicant shall provide as part of the application copies of transcripts (if any), presentation materials, and a summary of questions raised and responses provided during the pre-application meeting(s). In the event the applicant is unable to secure a meeting with a municipality, the application shall contain a detailed explanation of all of the applicant's best efforts and reasonable attempts to secure such meeting, including, but not limited to, all written communications between the applicant and the municipality; and

(3) the pre-application alternative route scoping procedures conducted pursuant to section 1102-1.1(f)(2) of this Part, and the outcome of that procedure including any alternative route scoping decision issued by the office.

Section 1102-2.6. Exhibit 6: Design Drawings.

Exhibit 6 shall contain:

(a) Plan and profile drawings of all facility components at a legible common engineering scale (recommended at a scale minimum 1 inch = 200 feet or other scale acceptable to the office). A full-size physical set (22″ x 34″ paper) shall be provided with the application. As applicable, the drawings shall include the following:

(1) a drawing index and drawing index map (with matching spatial data);

(2) a legend identifying existing and proposed features

shown on site plans;

(3) a proposed site plan showing existing and proposed contours at five-foot intervals, for the facility site and interconnections, at a scale sufficient to show proposed buildings, structures, paved and vegetative areas, laydown areas and other temporary work areas, and construction areas (contours may be provided in stand-alone mapping or included as part of site plans required in this subpart);

(4) existing and proposed major electric transmission facility right-of-way boundaries (including an indication of permanent rights-of-way (ROW)or easement boundaries), locations of any existing transmission line structures and access ways, and the approximate locations of any proposed permanent structures (underground and overhead); buildings or structures to be acquired, demolished, moved, or removed;

(5) existing electric transmission lines that cross or are adjacent to the proposed major electric transmission facility;

(6) location of any known co-located infrastructure and associated ROW within the facility site;

(7) location of any known oil and gas wells within one hundred (100) ft of the facility corridor, identifying minimum clearance distances from wells to permanent structures and buildings and a minimum twenty (20) feet access corridor to such wells, other than for plugged or abandoned wells;

(8) proposed and existing overhead and underground features that will be components of the proposed facility, differentiated by unique legends and symbols;

(9) location of mid-span splices, if any are anticipated. If mid-span splices are proposed above wetlands, at road crossings, or in areas of limited accessibility due to particular encumbrances, then explanation and justification shall be provided for each proposed location;

(10) proposed trenchless and in-water installations,

including the approximate lengths of such electric line segments. This information may be included in site plans or provided as a stand-alone map set;

(11) extents of proposed access road travel lanes, including indications of any existing access roads to be utilized and any turn-around areas and temporary road improvements for use during construction or for permanent access to project facilities;

(12) proposed grading areas including stockpiling locations;

(13) proposed new and extensions of existing stormwater management features;

(14) approximate clearing limits, including temporary clearing needed for construction, with notes regarding how danger trees will be addressed;

(15) substations, switchyards and converter stations, and any applicable setbacks;

(16) clearances and setbacks consistent with section 1102-2.26 of this Part – Electric and Magnetic Fields;

(17) site security features, including approximate location of perimeter fencing, where required;

(18) any existing natural protective features or erosion protective structures or other existing or proposed structures including but not limited to berms, retaining walls, fences, and other landscaping improvements (included in general site plans or provided as a stand-alone map set);

(19) typical underground infrastructure section details with dimensions of proposed depth, trench width, level of cover, separation requirements between circuits/cables, clearing width limits for construction and operation of the facility, temporary stockpile width, limits of disturbance, required permanent ROW, and a description of the cable installation process (may be provided in the Preliminary Description of Construction Practices section 1102-2.7 of this Part); and

(20) stormwater practices consistent with the draft Stormwater Pollution Prevention Plan (SWPPP) required in section 1102-2.15(c)(1) of this Part (included in general site plans or provided as a stand-alone set).

(b) A profile of the centerlines or proposed electric lines at an exaggerated vertical scale and typical elevation views including height above grade and structure layouts.

(c) Typical details including:

(1) anticipated tower foundation(s);

(2) any proposed vaults (splice, transition, etc.), including vault dimensions (length, width, and depth), level of cover, clearing limits for construction and operation, and LOD for installation;

(3) mid-span splices, if any are anticipated;

(4) for substation(s), converter station(s), other buildings, and interconnection facilities (including fencing, gates, all station equipment and infrastructure):

(i) typical detail drawings including: the length, width, height, material of construction, color and finish of all such buildings, structures, and other fixed equipment; and

(ii) a general arrangements drawing showing elevation mark pointers (arrows) with reference to associated elevation views (including views of all components of the station);

(5) for each proposed permanent point of access or access type a typical installation plan view, cross section and side view with appropriate dimensions (temporary and permanent width(s)) and identification of materials to be used along with corresponding material thickness. Where existing accessways will be used, a description of proposed upgrades for facility construction shall be provided. Additionally, typical details of any other proposed access (e.g., helicopter or barge placement) shall be provided;

(6) proposed protections for crossings of Unknown or Unresponsive co-located infrastructure, if any are anticipated;

(7) proposed agricultural resource protection measures, including, to the extent known, topsoil segregation stockpiling, fencing requirements, trench breakers, preservation of surface drainage, and sub-surface drainage structure repairs;

(8) typical plan and profile drawing of horizontal directional drilling (HDD) bore path and entry/exit pits.

(d) A list of engineering codes, standards, guidelines, and practices that the applicant has or intends to conform with when planning, designing, constructing, operating, and maintaining the substation(s), switchyard(s), converter station(s), transmission line, inter-connection, and associated structures.

(e) Manufacturer (or potential manufacturer, if procurement not yet completed) provided information regarding the design, safety, and testing information for associated components of the major electric transmission facility including, but not limited to inverters, transformers, cables and conductors, circuit breaker, relay protection and communication system to be installed during construction, or as related to the transmission facility for operation.

(f) All drawings submitted pursuant to this section shall be prepared by or under the direct supervision of a professional engineer, architect, or landscape architect, as appropriate, licensed and registered in New York State, whose name and license number shall be clearly printed on the drawings. Drawings may be labeled “preliminary” or “not for construction” to indicate preliminary status as appropriate, and shall be developed using computer graphics, or computer-aided design software, drawn to scale or to an exaggerated scale, as appropriate, or required herein.

Section 1102-2.7. Exhibit 7: Preliminary Description of Construction Practices.

Exhibit 7 shall contain:

(a) A brief narrative of the facility's design features including siting of facility components, stormwater, fire code compliance, security, lands used in agricultural production, wetland, terrestrial and marine habitat protection, and any special design challenges or unique design, access, or construction features including minimization of mid-span splices, and, as applicable:

(1) A draft Blasting Plan for all anticipated blasting, including in-water blasting, if proposed, consistent with subdivision 1102-4.4(l) of this Part.

(2) A description of anticipated types of excavation techniques (including rock removal) to be employed, including a list of excavation equipment for each excavation type. An assessment of potential impacts to environmental features, above-ground structures, and below-ground structures and infrastructure. Include a reuse/disposal plan for excavated materials indicating how topsoil will be preserved and reused.

(3) A description of anticipated grading techniques and a list of the anticipated equipment for grading. An assessment of potential impacts to environmental features, above-ground structures, and below-ground structures such as pipelines and wells. A reuse/disposal plan for graded materials including plans regarding how topsoil will be preserved during grading.

(4) For underground construction if any portion of the proposed transmission line is to be built underground, the applicant shall:

(i) indicate the type of cable system to be used;

(ii) provide the design standards for that system;

(iii)provide an assessment of potential impacts to environmental features, above-ground structures, and below-ground structures such as pipelines and wells; and
(iv) indicate the type, number, and size of conductors to be used. Additionally, provide maps or profiles of

the line, as applicable to facility design: the depth of the cable and the location, of oil pumping or storage stations, transition vaults, cooling equipment, and manholes.

(5) For trench installations, provide a list of the anticipated equipment and trench excavation methodology, including back fill requirements, and a spoil and topsoil management plan.

(6) For trenchless installations, including horizontal directional drilling (HDD), provide the following:

(i) description of the proposed trenchless method and the anticipated equipment;

(ii) map(s) depicting the proposed location of the anticipated entry/exit pits, including typical drawings;

(iii)spoils Management Plan; and

(iv) draft Inadvertent Returns Plan (if applicable), consistent with the requirements of section 1102-4.3(h) of this Part.

(7) Provide a description of proposed aviation construction, if anticipated, including but not limited to conductor pulling, vegetation clearing, and structure installations. Provide a list of the anticipated aviation equipment, staging or landing locations, and preliminary refueling procedures and locations. Additionally, provide status reports and all consultations with the Federal Aviation Administration.

(8) Provide a description of proposed vegetation management during construction, if anticipated, including a list of the anticipated equipment, clearing locations, an assessment of potential impacts to environmental features, and a preliminary vegetation clearing and disposal methods plan.

(b) For in-water facilities, exhibit 7 shall contain:

(1) Description of the equipment and construction methods of any proposed in-water facility construction methods, including

but not limited to:

(i) dredging details, include method (e.g., mechanical, hydraulic), and area to be disturbed and volume of sediment expected to be excavated;

(ii) jetting technologies and other direct burial methods;

(iii) mass flow excavation;

(iv) measures for minimizing water quality impacts;

(v) discussion of avoidance/minimization measures to demonstrate need for boulder removal, sandwave leveling etc.

(vi) measures minimizing sediment disturbance and transport; and

(vii) trenching and dredging, including any proposed permanent or temporary containment structures, and additional best management practices.

(2) Route preparation and clearance methods, such as:

(i) pre-Lay grapnel runs;

(ii) boulder removal and/or relocation following the required demonstration in 1102-2.7(b)(v); and

(iii) sandwave leveling, including a map showing locations where sandwave leveling is anticipated.

(c) Description of any proposed pre-installation trials for proposed in-water cable installation methods to establish operating conditions that will minimize the suspension of in-situ sediments and contaminants along representative sections of the in-water cable route.

(d) Description and assessment of proposed cable protection measures, including a written evaluation of the efficacy of alternative cable protection measures that may be required along

the in-water cable export route, discussion of how use of cable protection measures have been avoided or minimized to the extent practicable, and justification for why the selected cable protection method is preferred at each site. The evaluation shall:

(1) include, to the extent available, technical documentation from cable protection manufacturers;

(2) evaluate a range of all appropriate cable protection measures (e.g., concrete mattresses with tapered edges, dagger boards, self-burying, crushed rock, and rock bags) with respect to their ability to maintain overtrawlability, minimize shifting over time, and avoid creating a discernable berm on the seafloor; and

(3) map(s) showing areas where subsea cable protection is anticipated to be needed, including associated spatial data.

Section 1102-2.8. Exhibit 8: Public Health, Safety and Security.

Exhibit 8 shall contain:

(a) A statement and evaluation that identifies, describes, and discusses all efforts made to avoid and minimize potential adverse impacts from construction of the facility, interconnections, and related facilities on the environment, public health and safety, other than those already detailed in other relevant exhibits, at a level of detail that reflects the severity of the impacts and the reasonable likelihood of their occurrence, identifies the current applicable statutory and regulatory framework, and addresses:

(1) the anticipated gaseous, liquid, and solid wastes to be produced at the facility during construction and under representative operating conditions of the facility, including their source, anticipated mass or volume (excluding estimates for minor waste volumes such as concrete washout wastes), other information needed to support such estimates, and any studies used in the analyses with the author and date for each study;

(2) the anticipated amounts of such wastes to be released to the environment during construction and

under any operating condition of the facility;

(3) the processes to eliminate, minimize, and treat wastes to be released at the site;

(4) the manner of collection, handling, storage, transport, and disposal for wastes retained and not released at the site, or to be disposed of;

(5) maps of the study area and analysis showing relation of the facility site (to the extent locations are publicly available) to: public water supply resources; community emergency response resources and facilities including police, fire, and emergency medical response facilities and plans; emergency communications facilities; hospitals and emergency medical facilities; existing known hazard risks including flood hazard zones, storm surge zones, areas of coastal erosion hazard, landslide hazard areas, areas of geologic, geomorphic, or hydrologic hazard; dams, bridges, and related infrastructure; explosive or flammable materials, transportation, or storage facilities; contaminated sites; and other local risk factors;

(6) all significant impacts on the environment, public health, and safety associated with the information required to be identified pursuant to paragraphs (1) through (5) of this subdivision, including all reasonably related short-term and long-term effects;

(7) any measures proposed by the applicant to minimize such impacts;

(8) any measures proposed by the applicant to mitigate such impacts; and

(9) any monitoring of such impacts proposed by the applicant.

(b) A draft Site Security Plan for the operation of the proposed facility, including site plans and descriptions of the following site security features for the substation(s), switchyard(s), and/or converter station(s), if applicable:

(1) access controls including fences, gates, bollards, and other structural limitations;

(2) electronic security and surveillance facilities; and

(3) a preliminary Facility Lighting Plan(s), which shall address:

(i) security lighting, designed to avoid off-site light trespass, at substations, switchyards, and converter stations, and any exterior equipment storage yards;

(ii) plan and profile figures demonstrating proposed lighting arrangement and illumination levels (including lumens, location, and direction of lights for the facility or task use, worker safety, and tall structure marking requirements);

(4) a description of a cyber security program for the protection of digital computer and communication systems and networks that supports the facility demonstrating compliance with current standards issued by a standards setting body generally recognized in the information technology industry, including, but not limited to, the Federal Department of Commerce's National Institute of Standards and Technology, the North American Electric Reliability Corporation, or the International Organization for Standardization, and providing for periodic validation of compliance with the applicable standard by an independent auditor.

(c) If the facility is to be located within any part of a city with a population over one million (1,000,000), a statement that the applicant has provided a copy of the plan and requested review and comment of the plans required in subdivision (b) of this section to the local office of emergency management.

Section 1102-2.9. Exhibit 9: Noise and Vibration.

Exhibit 9 shall contain:

(a) A study of the noise and vibration impacts of the construction and operation of the facility including the

name(s) of the preparer(s) of the study and qualifications to perform such analyses. If the study is prepared by a certified member(s) of a relevant professional society or state, the details of such certification(s) shall be provided.

(b) *Design goals*. The study shall demonstrate that noise levels from noise sources at the facility will comply with the following design goals at sensitive sound receptors pursuant to section 1102-2.9(f) of this Part:

(1) All applicable operational noise limits pursuant to section 1102-3.5(a) of this Part.

(2) For substations not located in cities with a population over one million:

(i) A maximum noise limit of forty (40) dBA Leq (1-hour) from the substation outside of any type 1 sensitive sound receptors.

(ii) A maximum noise limit of fifty-five (55) dBA Leq (1-hour) from the substation outside of any type 5 sensitive sound receptors. No penalties for prominent tones will be added in this assessment.

(3) For converter stations (including any adjoining substations) and any substations not located in cities with a population over one million:

(i) Prominent tones are defined in and shall use the constant level differences listed under ANSI/ASA S12.9-2013/Part 3 Annex B, Section B.1 (see section 1100-17.1(a)(1)(ii) of this Title). Should a prominent tone occur or be expected to occur outside of the type 1 sensitive sound receptor, the broadband overall (dBA) noise level at the evaluated sensitive sound receptor shall be increased by 5 dBA for evaluation of compliance with sections 1102-2.9(b)(2)(i) and 1102-3.5(a)(2)(i) of this Part.

(ii) A maximum noise limit of 45 dBA Leq-(1-hour), short-term equivalent continuous average sound level from a converter station or substation across any

portion of a type 2 sensitive sound receptor, except for portions identified as wetlands pursuant to section 1102-1.1(a)(3) of this Part, electric generation or transmission facilities, transportation corridors , or utility ROW. The applicant shall demonstrate compliance with this design goal through the filing of noise contour drawings and sound levels evaluated at discrete worst-case locations. No penalties for prominent tones will be added in this assessment.

(iii) A maximum noise limit of 70 dBA Leq (1-hour), short-term equivalent continuous average sound level from the converter station or substation across any portion of a type 3 property. The applicant shall demonstrate compliance with this design goal through the filing of noise contour drawings and sound levels evaluated at discrete worst-case locations. No penalties for prominent tones will be added in this assessment.

(4) For substations and converter stations, cumulative noise impacts obtained as specified in subdivision (c) of this section shall not exceed:

(i) non-cumulative design goals specified in paragraphs (b)(1) through (b)(3) of this section, plus 1 dBA Leq; or

(ii) cumulative noise impacts from any substations and converter stations permitted or built after the effective date of Article VIII for major transmission facilities, plus one (1) dBA Leq.

(c) *Sound study area and radius of evaluation*. Evaluation of the maximum noise levels to be produced during operation of the substations or converter stations shall be conducted on a cumulative (if any) and non-cumulative basis, as follows:

(1) For substations and converter stations not located in a city with a population of over one million, the evaluation shall include, at a minimum:

(i) a non-cumulative noise analysis for any sensitive sound receptors existing as of the date of application filing, within the thirty (30) dBA noise contour from

any proposed substation(s), converter station(s), and components associated with those facilities; and

(ii) a cumulative noise analysis for any sensitive sound receptors existing as of the date of application filing, within the thirty (30) dBA noise contour from any proposed substation(s), converter station(s), and components associated with those facilities; and within the 30 dBA noise contours from any other substation and converter station and facility components proposed, permitted, or constructed after the effective date of Article VIII for major electric transmission facilities as of the date of application filing, that intersect or fall within the 30 dBA noise contour from the substation(s), and converter station(s), and any associated facility components proposed in the application.

(2) For substations and converter stations located in a city with a population of over one million, the evaluation shall be consistent with the evaluation required in paragraph (1) of this subdivision except that it shall be conducted within the 40 dBA noise contour rather than the 30 dBA noise contour.

(3) For evaluation of construction noise at switchyards, substations, or converter stations, the evaluation shall include, at a minimum, all sensitive sound receptors within a one thousand five hundred (1,500) foot distance from any switchyard, substation, or converter station, or within the fifty-five (55) dBA noise contour, whichever is greater.

(4) For evaluation of construction noise within the facility corridor the evaluation shall include, at a minimum, all sensitive sound receptors within a one thousand five hundred (1,500) foot distance from any edge of the temporary right-of-way, or within the fifty-five (55) dBA noise contour, whichever is greater.

(d) Operational Modeling standards, input parameters, assumptions, and reporting requirements.

(1) The evaluation shall use computer noise modeling software that follows the ANSI/ASA S12.62-2012/ISO 9613-2:1996 (MOD) (see section 1100-17.1(a)(1)(v) of this Title)

or the ISO-9613-2:1996 propagation standards (see section 1100-17.1(g)(1)(i) of this Title) with no meteorological correction (Cmet) or additional types of attenuation (A_{misc}) added. The model shall:

(i) set all noise sources operating simultaneously at maximum sound power levels;

(ii) use a ground absorption factor of no more than G=0.5, and G=0 for hard ground and waterbodies; and

(iii) use a temperature of ten (10) degrees Celsius and seventy (70) percent relative humidity.

(2) For substations and converter stations, the model shall use a minimum height of one and a half (1.5) meters above the ground for single story receptors, four (4) meters above the ground for two story receptors, and one and a half (1.5) meters above the highest floor elevation for receptors with more than two stories. The addition of an uncertainty factor greater than zero (0) dBA is optional.

(3) For noise sources that are assumed or behave as point sources, computer noise modeling shall use the maximum height of the equipment for both the unmitigated and mitigated noise assessments.

(4) Cut sheets and sound information from the manufacturers for all noise sources including overall (dBA and dB) and full-octave band (dB) sound power levels shall be provided. If no manufacturer's information is available, sound power levels can be estimated by using acoustical formulas or pre-construction field test(s) as follows:

(i) For electric transformers:

(a) Using the algorithms recommended by the Electric Power Plant Environmental Noise Guide (Volume 1, 2nd edition. Edison Electric Institute. Bolt Beranek and Newman Inc. Report 3637. 1983 Update) when only the electrical power is known (e.g., MVA).

(b) Using the formulas and guidelines specified in the IEEE C57.12.90-2021 standard (see section 1100-17.1(p)(1)(i) of this Title) (for the loudest operational noise condition, at full electrical load, with all the fans operating) when the NEMA rating (or sound pressure level at associated distance), the dimensions, and the maximum electrical power is known. Full octave band sound power levels can be estimated by using correction factors approved by the office.

(c) NEMA ratings will be reported.

(ii) For converter station valve buildings, derivation of sound power levels shall be based upon:

(a) sound power level information from the manufacturers for indoor noise sources, building dimensions, interior absorption coefficients, and transmission losses of envelope materials; and/or

(b) test results from similar indoor noise sources or converter station halls adjusted to account for any differences in specifications as appropriate. The application shall report any differences between the proposed and tested converter halls and noise source specifications.

(iii) For any other noise sources, sound power levels can be:

(a) Estimated by using algorithms approved by the office.

(b) Obtained from test(s) of the same or similar equipment. Any such test shall include a narrative explaining any differences in equipment or testing conditions, and shall report, at a minimum, measured sound pressure levels along with clear explanations about how the test was conducted, any standards followed, and any correction factors applied.

(iv) When acoustical formulas are used, the application will explain the algorithms used along with a clear derivation of how the sound power levels (dB) were obtained. All overall (dBA and dB) and full-octave band (dB) sound power levels shall be reported.

(5) Software input parameters, assumptions, and associated data used for the computer modeling shall be provided as follows:

(i) spatial data used for the computer noise modeling, including the location of all noise sources, and barrier locations, heights above the ground, or ground and top elevations; topography and proposed grading; and receptor and boundaries (differentiating boundaries and lands by receptor Type);

(ii) computer noise modeling files for all computer noise runs shall be submitted by digital means;

(iii) site plans and elevation drawings, consistent with section 1102-2.6 of this Part, including details for all noise sources; and manufacturer sound and technical specifications for any noise sources (sound power/pressure levels) and any identified mitigation features; and

(iv) appropriate clearances.

(6) Report, at a minimum, the maximum A-weighted dBA Leq (1-hour) sound pressure levels, and the maximum linear/unweighted/Z dB Leq (1-hour) sound pressure levels in a year, from the thirty-one and a half (31.5) Hz up to the eight thousand (8,000) Hz full-octave band, at all sensitive sound receptors within the sound study area or radius of evaluation indicating the use, property type classification, and Type of each receptor.

(7) Report the maximum A-weighted dBA Leq (1-hour) sound pressure levels in a year at the most critically impacted

portion of each external property boundary line of the facility site within the sound study area or radius of evaluation; indicating the use, property type classification, and Type of each receptor.

(8) Report the information in tabular and spreadsheet compatible format differentiating between "unmitigated" and "mitigated" as well as "cumulative" and "non-cumulative" results, as applicable, and summarizing maximum and minimum values for each sound descriptor. A summary of the number of sensitive sound receptors exposed to sound levels equal to or greater than thirty-five (35) dBA (for evaluation of operational noise) or equal to or greater than 55 dBA (for construction noise) within the sound study area or radius of evaluation shall also be reported in tabular format grouped in one (1)-dB bins by the use, property type classification, and Type of each receptor.

(9) The application shall report estimates of the number of sensitive sound receptors that will be exposed to noise levels that exceed any design goal or noise limit (in total as well as grouped in one (1)-dB bins).

(10) Sound impacts shall be reported with sound level contours on the map described in subdivision section 1102-2.9(f) of this Part.

(e) Evaluation of prominent tones for the design of substations and converter stations, shall be conducted using:

(1) Manufacturer sound information or pre-construction field tests. For sound sources where no one-third octave band manufacturer's information or pre-construction field tests are available, sounds will be assumed to be tonal and prominent. Field test(s) shall report, at a minimum, sound pressure and sound power levels, and provide clear explanations of how the test was conducted and how sound power levels were obtained.

(2) The ANSI/ASA S12.62-2012/ISO 9613-2:1996 (MOD) (see section 1100-17.1(a)(1)(v) of this Title) or the ISO 9613-2:1996 propagation standard (see section 1100-17.1(g)(1)(i) of this Title) attenuations (Adiv, Aatm, Agr, and Abar) and the definition for "prominent discrete tone" and constant

level differences (Kt) specified in ANSI/ASA S12.9-2013/Part 3 Annex B, Section B.1 (see section 1100-17.1(a)(1)(ii) of this Title), as follows: fifteen (15) dB in low-frequency one-third-octave bands (from twenty-five (25) up to one hundred twenty-five (125) Hz); eight (8) dB in middle-frequency one-third-octave bands (from one hundred sixty (160) up to four hundred (400) Hz); and five (5) dB in high-frequency one-third-octave bands (from five hundred (500) up to ten thousand (10,000) Hz).

(3) Transformers shall be assumed to be tonal and prominent.

(f) *Sensitive sound receptor and sound contour maps.* Sensitive sound receptor map(s) of the study area showing, at a minimum, the location of all sensitive sound receptors and sound contours within the sound study area or radius of evaluation as follows:

(1) Type 1 receptors: consist of discrete sensitive sound receptors subject to the design goals specified in section 1102-2.9(b)(2)(i) of this Part for substations, and regulatory noise limits specified in section 1102-3.5(a)(2)(i) of this Part for converter stations and any adjoining substations, as follows: residences, including year-round residences and any seasonal residences with sewer/septic systems and running/potable water identified by property type classification; places of hospitality (e.g., hotels, motels, inns); hospitals, schools, libraries, places of worship and any enclosed historic structures listed or eligible for listing on the State or National Register of Historic Places.

(2) Type 2 receptors: consist of any portion(s) of properties subject to the design goals and exceptions specified in section 1102-2.9(b)(3)(ii) of this Part: cemeteries; outdoor public facilities and public areas, parks; any public (Federal, State, and local) lands; campgrounds; summer camps; commercial lands; and any historic resources listed or eligible for listing on the State or National Register of Historic Places with open areas or developed lands.

(3) Type 3 receptors: consist of any portion(s) of an industrial properties subject to the design goals specified

in section 1102-2.9(b)(3)(iii) of this Part.

(4) Type 4 receptors: Are composed by discrete sensitive sound receptors which shall be evaluated but will not be subject to design goals: uninhabitable structures, except any historic resources listed or eligible for listing on the State or National Register of Historic Places, and Type 2 or 3 receptors for which there is an enforceable agreement between the applicant and the property owner(s) waiving applicable limits.

(5) Type 5 receptors: consist of any Type 1 receptors for which there is an enforceable agreement between the applicant and the property owner(s) waiving applicable limits, which shall be subject to the design goals specified in section 1102-2.9(b)(2)(ii) of this Part for substations, and regulatory noise limits specified in section 1102-3.5(a)(2)(ii) of this Part for converter stations.

(6) Maps shall include all property boundaries differentiated by use and property type classification, and all noise sources.

(7) Sound contours shall be rendered, at a minimum, down to the 30 dBA or 40 dBA contour respectively for the sound study area indicated in paragraphs (c)(1) and (c)(2) of this section, in one (1) dBA steps, with sound contour multiples of five (5) dBA differentiated.

(8) Full-size hard copy map(s) (22 inches x 34 inches) of appropriate legible scale shall be provided.

(g) An evaluation of ambient pre-construction baseline noise conditions at proposed substation and converter station locations by using the L90 statistical and the Leq energy based noise descriptors with and without the application of the ANS frequency filter, and by following the recommendations included in ANSI/ASA S3/SC 1.100-2014-ANSI/ASA S12.100-2014 American National Standard entitled Methods to Define and Measure the Residual Sound in Protected Natural and Quiet Residential Areas (see section 1100-17.1(a)(1)(iv) of this Title). Sound surveys shall be conducted for, at a minimum, a four (4) day-long typical period (including one weekend and two weekdays).

(h) An evaluation of future noise levels during construction of the facility including predicted A-weighted/dBA sound levels using computer noise modeling as follows:

(1) the model shall use the ANSI/ASA S12.62-2012/ISO 9613-2:1996 (MOD) (see section 1100-17.1(a)(1)(v) of this Title) or the ISO-9613-2:1996 propagation standard (see section 1100-17.1(g)(1)(i) of this Title) for the main phases of construction, and from activities at any proposed batch plant area/laydown area;

(2) the model shall include, at a minimum, all noise sources and construction sites that may operate simultaneously for the most critical activities to meet the proposed construction schedule;

(3) consistent with the preliminary description of construction practices and activities described pursuant to sections 1102-2.7 and 1102-2.9 of this Part, indicate:

(i) the procedures to be followed to minimize noise impacts from construction of the facility;

(ii) the types of major equipment and/or construction technique (e.g., blasting) that will be used during construction;

(iii) the sound power and/or sound pressure levels with distance of evaluation- produced by the operation of that equipment or construction technique;

(iv) the days of the week and hours of the day during which construction activities are proposed to take place, along with any exceptions to these schedules;

(v) any identified exceedances to construction noise requirements and the magnitude of those exceedances, if any; and

(vi) consistent with the requirements of section 1102-2.28 of this Part, an analysis of whether the construction sound levels will comply with the substantive requirements of local regulations.

(4) for construction of the project, the applicable modeling and reporting requirements included in section 1102-2.9(d) of this Part shall be used for modeling of construction noise for each construction phase; and

(5) sound impacts shall be reported on the map with sound level contours specified in section 1102-2.9(f) of this Part and sound levels at the most critically impacted receptors in tabular format as specified section 1102-2.9(d)(8) of this Part.

(i) A tabular comparison between maximum sound impacts and any design goals, noise limits, and local requirements for the facility, and the degree of compliance at all sensitive sound receptors and at the most impacted non-participating boundaries within the sound study area or radius of evaluation.

(j) An evaluation as to whether any of the following potential community noise impacts will occur:

(1) Hearing loss for the public, as addressed by the World Health Organization (WHO) Guidelines for Community Noise published in 1999 (see section 1100-17.1(d)(1)(i) of this Title). The requirements for the public are not to exceed an average sound level of seventy (70) dBA from operation of the facility and one hundred twenty (120) dB-peak for children and one hundred forty (140) dB-peak for adults for impulsive sound levels (e.g., construction blasting).

(2) The potential for structural damage from some construction activities (e.g., blasting, pile driving, excavation, HDD, or rock hammering) to produce any cracks, settlements, or structural damage on any Type 1, Type 3, or Type 5 sensitive sound receptors, and public or private infrastructure.

(k) An identification and evaluation of reasonable noise abatement measures for facility construction activities. This will include measures to be taken to minimize noise impacts at sensitive sound receptors and any measures to reduce audible noise levels caused by construction to the maximum extent practicable, including but not limited to, any temporary movable sound

barriers.

(l) An identification and evaluation of noise abatement measures for the design and operation of the facility to comply with the design goals set forth in section 1102-2.9 (b) of this Part and the regulatory noise limits set forth in section 1102-3.5(a) of this Part. For substations, and converter stations, if noise mitigation measures are necessary for the design and operation, details such as dimensions, appropriate clearances, and specifications shall be included and those mitigation measures shall be described in the application and implemented no later than the day before the start date of operations.

(m) The application shall include a glossary of terminology, definitions, abbreviations, and references mentioned in the application.

Section 1102-2.10. Exhibit 10: Visual Impacts.

Exhibit 10 shall contain:

(a) A visual impact assessment (VIA) to determine the extent and assess the significance of facility visibility. The components of the VIA shall include identification of visually sensitive resources, viewshed mapping, confirmatory visual assessment fieldwork, visual simulations (photographic overlays), cumulative visual impact analysis, and a proposed draft Visual Resources Management Plan as outlined in subdivision (c) of this section. The VIA shall address issues as identified by the office during pre-application consultation, which may include the following:

(1) For all facilities:

(i) a general narrative description of the regional visual setting of the proposed transmission corridor, including the visual properties of the topography, vegetation, water features, and any modifications to the landscape as a result of human activities;

(ii) the appearance of the facility converter stations, substations, support structures, poles, buildings, light fixtures, fencing, screening walls, plantings, and other appurtenances upon completion, including architectural design, facade colors, and surface

textures;

(iii) a discussion of the cumulative visual impacts from planned development in the visual study area and time frame for such development (if available).

(2) For any major electric transmission facility proposed in new electric transmission rights-of-way, or any portion of major electric transmission facilities located substantially within existing electric transmission rights-of-way where an increase in structure height of twenty-five (25) percent or more is proposed:

(i) the visibility of the facility, including visibility of facility operational characteristics, such as roadway use, warning lights, glint or glare, and converter station and substation lighting;

(ii) the visibility of all above-ground structures, interconnections, converter stations, substations, and roadways to be constructed within the transmission corridor as determined by the viewshed analysis;

(iii) representative views (photographic overlays) of the transmission corridor alignment, support structures, converter stations, substations, buildings, and other facility structures, including relevant front, side, and rear views, indicating approximate elevations;

(iv) the nature and degree of visual change resulting from construction of the facility support structures, transmission lines, electrical stations, substations, and converter stations;

(v) the nature and degree of visual change resulting from operation and maintenance of the facility;

(vi) a description of all resources of statewide concern and locally designated visually significant resources that would be affected by the facility.

(vii) a discussion of the potential impacts on visual

resources that may occur from the future construction, operation, or maintenance of electric transmission line structures within the corridor, including what specific measures could be taken to avoid or mitigate any potentially significant adverse impacts; and

(viii) assumptions, evidence, and references used to support the descriptions, discussions, and analyses required in this section.

(b) For any major electric transmission facility proposed in new electric transmission rights-of-way, or any portion of major electric transmission facilities located substantially within existing electric transmission rights-of-way where an increase in structure height of twenty-five (25) percent or more is proposed, the analysis component of the VIA shall be conducted as follows:

(1) In developing the application, the applicant shall confer with municipal planning representatives, the office, and where appropriate, OPRHP, Indigenous Nations, NYSDOS (as applicable), and/or APA, in its selection of important or representative viewpoints; providing copies of all related correspondence to the office. Viewpoint selection is based upon the following criteria:

(i) representative or typical views from unobstructed or direct line-of-sight views;

(ii) significance of viewpoints, designated scenic resources, areas, or features, which typically include, but are not limited to: resources of statewide concern and locally designated visually significant resources;

(iii) level of viewer exposure (i.e., frequency of viewers or relative numbers in residential areas or high-volume roadways);

(iv) proposed land uses; and

(v) assessment of visual impacts pursuant to the requirements of adopted local laws or ordinances.

(2) A viewshed analysis shall be conducted as follows:

(i) Viewshed maps depicting areas of facility visibility within the visual study area established in consultation with the office, as well as any potential visibility from specific significant visual resources beyond the visual study area, shall be prepared and presented on a base map depicting recent-edition transportation network, topography, and built environment information. A line-of-sight profile shall also be done for resources of statewide concern located within one thousand two hundred (1,200) feet on either side of the facility corridor. The viewshed maps shall provide an indication of areas of potential visibility based on topography and vegetation, the highest elevation of facility structures, and distance zone (foreground, midground, and background areas). The potential screening effects of existing vegetation shall also be shown. Visually-sensitive sites, cultural and historical resources, representative viewpoints, photograph locations, and public vantage points within the viewshed study area shall be included on the map(s) or an overlay. An overlay indicating landscape similarity zones shall be included.

(ii) The VIA shall include a description of the methodology used to develop the viewshed maps, including software, baseline information, and sources of data.

(iii) The viewshed mapping shall be used to determine the potential visibility from viewpoints to be analyzed pursuant to paragraph (1) of this subdivision and locations of viewer groups in the vicinity of the facility, as determined pursuant to the pre-application meeting(s) held pursuant to section 1100-1.3(a) of this Title.

(3) The Visual Contrast Evaluation shall include:

(i) Photographic simulations of the facility shall be prepared from the representative viewpoints to demonstrate the post-construction appearance of the facility.

(ii) Additional revised simulations illustrating mitigation shall be prepared for those observation points for which mitigation is proposed in the application. Where screen plantings are proposed, provide simulations illustrating growth at 0-2 years and 5-7 years post-installation. Where existing or proposed vegetative screening is relied on for facility mitigation, leaf-off and leaf-on simulation shall be provided. Background photos must be provided at leaf-on where existing vegetation is relied on for screening.

(iii) Each set of existing and simulated views of the facility shall be compared and rated and the results of the VIA shall be summarized. Documentation of the steps followed in the rating and assessment methodology shall be provided including results of rating impact panels and a description of the qualifications of the individuals serving on the panels. Where visual impacts from the facility are identified, contrast minimization and mitigation measures shall be identified, and the extent to which they effectively minimize such impact shall be discussed.

(c) The draft Visual Resources Management Plan shall include:

(1) For all facilities:

(i) General discussion of proposed measures to avoid or mitigate any potentially significant adverse impacts.

(2) For any major electric transmission facility proposed in new electric transmission rights-of-way, or any portion of major electric transmission facilities located substantially within existing electric transmission rights-of-way where an increase in structure height of twenty-five (25) percent or more is proposed:

(i) General discussion of visual impact avoidance, minimization, and mitigation practices related to:

(a) architectural design including discussion of elements designed to make structures compatible

with the local architectural forms;

(b) visual offsets considered including off-site mitigation for visual impacts that cannot be mitigated;

(c) relocation or rearranging facility components;

(d) reduction of facility component profiles;

(e) alternative technologies; and

(f) facility colors, textures, and design.

(ii) Screen planting plans which shall address:

(a) Screening of abutting private lands, viewsheds, and statewide significant view locations from view of switchyards, substations, and converter stations, including replacement planting for any removed existing screening vegetation.

(b) Long term protection and maintenance of screen plantings.

(iii) For transmission facilities, support towers and lines shall comply with requirements mandated by Federal Aviation Administration.

Section 1102-2.11. Exhibit 11: Cultural Resources.

Exhibit 11 shall contain:

(a) A study of the impacts of the construction and operation of the facility, interconnections, and related facilities on archeological/cultural resources within the project impact area, including:

(1) a summary of the nature of the probable impact on any archeological/cultural resources identified, addressing how those impacts shall be avoided or minimized;

(2) as required pursuant to section 1102-1.1(c)(1)(i) of

this Part, a Phase IA archeological/cultural resources study for the proposed facility;

(3) if required pursuant to section 1102-1.1(c)(1)(ii) of this Part, a Phase IB field study;

(4) if required by the Phase IB study results, as determined pursuant to section 1102-1.1(c)(1)(iii) of this Part, a Site Avoidance Plan and/or Phase II site evaluation study to assess the boundaries, integrity and significance of identified cultural resources;

(5) if required by the Phase II study results, as determined pursuant to sections 1102-1.1(c)(1)(iv) and (v) of this Part, a Site Avoidance Plan and/or Phase III data recovery investigation or alternative measures to mitigate impacts to identified cultural resources;

(6) for any areas where the applicant could not obtain access permissions during the pre-application phase, the applicant shall provide a narrative explanation and Areas Proposed for Archaeological Survey figure distinguishing areas where survey has been completed pursuant to 1102-1.1(c)(3) and (4) of this Part from areas where additional survey is proposed to occur prior to EM&CP submission; and

(7) a proposed schedule for completing any required studies prior to EM&CP submission for those areas where the applicant could not obtain access permissions during the pre-application phase.

(b) A study of the impacts of the construction and operation of the facility, interconnections, and related facilities on historical/above ground cultural resources within the project impact area, including:

(1) a summary of the nature of the probable impact on any historical/ above ground cultural resources identified, addressing how those impacts shall be avoided or minimized;

(2) as required pursuant to section 1102-1.1(c)(4)(ii) of this Part, a Zone of Visual Impact for the proposed

facility;

(3) as required pursuant to section 1102-1.1(c)(4)(iii) of this Part, a historic resources survey methodology for the proposed facility;

(4) as required pursuant to section 1102-1.1(c)(4)(iv) of this Part, a historic resources survey for the proposed facility; and

(5) if required pursuant to section 1102-1.1(c)(4)(v) of this Part, a historic resources effects assessment for the proposed facility.

(c) For any areas of the proposed electric transmission facility where the office, in consultation with OPRHP/SHPO, has determined that documents, correspondence, and studies adopted as part of a Federal agency's National Historic Preservation Act section 106 review satisfy any requirements of section 1100-1.3(c) of this Title, or sections 1102-1.1(c) or 1102-2.11 of this Part, pursuant to section 1102-1.1(c)(6) provide:

(1) copies of such documents, correspondence, and studies as applicable;

(2) documentation confirming that such information has been adopted by a Federal agency pursuant to its National Historic Preservation Act Section 106 review;

(3) a narrative explanation detailing which documents, correspondence, and studies the office, in consultation with OPRHP/SHPO, has determined satisfy each applicable regulatory requirement;

(4) a narrative explanation and figure distinguishing areas where the office, in consultation with OPRHP/SHPO, has determined that documents, correspondence, and studies produced as part of a Federal agency's National Historic Preservation Act section 106 review satisfy each applicable regulatory requirement from areas where such information was prepared in accordance with section 1100-1.3(c) of this Title, or sections 1102-1.1(c) or 1102-2.11 of this Part; and

(5) a copy of the office's determination.

(d) An Unanticipated Discovery Plan that shall identify the actions to be taken in the unexpected event that resources of cultural, historical, or archaeological importance, or human remains, are encountered during the excavation process. This plan shall include a provision for work stoppage upon the discovery of possible cultural, historical, or archaeological resources or human remains and be prepared by a professional archaeologist meeting the 36 CFR 61 standards.

(e) A description and documentation of the applicant's consultation with OPRHP/SHPO, local historic preservation groups, and Indigenous Nations as required in section 1102-1.1(c)(1) of this Part and 1100-1.1(c) of this Title.

(f) OPRHP/SHPO's effect or impact determination letter(s) for the areas where survey has been completed pursuant to section 1102-1.1(c)(7) of this Part.

Section 1102-2.12. Exhibit 12: Geology, Seismology, and Soils.

Exhibit 12 shall contain:

(a) An assessment of the geology, seismology, and soils setting, including an evaluation of the suitability of the facility corridor for construction and operation of the project, based on mapped soil and bedrock formations within the facility corridor, and other publicly available information.

(b) Maps, figures, and analyses delineating depth to bedrock and underlying bedrock types.

(c) A description of the characteristics and suitability for construction of the subsurface conditions and/or stratigraphy found at foundation level, including factors such as soil competence, bedrock competence, soil erodibility, groundwater levels and confining artesian conditions.

(d) An evaluation of the suitability of subsurface conditions where horizontal directional drilling (HDD) is anticipated.

(e) A map identifying locations where blasting operations are

anticipated.

(f) Where an application proposes a converter station, the assessment shall include:

(1) analysis of the impacts of typical seismic activity experienced in the area where the converter station is proposed, based on current seismic hazard maps and other publicly available information; and

(2) evaluation of liquefaction susceptibility in areas where converter stations are proposed.

(g) A map and narrative description identifying karst, highly erodible or highly corrosive soils, high groundwater, artesian conditions, or other conditions for which mitigation measures may be required.

(h) A discussion of any dewatering that may be necessary during construction, including the duration and timing of dewatering operations, and whether the facility shall contain any components below grade that would require continuous de-watering.

(i) An identification of suitable building and equipment foundations, including a preliminary engineering assessment to determine the types and locations of potential foundations to be employed.

(j) If applicable, preliminary plans for management, including any proposed reuse of soil and other excavated materials in accordance with 6 NYCRR Part 360 for Beneficial Use Determination.

(k) If applicable, plans for managing oil and gas impacted soils to be disturbed in areas near known oil and gas wells.

Section 1102-2.13. Exhibit 13: Terrestrial Ecology.

Exhibit 13 shall contain:

(a) An identification and description of the type of vegetative and ecological communities present along the

proposed transmission facility corridor, and adjacent properties within one hundred (100) feet of areas to be disturbed by construction, based upon field observations and data collection. Ecological communities shall be categorized based on information from the New York Natural Heritage Program.

(b) An analysis of the temporary and permanent impact of the construction and operation of the facility on the vegetation identified, including a mapped depiction of the vegetation areas showing the areas to be removed or disturbed, as categorized based on information from the New York Natural Heritage Program.

(c) An identification and evaluation of avoidance measures or, where impacts are unavoidable, minimization measures, including the use of alternative technologies or designs, regarding vegetation impacts identified. Rare ecological communities shall be prioritized for avoidance and minimization of impacts.

(d) A list of the species of mammals, birds, amphibians, terrestrial invertebrates, and reptiles that are likely to occur based on ecological communities present at, and bird and bat migration routes through, the proposed facility corridor, supplemented as necessary by site surveys, site observations, and publicly available sources.

(e) An analysis of the impact of the construction and operation of the proposed facility corridor on wildlife, wildlife habitats, and wildlife travel corridors, other than a NYS threatened or endangered species or species of special concern (which will be addressed pursuant to section 1102-2.14 of this Part).

(f) An identification and evaluation of avoidance measures or, where impacts are unavoidable, minimization measures, including the use of alternative technologies, regarding impacts to wildlife and wildlife habitat.

Section 1102-2.14. Exhibit 14: NYS Threatened or Endangered Species.

Exhibit 14 shall contain:

(a) A wildlife site characterization report or benthic habitat site characterization report prepared pursuant to section 1102-1.1(b)(1) or 1102-1.1(e)(ii) of this Part.

(b) Any reports detailing the results of pre-application survey(s).

(c) A copy of the office's determination pursuant to section 1102-1.1(b)(4)(iv) of this Part or a copy of the preliminary take estimate issued pursuant to section 1102-1.1(b)(5) of this Part.

(d) If the office determined that there is confirmed or presumed occupied habitat at the site, an identification and evaluation of avoidance and minimization measures incorporated into the facility design, as well as any unavoidable potential impacts to NYS threatened or endangered species or species of special concern. Adverse impacts shall be summarized by species impacted and include an assessment of the acreage and/or an estimated number of individual members of each such species affected.

(e) For a facility that would adversely impact any NYS threatened or endangered species or their habitat, a Preliminary Net Conservation Benefit Plan prepared in compliance with section 1102-3.4(x) of this Part. The following components of a preliminary Net Conservation Benefit Plan at a minimum are required to determine application completeness:

(1) Objective of NCBP, including identification of the affected NYS threatened or endangered species for which mitigation is proposed, including the details and level of impact.

(2) Avoidance and minimization measures proposed to reduce impacts to the identified NYS threatened and endangered species.

(3) Type of mitigation proposed, and as applicable, the number of individuals proposed to be mitigated, or number of acres proposed in mitigation for the identified impacts.

(4) Analysis of how the proposed mitigation would provide a net conservation benefit, as defined by 6 NYCRR Part 182.2 to the identified NYS threatened or endangered species which may, if applicable, include payment of a mitigation fee into

the Endangered and Threatened Species Mitigation Fund established pursuant to section 99(hh) of the New York State Finance Law. The office may give the permittee credit for any mitigation fee paid to another State or Federal agency or authority.

(5) Proposed mitigation site:

(i) Consideration of location, tax parcel identification, and spatial (GIS) data for land proposed as mitigation. If an applicant is unable to propose a parcel or location for mitigation but provides documentation of a substantive and specific effort to identify parcels, this requirement for proposed mitigation site will be considered met.

(a) If a parcel or location is proposed, a description of current land use and general vegetative cover, preferably including representative ground-level photography should be provided to the office for review.

Section 1102-2.15. Exhibit 15: Water Resources and Aquatic Ecology.

Exhibit 15 shall contain:

(a) *Groundwater.*

(1) Hydrologic information reporting depths to high groundwater and bedrock, including a site map based on publicly available information and any field investigations completed by the applicant, showing depth to high groundwater and bedrock in increments appropriate for the facility site.

(2) A survey based on publicly available information and the results of a private, active groundwater well survey distributed to property owners and residents within five hundred (500) feet of the facility corridor and within one thousand (1,000) feet of any anticipated blasting locations. The groundwater well survey materials will include a summary of the project, contact information, and a description of where the well owner can get more information about the

project, an invitation to join the stakeholder list, and questions regarding any wells on the property. Survey respondents that indicate an active well on their property shall be added to the stakeholder list if not already included. The application shall include information on groundwater quality, and the location, depth, yield, and use of all public and private groundwater wells or other points of extraction of groundwater, and a delineation and description of well head and aquifer protection zones, to the extent such information is publicly available or obtained through the private well survey. Parcel-based maps shall be provided based on publicly available information and the results of publicly available information and the private well survey, showing the locations of all identified public and private groundwater wells, delineating all groundwater aquifers and groundwater recharge areas, and identifying groundwater flow direction, and shall distinguish the following features:

(i) all existing, active water supply wells or water supply intakes located within one hundred (100) feet of the LOD;

(ii) all existing, active water supply wells or water supply intakes located within five hundred (500) feet of horizontal directional drilling (HDD) operations;

(iii) all existing, active water supply wells or water supply intakes located within one thousand (1,000) feet of any anticipated blasting operations.

(3) An analysis and evaluation of potential impacts (during normal and drought conditions) from the construction of the facility on all water supplies and uses, groundwater quality and quantity in the facility area, including potential impacts on public and private groundwater sourced water supplies, including private wells within five hundred (500) feet of the proposed facility corridor, and wellhead and aquifer protection zones.

(b) *Surface water.*

(1) Copies of the approved surface water detailed screening

conducted pursuant to section 1102-1.1(a) of this Part, including results and summary tables.

(2) A map or series of maps showing all surface waters present within the proposed transmission facility corridor as identified in the detailed screening performed in consultation with the office pursuant to section 1102-1.1(a) of this Part.

(3) An identification and location of any surface water drinking-water supply intakes within one (1) mile, or if none are identified within one (1) mile, an identification and location of the nearest intake, including characterization of the type, nature, and extent of service provided from the identified source.

(4) A demonstration of avoidance and minimization of impacts to NYS-protected waters by siting all components and construction activity more than fifty (50) feet from any NYS-protected waters to the maximum extent practicable. To the extent that an applicant cannot avoid all impacts to NYS-protected waters, an explanation of all efforts the applicant made to minimize the impacts, including a discussion of all best management practices used during design.

(5) For construction activities which impact NYS-protected waters, the applicant shall submit plans for stream restoration or mitigation, if required by the office, as part of the approved EM&CP pursuant to Subpart 1102-4 of this Part.

(c) *Stormwater.*

(1) A draft Stormwater Pollution Prevention Plan (SWPPP) for the collection and management of stormwater discharges from the facility site during construction. The draft SWPPP will be prepared in accordance with the applicable New York State Pollution Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity. If the facility is not eligible for coverage under the SPDES General Permit, a draft application for an individual SPDES Permit shall be provided.

(2) To the extent not covered in paragraph (1) of this subdivision, a preliminary plan, prepared in accordance with the New York State Stormwater Management Design Manual (see section 1100-17.1(i)(1)(ii) of this Title), which identifies the post-construction stormwater management practices that will be used to manage stormwater runoff from the developed facility site. This can include runoff reduction/green infrastructure practices, water quality treatment practices, and practices that control the volume and rate of runoff.

(d) *Chemical and petroleum bulk storage.*

(1) A description of the spill prevention and control measures to be in place for ammonia storage, fuel oil storage, wastewater storage, and other chemical, petroleum, or hazardous substances stored on the facility site, including an evaluation of alternatives and mitigation measures.

(2) An identification of whether the storage of ammonia, fuel oil, wastewater, other chemicals, petroleum, or hazardous substances, or disposal of solid wastes on the facility site is subject to regulation under the State's chemical and petroleum bulk storage programs, and, if so, a demonstration of compliance with such regulations.

(3) An identification whether the storage of ammonia, fuel oil, wastewater, other chemicals, petroleum, or hazardous substances on the facility site is subject to regulation under local law (county, city, town, or village), and, if so, a demonstration of the degree of compliance with such local laws.

(4) Plans to comply with section 175 of the Navigation Law and Part 611 (petroleum spills), Subpart 613-7 (petroleum bulk storage), and Subpart 598-6 (hazardous substance bulk storage) of Title 6 NYCRR, as applicable.

(e) *Aquatic species and invasive species.*

(1) An analysis of the impact of the construction and operation of the facility on aquatic biota, including species listed as endangered, threatened, or species of special concern in 6 NYCRR Part 182, and protected native

plants in 6 NYCRR Part 193, including the potential for introducing and/or spreading invasive species.

(2) An identification and evaluation of reasonable avoidance measures and, where impacts are unavoidable, mitigation measures regarding impacts on such aquatic biota, invasive species impacts to be addressed pursuant to the Invasive Species Control and Management Plan to be prepared pursuant to section 1102-4.3(n) of this Part (if any) and assure compliance with applicable water quality standards (6 NYCRR Part 703).

Section 1102-2.16. Exhibit 16: Wetlands.

Exhibit 16 shall contain:

(a) Copies of the approved wetland detailed screening conducted pursuant to section 1102-1.1(a) of this Part, including results and summary tables.

(b) A map or series of maps showing all protected wetlands and regulated adjacent areas included in the wetland and surface water detailed screening present within proposed transmission facility corridor and alternative routes, as determined by the office pursuant to section 1102-1.1(a) of this Part.

(c) A qualitative and descriptive wetland functional assessment, including seasonal variations, for all wetlands described in the detailed screening required pursuant to section 1102-1.1(a) of this Part, that would be impacted for groundwater recharge/discharge, flood flow alteration, fish and shellfish habitat, sediment/toxicant retention, nutrient removal, sediment/shoreline stabilization, wildlife habitat, recreation, uniqueness/heritage, visual quality/aesthetics, and protected species habitat.

(d) An analysis of all off-site wetlands within one hundred (100) feet (three hundred (300) feet for tidal wetlands) □LOD, ,□for all alternative routes that may be hydrologically or ecologically influenced by development of the transmission facility corridor and the wetlands identified on the map required by subdivision (a) of this section, observed in the field where accessible to determine their general characteristics

and relationship, if any, to delineated wetlands.

(e) A demonstration of avoidance of impacts to all wetlands and regulated adjacent areas identified in the detailed screening required pursuant to section 1102-1.1(a) of this Part.

(f) If the applicant cannot avoid impacts to all wetlands and adjacent areas identified in the detailed screening required pursuant to section 1102-1.1(a) of this Part, an explanation consistent with the standards for issuance of a permit pursuant to section 661.9 or 663.5 of Title 6 NYCRR, as applicable, of all efforts the applicant made to minimize the impacts to wetlands and adjacent areas identified during wetland surveys. The impact minimization summary shall address the following criteria for each proposed impact area:

(1) why the facility design and siting cannot avoid wetlands and adjacent areas, as applicable;

(2) how the facility design has minimized spatial extent of proposed impacts to wetlands and adjacent areas, as applicable;

(3) how the facility design and siting minimize impacts to the functions and values currently provided by these wetlands and/or regulated adjacent areas.

(g) A proposed schedule for completing the required wetland and waterbody field delineations and obtaining the wetland and waterbody jurisdictional determinations prior to EM&CP submission pursuant to section 1102-4.3(e) of this Part.

(h) For facilities for which compensatory mitigation for permanent or long-term impacts to protected wetlands and/or adjacent area is required, unless determined otherwise in consultation with the office, the applicant shall submit a Wetland Restoration and Mitigation Plan as part of the approved EM&CP pursuant to section 1102-4.4(f) of this Part.

Section 1102-2.17. Exhibit 17: In-Water Facilities.

Exhibit 17 shall include:

(a) Maps of the in-water facility corridor for the in-water facility components, shown on the latest or recent-edition National Oceanic and Atmospheric Administration navigational charts, at a size and level of detail appropriate to substantially inform the public of the location of the proposed in-water facility components.

(b) A study and assessment of the potential impacts of construction and operation of the facility on benthic and shellfish resources, including:

(1) Description of studies and analysis, including desktop benthic habitat site characterization and any in-situ surveys completed.

(2) Site characterization and description of existing benthic and shellfish resources.

(3) Identification and description of Complex and Sensitive Habitats, including Submerged Aquatic Vegetation and coral.

(4) Quantitative assessment of habitat conversion that will result from the project (i.e., soft bottom to hard bottom, complex to uniform).

(5) Description of proposed impacts avoidance, minimization, and mitigation measures, including NYSDEC, NYSDOS, and federally required time-of-year restrictions, as discussed during pre-application consultations.

(6) Proposed pre- and post-construction Benthic Monitoring Plan, developed in consultation with NYSDEC and ORES, and NYSDOS for in-water facilities proposed in Coastal waterbodies or inland waterbodies, and which shall:

(i) provide for at least one (1) year of pre-construction benthic sampling surveys to establish baseline conditions along the in-water facility corridor;

(ii) provide for at least two (2) years of post-construction benthic sampling surveys along the in-water facility corridor; and

(iii) require that benthic sampling surveys occur during peak biomass periods.

(c) A study and assessment of the potential impacts of construction and operation of the facility on finfish and essential fish habitat, including:

(1) Description of studies and analysis, including desktop studies and the results of any surveys completed by the applicant.

(2) Site characterization and description of existing finfish and essential fish habitat within and around the facility corridor.

(3) Identification of any protected and managed species that may be impacted by the project's construction and operation.

(4) Description of proposed impacts avoidance, minimization, and mitigation measures, including NYSDEC, NYSDOS, and federally required time-of-year restrictions, as discussed during pre-application consultations, and further including any proposed pre- and post-construction fisheries monitoring plans, if applicable.

(d) A study and assessment of the potential impacts of construction and operation of the facility on marine and freshwater mammals and Sea Turtles, including:

(1) Description of studies and analysis, including desktop studies and the results of any surveys completed by the applicant.

(2) Site characterization and description of existing marine and freshwater mammals and Sea Turtles within and around the facility corridor.

(3) Identification and description of any potentially affected protected and managed species.

(4) Description of proposed impacts avoidance, minimization, and mitigation measures, including NYSDEC, NYSDOS, and federally required time-of-year restrictions.

(e) Description of the marine or freshwater sediment conditions of the facility corridor, including physical and chemical characteristics, and potential water quality impacts associated with construction of the in-water facility, including:

(1) Characterization and mapping of the sediment conditions along the in-water facility corridor based on the results of pre-application geophysical, geotechnical and geochemical field investigations and publicly available information, including:

(i) waterbody classifications;

(ii) sediment types and depths;

(iii) sand waves, mobile bedforms, and other topographic features; and

(iv) areas of known or suspected contamination.

(2) Summary and presentation of the results of studies and analysis completed by the applicant, including review of publicly available mapping and data, geophysical surveys of the facility corridor, and geotechnical investigations along the facility corridor.

(3) Description of existing physical and chemical characteristics of the in-water facility corridor, including the results of sediment sampling and laboratory analysis for contaminants as identified in section 1102-1.1(e) of this Part.

(4) Description of proposed impacts avoidance, minimization, and mitigation measures for the existing marine or freshwater physical and chemical environment.

(5) Proposed pre- and post-construction Surficial Sediment Sampling Plan developed in consultation with NYSDEC, ORES, and NYSDOS for in-water facilities, which shall:

(i) provide that pre- and post-installation surficial sediment samples (top two centimeters) will be collected and analyzed prior to and subsequent to the completion of the in-water installation of the cable system, and that post-installation sampling shall commence as soon as practicable and in conjunction with other benthic sampling efforts; and

(ii) specify the constituents for which samples shall be collected and analyzed, based on publicly available data and the results of pre-application consultations with NYSDEC, ORES, and NYSDOS.

(6) Evaluation of potential suspended sediment and water quality impacts from construction of the project, including:

(i) a Suspended Sediment Transport and Water Quality Modeling Report; and

(ii) a draft description of planned suspended sediment and water quality monitoring activities.

(f) Description of existing marine or freshwater and nearshore uses and resources within one (1) mile of the facility corridor, including but not limited to:

(1) commercial, for-hire, and recreational fishing;

(2) artificial reefs;

(3) sand resource borrow areas;

(4) designated Coastal Erosion Hazard Areas;

(5) mariners and commercial vessel traffic, including local ferry routes, and federally authorized navigational channels (effects on water-based transportation are evaluated and discussed in section 1102-2.19(b) of this Part);

(6) designated and common practice anchorage areas, and aids to navigation;

(7) designated open-water dredged material disposal sites or sites historically used for disposal of dredge material;

(8) unexploded ordnances; and

(9) co-located infrastructure and existing row/facilities, including water supply intakes and discharge points.

(g) The application shall include map(s), at an appropriate scale, showing the known locations of each of the described existing marine or freshwater and nearshore uses relative to the facility corridor.

(h) Description of the anticipated and proposed target burial depths for the in-water cable, including:

(1) Comparative analysis of all burial techniques and adjustments considered to achieve target burial depth throughout in-water cable route.

(2) Detailed graphical representation of anticipated achievable burial depths based on sediment conditions (e.g., sediment densities, shear strengths, and other limiting factors) at representative intervals along the in-water facility corridor, and written evaluation of the likelihood of achieving target burial depth.

(3) Identification of areas where target burial depth is not anticipated to be achieved, including corresponding justification.

(4) A preliminary Cable Monitoring and Maintenance Plan providing, to the extent known, the information required in section 1102-4.4(z) of this Part.

(i) A discussion regarding any proposed or foreseeable impact to piers, bulkheads, or other waterfront infrastructure.

Section 1102-2.18. Exhibit 18: Agricultural Resources.

Exhibit 18 shall contain:

(a) An assessment of the facility corridor, which shall include

the following:

(1) An analysis of temporary impacts and/or permanent impacts to land used in agricultural production within the proposed LOD. Analysis should identify Agricultural Districts, lands with Mineral Soil Groups 1-4, and municipal boundaries.

(2) Methods available and to be employed to facilitate farming activity during construction, areas where it will not be feasible to continue farming both during construction and during operation, and areas which will remain in agricultural use during operation.

(3) A discussion of the efforts that were taken to avoid or minimize the impact of the facility on lands used in agricultural production, with additional consideration for lands located within NYS Certified Agricultural Districts and containing Mineral Soil Groups 1-4. To the extent the office has determined that the facility would result in impacts to lands used in agricultural production requiring mitigation, the office may authorize the permittee to pay a mitigation fee into the Agricultural and Farmland Viability Protection Fund established by State Finance Law section 99-pp. The office may also give the applicant credit, in whole or in part, for any agricultural mitigation fee paid to another state or federal agency or authority.

(b) Maps showing the following:

(1) the location of the proposed facility and all ancillary features in relation to land used in agricultural production, NYS certified Agricultural Districts, and Mineral Soil Groups 1-4 within the facility corridor;

(2) temporary and permanent impacts to land used in agricultural production and all agricultural production acreage proposed to remain in agricultural use;

(3) any agreed upon landowner-imposed development restrictions (e.g., locations within the facility corridor on which the landowner will not allow facility development); and

(4) locations of known or suspected sub-surface drainage systems (including outlets), surface drainages, irrigation lines, or other unique agricultural facilities.

(c) A Drainage Remediation Plan to address inadvertent damages to surface or sub-surface drainage, including:

(1) a demonstration of the likelihood of impacts to surface or subsurface drainage and how the interruption of drainage may impact land used in agricultural production within and outside of the facility corridor; and

(2) an identification of methods of repair for damaged drainage features.

Section 1102-2.19. Exhibit 19: Effect on Transportation.

Exhibit 19 shall contain:

(a) A description of consultations with Federal, State, local officials, and school districts, regarding the proposed facility including, but not limited to, location, installation practices, or access points. Such statements shall clearly indicate: the agency, municipality, district, or authority name; the potentially impacted transportation system; and, if applicable, the segment(s) of concern.

(b) For any segment(s) to be installed in or adjacent to canals, waterways, and seaways: An analysis and evaluation of any potential impacts of the proposed line and related facilities on such waterbodies including:

(1) maps, figures, and analyses regarding:

(i) any federally authorized navigational channels;

(ii) density of commercial vessels (as reported by the Coast Guard Navigation Center). Such data shall be presented as heat maps depicting (1) maximum 24 hour period (2) maximum 72 hour period and (3) average 30-day period;

(iii) ferry routes;

(iv) recreational sailing routes;

(v) transportation tunnels;

(2) for facilities associated with offshore generation projects, a Vessel Traffic Risk Assessment that shall assess potential impacts to existing navigational channels and ports from traffic generated by the project, identifying areas of navigational risks, and qualitatively assessing the projected vessel traffic change throughout facility construction;

(3) discussion of any required or voluntary mitigation and minimization measures.

(c) *Aviation.* An analysis and evaluation of any potential impacts of the facility on the surrounding navigable airspace and existing or planned aviation infrastructure including:

(1) an identification of any construction or alteration proposed that requires a Notice of Proposed Construction to be submitted to the administrator of the FAA in accordance with 14 Code of Federal Regulations Part 77 (see section 1100-17.1(h)(1)(i) of this Title);

(2) for projects involving any new aboveground structures, or alteration to existing structures, include a figure or table identifying any aviation facilities meeting the following criteria:

(i) commercial service, cargo service, reliever or general aviation (public use) airports or military airports with at least one (1) runway more than three thousand two hundred (3,200) feet in actual length; and within 12 miles;

(ii) commercial service, cargo service, reliever or general aviation (public use) airports or military airports with its longest runway no more than three thousand two hundred (3,200) feet in actual length; and within 6 miles;

(iii) commercial service, cargo service, reliever or general aviation (public use) heliports or military heliport landing / takeoff areas within three (3) miles of the new structure or alteration.

(d) An analysis of impacts due to access roads including:

(1) discussion of the types of access which will be used and the rationale for employing that type of access;

(2) for each temporary and permanent access type, a figure or diagram showing a typical installation (at a legible scale);

(3) indication of the associated drainage erosion controls and stormwater management features to be used for access road construction and maintenance;

(4) indication of the type(s) of stream crossing method if any to be used in conjunction with temporary and permanent access road construction;

(e) *Public roadways, highways, and trails.* An analysis including:

(1) For any segments to be located in a longitudinal installation within the control of access line of a State highway ROW, describe any consultation steps taken toward initiating a request for NYSDOT or other pertinent State agency or authority approval, (which may also require subsequent Federal Highway Administration (FHWA) concurrence of a NYSDOT approval) of an exception to the NYS Accommodation Plan for Longitudinal Use of Freeway Right-Of-Way By Utilities for longitudinal installation within such State right-of-way.

(2) For any segments to be located within a transverse crossing of a controlled access State highway, describe any initial steps taken toward requesting NYSDOT or other pertinent State agency or authority approval (which may also require subsequent FHWA concurrence).

(3) For any segments to be located within a longitudinal or transverse installation of the right-of-way of a partial control of access road or a no control of access road within the jurisdiction of NYSDOT or other pertinent State agency or authority, describe any initial consultation steps with NYSDOT or other pertinent State agency or authority.

(4) A description of the pre-construction characteristics of all existing public roadways collocated along or intersecting the proposed facility corridor, or local roadways where any transportation permits from local municipalities are anticipated. Characteristics shall include information on

existing traffic volumes (if such information is available) which shall be corrected to the estimated time of construction (ETC).

(5) For any projects with the potential for movement of equipment or materials in excess of legal limits per Vehicle and Traffic Law section 385 (i.e., haul routes):

(i) maps depicting conceptual vehicle route(s) extending to the point where vehicles would meet all regulatory restrictions, or point of entry into the state;

(ii) a review of existing data on vehicle traffic;

(iii) an evaluation of any potential interference with school bus routes;

(iv) a review of available load bearing and structural rating information for all identified routes; and

(v) improvements necessary to accommodate oversize or overweight deliveries, impacts associated with such improvements, and mitigation measures appropriate to minimize such impacts.

(6) An estimate of the trip generation characteristics of the facility during construction, including the number and frequency of trips and a separate tabulation for trips associated with major cut or fill activity.

(7) Maps depicting potential impacts to a State or federally designated trail, or one proposed for designation.

(8) An identification and evaluation of practicable mitigation measures regarding traffic and transportation impacts, including: time restrictions, the use of alternative technologies, the construction of physical roadway improvements, the installation of new traffic control devices, and the repair of local roads or other features due to damage by heavy equipment or construction activities during construction or operation of the facility.

(f) *Other transit.* Maps, figures, and an analysis regarding potential impacts of the facility on any other transit systems (buses, subways, railroads, etc.) in the vicinity of the facility.

(g) Unless otherwise stated, all mapping required hereunder shall be at a scale of 1:12,000 (or another appropriate scale agreed to by the office) accompanied by a one-page index depicting the extents of such scaled maps.

Section 1102-2.20. Exhibit 20: Cost of Proposed Facility.

Exhibit 20 shall contain:

(a) A detailed estimate of the total capital costs associated with the proposed facility. The estimate shall show the estimated cost of:

(1) right-of-way;

(2) land surveys;

(3) materials;

(4) labor;

(5) engineering and inspection;

(6) administrative overhead;

(7) fees for legal and other services;

(8) interest during construction; and

(9) contingencies.

(b) The applicant shall include a brief statement of the source of the information used as the basis for the estimates required by subdivision (a) of this section and provide the work papers used to create cost estimates.

(c) If not stated elsewhere, the applicant shall include data on preliminary bids, if any, for the proposed facilities, and recent experience cost data for similar facilities.

Section 1102-2.21. Exhibit 21: Public Need.

Exhibit 21 shall contain:

(a) A statement along with relevant supporting documentation describing the qualified public need for the facility, which, at a minimum, shall indicate whether the facility:

(1) was identified through the Coordinated Grid Planning Process and approved for development and funding by the Public Service Commission;

(2) was selected by the New York Independent System Operator, or a successor entity, under a FERC-approved long term planning process as the solution to a bulk system need identified by the Public Service Commission;

(3) was approved by the Public Service Commission in an order resolving a rate case;

(4) was approved by the Public Service Commission as necessary for State economic development purposes;

(5) is required for the operation of a generation facility whose developer has executed a contract under a Public Service Commission-authorized procurement program for energy, capacity, renewable energy credits, or environmental attributes, or any combination of the foregoing;

(6) is associated with a generation project that has received certificate of environmental compatibility and public need from the New York State Board on Electric Generation Siting and the Environment, or a successor thereto; or

(7) is a solution to a Reliability Need identified by the New York Independent System Operator, Inc. or a successor entity charged with similar responsibilities, in the course of its reliability planning processes.

(b) For any projects that cannot provide the statement required by subdivision (a) of this section, provide:

(1) a demonstration that the facility is consistent with New York State energy and/or climate policy and designed to implement or support long-range energy planning objectives and policies. Such demonstration shall include specific

discussion of the Climate Leadership and Community Protection Act, including targets for renewable energy and greenhouse gas emissions set forth therein; and

(2) a statement, along with relevant supporting documentation, demonstrating that the facility is in the public and ratepayer interest, which at a minimum shall identify the benefits of the facility to ratepayers.

Section 1102-2.22. Exhibit 22: Socioeconomic Effects.

Exhibit 22 shall contain:

(a) An estimate of the average construction work force, by discipline, for each quarter, during the period of construction, and an estimate of the peak construction employment level.

(b) An estimate of the annual construction payroll, by trade, for each year of construction and an estimate of annual direct non-payroll expenditures made by the applicant in the host municipality(ies) (materials, services, rentals, and similar categories) during the period of construction.

Section 1102-2.23. Exhibit 23: Disadvantaged Communities.

Exhibit 23 shall contain:

(a) An identification and description of any disadvantaged community located within the impact study area for the proposed corridor and any alternatives that are being considered. The impact study area for purposes of disproportionate burden analysis shall be at a minimum, within one thousand two hundred (1,200) feet on either side of the facility corridor.

(b) A figure identifying the location of any disadvantaged communities within the impact study area for the proposed corridor and any alternatives that are being considered.

(c) A list of census tracts or census blocks comprising each disadvantaged community within the impact study area in tabular format.

(d) An identification and evaluation of the nature and magnitude of potential and significant adverse disproportionate pollution impacts occurring within or impacting disadvantaged communities resulting from the construction and operation of the proposed facility.

(e) Any analysis required hereunder shall include supporting information, facts, and figures, and provide the proportion of pollution impacts proposed to occur within any disadvantaged communities and the proportion of pollution impacts outside of disadvantaged communities. The applicant shall provide any studies which were used in the evaluation and identify the author and dates thereof.

(f) The applicant shall articulate the reasons why the proposed measures to avoid, minimize, or offset any disproportionate pollution impacts of the proposed facility will, to the maximum extent practicable, avoid, minimize, or offset any identified significant and adverse disproportionate pollution impacts, including a description of the manner in which such measures can be verified and a statement of the cost of such measures.

Section 1102-2.24. Exhibit 24: Effect on Communications.

Exhibit 24 shall contain:

(a) A detailed description of the proposed facility's communications system, including, but not limited to, any communications necessary for interconnection, and a discussion of the purpose, design details, functions, capabilities, and operating characteristics of the communications system.

(b) Identification of all existing underground or underwater cable and fiber optic major transmission telecommunication lines within five hundred (500) feet of the proposed facility.

(c) An evaluation of the design configuration of the proposed facility and related facilities demonstrating that there shall be no adverse effects on the following communications systems: radio, television, telephone, microwave transmission, emergency services, municipal/school district services, public utility services, doppler/weather

radar, air traffic control, armed forces, Global Positioning Systems (GPS), and amateur radio licenses registered to users; including the potential for:

(1) facility structures to interfere with broadcast patterns by re-radiating the broadcasts in other directions;

(2) structures to block necessary lines-of-sight;

(3) physical disturbance by construction activities;

(4) adverse impacts to co-located lines due to unintended bonding; and

(5) any other potential for interference.

(d) A description of post-construction activities that shall be undertaken to identify and mitigate any adverse effects on the communications systems identified hereunder that cannot be avoided or minimized.

Section 1102-2.25. Exhibit 25: Electric System Effects and Interconnection.

Exhibit 25 shall contain:

(a) A detailed description of the proposed facility, including:

(1) the design voltage and voltage of initial operation;

(2) the transmission line conductor specification including type, size, number, materials of conductors, insulation;

(3) the insulator design;

(4) the length of the transmission line;

(5) the typical dimensions and material of the towers;

(6) the design standards for each type of tower and tower foundation;

(7) for underground or underwater construction, the type of

cable system to be used, cable specification, and the design standards for that system;

(8) for underground or underwater construction, indicate on a profile of the line the depth of the cable; typical cable duct, trench, or culvert system; systems for securing and protecting cable; fill material and depth; and any minimum clearances from existing infrastructure.

(9) equipment to be installed in any proposed switching station or substation including an explanation of the necessity for any such switching station or substation;

(10) any terminal facilities; and

(11) the need for cathodic protection measures, including status of coordination with utility owners and proposed design.

(b) If the proposed facility is subject to the transmission interconnection procedures of the New York Independent System Operator (NYISO) Open Assess Transmission Tariff (OATT), a copy of the system impact study submitted to the NYISO pursuant to those procedures. If the proposed facility is not subject to the NYISO's transmission interconnection procedures, a system impact study that shows expected flows on the system under normal, peak, and emergency conditions and effects on stability of the interconnected system, including the necessary technical analyses (thermal, voltage, short circuit, and stability) to evaluate the impact of the interconnection and identify any system upgrades required.

(1) For applications proposed to be developed as part of an energy generation project, such study shall be conducted by an independent third-party.

(c) A description of the potential significant impacts of the facility to transmission system reliability at a level of detail (not including Critical Energy Infrastructure information) that reflects the magnitude of the impacts.

(d) A discussion of the benefits and detriments of the facility on the electric transmission system, including impacts associated

with reinforcements and any new construction required as a result of the facility.

(e) An estimate of the increase or decrease in the total transfer capacity across each affected interface, and if a forecasted change in transfer capacity across affected interfaces violates reliability requirements, an evaluation of reasonable corrective measures that could be employed to mitigate or eliminate such impacts.

(f) A description of criteria, plans, and protocols for the design, construction, commissioning, and operation of the facility, including as appropriate:

(1) engineering codes, standards, guidelines, and practices that apply to the facility;

(2) procedures and controls for facility inspection, testing, and commissioning; and

(3) maintenance and management plans, procedures, and criteria.

(g) For facilities where it is contemplated that a portion of the new facility will be transferred to another transmission owner/operator:

(1) describe the facilities to be transferred and the contemplated future transaction, including a timetable for the future transfer;

(2) describe how the facility design will meet the transmission owner's requirements; and

(3) define the operational and maintenance responsibilities for the facility and how they will meet the transmission owner's standards.

(h) Whether the applicant will, or is willing to, share infrastructure with other utilities (communications, cable, phone, cell phone relays, and similar facilities), and criteria and procedures for review of such proposals.

Section 1102-2.26. Exhibit 26: Electric and Magnetic Fields.

Exhibit 26 shall contain:

(a) Identification of unique electric and magnetic field (EMF) characteristics for the proposed facility, including any unique characteristics due to design voltage, current, structure types and average heights, line sag, right-of-way widths, and co-location of other transmission facilities in the right-of-way.

(b) For any portion of the proposed facility identified pursuant to subdivision (a) of this section, provide both "existing condition" and "proposed" cross-sections to scale showing:

(1) all overhead, underwater, and underground electric transmission, sub-transmission, and distribution facilities including the proposed facility showing structural details and dimensions and identifying phase spacing, phasing, and any other characteristics affecting EMF emissions;

(2) all underground gas transmission facilities;

(3) all right-of-way boundaries; and

(4) any roads, highways, railway facilities, and water bodies.

(c) A set of the aerial photos or drawings that show the exact location of each:

(1) portion of the proposed facility identified pursuant to subdivision (a) of this section;

(2) cross-section of the proposed facility identified pursuant to subdivision (b) of this section; and

(3) nearest residence or occupied non-residential building showing the distance between the proposed facility and the residence or building.

(d) An EMF study by a professional engineer with calculation tables and field strength graphs for each identified right-of-way segment cross-section, as follows:

(1) provide the name of the computer software program and version used to model the facilities and make the calculations;

(2) regarding electric fields, model and perform simulation of circuits at rated voltage and provide electric field calculation tables and field strength graphs calculated at one (1) meter above ground level with five (5)-foot measurement intervals depicting the width of the entire right-of-way and out to five hundred (500) feet from the edge of the right-of-way on both sides, including digital copies of all input assumptions and outputs for the calculations;

(3) regarding magnetic fields, model and perform simulation of the following conditions and provide magnetic field calculation tables and field strength graphs calculated at one (1) meter above ground level with five (5)-foot measurement intervals depicting the width of the entire right-of-way and out to five hundred (500) feet from the edge of the right-of-way on both sides, including digital copies of all input assumptions and outputs for the calculations:

(i) circuit phase currents equal to the summer normal, summer short term emergency (STE sum), winter normal, and winter short term emergency (STE win) conductor ratings;

(ii) circuit phase currents equal to the average annual load estimated to be occurring on the power lines within ten (10) years after the proposed facility is put in operation;

(iii) if there is an "existing condition" with the circuit phase currents equal to the average annual load estimated to be occurring on the existing power lines within the right-of-way (without construction or operation of the proposed facility);

(4) provide a demonstration that the proposed facility will conform with the applicable electric and magnetic field standards established by the Public Service Commission. If the proposed facility cannot conform with the applicable electric and magnetic field standards established by the

Public Service Commission, provide an explanation and justification of such exceedance.

Section 1102-2.27. Exhibit 27: Decommissioning and Site Restoration.

Exhibit 27 shall contain a Preliminary Decommissioning and Site restoration Plan consistent with the requirements in section 1102-3.4(ad) of this Part.

Section 1102-2.28. Exhibit 28: Local Laws and Ordinances.

Exhibit 28 shall contain:

(a) A list of all local ordinances, laws, resolutions, regulations, standards, and other requirements adopted and in effect prior to the date of the notice of the filing of an application and applicable to the proposed facility, together with a statement that the location of the facility as proposed conforms to all such local substantive requirements, except any that the applicant requests that the office elect not to apply because, as applied to the proposed facility, such local substantive requirement is unreasonably burdensome in view of the CLCPA targets, and the environmental benefits of and the public need for the proposed project. Such list shall include:

(1) A table summarizing all local requirements containing:

(i) the local requirement, including proper citation to the local ordinance, law, resolution, regulation, standard, or other requirement;

(ii) an indication of whether the requirement is procedural or substantive; and

(iii) an indication of the degree of compliance with, or the scope of relief requested from, any substantive requirements.

(2) A statement identifying the public entity or entities that are responsible for administration and enforcement of the New York State Uniform Fire Prevention and Building Code, the Energy Conservation Construction Code of New York State, and the substantive provisions of any applicable

local electrical, plumbing, fire, or building code. The statement should identify any local government that has declined responsibility for the Uniform Code and Energy Code pursuant to 19 NYCRR section 1202.1, and whether the responsibility falls with the county in which the local government is located or with the State.

(3) A statement indicating whether the municipality is a Municipal Separate Storm Sewer System jurisdiction.

(b) A list of all local substantive requirements identified pursuant to subdivision (a) of this section for which the applicant requests that the office elect to not apply to the facility. Pursuant to Public Service Law article VIII, the office may elect to not apply, in whole or in part, any local law or ordinance that would otherwise be applicable if it makes a finding that, as applied to the proposed facility, it is unreasonably burdensome in view of the CLCPA targets, and the environmental benefits of and the public need for the proposed facility. For each local substantive requirement identified by the applicant, 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 facility, that the request is the minimum necessary, and that the adverse impacts of granting the request shall be mitigated to the maximum extent practicable consistent with applicable requirements set forth in this Part. If applicable, the statement may include a demonstration:

(1) for requests grounded in the existing technology, that there are technological limitations (including governmentally imposed technological limitations) related to necessary facility component bulk, height, process or materials that make compliance by the applicant technically impossible, impractical or otherwise unreasonable;

(2) for requests grounded in factors of costs or economics (likely involving economic modeling), that the costs to consumers associated with applying the identified local substantive requirements would outweigh the benefits of applying such provisions; and

(3) for requests grounded in the needs of consumers, that the needs of consumers for the facility outweigh the impacts on the community that would result from refusal to apply the identified local substantive requirements.

(c) Copies of zoning, flood plain and similar maps, tables, and/or documents shall be included in the exhibit when such are referenced in such local substantive requirements.

(d) Copies of the documents constituting the comprehensive plan shall be included in the exhibit when such plan is referenced in such local substantive requirements.

Section 1102-2.29. Exhibit 29: Other Permits and Approvals.

Exhibit 29 shall contain:

(a) A list of any State, Federal (or federally-delegated), or Federal or State recognized Indigenous Nation, permit, consent, approval, or license, including any permit or approval required by local flood plain management regulations adopted pursuant to the National Flood Insurance Program, that may be required for the construction or operation of the facility, which shall specify the date on which an application for any such approval was made or the estimated date on which it will be made. The applicant shall notify the office of any significant change in the status of each application.

(b) A statement as to whether the applicant has awareness of publicly available information as to persons or entities who have any pending applications or filings for any State, Federal, federally-delegated, Federal or State recognized Indian Nation, or local permit, consent, approval, or license, including any permit or approval required by local flood plain management regulations adopted pursuant to the National Flood Insurance Program, which concerns the facility. If any such applications or filings are identified, the applicant shall indicate whether the granting of any such application or filing will have any effect on the grant or denial of a siting permit, and whether the grant or denial of a siting permit will have any effect upon the grant or denial of any such other application or filing. The applicant shall notify the office of any significant change in the status of each such

application or filing.

Subpart 1102-3. Electric Transmission Facility Uniform Standards and Conditions.

Section 1102-3.1. Facility authorization.

(a) *Compliance.* The permittee is authorized to construct and operate the facility as described in the application and as clarified by the permittee's subsequent filings and any approved amendments or modifications, except as waived, modified, or supplemented by this permit or other permits. The permittee shall implement any impact avoidance, minimization, and/or mitigation measures identified in the exhibits, compliance filings, and/or contained in a specific plan required under this Part, as approved by the office. In case of any discrepancy between an exhibit or compliance filing and a permit condition, the permittee shall comply with the permit condition and notify the office immediately for resolution.

(b) *Property rights*. Issuance of a siting permit does not convey any rights or interests in public or private property. The permittee shall be responsible for obtaining all real property, rights-of-way (ROW), access rights and other interests or licenses in real property required for the construction and operation of the facility.

(c) *Eminent domain*. For a permittee organized as an Electric Corporation under the Transportations Corporation Law, the permittee shall not commence construction, nor shall any party commence any proceedings under the Eminent Domain Procedure Law to acquire permanent right-of-way (ROW), temporary ROW, or off-ROW access, until the office has approved the EM&CP. To calculate the three-year period for acquisition of property pursuant to the Eminent Domain Procedure Law, the date of the office approval of the EM&CP covering the affected parcel shall be regarded as the date on which this Article VIII proceeding was completed.

(d) *Other permits and approvals*. Prior to the permittee's commencement of construction and consistent with section 1102-4.4(a) of this Part, the permittee shall be responsible for obtaining all necessary Federal and federally-delegated permits and any other approvals that may be required for the facility and which the office is not empowered to provide or has expressly

authorized. In addition, the office expressly authorizes:

(1) the PSC to require approvals, consents, permits, or other conditions for the construction or operation of the facility under PSL sections 68, 69, 70, as applicable, with the understanding that the PSC will not duplicate any issue already addressed by the office, will only act on its police power functions related to the entity as described in the body of this siting permit, and will retain the authority to authorize the exercise or expansion of franchise rights; provided however that the verified statement of the president and secretary of the corporation showing that it has received the required consent of the proper municipal authorities shall be limited to agreements related to franchise rights. All other agreements with municipal authorities shall be submitted to the office and shall not be subject to review under PSL section 68;

(2) the NYSDOT or other pertinent State agency or authority to require or administer permits associated with oversize/overweight vehicles and deliveries, highway work permits, and associated use and occupancy approvals as needed to construct and operate the facility;

(3) the city, town, village, county, or State agency or authority to be responsible for administration and enforcement of the New York State Uniform Fire Prevention and Building Code (Uniform Code), or other applicable local fire or building code, and State Energy Conservation Construction Code (State Energy Code), or other applicable local energy conservation construction code, with respect to the proposed facility;

(4) the pertinent agency to implement any applicable State law for the protection of employees engaged in the construction and operation of the project;

(5) the permittee shall file copies of all Federal and federally-delegated permits and approvals required for construction and operation of the facility, as well as any other permits and approvals which the office is not empowered to provide, consistent with section 1102-4.4(a) of this Part. The permittee shall inform the pertinent permitting agency of

any changes in the design of the project that have the potential to impact an issued permit or authorization and shall file a copy of such correspondence with the office. The permittee shall file with the office a copy of any amendments or modifications for any permits or authorizations within fifteen (15) days of issuance.

(e) *Water quality certification*. Prior to commencing construction, the permittee shall request and obtain from the office a water quality certification pursuant to section 401 of the Clean Water Act, if required.

(f) *Notice to proceed with construction*. The permittee and its contractors shall not commence construction until a "Notice to Proceed with Construction" or "Conditional Notice to Proceed with Construction" (NTP) has been issued by the office. Such NTP will be issued after all applicable pre-construction compliance filings have been filed by the permittee and approved by the office.

(g) *Project Phasing or Segmenting Plan.*

(1) The permittee may request phased construction by submitting a comprehensive Project Phasing or Segmenting Plan, including a detailed narrative of the scope of work, and anticipated EM&CP contents for each phase or segment, in consultation with the office.

(2) To receive NTP approval for any phase, the permittee shall have submitted to the office all applicable pre-construction EM&CP filings consistent with the Project Phasing Plan.

(h) *Expiration*. The siting permit will automatically expire if the facility does not achieve commencement of commercial operation within five (5) years from the date of issuance.

(i) *Partial cancellation*. If the permittee decides not to commence construction of any portion of the facility, it shall so notify the office in writing within thirty (30) days after making such decision. Such decisions shall not require a modification to the siting permit unless the office determines that such change constitutes a major modification to the siting permit pursuant to

section 1100-11.1 of this Title.

(j) *Deadline extensions*. The office may extend any deadlines established by the siting permit for good cause shown. Any request for an extension shall be in writing, include a justification for the extension, and be filed at least fourteen (14) days prior to the applicable deadline. The office may decline to consider any request for extension received less than fourteen (14) days prior to applicable deadline.

(k) *Force majeure*. Notwithstanding other conditions in the siting permit to the contrary, following receipt of an NTP, during unforeseen circumstances the permittee may conduct limited construction, operations, and maintenance activities, where and when otherwise prohibited, only as necessary to protect human life or to meet FERC, NERC, NYISO, NPCC, NYSRC, and PSC (or their successor organizations) reliability standards. If the permittee intends to conduct or has conducted otherwise prohibited construction, operations, or maintenance activities pursuant to this paragraph, the permittee must inform office staff as soon as possible and provide a written description of the activities performed and the justification for such activities, within two business days following the initiation of such activities. Upon protecting human life or meeting the reliability standards, the permittee shall cease all prohibited construction, operation, and maintenance activities.

(l) *Enforcement authority*. The permittee shall regard the office and NYSDPS staff, authorized pursuant to PSL sections 66(8) and 144(4), as the office's representatives in the field. In the event of any emergency resulting from the specific construction or maintenance activities that violate, or may violate, the terms of the siting permit, compliance filings, or any other supplemental filings, such Staff may issue a stop work order for that location or activity pursuant to section 1100-12.1 of this Title.

Section 1102-3.2. Notifications.

(a) *Pre-Construction notice methods*. At least fourteen (14) business days prior to the permittee's commencement of construction date, the permittee shall notify the public as follows:

(1) provide notice on the facility's website;

(2) provide notice to all persons who own and/or reside on properties within or adjacent to the right-of-way by first class mail;

(3) provide notice to municipal officials and emergency personnel along the entire facility route via electronic or first class mail;

(4) publish notice in print or electronic form in the newspapers specified in section 1100-1.6(c)(2) of Part 1100 of this Title; and

(5) provide notice to municipalities and Indigenous Nations as applicable, that may be displayed in public places, such as municipal offices, libraries, and post offices.

(6) *Proof of notice to office.* At least fourteen (14) business days prior to commencement of construction, the permittee shall file with the office an affirmation that it has provided the notifications required by subdivision (a) of this section and include a copy of the notice(s), as well as a distribution list.

(b) *Mariner notification*. If applicable, at least thirty (30) days prior to the commencement of in-water construction, the permittee will consult with the United States Coast Guard (USGC) Waterways Management Office regarding the details of its final construction plans, including the submarine cable route, construction sequence, rate of movement of its vessels, and schedule of time frames for specified waypoints or locations. Additionally:

(1) The permittee will communicate this information to other applicable in-water users identified in the approved Mariner Notification and Communications Plan required in section 1102-4.4(y) of this Part.

(2) All subsequent changes to the planned route or construction schedule will be communicated immediately to the USCG's Waterways Management Office and applicable in-water users.

(3) *Construction notice.* The permittee shall inform the office, NYSDEC and, where applicable, the APA, at least five (5) days before commencement of construction of the project.

(c) *Post-construction notice.* Within ten (10) days of the completion of final project site restoration, the permittee shall file such notice with the office that all such restoration has been completed in compliance with the siting permit and applicable compliance filings.

(d) *In-service notice*. Within ten (10) days after the project is placed in service, the permittee shall provide notice to the office and entities identified in paragraphs (a)(1)-(6) of this section, along with the contact name, telephone number, email, and mailing address of the facility operations manager, as well as all information required in paragraphs (e)(1)-(2) and (4)-(7) of this section.

(e) *Contents of notice.* The permittee shall write the notice(s) required in subdivision (a) of this section in plain language reasonably understandable to the average person and shall ensure that the notice(s) contain(s):

(1) a map of the facility including an overlay on a NOAA chart for the in water portion;

(2) a brief description of the facility;

(3) the construction schedule and transportation routes;

(4) the name, mailing address, local or toll-free telephone number, and email address of the appropriate facility contact for development, construction, and operations;

(5) the procedure and contact information for registering a complaint consistent with section 1102-4.3(s) of this Part;

(6) contact information of the office;

(7) the facility website; and

(8) a list of public locations where information on the facility, construction, and the permittee will be available.

Section 1102-3.3. General requirements.

(a) *Local laws*. The permittee shall construct and operate the facility in accordance with the substantive provisions of the applicable local laws as identified in section 1102-2.28 of this Part, except for those provisions of local laws that the office determines to be unreasonably burdensome, as stated in the siting permit.

(b) *Federal requirements*. The permittee shall construct and operate the facility in a manner that conforms to all applicable Federal and federally-delegated permits identified in section 1102-2.29 of this Part. If facility plans require modifications due to conditions of Federal permits, the relevant final design drawings and all applicable compliance filings shall be revised accordingly and submitted for review and approval pursuant to section 1100-11.1 of this Part.

(c) *Traffic coordination.* The permittee shall coordinate with State, county, and local highway agencies and authorities for traffic management of roads under each respective jurisdiction that will be crossed by the project or used for direct access to the project area, and school districts potentially affected by the project.

(1) The permittee shall respond to and apply applicable traffic and parking control measures to any locations that may experience any traffic flow or capacity issues due to the project including spillback effects on side streets.

(2) The permittee shall notify each relevant agency or district of the approximate date when use of its road(s) will begin and the anticipated duration of use.

(3) The NYSDOT, NYSTA, or other jurisdictional roadway owners, shall have authority to place inspectors on site to monitor and observe the permittee's activities on State highways and local roads, or to request the presence of State or local police to ensure the safety of highway travelers, at such times and for such periods as such agencies deem

appropriate. All costs thereof shall be borne by the permittee.

(d) *Repair of damages*. The permittee shall repair any damages that occur as a result of project activities in a manner consistent with the approved EM&CP and any other applicable permits, including:

(1) restoration of damaged roadways to, at a minimum, pre-existing conditions;

(2) restoration of disturbed pavement, curbs, and sidewalks to, at a minimum, pre-existing conditions;

(3) checking all culverts and assuring they are not crushed or blocked during construction and restoration of the facility. If a culvert is blocked or crushed, or otherwise damaged by construction or maintenance activities, the permittee shall repair the culvert or replace it with alternative measures appropriate to current construction and design standards, maintaining proper drainage, embedment, and aquatic connectivity as required by section 1102-3.4(q)(6) of this Part, and in accordance with stormwater management provisions;

(4) conducting an assessment of the need for landscape and agricultural restoration to return areas inadvertently damaged to, at minimum, their pre-existing conditions, including vegetation planting, earthwork, or installed features that provided screening of facility road crossings, residential areas, and substations.

(e) *Site Security Plan*. The permittee shall submit a Site Security Plan consistent with section 1102-2.8(b) of this Part, upon the completion of any site security audit or other review requiring revisions to the approved Site Security Plan, pursuant to the procedures set forth in section 1100-11.1 of this Title.

Section 1102-3.4. Facility construction and maintenance.

(a) *Construction hours.* Construction and routine maintenance activities at the facility shall be limited to 7 a.m. to 7 p.m. Monday through Saturday, except deliveries, which may occur

during extended hours on an as-needed basis. Extended hours includes work before 7 a.m. and after 8 p.m., on Sundays, and on the following State and Federal Holidays: Independence Day, Thanksgiving Day, Christmas Day, and New Year's Day.

(1) Construction work hour limits apply to facility construction and construction related activities; routine maintenance; maintenance and repairs of construction equipment at outdoor locations; large vehicles idling for extended periods at roadside locations; and related disturbances. This condition shall not apply to vehicles used for transporting construction or maintenance workers, small equipment, and tools used at the facility site for construction or maintenance activities.

(2) If, due to safety, planned outage restrictions, or continuous construction or operation requirements, construction activities are required to occur beyond the allowable work hours, the permittee shall notify the office, affected landowners, and affected municipalities. Such notice shall be given at least twenty-four (24) hours in advance of such activities, unless such construction activities are required to address emergency situations threatening personal injury, property, or severe adverse environmental impacts that arise less than twenty-four (24) hours in advance. In such cases, as much advance notice as is practical shall be provided.

(3) Unless otherwise directed by the office, the permittee may proceed with the construction activities beyond the allowable work hours following the required notice period described above and in accordance with the approved schedule.

(b) *Environmental and agricultural monitoring.*

(1) The permittee shall retain an independent, third-party environmental monitor(s) to oversee compliance with environmental commitments and siting permit requirements. The environmental monitor(s) shall satisfy the qualifications of a "qualified inspector" pursuant to the State Pollutant Discharge Elimination System Construction General Permit (SPDES Construction General Permit). The environmental monitor(s) shall perform regular site inspections of

construction work sites and, in consultation with the office, issue regular reporting and compliance audits.

(2) When project activities will occur within land used in agricultural production, the permittee shall also retain an independent, third-party agriculture-specific environmental monitor as required in section 1102-3.4(ab) of this Part. The environmental monitor in paragraph (1) of this subdivision may serve as the agricultural monitor, if qualified.

(3) When project activities will occur in aquatic environments, an additional environmental monitor(s) shall be retained for the duration of all in-water work if such work is undertaken simultaneously with onshore and/or interconnection construction activities (aquatic environmental monitor). The same inspector shall not be assigned to both in-water and on-land activities, simultaneously.

(4) For projects with an in-water component within the marine and coastal district, permittee shall also retain one (1) independent, third-party fishing interest monitor (fishing monitor) who will be on-site during in-water construction activities.

(5) The aquatic environmental monitor shall be present on-site during activities within and above New York State Waters.

(6) At least fourteen (14) days prior to the start of construction the permittee shall identify and provide the following information to the office:

(i) qualifications, contact information, and organization structure, including specific names, duties, and responsibilities for all independent, third-party monitor(s);

(ii) statement confirming independence of the monitor(s) from the permittee.

(7) The office may disqualify any independent third-party monitor or monitoring staff. Any monitor or monitoring staff disqualified by the office shall be promptly substituted.

(8) The monitor(s) shall be authorized to access all facility areas and communicate directly with office staff.

(9) The environmental monitor(s) shall have stop work authority over all aspects of the facility. Any stop work orders shall be limited to affected areas of the facility.

(10) The permittee shall ensure that all independent monitors are equipped with sufficient access to documentation, transportation, and communication equipment to effectively monitor the permittee's compliance with the provisions of the siting permit with respect to such permittee's facility components and to applicable sections of the Public Service Law, Executive Law, Environmental Conservation Law, the Clean Water Act Section 401 Water Quality Certification, and any other laws administered by the office. Additional monitors or monitoring staff shall be retained as determined necessary by the permittee or the office to assure protection of resources and adequate compliance oversight. During periods of relative inactivity on the project, after consultation with and approval from the office, the permittee may temporarily decrease the number of hours worked by monitors and the extent of their presence at the project site commensurate with the decline in project activity.

(c) *Pre-Construction meeting.* At least fourteen (14) days before the commencement of construction, the permittee shall hold a pre-construction meeting with office staff and NYSDPS, to which the permittee shall invite NYSDEC, NYSAGM, NYSDOT, NYSTA (where applicable), NYSDOS (where applicable), APA (if applicable), municipal supervisors/mayors and highway departments, county highway departments, the POI utility owner, and other entities as required by the office. The construction supervisor, agricultural monitor (if applicable), environmental monitor, aquatic environmental monitor (if applicable), and fishing monitor (if applicable) shall be required to attend the pre-construction meeting. For the pre-construction meeting:

(1) an agenda, location, and an attendee list shall be

agreed upon between office staff and the permittee and distributed to the attendee list at least ten (10) days prior to the meeting;

(2) maps showing designated travel routes, construction worker parking, and access road locations, and a general facility schedule shall be distributed to the attendee list at least ten (10) days prior to the meeting;

(3) the permittee shall supply draft minutes from the meeting to the attendee list for corrections or comments, and thereafter the permittee shall issue the finalized meeting minutes; and

(4) if, for any reason, the project contractors cannot finish the construction of the facility, and one (1) or more new contractors are needed, there shall be another pre-construction meeting with the same format as outlined in this section.

(d) *Contractor notification*.

(1) The permittee shall provide all project contractors with complete copies of the siting permit, the approved EM&CP and compliance filings, approved changes to the EM&CP and compliance filings, Notices to Proceed issued for the project, any site-specific plans, any executed crossing agreements (including associated details and drawings exhibiting construction provisions and measures to be implemented for protection of existing utilities), the SWPPP, the SPDES Construction General Permit and/or SPDES Individual Permit applicable the project, any permit issued pursuant to section 404 of the Federal Clean Water Act, and the Section 401 Water Quality Certification. To the extent that the listed documents are available before contracts for construction services are executed, such copies shall be provided by the permittee to its contractors prior to the execution of such contracts.

(2) The permittee shall notify its contractors that the office may seek to recover penalties for any violation of the siting permit, approved EM&CP and compliance filings, and Notices to Proceed. The office may seek to recover such

penalties from the permittee and its contractors, and contractors may also be liable for additional fines, penalties, and environmental damage.

(e) *Construction reporting and inspections*. During facility construction, the permittee shall report construction status and support inspections as follows:

(1) Every two (2) weeks by electronic mail, the permittee shall provide office staff and the host municipalities with a report summarizing the status of construction activities, and the schedule and locations of construction activities for the next two (2) weeks. The office may require interim reports regarding the progress of construction.

(2) Prior to entry onto the facility site for on-site inspections, the permittee shall conduct a tailgate meeting to communicate required safety procedures and worksite hazards to site inspectors.

(3) The permittee shall review the following during a monthly meeting with the office and other involved agencies, and at other times as may be determined by office staff:

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

(ii) field reviews of the facility site;

(iii) actual or planned resolutions of complaints;

(iv) significant comments, concerns, or suggestions made by the public, municipalities, or other agencies with an explanation of how the permittee has responded to the public, local governments, or other agencies;

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

(vi) any other items the permittee or office staff consider appropriate.

(4) Within five (5) business days after every monthly compliance meeting, the permittee shall provide the office, other involved agencies, and host municipalities (if requested), with written meeting minutes and a written summary of the results of any inspections completed during the past month, including resolution of issues and additional measures to be taken. Copies of the reporting and compliance audits shall be provided to the host municipality(ies) upon request.

(f) *Report of accidents*. As soon as possible, but in any event no later than twenty-four (24) hours, the permittee shall report to the office:

(1) Any damage to public or private property, damage to equipment, or damage to any sensitive resource incurred as a result of project activities.

(2) Any Occupational Safety and Health Administration (OSHA)-recordable construction accident in connection with work on the project. A copy of the accident report shall be provided to the office after it has been finalized.

(g) *Flagging.* At least two (2) weeks before tree clearing or ground disturbing activities, the permittee shall delineate both edges of the project right-of-way (ROW) in areas in which clearing will be undertaken, and identify and mark any known danger trees to be removed in such area for review and acceptance by office staff. The permittee shall stake or flag all on or off-ROW access roads, limits of clearing, and other areas needed for construction, including, but not limited to: structure work areas, proposed infiltration areas for post-construction stormwater management, and laydown and storage areas. The permittee shall mark any environmentally sensitive area (ESA) with colored flagging, "protected area" signs, or erosion and sediment control measures specified by the Stormwater Pollution Prevention Plan, including the boundaries of any State-regulated wetlands, waterbodies, or streams and associated adjacent areas in the limits of disturbance (as identified and approved by the office pursuant to sections 1102-1.1(a) and 1102-4.4(e) of this Part), NYS threatened or endangered species or species of special concern areas, and any known archeological sites identified in

the approved Cultural Resources Avoidance, Minimization and Mitigation Plan required in section 1102-4.4(o) of this Part. In addition, archeological sites and ESAs where no construction is planned shall be surrounded with construction fencing and a sign stating, "No Equipment Access." Staking in agricultural areas shall be coordinated with farm operations through the agricultural monitor.

(h) *UDig*. Prior to the commencement of construction, the permittee shall become a member of UDig New York. The permittee shall require all contractors, excavators, and operators associated with its facilities to comply with the requirements of the PSC's regulations regarding the protection of underground facilities at Part 753 of this Title.

(i) *Co-located infrastructure.* The permittee shall engineer, construct, and install the facility to make it fully compatible with the continued operation and maintenance of co-located infrastructure (CI), as defined in section 1100-1.2(m) of this Title, and affected railroads, railways, highways, roads, streets, or avenues, except as approved in the EM&CP and Interconnection Agreement. To protect CI, the permittee shall:

(1) within sixty (60) days of issuance of the siting permit, consult with the owners and/or operators of all known CI and appurtenant facilities and associated equipment, whether above ground, below ground or submerged, other than railroads, railways, highways, roads, streets and avenues, located either: (i) within the facility corridor, (ii) within three hundred (300) feet of any location outside the facility corridor where the permittee intends to undertake any pre-construction activities; or (iii) sufficiently close to areas of anticipated pre-construction activities such that Good Utility Practice, as defined in the NYISO Open Access Transmission Tariff (OATT) and as required by applicable utility specifications or requirements, requires discussion of the impacts of such preconstruction activities between the permittee and the owners and/or operators of such facilities (potential CI). Such consultations shall include discussion of the routing of the facility and the measures that will be employed by the permittee to protect CI, including the studies required by the exercise of Good Utility Practice

regarding the manner in which the facility will be designed and installed wherever they are expected to cross CI or are expected to come in such proximity to CI that Good Utility Practice would require a specific design to be developed. All agreements, letter of no objection, and requirements resulting from this consultation shall be reflected in the proposal prescribed in paragraph (4) of this subdivision and the notice prescribed in paragraph (5) of this subdivision;

(2) within sixty days (60) of the issuance of the siting permit, begin the process of consulting with the owners and/or operators of potential CI to develop a construction schedule for the facility that, among other things, coordinates any system outage requirements, and avoids conflicts with the internal construction programs of each affected owner and/or operator. This consultation shall continue throughout each phase and portion of the construction of the facility that affects any CI or potential CI, as applicable. As a part of this consultation, the permittee will identify, to a reasonable degree of certainty, the appropriate representative of the party, whether the owner or operator, having primary care, custody, and control of a particular segment of potential CI or CI (each such representative being a "designated representative"). All agreements, letter of no objection, and requirements resulting from this consultation shall be reflected in the proposal prescribed in paragraph (4) of this subdivision and the notice prescribed in paragraph (5) of this subdivision and in the permittee's EM&CP;

(3) comply with all procedures identified by the designated representative(s) of the owners and/or operators of such CI or potential CI, including, application procedures and compliance with requirements for obtaining relevant rights, permission, permits, or authorization, whenever the permittee seeks to undertake any studies, surveys, testing, sampling, preliminary engineering, pre-construction, construction, operation, maintenance, or repair activities that involve CI or potential CI, except in cases where such actions must be taken on an expedited basis to protect the public or to ensure reliable operation of the facility. In such cases, the permittee shall provide such designated representative(s) with such notice and obtain such approvals as the office, in

consultation with NYSDPS, finds is reasonable under the circumstances, except where such procedures are subject to the commission's jurisdiction and the commission objects. Notwithstanding the foregoing, the permittee shall not be required to comply with the requirements of this section for the transport or travel over or under CI or potential CI by the permittee and its agents, employees, and contractors where such CI or potential CI is located in, over, or under public waterways, roads, streets, highways, or railroad ROW, unless such transportation would be subject to special approval by State and/or local authorities due to the size or weight of load(s) transported;

(4) provide owners and/or operators of potential CI or CI, at least one hundred-and-eighty (180) days prior to the filing of the relevant EM&CP, a proposal for the location and design of the facility (including a proposed construction area) and the methods of construction to be employed with respect to all locations involving CI (Proposal). The permittee's proposal must include all studies, calculations, tests, results, explanations, protocols, drawings, proposed construction schedules, and documents developed through the consultations described in paragraphs (1) and (2) of this section, other documentation identified in this section, and any other information that supports the proposal. To the extent that any such proposal addresses CI that was not previously identified as potential CI, the permittee shall conduct the consultations described in paragraphs (1) and (2) of this section with the designated representative(s) of the owner(s) or operator(s) of such CI and shall perform all other activities required by such paragraphs with respect to such CI in as reasonably expeditious a manner as possible and shall provide any resulting studies, calculations, tests, results, explanations, protocols, drawings, proposed construction schedules, and documents to the appropriate Designated Representative in a timely fashion; and

(5) advise owners and/or operators of CI at least thirty (30) days prior to commencing any planned repair, construction, operation, or maintenance activity relating to the facility affecting or occurring in the vicinity of such owner's or operator's CI, unless such actions must be taken in less than thirty (30) days to protect the public or to

ensure reliable operation of the facility, whereupon the permittee shall provide such notice as is reasonable under the circumstances. "Vicinity" with respect to CI used to transmit or distribute natural gas shall mean all areas within two hundred (200) feet thereof and with respect to all other CI shall mean all areas within one hundred (100) feet thereof;

(6) immediately upon knowledge or discovery of any damage to or adverse effect on any CI or potential CI resulting from any activities related to the facility, report to the owners and/or operators of the affected CI or potential CI the nature and existence of such damage or effect and other known facts relating to the cause thereof; and

(7) notify the owners or operators of CI or potential CI as soon as possible, in the event of any situation involving imminent risk to health, safety, property, or the environment requiring the permittee to cross such CI or potential CI, or to use any associated property to address the emergency. Such notice shall not be required for the transport or travel over or under CI or potential CI by the permittee or its agents, employees, or contractors where such CI or potential CI is located in, over, or under public waterways, roads, streets, highways, or railroad ROW unless such transportation would be subject to special approval by State and/or local authorities due to the size or weight of load(s) transported.

(8) If, despite all commercially reasonable efforts: (a) the permittee cannot identify the owners and/or operators of affected CI, or in the event such owners and/or operators of affected CI are unresponsive and, (b) due to the fact that the CI owner is unknown or unresponsive, the permittee cannot provide the agreement required under paragraphs (1) and (2) of this subdivision, then the permittee shall file with the office, at least ten (10) days prior to requesting a Notice to Proceed with construction of any such crossing, a narrative describing efforts made in attempting to contact such unknown or unresponsive CI owners and/or operators (Unknown or Unresponsive CI Owner Crossings). The permittee shall also provide an attestation indicating that such crossings have been designed by a professional engineer, along with copies of proposed standard pre- and post-

installation utility protection measures to be implemented in connection with the Unknown or Unresponsive CI Owner Crossing. The standard utility protection measures to be implemented by the permittee shall be substantially similar to those used for other utilities of the same utility type (telecommunications, gas, electric, etc.) in a materially similar environment (marine, rural or urban terrestrial setting, etc.). Provided that the permittee can demonstrate that they have exhausted all commercially reasonable efforts to identify and/or engage Unknown or Unresponsive CI Owners, the office may issue a Notice to Proceed authorizing the permittee to proceed with standard utility protection measures at Unknown or Unresponsive CI Owner Crossings.

(9) If a previously Unidentified CI is encountered during construction, the permittee shall implement commercially reasonable efforts to identify the owner and operational status of the facility. In the event that, subsequent to a submittal pursuant to section 1102-3.4(j)(8) of this Part , a previously Unidentified CI is encountered for which the operational status is determined to be active or for which such status cannot be otherwise verified with supporting documentation, or a previously Unknown or Unresponsive CI Owner is identified or comes forward, the permittee shall notify the office within twenty-four (24) hours and may, at the permittee's discretion, or shall, if directed by the office, consult with that CI Owner to obtain an agreement or letter of no objection regarding the sufficiency of utility protection measures installed at the crossing in question. Any such agreement or letter of no objection shall be filed with the office.

(j) *Oil and natural gas wells.*

(1) Where an ECL article 23 regulated oil or natural gas well is known or suspected to exist within one hundred (100) feet of areas to be disturbed, or for any proposed facility located within NYSDEC regions 7, 8, or 9, the permittee shall, at the direction of the office, conduct a survey to determine whether any such wells are located within one hundred (100) feet of areas to be disturbed, using a survey methodology authorized by the office. The results of the

survey shall be reported in the EM&CP, as required pursuant to section 1102-4.3((a) of this Part.

(2) If previously unknown oil or natural gas wells are discovered within the facility corridor during construction of the facility, the permittee shall immediately cease construction activities in the immediate area surrounding the well and shall notify and consult with the office and NYSDEC Division of Mineral Resources, Regional Minerals Manager for the applicable region, to determine what, if any, measures must be implemented.

(k) *Pole numbering*. The permittee shall comply with all requirements of the PSC's regulations regarding identification and numbering of above ground utility poles at Part 217 of this Title.

(l) *Air emissions.* To minimize air emissions during construction, the permittee shall:

(1) prohibit contractors from leaving generators idling when electricity is not needed and from leaving diesel engines idling when equipment is not actively being used;

(2) implement dust control procedures to minimize the amount of dust generated by construction activities in a manner consistent with the requirements of section 1102-4.2(m) of this Part and the Standards and Specifications for Dust Control, as outlined in the New York State Standards and Specifications for Erosion and Sediment Control (see section 1100-17.1(i)(1)(i) of this Title);

(3) use construction equipment powered by electric motors where feasible, or by ultra-low sulfur diesel; and

(4) dispose of or reuse cleared vegetation to minimize greenhouse gas emissions (e.g., lumber production or composting).

(m) *Construction noise*. To minimize noise impacts during construction, the permittee shall:

(1) Implement noise or vibration mitigation measures associated with specific construction activity(ies) as identified in the application or EM&CP on or before the start of such activity(ies).

(2) Maintain functioning mufflers on all transportation and construction machinery.

(3) Promptly address any noise and vibration complaints. Inform the office within 48 hours of receipt of such complaints that have not yet been resolved.

(n) *Visual resources management.* The permittee shall implement the approved Visual Resources Management Plan (VRMP) required in section 1102-4.4(p) of this Part and shall ensure consistency between the VRMP, the final design drawings, and construction and vegetation management measures specified in the EM&CP.

(o) *Limits of disturbance (LOD).* Construction shall not directly disturb areas outside the construction limits shown on the design drawings.

(p) *Blasting*. Blasting shall be designed and controlled to meet the limits for ground vibration set forth in United States Bureau of Mines Report of Investigation 8507 Figure B-1 (see section 1100- 17.1(k)(1)(i) of this Title) and air overpressure shall be under the limits set forth in the Conclusion Section in United States Bureau of Mines Report of Investigation 8485 (USBM RI 8507 and USBM RI 8485 (see section 1100-17.1(k)(1)(ii) of this Title) to protect structures from damage.

(1) Blasting shall be prohibited within five hundred (500) feet of any known existing, active water supply well or water supply intake.

(2) For in-water projects, blasting must be avoided to the greatest extent practicable. If blasting cannot be avoided, the permittee must provide a written analysis of all other options considered to the office.

(3) No blasting may occur within distances identified in approved NCBPs for listed species.

(4) Blasting times shall be limited to 9:00 a.m. to dusk on non-holiday weekdays, unless otherwise approved by the office consistent with section 1102-3.4(a)(2) of this Part.

(5) Where blasting will occur in agricultural areas, the permittee shall ensure that:

(i) in agricultural areas of till over bedrock, matting or controlled blasting shall be used to limit the dispersion of blast rock fragments;

(ii) all blasted rock not used as backfill shall be removed from croplands, haylands, and improved pastures; and

(iii) the till and topsoil shall be returned in sequence to restore the soil profile.

(6) Blasting operations in locations where geotechnical investigations confirm the presence of subsurface karst features shall be limited or performed under specific procedures recommended for those locations by a geotechnical engineer licensed to practice in the State of New York.

(q) *Erosion and sedimentation materials.* Permanent erosion control fabric or netting used to stabilize soils prior to establishment of vegetative cover or other permanent measures shall be one hundred (100) percent biodegradable natural product, excluding silt fence and geotextile used for road construction. Use of hay for erosion control or other construction-related purposes is prohibited.

(r) *Petroleum and hazardous substances*. Consistent with section 1102-2.15(d) of this Part:

(1) All hazardous chemicals and waste shall be secured in a locked and controlled area.

(2) All construction vehicles and equipment shall be equipped with a spill kit. All equipment shall be inspected daily for leaks of petroleum, other fluids, or contaminants; equipment may only enter a stream channel if found to be free of any leakage. Any leaks shall be stopped and cleaned up

immediately.

(3) Field personnel and contractors shall be trained in spill response procedures, including the deployment and maintenance of spill containment and response materials, which shall be readily available on-site.

(4) Spillage of fuels, waste oils, other petroleum products or hazardous materials shall be reported to the NYSDEC's Spill Hotline within two (2) hours of discovery, in accordance with the NYSDEC Spill Reporting and Initial Notification Requirements Technical Field Guidance (see section 1100-17.1(i)(1)(iii) of this Title). The office shall also be notified of all reported spills in a timely manner, generally, upon discovery to within 2 hours depending on substance.

(5) The permittee shall keep local fire department and emergency management teams apprised of on-site hazardous chemicals and waste.

(s) *Construction debris*. Any debris or excess construction materials shall be removed to a facility or location legally authorized to receive such material. No burying or burning of construction debris or excess construction materials is allowed.

(t) *Clearing areas*. Tree and vegetation clearing shall be limited to the minimum necessary for facility construction and operation, and as detailed on approved final construction plans.

(u) *Clearing methods*. When conducting clearing, the permittee shall:

(1) leave stumps and root systems in place within fifty (50) feet of NYS-protected waterbodies, unless construction of an access road or work pad necessitates removal;

(2) comply with the provisions of 6 NYCRR Part 192, Forest Insect and Disease Control, and ECL section 9-1303 and any quarantine orders issued thereunder;

(3) not create a maximum wood chip depth greater than three (3) inches, except for chip roads (if applicable), nor store

or dispose wood chips within wetlands, stream banks, delineated floodways, active agricultural fields, or improved pasture;

(4) not dispose of vegetation or slash by burning or by burying within a wetland or adjacent area; and

(5) coordinate with landowners or wood processing businesses to salvage merchantable logs and fuel wood. Where merchantable logs and fuel wood will not be removed from the facility site during clearing activities, the final design drawings shall indicate locations of stockpiles to be established for removal from site or future landowner resource recovery.

(v) *Invasive insects*. To control the spread of invasive insects, the permittee shall provide training for clearing and construction crews to identify the Asian Longhorn Beetle, the Emerald Ash Borer, and other invasive insects of concern that pose a potential problem at the facility site. If these insects are found, they shall be reported to the NYSDEC as soon as practicable.

(w) *Water supply protection.*

(1) Provided the permittee is granted access by the property owner, the permittee shall engage a qualified third party to perform pre- and post- construction testing of the potability of water wells within the below specified distances of construction disturbance before commencement of construction and after completion of construction:

(i) major electric transmission components within one hundred (100) feet of an existing, active water supply well;

(ii) blasting within one thousand (1,000) feet of an existing, active water supply well; and

(iii)horizontal directional drilling operations within five hundred (500) feet of an existing, active water supply well.

(2) Should the third-party testing, as required by paragraph (1) of this subdivision, conclude that the water supplied by an existing, active water supply well met Federal (see section 1100-17.1(j)(1)(i) of this Title) and State standards for potable water (see 10 NYCRR Part 75, Appendix 75-c) prior to construction, but failed to meet such standards after construction as a result of facility activities, the permittee shall:

(i) immediately provide potable water in consultation with the property owner; and

(ii) in consultation with the affected property owner(s) and the office, develop and implement a plan to mitigate impacts to water supply wells as a result of construction.

(3) Pier and post driving activities shall be prohibited within one hundred (100) feet of any existing, active drinking water supply well, except for fence and utility poles.

(x) *Threatened and endangered species.*

(1) For facilities that would cause an adverse impact on NYS threatened or endangered species, or their habitat that results in a take determination, the permittee shall implement a final Net Conservation Benefit Plan (NCBP) that is approved by the office which shall include:

(i) an identification of each affected NYS threatened or endangered species for which mitigation was proposed, details regarding level of impact, and a demonstration that the NCBP results in a benefit for each of the affected species as defined by 6 NYCRR Part 182.2;

(ii) a detailed explanation of avoidance and minimization measures to be taken for each of the affected species;

(iii) amount of impact each mitigation measure is proposed to offset; as applicable, identifying either the number of individuals proposed to be mitigated, or

the number of acres proposed for mitigation;

(iv) full source citation information supporting a determination consistent with subparagraph (iii) of this paragraph as to the net conservation benefit for each of the affected species;

(v) a detailed description of the mitigation actions that will be undertaken by the permittee to achieve a net conservation benefit to the affected NYS threatened or endangered species. This shall include the methods of implementation, management, monitoring, and reporting, and may, if applicable, include payment of an approved mitigation fee into the Endangered and Threatened Species Mitigation Fund established pursuant to section 99(hh) of the New York State Finance Law. The office may give the permittee credit for any mitigation fee paid to another State or Federal agency or authority;

(vi) to the extent that physical mitigation will be performed, a letter or other indication of the permittee's financial and technical capability and commitment to fund such; and

(vii) an executed implementation agreement committing to implement required management, maintenance, and monitoring for the life of the siting permit.

(2) For facilities determined pursuant to the procedures set forth in section 1102-2.14 of this Part to have de minimis impacts to NYS threatened or endangered grassland birds, if an active nest is identified within the facility ROW prior to or during construction, and the facility results in adverse impacts to the nest or grasslands twenty-five (25) acres or more in size that are determined to be occupied habitat, then the permittee shall coordinate with the office and NYSDEC to adjust the limits of disturbance and/or adjust the construction schedule to avoid work in the area until nesting has been completed or the permittee shall pay into the Endangered and Threatened Species Mitigation Bank Fund the required mitigation fee commensurate with the acreage of mitigation that would be required for permittee-implemented grassland bird habitat conservation, calculated pursuant to subparagraph (ix) of paragraph (3) of this subdivision. The

office may give the permittee credit, in whole or in part, for any mitigation fee paid to another State or Federal agency or authority.

(3) For facilities that will have more than a de minimis impact on NYS threatened or endangered grassland birds, the permittee shall implement the following as part of the approved final NCBP:

(i) The permittee shall implement environmental monitoring immediately prior to and during construction in the occupied habitat to search for NYS threatened or endangered species occurrence based on the species' seasonal windows for presence.

(ii) If active nests of the NYS threatened or endangered species are found within the occupied habitat, then the permittee shall coordinate with the office to adjust the limits of disturbance and/or adjust the construction schedule to avoid work in the area until nesting has been completed.

(iii) To avoid direct impacts to NYS threatened or endangered grassland bird species, the following work windows apply for all ground disturbance and construction-related activities, including restoration and equipment/component staging, storage, and transportation, within occupied habitat:

(a) in NYS threatened or endangered grassland bird occupied breeding habitat, work shall be conducted only between August 16 and April 22;

(b) in NYS threatened or endangered grassland bird occupied wintering habitat, work shall be conducted only between April 1 and November 14;

(c) in areas of the facility where both breeding and wintering occupied habitat occurs, work shall be conducted only between August 16 and November 14, and between April 1 and 22.

(iv) If fields within identified occupied breeding habitat are planted with row crops (e.g., corn, beans, or vegetables) in the farming season prior to the commencement of facility construction and such fields were historically used for row crops during at least one of the prior five (5) years, these fields will not be subject to the construction timing restrictions set forth in subparagraphs (iii)(*a*) and (*c*) of this paragraph.

(v) If the permittee has identified construction activities that must occur between November 15 and March 31 in identified NYS threatened or endangered grassland bird occupied wintering habitat, or between April 23 and August 15 in identified NYS threatened or endangered grassland bird occupied breeding habitat outside of row crop areas described in subparagraph (iv) of this paragraph, the occupied habitat area(s) proposed for active construction shall be assessed by an on-site environmental monitor or biologist who shall conduct surveys for NYS threatened or endangered grassland bird species. The surveys shall occur weekly until construction activities have been completed in the occupied habitat area, unless otherwise agreed to by the office. If no NYS threatened or endangered grassland bird species are detected during the survey, the area shall be considered clear for seven (7) days, when another survey shall be performed. If NYS threatened or endangered grassland bird species are detected, the permittee shall comply with paragraphs (8) and (9) of this subdivision.

(vi) All temporary disturbance or modification of established grassland vegetation communities that occurs as a result of facility construction, restoration, or maintenance activities shall be restored utilizing a native or naturalized herbaceous seed mix or the pre-existing grassland vegetative conditions by re-grading and re-seeding with an appropriate native seed mix after disturbance activities are completed, unless returning to agricultural production or otherwise specified by the

landowner. These temporarily disturbed or modified areas include all areas within the facility site that do not have impervious cover, such as temporary roads, material and equipment staging and storage areas, and electric line rights-of-way.

(vii) The permittee shall implement the avoidance and minimization measures identified in section 1102-2.14 of this Part and the other conditions herein to minimize potential take of the species.

(viii) To the extent that the office has determined that the facility would result in impacts to grassland bird occupied habitat requiring mitigation, the permittee shall pay the required mitigation fee commensurate with the acreage of mitigation that would be required for permittee-implemented grassland bird habitat conservation, calculated pursuant to subparagraph (ix) of this paragraph. The mitigation fee shall be paid into the Endangered and Threatened Species Mitigation Bank Fund with the sole purpose to conserve habitat of similar or higher quality or otherwise achieve a net conservation benefit to the impacted species. The office may give the permittee credit, in whole or in part, for any mitigation fee paid to another State or Federal agency or authority.

(ix) If the permittee proposes a NCBP involving permittee-implemented grassland bird habitat conservation in lieu of payment of a mitigation fee pursuant to subparagraph (viii) of this paragraph, the required mitigation ratio shall be 0.4 acres of mitigation for every acre of occupied grassland bird breeding habitat determined to be taken and 0.2 acres of mitigation for every acre of occupied grassland bird wintering habitat determined to be taken. These mitigation requirements are based upon multiplying impacts by the ratios described above and dividing impacts by five lifecycles of habitat succession (e.g., a 30-year mitigation project term and 5-year timeframe in which unmanaged grassland would naturally succeed into scrub/shrub habitat, minus one lifecycle to provide a net conservation benefit).

(x) Sites selected for mitigation of grassland bird

impacts shall be managed to provide conditions conducive to successful reproduction during the breeding season (April 23 to August 15) and overwintering (November 1 to March 31).

(4) To avoid and minimize impacts to NYS threatened or endangered bat species the permittee shall implement the following conditions during construction and operation:

(i) No facility component shall be sited or located within one hundred fifty (150) feet of any known northern long-eared bat roost tree, within five hundred (500) feet of any known Indiana bat roost tree, or one quarter (0.25) mile of any known northern long-eared bat or Indiana bat hibernaculum.

(ii) If at any time during the life of the facility, an active NYS threatened or endangered bat species roost tree (or structure) is discovered within the transmission facility corridor, the office shall be notified within twenty-four (24) hours of discovery, and the colony site shall be marked. A five hundred (500)-foot radius around the colony shall be posted and avoided until notice to continue construction, ground clearing, grading, non-emergency maintenance or restoration activities, as applicable, at that site is granted by the office. A re-evaluation of the potential impacts of the project on listed bat species shall be provided to the office.

(iii) *Tree clearing limitations for Northern Long-eared bats*.

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

(*b*) All tree clearing activities (except for danger tree removal to protect human life or property occurring within one and a half (1.5) miles of a roost site or five (5) miles of a hibernaculum site, but not subject to clause (a) of this

subparagraph, shall be conducted during the hibernation season (between December 1 and February 28 for Nassau and Suffolk Counties; or, between November 1 and March 31 for all other counties) without further restrictions unless otherwise approved by the office. This limitation does not include trees less than or equal to four (4) inches in diameter at breast height (DBH).

(*c*) From April 1 to May 31 and August 1 to October 31, the following restrictions shall be implemented for all tree clearing activities in the facility site, unless otherwise agreed by the office:

(1) The permittee shall leave uncut all snag and cavity trees, as defined under the NYSDEC Program Policy ONRDLF-2 Retention on State Forests, unless their removal is necessary for protection of human life and property. This restriction pertains to trees that are greater than or equal to four (4) inches DBH. When necessary, a limited number of snag or cavity trees may be removed as approved by the environmental monitor with concurrence by the office. A qualified environmental monitor shall conduct a survey for bats exiting the tree. This survey shall begin thirty (30) minutes before sunset and continue until at least one (1) hour after sunset or until it is otherwise too dark to see emerging bats. Unoccupied snag and cavity trees in the approved clearing area shall be removed within twenty-four (24) hours of negative survey results.

(*2*) If any bats are observed flying from a tree, or from a tree that has been cut, tree clearing activities within distances required in clause (*a*) of this subparagraph, depending on the potential species present, shall be suspended and the office shall be notified as soon as possible. The permittee shall have an environmental monitor present on site during all tree clearing activities. If any bat

activity is noted, a stop work order will immediately be issued and shall remain in place until such time as the office has been consulted and authorizes resumption of work.

(iv) *Tree clearing limitations for Indiana bats*.

(*a*) No tree clearing activities shall occur at any time within five hundred (500) feet of any known roost tree or one quarter (0.25) mile of any known hibernaculum.

(*b*) All tree clearing activities (except for danger tree removal to protect human life or property) occurring within two and a half (2.5) miles of a roost site or hibernaculum site, but not subject to clause (a) of this subparagraph, shall be conducted during the hibernation season (between November 1 and March 31), without further restrictions, unless otherwise directed or approved by the office. This limitation does not include trees less than or equal to four (4) inches in DBH or locations above three hundred (300) meters in elevation.

(*c*) From April 1 to October 31, tree clearing within two and a half (2.5) miles of a roost site or hibernaculum site is limited to trees less than or equal to four (4) inches in DBH or locations above three hundred (300) meters in elevation.

(*d*) Tree clearing may not reduce forest habitat below thirty-five (35) percent of the landcover within two and a half (2.5) miles of the roost site or hibernaculum site.

(5) To avoid and minimize impacts to NYS threatened or endangered reptile and amphibian species, the permittee shall implement the following conditions during construction:

(i) Avoid construction activities within occupied habitat(s) to the maximum extent practicable. Avoid construction activities within breeding areas for NYS

threatened or endangered species during the peak breeding season. Where avoidance is not possible, the permittee will implement an Avoidance and Minimization Plan that meets the requirements of 6 NYCRR Part 182, including a Monitoring and Handling Protocol, in the EM&CP.

(ii) Employ dedicated threatened or endangered species monitor(s) (T&E monitor) to be present for all work within known occupied and identified habitats and implement the Monitoring and Handling Protocol.

(iii) The T&E monitor(s) shall have the necessary Endangered/Threatened Species License obtained from NYSDEC's Special License Unit or be listed as a Designated Agent on such a license.

(iv) The number of necessary T&E monitor(s) shall be determined in consultation with office staff.

(v) The T&E monitor(s) shall be present to inspect work areas ahead of daily construction activities and shall continue to inspect periodically until construction activities stop for the workday. A daily inspection log shall be maintained and provided to the office staff upon request.

(vi) For all unavoidable impacts to threatened or endangered reptile and amphibian species, the permittee shall prepare a NCBP approved by the office.

(6) To avoid and minimize impacts to bald eagles, the permittee shall implement the following:

(i) At least fourteen (14) days prior to construction activities, the permittee shall conduct a visual inspection in the area in which construction will take place to determine if any active bald eagle nests are present.

(ii) If, at any time during construction and operation of the facility, an active bald eagle nest or roost is identified within the facility ROW, office staff shall

be notified within twenty-four (24) hours of discovery and prior to any disturbance of the nest or immediate area.

(iii) An area one quarter (0.25) mile for nests without a visual buffer and six hundred sixty (660) feet in radius for nests with a visual buffer from the nest tree shall be posted and avoided to the maximum extent practicable until notice to continue construction at that site is granted by the office.

(iv) Tree removal is not allowed:

(*a*) within six hundred sixty (660) feet from an active nest during breeding season (January 1 to September 30);

(*b*) within one quarter (0.25) mile from an important winter roost during the wintering period (December 1 to March 31); or

(*c*) of overstory trees within three hundred thirty (330) feet of an active nest at any time.

(7) For projects located within the Marine and Coastal District, to avoid and minimize impacts to NYS threatened or endangered marine species, the permittee shall implement the following conditions during construction and operation:

(i) Sightings of North Atlantic Right whales must be reported to NOAA, NYSDEC, and ORES as soon as possible, but no later than within 24 hours of the sighting.

(ii) The permittee shall comply with all applicable time-of-year restrictions required by the office in consultation with NYSDEC, unless otherwise approved through implementation of an approved (a) avoidance and minimization plan for NYS threatened or endangered species and/or (b) a NCBP prepared in consultation with NYSDEC and approved by the office for NYS threatened or endangered species.

(8) *Record all observations of NYS threatened or endangered*

species. During construction and restoration of the facility, the permittee shall maintain a record of all observations of NYS threatened or endangered species as follows:

(i) *Construction.* During construction, the on-site environmental monitor shall be responsible for recording all occurrences of NYS threatened or endangered species within the facility site. All occurrences shall be reported in a biweekly monitoring report submitted to office staff, and such reports shall include the information described in subparagraph (iii) of this paragraph. If a NYS threatened or endangered bird species is demonstrating breeding behavior, it shall be reported to office staff within twenty-four (24) hours.

(ii) *Restoration.* After construction is complete, incidental observations of any NYS threatened or endangered species shall be documented and reported to office staff, in accordance with the reporting requirements in subparagraph (iv) of this paragraph.

(iii) For any NYS threatened or endangered species not otherwise addressed in the siting permit, to protect the identified species or its potentially occupied habitat from immediate harm, the permittee shall secure the immediate area to the extent the permittee has property rights, and cease construction in that area until office staff authorizes recommencement of activities.

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

(9) *Discovery of nests or dead or injured NYS threatened or endangered species*.

(i) Excluding Bald Eagles, if an active nest of a Federal or NYS threatened or endangered bird species is discovered (by the permittee's environmental monitor or other designated agents) within the facility site, the following actions shall be taken:

(a) office staff shall be notified within twenty-four (24) hours of discovery and prior to any further disturbance around the nest, eggs, roost, or area where the species were seen exhibiting any breeding or roosting behavior;

(b) an area at least five hundred (500) feet in radius around the active nest shall be posted and avoided until notice to continue construction, ground clearing, grading, maintenance, or restoration activities are granted by the office ; and

(c) the active nest(s) or nest tree(s) shall not be approached under any circumstances unless authorized by office staff.

(ii) If any dead or injured Federal or NYS threatened or endangered species, or eggs or nests thereof, are discovered by the permittee's on-site environmental monitor or other designated agent at any time during the life of the facility, the permittee shall immediately (within 24 hours) contact the NYSDEC, the United States Fish and Wildlife Service (USFWS), and, as applicable, the National Marine Fisheries Service (NMFS) and NOAA for federally-listed species, to arrange for recovery and transfer of the specimen(s). The office shall also be notified. The following information pertaining to the find shall be recorded:

(*a*) species;

(*b*) number, age and sex of the individual(s), if

known;

(*c*) date of discovery of the animal or nest;

(d) condition of the carcass, or state of the nest or live animal;

(e) GPS coordinates of the location(s) of discovery;

(*f*) name(s) and contact information of the person(s) involved with the incident(s) and find(s);

(*g*) weather conditions at the facility site for the previous forty-eight (48) hours;

(*h*) photographs, demonstrating scale and of sufficient quality to allow for later identification of the animal or nest; and

(i) an explanation of how the mortality/injury/damage occurred, if known.

(iii) Electronic copies of each record, including photographs, shall be kept with the container holding the specimen(s) and given to the NYSDEC or the USFWS at the time of transfer. If the discovery is followed by a non-business day, the permittee shall ensure all the information listed above is properly documented and stored with the specimen(s). Unless otherwise directed by the NYSDEC or the USFWS, after all information has been collected in the field, the fatality specimen(s) shall be placed in a freezer, or in a cooler on ice until transported to a freezer, until it can be retrieved by the proper authorities.

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

(y) *Wetlands, waterbodies, and streams*. Except as otherwise allowed in the permit or EM&CP, no construction activities shall occur within any wetlands, including tidal and freshwater

wetlands, regulated adjacent areas, waterbodies, and streams (as identified in the jurisdictional determination by the office pursuant to section 1102-4.4(e)(2) of this Part). No construction materials, equipment, or vehicles shall be allowed to enter upon any such waterbodies, and no in-water sidecasting shall occur. The permittee shall implement the following procedures for approved construction within such waterbodies.

(1) *Contamination precautions*. The permittee shall take all necessary precautions to preclude contamination of any wetland, stream, or other waterbody by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate, washings from transit mix trucks, mixers, or other devices or any other environmentally deleterious materials associated with the project.

(2) *Equipment maintenance, refueling, and storage*.

(i) Equipment storage, refueling, maintenance, and repair, and handling of containers containing pesticides, chemicals, or petroleum products, shall be conducted and safely contained more than one hundred (100) feet from all freshwater wetlands, waterbodies, and streams, and three hundred (300) feet from tidal wetlands. Refueling and emergency maintenance within one hundred (100) feet of all freshwater wetlands, waterbodies, and streams, or within three hundred (300) feet from tidal wetlands, will only be allowed under the following circumstances:

(a) refueling of hand equipment will be allowed when secondary containment is used. Secondary containment will be constructed of an impervious material capable of holding the hand equipment to be refueled and at least 110% of the fuel storage container capacity. Fuel tanks of hand-held equipment will be initially filled in an upland location greater than one hundred (100) feet from freshwater wetlands, waterbodies, or streams, or 150 feet from tidal wetlands in order to minimize the amount of refueling within these sensitive areas. Crews will have sufficient spill containment

equipment on hand at the secondary containment location to provide prompt control and cleanup in the event of a release;

(b) refueling of equipment will be allowed within one hundred (100) feet of freshwater wetlands, waterbodies, or streams, or 150 feet of tidal wetlands when necessary to maintain continuous operations and where removing equipment from a sensitive area for refueling would increase adverse impacts to the sensitive area. Fuel tanks of such equipment will be initially filled in an upland location greater than one hundred (100) feet from freshwater wetlands, waterbodies, or streams, or one hundred fifty (150) from tidal wetlands in order to minimize the amount of refueling within these sensitive areas. All refueling of equipment within one hundred (100) feet of freshwater wetlands, waterbodies, or streams, or one hundred fifty (150) feet of tidal wetlands will be conducted under the direct supervision of the environmental monitor. Absorbent pads or portable basins will be deployed under the refueling operation. In addition, the fuel nozzle will be wrapped in an absorbent pad and the nozzle will be placed in a secondary containment vessel (e.g., bucket) when moving the nozzle from the fuel truck to the equipment to be refueled. All equipment operating within one hundred (100) feet of a freshwater wetland, waterbody, or stream, or one hundred fifty (150) feet of a tidal wetland will have sufficient spill containment equipment on board to provide prompt control and cleanup in the event of a release;

(c) emergency maintenance within one hundred (100) feet of all freshwater wetlands, waterbodies will be allowed only when moving equipment out of the above areas is unavoidable and conducted with spill protection as required by the environmental monitor.

(ii) All equipment and machinery shall be stored more

than one hundred (100) feet from all freshwater wetlands, waterbodies, and streams, and one hundred fifty (150) feet from tidal wetlands at the end of each workday unless moving the equipment will cause additional environmental impact.

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

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

(4) *Turbid water*. Construction and maintenance activities shall not result in substantial visible contrast due to turbidity or sedimentation downstream of the work site. Turbid water resulting from dewatering operations shall not be allowed to enter any wetland, waterbody, or stream. Water resulting from dewatering operations shall be discharged directly to settling basins, filter bags, or other approved device or measure.

(5) *Equipment washing*. Washing of trucks and equipment shall occur one hundred (100) feet or more from an ESA. Herbicides and wash water from such activities shall be controlled to avoid discharging into a wetland or adjacent area, waterbody, or stream. If runoff from such activities discharges into any wetlands, waterbodies, and streams office staff, NYSDEC, and APA (as applicable) shall be notified within two (2) hours.

(6) *Concrete washouts*. Concrete washouts and batch plants, or concrete from truck cleanout activity, any wash water from trucks, equipment, or tools, if done on site, shall be located and installed to minimize impacts to water resources. Washout locations should be at least one hundred (100) feet from any wetland, waterbody, or stream, and located outside wetland adjacent areas to the maximum extent

practicable. Waste concrete and wash water shall be disposed of as construction debris.

(7) *Use of horizontal direction drilling (HDD)*. Installation of underground lines across wetlands, waterbodies, and streams shall be performed via HDD to the maximum extent practicable.

(8) *Trenching*. Open cut trenching in wetlands, waterbodies, and streams shall be performed in one continuous operation. All reasonable efforts shall be made to backfill open trenches within the same workday. The permittee shall consolidate trenching areas to the maximum extent practicable to minimize impacts to agricultural soils.

(9) *Discharge notice and response*. If construction activities undertaken by the permittee result in a discharge to a wetland, waterbody or stream that violates New York Water Quality Standards at 6 NYCRR Part 703, the permittee shall notify the office within two 2 (hours) and, in coordination with the environmental monitor, take appropriate corrective action. Following the implementation of appropriate corrective actions, if New York Water Quality Standards are not met the permittee shall stop work in the affected area of the Facility until authorized to proceed by the environmental monitor in consultation the office.

(z) *Wetlands*. The permittee shall implement the following requirements for wetlands and regulated adjacent areas (as identified in the delineations approved by the office pursuant to section 1102-4.4(e)(2) of this Part):

(1) *Construction in wetlands and adjacent areas*. All construction activities completed within wetlands and/or adjacent areas shall adhere to the following requirements:

(i) As approved in the EM&CP, work should be conducted during dry conditions without standing water or when the ground is frozen, where practicable.

(ii) The permittee shall implement best management practices to minimize soil compaction.

(iii) Temporary construction matting shall be used as

necessary to minimize disturbance to the wetland soil profile during all construction and maintenance activities. All temporary construction matting shall be removed as soon as practicable following installation from the wetland and cleaned of any invasive species (seed, plant materials, insects, etc.) after construction/maintenance activities are completed and removal shall be verified with the environmental monitor after construction. Matting shall be removed by equipment stationed on a mat or areas outside the wetland or adjacent area.

(iv) If topsoil removal is necessary in wetland areas, the topsoil shall be removed and stored separate from subsoil. The top twelve (12) inches of wetland topsoil shall be removed first and temporarily placed onto a geo-textile blanket. Subsoil dug from the trench shall be sidecast on the opposite side of the trench on another geo-textile blanket running parallel to the trench, if necessary.

(v) Only the excavated wetland topsoil and subsoil shall be utilized as backfill, with the exception of clean bedding material for electric lines and/or conduits, provided there is no change to the pre-construction contours upon restoration.

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

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

(viii) In the event that construction results in an unanticipated alteration to the hydrology of a wetland (i.e., lowering), the breach shall be immediately sealed, and no further activity shall take place until the office is notified and a remediation plan to restore the wetland and prevent future dewatering of the wetland has been approved.

(ix) Trenches shall be backfilled with the wetland subsoil and the wetland topsoil shall be placed back on top. All

excess materials shall be completely removed to upland areas more than one hundred (100) feet from the wetland and suitably stabilized. Excess topsoil from agricultural areas shall be spread within the immediate agricultural areas within the approved limits of disturbance, or within other nearby areas that will still be used for agricultural production.

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

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

(xii) In agricultural or farmed wetlands, crop covers consistent with existing agricultural uses shall be utilized in all areas of soil disturbance.

(2) *Access roads through wetlands*. If access roads or work pads in wetlands cannot be avoided, their installation shall be performed using the following methods as shown on the EM&CP drawings:

(i) Where feasible, all work shall be done in dry conditions or on frozen ground upon approval of the environmental monitor in consultation with the office.

(ii) Where work cannot be performed in dry conditions or on frozen ground, temporary access roads shall use clean timber/construction matting that is completely removed after construction/maintenance activities are completed. Removal shall be verified with and reported to the office by the on-site environmental monitor after construction, or by the facility operator after maintenance work is completed.

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

(3) *Cut vegetation*. Cut vegetation in wetlands, with the exception of invasive species, may be left in place (i.e., lop and drop), piled in dry or seasonally saturated portions of wetlands and adjacent areas to create wildlife brush piles, or removed.

(4) *Tree clearing*. Tree clearing shall be minimized to the extent practicable in wetlands and adjacent areas.

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

(6) *Concrete use*. For activities involving the placement of concrete into protected wetlands, forms shall be dewatered prior to the placement of the concrete. The use of tremie-supplied concrete is allowed if it complies with NYS water quality standards.

(7) *Stormwater setback*. Any new stormwater management infrastructure must be located outside of the wetland and adjacent area to the extent practicable or as required by a federal permit.

(8) *Wetland restoration*.

(i) Wetland restoration shall be completed according to the approved Wetland Restoration and Mitigation Plan

submitted pursuant to section 1102-4.4(f) of this Part.

(ii) The permittee shall restore disturbed areas, ruts, and rills within wetlands and adjacent areas to original grades and conditions with permanent erosion controls appropriate for those locations.

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

(iv) Immediately upon completion of grading, and as consistent with existing land use/land cover, the area shall be seeded with an appropriate native species mix for wetlands and upland areas adjacent to wetlands, except that adjacent areas may be reseeded differently at the request of the landowner.

(v) In any areas where woody vegetation has been cleared or uprooted, the vegetation shall be replaced with right-of-way compatible native plantings as site conditions and facility design allow, and as appropriate for consistency with existing land uses, excluding permanent access roads and areas needed for operation and maintenance of the project.

(vi) The permittee shall attain eighty (80) percent vegetative cover across all disturbed soil areas by the end of the first full growing season following construction. Overall vegetative cover in restored areas shall be monitored for a minimum of five (5) years. Post- construction monitoring shall continue until an eighty (80) percent survivorship of native woody species or eighty-five (85) percent absolute cover of native herbaceous species appropriate wetland indicator status has been reestablished over all portions of the replanted area, unless the invasive species baseline survey indicates a smaller percentage of survivorship or cover of appropriate native species exists prior to construction.

(vii)Notification shall be provided to the office once

eighty (80) percent cover has been achieved.

(9) *Mitigation*. The permittee shall implement the approved Wetland Restoration and Mitigation Plan submitted pursuant to section 1102-4.4(f) of this Part.

(aa) *Work in surface waters*. The permittee shall implement the following requirements for surface waters (as identified in the jurisdictional determination by the office pursuant to section 1102-4.4(e)(2) of this Part):

(1) *Dry conditions*. In-stream work shall only occur in dry conditions, using appropriate water handling measures to isolate work areas and direct stream flow around the work area. Any waters accumulated in isolated work areas shall be discharged to an upland settling basin, field, or wooded area to provide for settling and filtering of solids and sediment before water is return to the stream. If measures fail to divert all flow around the work area, in-stream work shall stop until dewatering measures are functioning properly.

(2) *In-water work windows*. In-stream work shall be prohibited from September 15 through May 31 in cold water fisheries and March 15 through July 15 in warm water fisheries. Coastal waters may be subject to separate work timing restrictions.

(3) *Stream channels.* The restored stream channel shall be equal in width, depth, gradient, length, and character to the pre-existing stream channel and tie in smoothly to the profile of the stream channel upstream and downstream of the disturbance. The planform of any permanent stream shall not be changed, unless dictated by restoration or mitigation objectives. The stream channel shall be restored to pre-existing conditions to the maximum extent practicable.

(4) *Stream banks.* All disturbed stream banks shall be temporarily stabilized within forty-eight (48) hours of final grading, and stabilized with one hundred (100) percent natural or biodegradable fiber matting, and seeded with an appropriate riparian seed mix as specified in the approved EM&CP. In any areas where woody vegetation has been uprooted

or grubbed on stream banks, the vegetation shall be replaced with right-of-way compatible native plants as site conditions and facility design allow, and as appropriate for consistency with existing land uses, excluding permanent access roads and areas needed for operation and maintenance of the project.

(5) *Felled trees*. Trees shall not be felled into any stream or stream bank.

(6) *Culvert repairs*. Culverts shall be repaired consistent with section 1102-3.3(d) of this Part.

(7) *Access road crossings of streams*. Construction vehicle access across streams and other waterbodies shall be limited to approved existing, permanent, or temporary crossings, or installed in accordance with the approved Stream Crossing Plan, required by section 1102-4.4(g) of this Part. The creation, modification, or improvement of any road crossing of a NYS-protected waterbody shall meet the following requirements:

(i) temporary bridges or culverts may not be dragged through the stream and must be suitably anchored to prevent downstream transport during a flood;

(ii) new bridges and culvert pipes that the permittee is required to install shall be designed to safely pass the one (1) percent annual chance storm event;

(iii) culvert pipes shall be embedded twenty (20) percent beneath the existing grade of the stream channel;

(iv) width of the structure shall be a minimum of one and a quarter (1.25) times the width of the mean high-water channel; and

(v) the culvert slope shall remain consistent with the slope of the adjacent stream channel. For slopes greater than three (3) percent, an open bottom culvert or a culvert with baffles shall be used.

(8) *Overhead lines across NYS-protected streams*. If construction of overhead power line crossings requires cutting of trees or shrubs within fifty (50) feet of a NYS-protected waterbody, cut materials shall be left on the ground, unless within the waterbody or stream bank.

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

(10) *No aquatic impediments*. In-stream work, including the installation of structures and bed material, but excluding dewatering associated with dry trench crossings, shall not result in an impediment to aquatic organisms. All fish trapped within cofferdams shall be netted and returned, alive and unharmed, to the water outside the confines of the cofferdam, in the same stream.

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

(12) *Restoration*. The permittee shall implement the approved measures for stream restoration submitted pursuant to section 1102-4.2(c) of this Part.

(ab) *In-water cables*. The permittee shall use best efforts to site the cable within the in-water facility corridor and conduct site preparation activities required to achieve the target burial depth during installation while minimizing impacts. Unless otherwise specified in the approved EM&CP in consultation with the office, the permittee shall implement the following:

(1) *Pre-installation.*

(i) Prior to the commencement of installation of the in-water facility, the permittee shall engage in offshore site preparation, as necessary, to install the in-water cables and achieve the target burial depth, including:

(a) boulder removal, which will be minimized to the maximum extent practicable;

(b) pre-lay grapnel run;

(c) marine debris removal;

(d) unexploded ordnance clearance;

(e) pre-installation surveys;

(f) pre-sweeping through use of mass flow excavation or a dredge, where needed for sandwave leveling or utility crossings, which will be minimized to the maximum extent practicable;

(g) utility crossing preparation; and

(h) pre-trenching by running the cable burial equipment over portions of the route prior to cable lay, where deeper burial depths or sediment conditions may otherwise limit the ability to achieve target burial depth.

(2) A pre-installation trial shall be conducted to establish operating conditions that will minimize the suspension of in-situ sediments and contaminants during the jetting and mass flow excavation activities. Pre-installation trials for any proposed jetting tools and mass flow excavation tools must be conducted prior to cable installation and within representative sections or areas proximate to the in-water cable route in NYS waters to evaluate compliance with Total Suspended Solids (TSS) threshold limit, turbidity, and other applicable NYS water quality standards. Pre-installation trials, shall:

(i) include approximately one thousand (1,000) feet of operations within an area to be specified in the Pre-Installation Trial Plan;

(ii) use appropriate instruments as specified in the Pre-Installation Trial Plan to measure water column TSS

and turbidity on selected transects in the field;

(iii) collect and analyze companion samples using a NYSDOH Environmental Laboratory Approval Program laboratory certified for TSS; and

(iv) collect samples of TSS and any constituents required by the siting permit at three-interval depths (near surface, mid-depth, and near bottom) as follows:

(a) up-current outside of the influence of the construction activities, for baseline to determine ambient, or background conditions; and

(b) down-current of the pre-installation trial, at the edge of the regulatory mixing zone.

(3) The permittee must consult with the Aquatic Environmental Monitor and the office to review the results of the TSS field measurements during the pre-installation trials to evaluate whether the operating conditions result in TSS concentrations that exceed the TSS limit.

(4) If the pre-installation trials demonstrate that the operating conditions result in TSS concentrations that exceed the applicable TSS limit, the permittee must work with the Aquatic Environmental Monitor and, the office to evaluate and implement practical operational modifications to the jetting or mass flow excavation tools to further reduce in-situ sediment re-suspension associated with the equipment operations.

(5) Jetting and mass flow excavation operations may proceed after the pre-installation trial field monitoring and laboratory results for all required constituents are submitted by the permittee for review and accepted by the office.

(6) *In-water cable installation.*

(i) Exclusive of the portion of the cable approaching the cable landfall, unless a deeper depth is otherwise required by the USACE permit(s), the permittee shall

install the in-water cables a minimum target burial depth of six (6) feet below the existing stable sediment surface. Stable sediment surface refers to the depth at which sediment is not influenced by mobile bedforms, often the trough of a sandwave.

(ii) Where the facility will be installed within the federally-authorized navigational channel or federally-designated anchorage areas, the permittee shall install the submarine cables to a minimum target burial depth as required by the USACE permit(s).

(iii) Should the target burial depth not be achieved during the initial pass of the cable installation tool that is best suited to achieve target burial depth, the permittee shall perform at least one (1) and up to two (2) additional passes with the installation tool, or other burial tool that will achieve the project's requirements, unless:

(a) additional passes risk causing damage to the in-water cables or the installation tool; or

(b) due to geologic obstructions, additional passes would not increase the burial depth or risk causing cable exposure.

(iv) The permittee shall not leave any portions of the cable exposed on the sediment surface without cable protection measures at the conclusion of construction.

(v) In areas where sediment conditions, geologic or topographic features, or utility crossings do not allow the permittee to achieve target burial depth, the permittee is authorized to use cable protection methods, as approved in the EM&CP.

(vi) If cable protection is necessary in "non-trawlable" habitat, as identified in the EM&CP, then the permittee shall, to the extent technically feasible, use materials that reflect the pre-existing conditions of the benthic environment in those locations.

(vii) The permittee shall install and maintain any necessary cable protection measures in a manner that maintains overtrawlability to the extent technically feasible, minimizes shifting over time, and avoids creating a discernable berm.

(viii) If unanticipated boulders are encountered during in-water cable installation and avoidance cannot be achieved, the permittee shall relocate any encountered boulders within sixty-five (65) feet of the approved centerline of the cable if required to increase the likelihood of achieving target burial depth.

(a) Boulders shall be placed together where possible, to reduce the overall area of obstruction.

(b) Where the permittee has relocated a boulder one (1) meter or more in diameter a distance of two (2) meters or more from the location where it was initially encountered, the permittee shall provide notice to mariners and NYSDEC-Licensed Fishermen.

(ix) To the maximum extent practicable, the permittee shall avoid all known sensitive benthic habitats, including, but not limited to, hard bottom, complex habitat, SAV, and sandwaves, when installing the in-water facility. If previously unknown sensitive benthic habitat is encountered, the permittee shall use best efforts to avoid impacts to the maximum extent practicable via micro-siting.

(x) The permittee must operate the jetting and mass flow excavation tools in accordance with the operating conditions determined through the pre-Installation trials.

(xi) No changes in the approved installation technologies or reduction in target burial depth shall be allowed for facilities within coastal waterbodies without prior consultation with the office, NYSDEC, and NYSDOS. In the event that NYSDOS determines that such deviation would result in coastal effects that differ

significantly from those reviewed in the Coastal Consistency Certification (15 CFR Part 930), the permittee shall obtain a written concurrence from NYSDOS for any such project changes that would require a modification of the permittee's Coastal Consistency Certification.

(xii)Consultation with the U.S. Coast Guard (USCG) should occur early and prior to installation of each segment of the in-water cable. In-water cables will be placed in such a manner that the Project will not preclude navigation during construction, operation and maintenance, except as approved in the EM&CP and coordinated with the USCG. Vessels will be allowed to continue to move through the navigation channels safely and efficiently during construction, operation and maintenance of the Project.

(7) *Water quality monitoring and operational modifications*. If, during water quality monitoring pursuant to the Suspended Sediment and Water Quality Monitoring Plan, water quality measurements exceed the limits established in the siting permit:

(i) the office and the Aquatic Environmental Monitor shall be immediately notified;

(ii) the permittee shall employ one or more of the operational modifications provided in the EM&CP as soon as possible in consultation with the Aquatic Environmental Monitor and the office:

(a) changing the rate of advancement of the equipment;

(b) modifying hydraulic pressures; or

(c) implementing other reasonable operational controls that may reduce suspension of in situ sediments.

(iii) the permittee shall not be required to reduce hydraulic jetting pressures to levels which would not

allow burial to the target burial depth specified in the siting permit, EM&CP, or other applicable permits and approvals;

(iv) after any operational modifications are implemented, turbidity will be measured and water quality samples will be collected and analyzed in accordance with the procedures outlined in the Suspended Sediment and Water Quality Monitoring Plan;

(v) the results of all water quality monitoring and sampling will be provided to the office, NYSDEC, and the Aquatic Environmental Monitor;

(vi) during implementation of operational modifications, the office may require additional monitoring until compliance with the applicable limits is demonstrated;

(vii)samples shall be collected until resumption of routine monitoring is authorized by the office.

(8) *Dredging.*

(i) Dredging activities shall comply with state water quality standards and be performed in accordance with the approved Dredge Management Plan, included in the EM&CP.

(ii) Only vessels, barges, or scows in good operating condition shall be used.

(iii) For mechanical dredging operations, the permittee shall:

(a) use a sealed environmental clamshell bucket to minimize sediment suspension;

(b) ensure that seals or flaps designed or installed at the jaws and locations of vent openings tightly cover these openings while the bucket is lifted through the water column and into the barge;

(c) equip the environmental bucket with sensors to ensure complete closure of the bucket before lifting through the water;

(d) operate the bucket so as to control the rate of the descent and to maximize the depth of penetration without overfilling the bucket;

(e) lower the bucket to the level of the barge gunwales prior to release of the load and place the excavated material deliberately and in a controlled manner;

(f) limit bucket hoist speed to approximately two (2) feet per second and the bucket shall be lifted in a continuous motion through the water column and into the barge to minimize turbidity;

(g) suspend operations until any necessary repairs or replacements are made when a significant loss of water and visible sediments from the bucket is observed;

(h) allow no barge overflow;

(i) not commence decanting of barges until approved by the office; and

(j) not sidecast, and will ensure all material is recovered to a barge.

(iv) For hydraulic/suction hopper dredging, the permittee shall remove displaced dredged material to a barge or trailing suction hopper dredger. The dredged material will be transported for beneficial reuse or disposal at a permitted disposal facility.

(v) The following will apply if decanting and dewatering will occur:

(a) The overlying water in the barge or dewatering area may be pumped to the water column only after a minimum 24 hours of settling to ensure that

decanting does not violate water quality standards or guidance values for TSS, turbidity, and contaminants.

(b) Dewatering and decanting activities for contaminated sediments will require sampling and analysis of effluent prior to discharge to confirm compliance with water quality standards at the point of discharge. No chemicals shall be added to aid in dewatering unless approved by the office prior to the use of the chemical and discharge of the effluent.

(c) Decanting of the barge shall be conducted in a manner that precludes adding substantial suspended solids, turbidity, or sheens to the receiving water body. Pumping of decant water shall avoid re-suspending or pumping previously settled sediment to the maximum extent practicable.

(d) Decanting and dewatering activities may not cause turbidity that results in a substantial visible contrast to the receiving waterbody. If a visual contrast is observed, pumping shall be stopped immediately and the office will be notified and an evaluation of the adequacy of the holding time and/or the need to add a flocculant to aid in settling shall be undertaken by the permittee.

(e) Washing of the gunwales of the scow or other vessels where dredged sediment is stored and transported will be avoided, except to the extent necessary to ensure the safety of workers.

(vi) If needed, imported backfill shall be clean material of similar grain size to the dredged material.

(vii) Management of contaminated dredged material shall be as follows:

(a) Contaminated material may not be used as backfill.

(b) If dredged material is not eligible for a Beneficial Use Determination in accordance with 6 NYCRR Part 360 prior to dredging, the permittee shall identify the final upland disposal location, including a letter from the permitted disposal facility verifying that it will accept the material. The final material disposal location shall be submitted to ORES and NYSDEC at least fourteen (14) days prior to disposal.

(c) Disposal of all material must comply with 6 NYCRR Part 360 et seq.

(d) All contaminated material shall be handled in accordance with the procedures specified in the Dredge Management Plan.

(e) The Aquatic Environmental Monitor shall inspect all dredging and backfilling equipment prior to use and shall perform periodic inspections of all such equipment no less than once per week when in use.

(9) *Water quality, in-water cables.*

(i) Limits for TSS, turbidity and chemical parameters must be achieved at the defined mixing zone distance, down current of sediment disturbing activities. The mixing zone shall be defined in the site specific permit conditions, by the office.

(ii) Water quality monitoring shall be conducted in accordance with the Suspended Sediment and Water Quality Monitoring Plan which shall be in the approved EM&CP.

(iii) A pre-activity water quality calibration will be conducted to ensure that TSS may be accurately estimated in the field during water quality monitoring activities.

(iv) Sewage, industrial waste, or other wastes that will cause deposition or impair the waters for their best usages shall not be discharged into any waterbody.

(v) The permittee will implement operational controls to the maximum extent practicable to comply with TSS limits at the outer limit of the mixing zone down current (based on tide direction) of sediment disturbing activities.

(vi) If TSS concentrations estimated in the field at the outer limit of the mixing zone exceed ambient TSS concentrations by more than the TSS limit, the permittee's contractor shall employ additional operational controls to bring TSS levels back into compliance, in consultation with or at the direction of the Aquatic Environmental Monitor.

(vii) The concentrations of any constituents listed in the siting permit and approved EM&CP, as measured in the samples collected down-current of the sediment disturbance activities, at the outer limit of the applicable mixing zone, shall not exceed the water quality standard, unless the ambient sample exceeds the water quality standard, in which case the permit limit shall be 1.3 times the highest ambient background level measured during the same sampling day at the up-current background station at the same depth as the down-current sample.

(viii) The permittee shall request the most expedited turnaround time available for laboratory samples for locations along the submarine cable route.

(a) Analytical results must be sent electronically to the office within forty-eight (48) hours of receipt from the laboratory.

(b) Exceedances must be highlighted.

(c) Additional operational controls or other mitigation measures are to be implemented to bring constituent levels back into compliance shall be developed in consultation with, or at the direction of, the office and the Aquatic Environmental Monitor.

(10) *Cable monitoring and maintenance.*

(i) The permittee shall be responsible for remedying any exposure of the submarine cables in accordance with the Cable Monitoring and Maintenance Plan.

(ii) The permittee shall begin implementing the Cable Monitoring and Maintenance Plan within a maximum of 15 days from when the permittee is notified of such in-water cable exposure, unless the permittee files a request with the office to extend the start of implementation on the basis of risks to safety, the environment, applicable time-of-year restrictions, maritime operations, weather conditions, equipment availability and/or service impacts. Any such extension request will provide the reason for the extension and the anticipated repair schedule.

(ac) *Agricultural resources*. In all instances in which construction of the permitted facility will permanently or temporarily impact land used in agricultural production, the permittee shall:

(1) Hire an independent, third-party agricultural monitor to oversee compliance with agricultural conditions and requirements, including the avoidance, minimization, and mitigation measures described in the application; the approved Drainage Remediation Plan required pursuant to section 1102-2.18(c) of this Part; and the Final Design Plans, Profiles, and Detail Drawings pursuant to include the approved EM&CP. The Agricultural Monitor shall be available to provide site-specific agricultural information to the permittee and office as necessary for EM&CP development. The office, in consultation with the NYSAGM, shall verify and approve the qualifications required to fulfill the role of the agricultural monitor have been met. If the office, in consultation with the NYSAGM, agrees that the independent third-party monitor is qualified on agricultural issues, one monitor can act as both the general environmental monitor as well as the agricultural-specific environmental monitor.

(2) Implement the avoidance, minimization, and mitigation measures described in the application.

(3) Implement the approved Drainage Remediation Plan required in section 1102-2.18(c) of this Part.

(ad) *Cultural resources*.

(1) The permittee shall ensure that no construction site preparation, clearing, or other disturbance is undertaken in previously undisturbed areas where archeological surveys have not been completed until such time as the office, in consultation with OPRHP, has reviewed the results of any additional archeological and historic resource surveys that are required, and has provided final effect or impact determination letter(s).

(2) The permittee shall implement the approved Cultural Resources Avoidance, Minimization, and Mitigation Plan (CRAMMP) required in section 1102-4.4(p) of this Part and shall ensure consistency between the CRAMMP, the approved Site Avoidance Plans, and the project location, design, and construction and vegetation management measures specified in the EM&CP.

(ae) *Decommissioning*.

(1) A Decommissioning and Site Restoration Plan shall be required for proposed facilities that will be subject to a lightened ratemaking regulatory regime as determined by the PSC, proposed to be developed as part of an energy generation project, or proposed to serve a dedicated customer.

(2) The Decommissioning and Site Restoration Plan shall address the following:

(i) the anticipated useful life of the proposed facility, including all facility components;

(ii) safety and the removal of hazardous conditions;

(iii) evaluation of environmental impacts;

(iv) aesthetics;

(v) recycling;

(vi) potential future uses for the site;

(vii) funding;

(viii) schedule; and

(ix) procedures and timeframes for notifying municipal officials and landowners and residents (if different from owners) of all properties that are crossed by or abut against the project ROW along the route of decommissioning activities.

(3) The Decommissioning and Site Restoration Plan shall include gross and net decommissioning and site restoration estimates. The net cost estimate may include salvage value (including reference to cost and value data sources and assumptions).

(i) The gross cost estimates shall include line items and associated dollar amounts for decommissioning of all facility components removed four (4) feet below grade in lands used in agricultural production and three (3) feet below grade in non-agricultural land, and site restoration, including permitting and other overhead costs.

(ii) The net cost estimates shall include a fifteen (15) percent contingency on the gross decommissioning and site restoration estimates. The net amount shall be shown in aggregate and as allocated between each affected municipality based on the estimated cost associated with the removal and restoration of the facilities located in the jurisdiction of each municipality.

(iii) For in-water facilities, including those associated with offshore wind, the cost estimates shall include:

(a) the onshore facilities; and

(b) that portion of the submarine cable route from the landfall locations to the boundary of New York State territorial waters or, for intercoastal cable crossings or HDD river/stream crossings, opposite landfall location.

(4) For in-water facilities, the plan shall also provide that for portions of the submarine cable route from the landfall location to the boundary of New York State territorial waters or, for intercoastal cable crossings or HDD river/stream crossings, opposite landfall locations the permittee shall survey and use best efforts to remove installed cable protection measures that are within two (2) feet of the sediment surface, unless the office determines the cable protection measures should be left in place based on:

(i) An analysis by the permittee of the options for decommissioning the project, including any cable protection measures used, and restoring the project area, including any decommissioning methods and potential impacts to the environment for each option.

(ii) If applicable, a description of how the permittee will address impacts of leaving any portion of the project in place.

(5) The financial security regarding decommissioning and site restoration activities shall be in the form of a letter of credit (LOC), or other financial security approved by the office, and shall be established by the permittee to be held by each municipality hosting facility components or the State.

(i) The financial security shall be irrevocable and state on its face that it is expressly held by and for the sole benefit of the specific host municipality or the State.

(ii) If the permittee and the host municipality(ies) cannot come to an agreement as to the appropriate amount of the financial security to be provided, the office shall make the final determination.

(iii) The financial security shall remain active until the facility is fully decommissioned.

(6) The financial security agreement(s) shall provide that, subject to the conditions of the siting permit, if the permittee is not diligently implementing the Decommissioning and Site Restoration Plan, the beneficiary thereof may exercise its right to draw on the financial security and carry out the Decommissioning and Site Restoration Plan following the occurrence of any of the following events:

(i) the project's construction has halted for a period of twelve (12) continuous months, unless the 12-month period of inactivity is the result of reasonably unforeseen circumstances, recommencement is being actively pursued in good faith by the permittee, and the permittee otherwise obtains approval from the office for such construction inactivity; or

(ii) after energization of the project, if the project has not transmitted electricity for a period of twelve (12) continuous months, unless the 12-month period of no energy transmission is due to a Force Majeure event or the result of a repair, restoration, or improvement to an integral part of the project that affects the generation of electricity and that repair, restoration, or improvement is being actively pursued in good faith by the permittee, or the permittee otherwise obtains approval from the office for the project to not operate for such period of time;

(iii) for in-water facilities, if the permittee does not begin implementing the Cable Monitoring and Maintenance Plan within fifteen (15) days of the date the permittee is made aware of in-water cable exposure, or if the permittee ceases to diligently implement the Cable Monitoring and Maintenance Plan with respect to such exposure to the reasonable satisfaction of the office, unless the office approves an extension request.

(7) The permittee shall file notice with the office and each municipality hosting facility components if it is anticipated

that repairs or completion of construction (or similar) will extend beyond a 12-month inactive period. Such notice shall be provided prior to the conclusion of the 12-month inactive period and within thirty (30) days of the permittee becoming aware of the anticipated need for additional time to complete the repairs, construction, or similar. The permittee shall describe the permittee's good faith efforts to restore function or complete construction, or intent to decommission the facility. Written notice shall also be provided to adjoining landowners of planned decommissioning and site restoration activities prior to commencement of those activities.

Section 1102-3.5. Facility operation.

(a) *Operational noise limits.*

(1) For any converter station, substation, or switchyard located in cities with a population over one million the substantive provisions of that city's local laws and regulations on noise and vibration shall apply.

(2) For converter stations including any adjoining substation not located in cities with a population over one million:

(i) A maximum noise limit of forty-two (42) dBA Leq (1-hour) maximum equivalent continuous average sound level outside of any type 1 sensitive sound receptors (see section 1102-2.9(f)(1) of this Part), subject to the prominent tone penalties specified in section 1102-2.9(b)(3)(i) of this Part.

(ii) A maximum noise limit of fifty-five (55) dBA Leq (1-hour) outside of any type 5 sensitive sound receptors (see section 1102-2.9(f)(5) of this Part). No penalties for prominent tones will be added in this assessment.

(b) *Operational compliance*. The permittee shall operate the facility to abide by applicable rules and regulations of the PSL and this Title with respect to matters such as enforcement, investigation, safety, and reliability. The permittee shall abide by standard Good Utility Practice, and abide by all rules,

guidelines and standards of the interconnection utility(ies), the New York Independent System Operator (NYISO), the Northeast Power Coordinating Council (NPCC), the New York State Reliability Council (NYSRC), the North American Electric Reliability Corporation (NERC) and successors. The permittee shall obey operational orders issued by the NYISO.

(c) *Interconnection changes*. Throughout the life of the facility, the permittee shall provide a copy of the following interconnection documents to the secretary to the commission, with a copy to the office:

(1) any updates or revisions to any Interconnection Agreement or Facility Agreement between the permittee, the interconnecting utilities, and NYISO; and

(2) any system impact study required as part of a future facility modification or upgrade not subject to these rules, performed in accordance with the NYISO Open Access Transmission Tariff (OATT), if applicable.

(d) *Facility malfunction and transmission interconnection related incidents.*

(1) In the event of a malfunction of the facility or facility components or transmission related incident which causes a significant reduction in the capability of such facility to deliver power for an extended duration (i.e., expected to last longer than one (1) month), the permittee shall promptly provide the serving utility (if different from the permittee) and office, copies of all notices, filings, and other substantive written communications with the NYISO as to such reduction, any plans for making repairs to remedy the reduction, and the schedule for any such repairs. Upon request, within seven (7) days, the permittee shall file with the office and the serving utility, if different from the permittee, a report on the incident. The report shall contain, when available, copies of applicable drawings, descriptions of the equipment involved, a description of the incident, plans for making repairs to remedy the reduction, and a discussion of how future occurrences will be prevented.

Subpart 1102-4. Pre-construction Compliance Filings.

Section 1102-4.1. Environmental management and construction plans.

(a) Prior to commencement of construction, the permittee shall file for approval by the office an Environmental Management and Construction Plan (EM&CP). The EM&CP may be phased by project construction activities or segmented by project construction locations in order to facilitate construction sequencing, provided that the first EM&CP identify the remaining EM&CP phases or segments and expected filings. Each EM&CP shall clearly describe the associated locations and scopes of work for all segments and phases, and shall include any updates or revisions to the segmenting or phasing plans described in the first EM&CP.

(b) The EM&CP for each phase or segment shall include the information required in this section, as applicable to the project segment, phase, and scope of work proposed in the EM&CP as a single filing package. If any particular requirement of the EM&CP is not applicable, not provided, or otherwise not addressed, the permittee shall so indicate and include supporting justification.

(c) The EM&CP may include any refinements to maps, plans, and other components of the application, to reflect updates to the final design and construction plans for the facility within the approved facility corridor and in a manner that complies with the permit. The EM&CP shall include a narrative description of such refinements and an explanation with supporting information as to why they are consistent with section 1100-11.1(a) of this Title.

Section 1102-4.2. EM&CP description and statement of objectives, techniques, procedures, and requirements.

Section A of the Environmental Management and Construction Plan (EM&CP) shall include a narrative addressing the location of the route, description and statement of objectives, techniques, procedures, requirements, and impacts avoidance, minimization, and mitigation. A table of contents will be included for the EM&CP and each section, appendix, or exhibit containing ten or more pages. The narrative portion of the EM&CP shall include, but need not be limited to, all the following information:

(a) *Facility location and description.* Describe the location and

limits of the project's temporary right-of-way (ROW), limits of disturbance, and permanent ROW, or easement for in water installation, and explain the need for any additional property or access rights. Describe how the final facility design and location addresses any concerns raised by any Federal, State, or local agencies, Indigenous Nations, and other stakeholders. Provide a rationale for the inclusion of any mid-span splice locations proposed.

(b) *Vegetation clearing and disposal methods*.

(1) Describe the methods and rationale for the type and manner of cutting and disposition or disposal methods for cut vegetation.

(2) Detail measures that will be employed to avoid damage to desirable vegetation, rare, threatened, and endangered species or species of special concern, important screening trees, and hedgerows, including appropriate measures to minimize tree clearing, install tree protection fencing around critical root zone, and minimize soil compaction within temporary work areas that will be revegetated post-construction, including but not limited to work areas within SCFWHs, open space, parkland, and wetlands and waterbodies.

(3) Describe any landowner agreements for retention of timber or other cut vegetation.

(4) Describe methods of compliance with 6 NYCRR Part 192 – Forest Insect and Disease Control, applicable New York State Department of Environmental Conservation (NYSDEC) quarantine orders, and New York State Department of Agriculture and Markets (NYSAGM) regulations.

(c) *Wetlands, streams, and other waterbodies.*

(1) Develop a summary table of wetlands, streams, and other waterbodies within the project's temporary ROW.

(i) For each stream and other waterbody, indicate the following:

(a) municipality (location);

(b) facility location (mileposts);

(c) GPS coordinates;

(d) stream name;

(e) field/map identification name;

(f) stream flow designation (e.g., perennial, intermittent, or ephemeral);

(g) NYSDEC stream classification;

(h) water index number;

(i) fishery type;

(j) crossing method and length; and

(k) jurisdiction.

(ii) For each freshwater wetland, indicate the following:

(a) municipality (location);

(b) facility location (milepost);

(c) GPS coordinates;

(d) wetland field designation (name);

(e) NYSDEC and NWI Cowardin classification code or, if located in the Adirondack Park, the numerical value assigned to the wetland;

(f) wetland cover type;

(g) wetland functions and values;

(h) crossing method and length;

(i) proposed structures located within wetland and regulated adjacent area;

(j) total area (square feet) of temporary and permanent disturbance in wetland and regulated adjacent area;

(k) total area (square feet) of conversion of forested and scrub-shrub wetlands; and

(l) jurisdiction.

(iii) For each tidal wetland, provide a table of the tidal wetlands crossed or filled by the facility and including:

(a) municipality (location);

(b) facility location (milepost);

(c) GPS coordinates;

(d) wetland type;

(e) crossing method and length;

(f) amount of excavation;

(g) amount and source of fill (if applicable);

(h) existing and proposed lot coverage; and

(i) jurisdiction.

(2) Provide a narrative description of construction activities within protected wetlands, State-regulated wetland adjacent areas, streams and other waterbodies that includes:

(i) A description of the measures to be taken to protect stream bank stability, stream habitat, and water quality including:

(a) crossing techniques;

(b) crossing structure types;

(c) timing restrictions for in-stream work;

(d) stream bed and bank restoration measures;

(e) vegetation restoration measures; and

(f) any site-specific measures to minimize impacts, protect resources, and manage facility construction.

(ii) A description of all activities that will occur within wetlands or State-regulated adjacent areas. Describe how impacts to wetlands, State-regulated adjacent areas, associated drainage patterns, and wetland functions will be avoided and minimized. For State-regulated wetlands and adjacent area this requires an assurance that the proposed activities are consistent with the weighing standards set forth in 6 NYCRR 663.5(e) and (f) and standards for issuance of permits set forth in 6 NYCRR 661.9.

(iii) A description of proposed measures for the protection of functions and drainage patterns of non-State-regulated wetlands (e.g., town, Federal wetlands).

(iv) Measures to minimize soil compaction, including the use of temporary matting, low weight to surface area equipment, or constructing when soils are frozen.

(v) Measures and details demonstrating how work areas will be isolated from flowing streams and standing water in wetlands, including the use of water handling methods such as sandbags, cofferdam, piping, or pumping. The details shall include a discussion of:

(a) management of waters accumulated in the isolated work area to ensure settling and filtering of solids and sediments before water is returned to a wetland or waterbody;

(b) restoration measures for the isolated work

area in streams including the complete removal of the temporary measures, reestablishment of pre-construction contours, and stabilization and seeding immediately following the completion of work; and

(c) the manner by which low flow conditions will be maintained and water depths and velocities similar to undisturbed upstream and downstream reaches will be preserved so that the movement of native aquatic organisms is sustained.

(vi) Measures to minimize impacts to fish and wildlife during construction, including actions to prevent entrapment of fish and wildlife in the work area and, if entrapment occurs, actions to timely and safely move the animals to appropriate undisturbed locations outside the work area.

(vii) Procedures to remove all excess fill materials to upland areas at least fifty (50) feet from waterbodies and outside of the State-regulated adjacent area.

(3) Provide a narrative description wetland and waterbody restoration that includes:

(i) Plans for stabilizing the bed and banks of all streams disturbed by construction with grading and revegetation as necessary.

(ii) Plans for revegetation of disturbed protected wetlands and State-regulated adjacent areas with native plants. Appropriate native wetland species mixes must be described.

(iii) Plans for monitoring of wetland restoration areas until an eighty (80) percent cover of native plant species with the appropriate wetland indicator status has been reestablished over all portions of the restored area.

(d) *Stream crossings.* For proposed crossings of streams and other waterbodies, provide the following:

(1) Detailed description of all proposed stream crossing locations and methods, with reference to the approved Stream Crossing Plan for trenchless methods as required by section 1102-4.4(g) of this Part.

(2) If a bridge is not practicable for a new permanent stream crossing, an alternatives analysis must be provided, including written justification for why a bridge is not practicable.

(e) *Agricultural areas.*

(1) Describe programs, policies, and procedures to mitigate agricultural impacts such as soil compaction.

(2) Explain how construction plans either avoid or minimize crop production losses and impacts to vulnerable soils.

(3) Indicate specific techniques and references to appropriate agricultural protection measures recommended by NYSAGM guidelines (see section 1100-17.1(l)(1)(ii) of this Title).

(f) *Sensitive land uses*. Describe the sensitive land uses (e.g., hospitals, emergency services, sanctuaries, schools, residential areas, parks/recreational areas, local businesses, etc.) that may be affected by construction of the facility, or by construction-related traffic, and specify measures to minimize the impacts on these land uses.

(g) *Cultural resources.* Describe the archaeological and above-ground cultural resources that may be affected by construction of the facility or by construction-related traffic and specify measures to minimize impacts on these resources.

(h) *Access roads, lay-down areas, and workpads.* Discuss the proposed access to the project ROW, including the areas where temporary or permanent access is required, and the nature of access improvements based on natural features, real property constraints, equipment constraints, and vehicles to be used for construction and maintenance, and the duration of access needs through restoration and the maintenance of the facility.

(1) Discuss the types of access which will be used and the rationale for employing that type of access including consideration of:

(i) temporary installations;

(ii) permanent installations;

(iii) use of existing roads, driveways, farm lanes, rail beds, etc., and a description of any improvements required to meet applicable standards or otherwise needed for construction of the project; and

(iv) other proposed access including by air and water.

(2) Indicate the associated drainage and erosion control features to be used for access road construction and maintenance.

(3) Indicate the type(s) of stream crossing method to be used in conjunction with temporary and permanent access road construction, including rationale for each proposed crossing method.

(4) All diagrams and specifications should include material type and size to be placed in streams and at stream approaches.

(5) If access and workpad areas cannot be limited to upland areas, provide justification for any access and workpad areas which are proposed to be located in a wetland or stream or waterbody or natural protective feature.

(i) *Construction noise.*

(1) Indicate any changes in the types of major equipment to be used in construction, construction noise sources and associated sound levels; methods of construction or construction techniques; days of the week and hours of the day during which that equipment will normally be operated; any exceptions to these schedules; and any changes in construction schedule from the permitted facility.

(2) Describe any measures to be taken to reduce audible noise levels caused by construction equipment. Include notifications and noise impact avoidance, and any changes or updates in minimization measures to be implemented for potentially impacted sensitive sound receptors including but not limited to extended work hours consistent with section 1102-3.4(a) of this Part.

(j) *Ecological and environmentally sensitive sites.*

(1) Indicate the procedures that were followed to identify ecological and environmental resources and specify the measures that will be taken to avoid and minimize impacts to these resources. Include any survey reports or other reports prepared to identify and analyze such sites.

(2) Provide a list of all protected plant species or threatened or endangered species potentially located within the facility corridor and any other areas where construction-related activities may occur.

(3) Describe methods for training contractors and other on-site personnel on identifying those protected plant species and threatened or endangered species indicated as potentially located within the facility corridor, or evidence of the presence of those species.

(4) Describe measures that will be taken in the event that threatened or endangered species are known to exist in the project area or are otherwise observed, including avoidance and minimization measures that will be implemented.

(5) Provide an updated list of protected native plant species, including confirmation of the locations of protected native plants listed in 6 NYCRR section 193.3 that have been previously observed to occur within the facility corridor.

(k) *Invasive species.* Summarize the invasive species known to exist within the facility corridor based on publicly available information the results of pre-construction invasive species surveys and the methods that will be used to minimize the spread and prevent the introduction of invasives species during

construction of the project.

(l) *Herbicides.*

(1) Specify the locations where herbicides are to be applied. Provide a general discussion of the site conditions (e.g., land use, target and non-target vegetation species composition, height, and density) and the choice of herbicide, formulation, application method, and timing.

(2) Confirm that all herbicides that will be used have valid registrations under applicable State and Federal laws and regulations.

(3) Describe the procedures that will be followed during application to protect non-target vegetation, streams, wetlands, potable waters and other water bodies, and residential areas and recreational users on or near the ROW.

(m) *Fugitive dust control.* Specify appropriate measures that will be used to minimize fugitive dust and airborne debris from construction activity in a manner that is consistent with the Standards and Specifications for Dust Control, as outlined in the New York State Standards and Specifications for Erosion and Sediment Control (see section 1100-17.1(i)(1)(i) of Part 1100 of this Title).

(n) *Blasting.*

(1) Describe and identify on overview maps the proposed location(s) of blasting. Provide a characterization of the subsurface conditions at each proposed blast site and an explanation for why other excavation methods are not feasible, with appropriate reference to the Geotechnical Engineering Report required in section 1102-4.4(k) of this Part.

(2) Identify any nearby receptors that may be adversely affected by blasting operations and describe any pre-blast surveys completed and/or planned consistent with the Blasting Plan required by section 1102-4.4(l) of this Part.

(o) *Environmental supervision.*

(1) Describe protocols for supervising demolition, vegetation clearing, use of herbicides, construction, and site restoration activities to ensure minimization of environmental impact and compliance with the environmental protection provisions specified by the permit.

(2) Specify the titles and qualifications of personnel proposed to be responsible for ensuring minimization of environmental impact throughout the demolition, clearing, construction, and restoration phases, and for enforcing compliance with environmental protection provisions of the permit and the EM&CP. Indicate the amount of time each supervisor is expected to devote to the project.

(3) Specify responsibilities for personnel monitoring all construction activities, such as clearing, sensitive resource protection, site compliance, EM&CP change notices, etc.

(4) Explain how all environmental protection provisions will be incorporated into contractual specifications and communicated to those employees or contractors engaged in demolition, clearing, construction, and restoration.

(5) Describe the procedures to "stop work" in the event of a permit violation.

(6) Identify the permittee's designated contact, including 24/7 emergency phone number, for assuring overall compliance with permit conditions.

(p) *Clean-up and restoration.* Describe the permittee's program for ROW clean-up and restoration, including:

(1) Removal of any temporary roads; restoration of lay-down or staging areas; the finish grading of any scarified or rutted areas; and the removal of waste, scrap metals, surplus or extraneous materials or equipment used.

(2) Plans, standards, and a schedule for the restoration of vegetative cover, including, but not limited to, specifications to address:

(i) design standards for ground cover:

(a) species mixes and application rates by site;

(b) site preparation requirements (soil amendments, stone removal, subsoil treatment, or drainage measures); and

(c) acceptable final cover percentage by cover type.

(ii) planting installation specifications and follow-up responsibilities;

(iii) a schedule or projected dates of any seeding and/or planting; and

(iv) plans to prevent unauthorized access to and along the ROW.

(3) Roadway and guiderail restoration (if not addressed elsewhere).

(q) *NYS Uniform Fire Prevention and Building Code.* Provide a statement identifying the city, town, village, county, or State agency or authority acting as the Authority Having Jurisdiction to review and approve the building plans, inspect the construction work, and certify compliance with the New York State Uniform Fire Prevention and Building Code, the Energy Conservation Construction Code of New York State, and the substantive provisions of any applicable local electrical, plumbing, fire, or building code.

(1) The statement shall identify any local government that has declined responsibility for the Uniform Code and Energy Code pursuant to 19 NYCRR section 1202.1, and whether the responsibility falls with the county in which the local government is located or with the State.

(2) The statement shall include a description of the arrangement made between the applicant and the entity that shall perform the review, approval, inspection, and compliance certification, including arrangements made to pay for the costs thereof including the costs for any consultant services necessary due to the complex nature of such

facilities.

(r) *Real property.* Provide an attestation that all real property and access rights necessary for construction of the applicable phase or segment of the project have been obtained. The necessary real property and access rights for a particular phase or segment shall mean all real property and access rights for that phase or segment and no less than eighty-five (85) percent of real property or access rights for the major electric transmission facility, except that any permittee that is not registered as a transportation corporate shall have one-hundred (100) percent of real property and access rights.

(1) If applicable, copies of approved occupancy rights for any railway properties, including all design and construction plans, and a copy of all specifications and engineering computations for the proposed occupancy.

(2) If applicable, copies of crossing agreements with owners of railroad tracks or beds crossed by the project, including all design and construction plans and all specifications and engineering computations, if any, for the proposed crossings.

(s) *Co-located infrastructure (CI).*

(1) In order to protect CI described in section 1102-3.4(j) of this Part, the permittee shall include in the EM&CP:

(i) an interference study, conforming to industry standards and performed by an individual or individuals with suitable qualifications to conduct such study, with respect to each location at which the facility crosses CI or comes into such proximity to CI that an interference study is warranted by Good Utility Practices, and specifying any proposed mitigation measures;

(ii) a study to determine whether the facility may have corrosive effects on any CI, conforming to industry standards and performed by individual(s) with suitable qualifications to conduct such study, and specifying any proposed mitigation measures;

(iii) a statement that all proposed electric transmission grounding does not interfere with any gas pipeline cathodic protection system or is capable of conducting a fault current that would arc to the pipeline or gas facility;

(iv) detailed cable ampacity, EMF, and thermal calculations and documentation demonstrating that CI will not be adversely affected by the construction, operation, or maintenance of the facility; such documentation shall include study results, calculations, and underlying assumptions used in the analysis and also to include, but not be limited to, cable specification, installation cross sections, thermal resistivity (tested or assumed) and, in the case of alternating current lines only, magnetic field studies;

(v) detailed calculations and documentation demonstrating that CI will not be adversely affected by the weight and installation methodology of the facility's cables; such calculations and documentation shall respond to and address study results and shall set forth the underlying assumptions used in the analysis, and shall also include, but not be limited to, cable specification, installation cross sections, geotechnical data (tested or assumed), and proposed mechanical protection;

(vi) documentation showing that there will be no material interference with the ability of the owners and/or operators of any CI crossed by, or in proximity to, the facility, to repair, operate, or maintain such CI as a result of the construction, operation, or maintenance of the facility;

(vii) a full description of all measures that will be employed by the permittee to protect all CI that may be affected by the construction, operation, or maintenance of the facility, including, but not limited to, detailed construction techniques and methods, equipment descriptions, an explanation of how any contingency will be met in case damage does occur, and procedures for coordination with utilities and public service

providers;

(viii) protocols for performing repair and maintenance work on the facility in proximity to CI; and

(ix) documentation showing agreement by the owners and/or operators of affected CI with both the permittee's construction schedule for operations in the vicinity of such CI and the measures described in the EM&CP documents relating to such CI, or a description of those aspects of the proposal that are disputed, and a discussion of the positions taken by the permittee and the owners and/or operators of the CI.

(x) Where the office has required the permittee to conduct a survey for oil and natural gas wells pursuant to section 1102-3.4(k)(1) of this Part, or where the permittee has conducted a survey due to the known presence of such wells, the permittee shall provide:

(a) a description of the survey, setting forth the date(s) the survey occurred, the company that conducted it, methodology used, and a summary of the results of the survey;

(b) a map identifying the location of all identified wells and associated infrastructure, along with the facility ROW, proposed areas to be disturbed, and proposed facility components. The map shall identify minimum clearance distances from a well for a well servicing or plugging rig as specified in OSHA CFR 29 Part 1926.1408(a)(2)(iii) or OSHA CFR 29 Part 1926.1409 or proposed setbacks from permanent structures and buildings of a minimum of fifty (50) feet from identified well(s), whichever is greater, and a path minimum twenty (20) feet wide to the well to permit inspections and other regulatory work as may be needed;

(c) if the required clearances or setbacks to wells cannot be met, an explanation as to why they cannot be met and what provisions have been made to protect the wells during construction and to

preserve the ability to abandon, plug, or service such wells.

(t) *ROW encroachment.*

(1) Provide detailed plans for identifying and resolving potential encroachments to the existing and proposed ROW.

(2) Provide justification for any proposed acquisition, removal, or relocation of any buildings or structures.

(u) *Safety and security.* Describe plans to prevent unauthorized access to and along the ROW, such as:

(1) Posting signs at the edges of the project ROW in those locations where the ROW intersects public roads.

(2) Performing outreach to educate and inform the public concerning the risks and impacts of unauthorized access.

(3) Consulting with local law enforcement officials in an effort to prevent future trespassing.

(4) Identifying construction and material details of gates, berms and landscaping if any.

(5) Conducting a post-construction assessment of the project, in consultation with the office, to provide a final determination of locations of any gates, berms and landscaping.

(v) *Electric and magnetic fields.* Provide a certification of a professional engineer licensed by State of New York stating that, if constructed in accordance with the final design plans, the transmission facility will comply with the applicable electric and magnetic field ("EMF") standards, established by the commission in Opinion No. 78-13 (issued on June 19, 1978) and the Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities (issued on September 11, 1990).

(w) *In-water facilities*. For construction of in-water facilities, the EM&CP shall include:

(1) Details and manufacturers specifications of equipment that will be used for installation of the in-water cable and associated facilities.

(2) Detailed description of the following construction practices for in-water cable installation (as applicable):

(i) any offshore site preparation activities along the installation route, including but not limited to, as applicable, pre-lay grapnel run, boulder removal/relocation, marine debris removal, unexploded ordinances (UXO) clearance, removal of existing infrastructure, pre-installation surveys, pre-sweeping, pre-lay mattress installation, utility crossing preparation, and/or pre-trenching, including a narrative and maps indicating the locations at which each method is expected to be employed;

(ii) installation methods, including but not limited to mechanical cutter, mechanical plow (which may include a jetting system), jet sled, jet trencher, vertical injector, hydraulic/suction hopper dredging, mechanical dredging, and/or mass flow excavator, including a narrative and maps indicating the locations at which each method is expected to be employed;

(iii) the location(s) of any horizontal directional drilling (HDD) exit pit(s);

(iv) transition methods for HDD to in-water cable;

(v) cable pulling and splicing plans, including details associated with any proposed installation of spare conduits within the in-water ROW;

(vi) cable-laying methods including barge positioning and midline buoys, if necessary;

(vii) how the use of anchoring, if any, during construction and maintenance activities will avoid and/or minimize impacts to sensitive benthic habitats, Recognized Ecological Complexes, historic and archeological resources, and impacts to existing buried

assets;

(viii) the parameters for the use of anchors and spuds, the limits of the anchoring corridor, and identification of discrete "No Anchor" areas in the event anchoring is ultimately required;

(ix) measures that will be employed to minimize sediment disturbance caused by anchoring during construction of the in-water cable;

(x) how the proposed construction equipment and methods avoid and/or minimize impacts related to the in-water environment and why the proposed construction equipment and methods are most suitable for construction of the in-water facility;

(xi) details on the area and duration of any temporary in-water closures of the near shore including recreational areas (e.g. fishing piers, parks, beaches) and potential work windows that avoid these areas during high use times as needed during HDD and cable laying activities and a description of how these areas have been minimized to the maximum extent practicable;

(xii) details on how mariners, including commercial, recreational, for-hire (charter) fishermen, and other recreational boaters will be alerted to the presence of the in-water work area, including any Private Aids to Navigation (PATON) that may be required in State waters, and identification of activities that will be the subject of United States Coast Guard's (USCG) Local Notice to Mariners.

(3) Description of cable burial techniques and adjustments along the marine route, including a detailed graphical representation of anticipated minimum and maximum achievable burial depths based on sediment conditions at regular intervals that are appropriate for the scale of the project, and which provides:

(i) an evaluation of the likelihood of achieving target burial depths based on the results of the study; and

(ii) a quantitative analysis of risks to the cable and coastal users along the marine route.

(4) Written evaluation of the efficacy of alternative cable protection measures that may be required along the in-water route and justification for why the selected cable protection method is preferred at each site. The analysis shall:

(i) include, to the extent available, technical documentation from cable protection manufacturers; and

(ii) evaluate a range of cable protection measures, including but not limited to concrete mattresses with taper edges, crushed rock, and rock bags or other appropriate protection method(s)) with respect to their ability to maintain overtrawlability, minimize shifting over time, and avoid creating a discernable berm on the sediment surface.

Section 1102-4.3. EM&CP plans, profile drawings, and maps.

Section B of the EM&CP shall include the project's plans and profiles, details, sections and design drawings, and maps. Each drawing or figure shall be clearly titled, numbered, and dated as to its version. All final design drawings and figures must be stamped and signed by a licensed Professional Engineer.

(a) *Plan view requirements*. Plan drawings at a legible common engineering scale (recommended at a scale minimum 1 inch = 200 feet) showing or otherwise including:

(1) A drawing index and drawing index (key) map.

(2) A legend identifying existing and proposed features shown on the plans.

(3) Contour lines at a minimum of 5-foot intervals. Where contours are based on recently completed on-site surveys, contours shall be taken at two-foot intervals, completed by a licensed surveyor, and referenced to the National Geodetic Vertical Datum (NGVD) or North American Vertical Datum of 1988 (NAVD88).

(4) Station numbering (stationing) along the centerline of proposed electric line(s) which shall be continuous along the entire length of the cable.

(5) Construction notes, including all appropriate information for the contractor.

(6) A table showing property owner information and associated parcel number, stationing, and type of easement(s).

(7) A table showing splice locations and methods, and associated stationing location.

(8) A table showing CI information, including owner information, station location of proposed crossings, and agreement status.

(9) The boundaries of any new, existing, and/or expanded ROW or road boundaries, and where conductors are to be constructed overhead, underground or in-water.

(10) Areas contiguous to the ROW or street within which the permittee will obtain additional property rights.

(11) Host and adjacent property lines and associated landowner information.

(12) Locations of each proposed structure related to the major electric transmission facility.

(13) Components of the major electric transmission facility complying with any applicable local setbacks, including fence, gate, down-guy anchor, any counterpoise required for the facility, conductors, insulators, location of mid-span splices, static wires, and any other components attached to facility structures.

(14) Unique symbols distinguishing proposed and existing overhead and underground conductors.

(15) Proposed trenchless and in-water installation locations,

including the approximate lengths.

(16) On- and off-ROW temporary and permanent access roads, parking areas, lay-down areas and work pads, along with an indication of provisions for upgrading any existing access.

(17) Construction contract limit lines, property lines, designated floodways and flood-hazard area limits, buildings, sheds, structures to be relocated, and any plans for water service and sewage and waste disposal.

(18) Construction type, material, dimensions, and listing of any standards applied to construction of access roads.

(19) Limits of Disturbance for the proposed major electric transmission facility, including areas requiring temporary clearing needed for construction, including language referencing danger tree provisions/rights.

(20) For existing utility and non-utility facilities that will be acquired or require removal or relocation, indicate methods of removal of existing facilities, and show the new locations, types and configurations of relocated facilities.

(21) Location of the major electric transmission facility relative to nearby fence lines, roads, parks, trails, railways, airfields, hedgerows, surface waters, wetlands, streams, other water bodies, significant and unique habitats, associated facilities, nearby buildings or structures, major antennas, oil, gas, and potable water wells, and major utility infrastructure.

(22) Minimum clearance distances or proposed setbacks from permanent structures and buildings from known oil and gas wells.

(23) The location of any proposed new or expanded switchyard, substation, converter station, or other terminal or associated utility or non-utility structure.

(24) Type(s) of outdoor lighting, including design features to avoid off-site illumination and minimize glare, and the color and finish of all structures.

(25) The location and boundaries of any on- or off-ROW areas proposed to be used for fabrication, designated equipment parking, field office trailer, staging, access, lay-down, and conductor pulling.

(26) Any planned fencing, surface improvements, and screening of storage and staging areas.

(27) The locations for ready-mix concrete or flowable fill chute washout and any other cleaning activities.

(28) Location of any proposed temporary concrete batch plant(s) related to major electric transmission facility construction.

(29) Locations of all temporary and permanent erosion and sediment and stormwater management controls. Include the dimensions, material specifications and installation details for each post-construction stormwater management practice.

(30) Additional requirements for in-water cables:

(i) federal navigation channel locations;

(ii) location of aids to navigation;

(iii) co-located infrastructure and crossing locations;

(iv) any existing natural protective features or erosion protective structures or other existing or proposed structures including but not limited to berms, retaining walls, fences, bridges, piers, and other marine infrastructure;

(v) location of landfall and associated infrastructure (e.g., exit point, transition joint bay, etc.);

(vi) defined bathymetry contours within the facility siting corridor;

(vii) splice locations;

(viii) locations of known significant fish and wildlife habitat; threatened or endangered species or habitat; Recognized Ecological Complexes; shellfish management and conservation areas; shellfish and macroalgae aquaculture areas; fish passageways and structures; wintering areas for ducks and other waterfowls; and other exclusion zones;

(ix) locations of Federal Aids to Navigation (ATONs);

(x) locations of proposed cable protection measures;

(xi) anchorage areas and anchor avoidance areas;

(xii) any temporary in-water closures needed during horizontal directional drilling (HDD) and in-water preparation or construction; and

(xiii) locations of any proposed sand wave leveling.

(b) *Vegetation clearing and disposal plans*. Identify on the plan drawings:

(1) locations of sites requiring clearing of vegetation related to the proposed major electric transmission facility, including areas to be temporarily utilized during construction, including but not limited to temporary access roads, equipment storage areas, stockpile and laydown areas, and skid trails, and the geographic limits of such clearing including danger trees;

(2) specific methods for the type and manner of cutting and disposition or disposal method for cut vegetation, including areas where property owners request specific methods;

(3) methods for management of vegetation to be cut or removed at each site;

(4) any geographical area bounded by distinctly different cover types requiring different cut-vegetation management methods including areas requiring distinctly different cut-vegetation methods due to site conditions such as land use differences, population density, habitat or site protection,

soil or terrain conditions, fire hazards, or other factors; and

(5) location of any areas where specific vegetation protection measures will be employed and the details of those measures to avoid damage to specimen tree stands of desirable species, important screening trees, or hedgerows.

(c) *Stormwater management and erosion controls*. Plan views shall show specific controls to divert stormwater, minimize erosion, and prevent sediment transport beyond the limits of the work area, in a manner that is consistent with the project SWPPP.

(d) *Wetlands, waterbodies, and other water resources*. On the plan view, indicate:

(1) Locations of wetlands, streams, and other water bodies.

(2) The name, water quality classification, location, and flow regime of all rivers, streams, and drainages within or adjacent to the facility ROW.

(3) The location and type of any wetland, delineated locations of wetland boundaries, and the extent of State-regulated wetland Adjacent Areas located within or adjacent to the facility ROW identified in the approved jurisdictional determinations.

(4) The location of all potable water sources, based on publicly available information, and the precautionary measures to be taken to protect each water source, including springs and wells on the facility ROW or within: (i) one hundred (100) feet of the ROW or access roads; (ii) five hundred (500) feet of horizontal directional drilling locations; or (iii) one thousand (1,000) feet of blasting operations.

(5) The type(s) and location(s) of measures to be taken to protect wetlands and waterbodies.

(6) The stream and wetland crossing method(s), with reference to the applicable crossing method details/typicals.

(7) For each new crossing of a "protected stream" and/or "navigable waters of the state", and streams with species protected under 6 NYCRR Part 182, provide:

(i) detailed plan, profile, and cross-sectional view plans;

(ii) drainage area and flow calculations to ensure that the design will safely pass the 1% annual (100-year return) chance storm event; and

(iii) location, quantity, and type of fill.

(8) Designated floodways or flood hazard areas to be traversed by the facility or access roads, or otherwise used for facility construction or the siting of associated facility components.

(e) *Agricultural areas.* On the plan view, indicate:

(1) Locations of sites under cultivation or in active agricultural use, including rotational pasture, pasture, hayland, and cropland.

(2) Locations of any unique agricultural lands including maple sugarbushes, organic muckland, and permanent irrigation systems, as well as areas used to produce specialty crops.

(3) Locations of vulnerable soils in agricultural areas that are sensitive to construction disturbance due to slope, soil wetness, and shallow depth to bedrock.

(4) Location of all land and water management features, including subsurface drainage facilities, surface drainage, diversion terraces, buried water lines, and water supplies.

(5) Site-specific techniques to be implemented to minimize construction-related impacts to agricultural resources.

(f) *Sensitive land uses and resources*. Indicate the location and identification of sensitive land uses and resources that may be affected by construction of the facility or by construction-related traffic.

(g) *Recreational*. Indicate the locations where recreational use areas would affect or be affected by the facility location, construction or other ROW preparation.

(h) *Sensitive sound receptors*. Show the locations of sensitive sound receptors pursuant to section 1102-2.9(f) of this Part.

(i) *Ecological and cultural resource environmentally sensitive areas.*

(1) Indicate measures for avoidance of archeological sites identified within the facility right-of-way or along the general alignment of any access roads to be constructed, improved, or maintained for the facility, consistent with the approved Site Avoidance Plan(s). The mapped locations of all identified archeological and environmentally sensitive sites within the ROW shall be identified as "Environmentally Sensitive Areas, No access" (ESAs) on the final construction drawings. ESAs will be marked in the field to restrict access consistent with section 1102-3.4(g) of this Part.

(2) Protected native plants stands shall be identified in the plan view drawings, which shall note any such locations where the landowner has given permission for the removal of such protected native plants.

(3) Locations of construction fencing to restrict access to ecologically and environmentally sensitive areas during construction, including locations of protected native plants.

(j) *Above ground cultural resources*. Indicate the locations of historic/ above ground cultural resources and specify measures to minimize impacts to these resources.

(k) *Visual resources*. Indicate the locations of resources of statewide concern and any other visually sensitive resources identified in the VIA.

(l) *Invasive species*. Identify the location(s) of invasive species known or identified within or adjacent to the facility ROW and measures to minimize the spread, expansion, and introduction of invasive species.

(m) *Herbicides*. On the plan view and in the construction notes, indicate areas where herbicides will not be used.

(n) *Profiles*. Profile View, at an appropriate scale, to be included with relevant plan sheet, showing or otherwise including:

(1) The lowest conductor of an overhead design shall be shown in relation to ground at the maximum permissible conductor temperature for which the line is designed to operate (i.e., normally the short-time emergency loading temperature). If a lesser conductor temperature is used for the line profile, the maximum sag increase between the conductor temperature and the maximum conductor temperature shall be indicated for each ruling span.

(2) For underground project design, show relation of project to final surface grade, indicating design depth-of-cover.

(3) Existing surface grade (ground elevation) along major electric transmission facility route.

(4) Stationing that matches the related plan view on that sheet. Stationing shall be continuous from beginning of the major electric transmission facility to its end.

(5) All components of the proposed major electric transmission facility and corresponding elevations shown above or below the existing surface grade.

(6) Existing utility or non-utility structures and related elevations within the ROW and indicate those to be removed or relocated.

(7) Include circuit arrangements where new structures will accommodate existing circuits, indicate methods of removal of existing facilities, and show the new locations, types and configurations of relocated facilities.

(8) Proposed trenchless installations and waterbody crossing locations, elevations of proposed cables, and direction of cable pull, including the approximate lengths of such routes. Include plan and profile drawings of HDD bore paths and

entry/exit pits.

(o) *In-water transmission facility profiles*. For in-water cables, provide installation requirements shown on profiles, including related elevations, including:

(1) Existing surface water level.

(2) Present sediment surface, including the presence of designated or historic dredged material sites.

(3) Profile drawing of HDD bore path and entry/exit pits.

(4) Proposed in-water route of major electric transmission facility shown at target burial depth.

(5) Federal navigation channel and proposed separation between the bottom of the channel and proposed target burial depth.

(6) Co-located infrastructure and crossing locations.

(7) Locations of cable protection measures.

(8) Bridges, piers, and other marine infrastructure.

(9) Location of landfall and associated infrastructure.

(10) Splice locations.

(11) Locations of Federal Aids to Navigation (ATONs).

(12) Anchorage areas and anchor avoidance areas.

(13) Locations of any proposed sand wave leveling.

(14) Location of any known unexploded ordnances (UXO).

(15) Locations of known significant fish and wildlife habitat; threatened or endangered species or habitat; Recognized Ecological Complexes; shellfish management and conservation areas; shellfish and macroalgae aquaculture areas; fish passageways and structures; wintering areas for

ducks and other waterfowls; and other exclusion zones.

(p) *Typical details and elevation requirements.* Provide the following typical details and elevation requirements for the for final facility design and construction:

(1) Typical underground infrastructure section details with dimensions of proposed depth, trench width, level of cover, separation requirements between circuits/cables, clearing width limits for construction and operation of the facility, temporary stockpile width, limits of disturbance, required permanent ROW and a description of the cable installation processes.

(2) Details for typical tower foundations.

(3) Typical details of any proposed vaults, including vault dimensions, level of cover, clearing limits for construction and operation of the facility, and LOD for installation.

(4) Details for typical overhead electric transmission lines, including a profile of the centerlines at an exaggerated vertical scale and typical elevation views including height above grade and structure layouts.

(5) Details for typical overhead structure, buildings, and any proposed equipment foundations including plan and section information. If multiple foundation designs are to be utilized for the major electric transmission facility, specify the foundation type at each location on the foundation plans, either listed in a table or indicated on corresponding plans.

(6) Typical detail drawings for switchyards, substation, converter stations other buildings and interconnection facilities, including fencing, gates, and station equipment and infrastructure, which shall include:

(i) the length, width, height, material of construction, color, and finish of all buildings, structures, conductors, insulators, and other fixed equipment; and

(ii) a general arrangements drawing showing elevation mark pointers with reference to associated elevation views, including views of all components of the station.

(7) For each proposed permanent point of access or access type, a typical installation plan view, cross section, and side view with appropriate dimensions, including temporary and permanent widths, and identification of materials to be used along with corresponding material thickness.

(i) Provide diagrams and specifications (include plan and side views with appropriate typical dimensions) for each erosion control feature to be used for access roads.

(ii) Provide diagrams and specifications (include plan and side view with appropriate dimensions) for each type of access road stream crossing method.

(8) Typical details of any other proposed access (e.g., helicopter or barge placement).

(9) Typical details of any proposed agricultural resource protection measures.

(10) Manufacturer provided information regarding the design, safety and testing information for associated components of the major electric transmission facility including, but not limited to inverters, transformers, cables and conductors, circuit breaker, relay protection and communication system to be installed during construction, or as related to the transmission facility for operation.

Section 1102-4.4. EM&CP additional plans and appendices.

Section C of the EM&CP shall include additional plans and appendices required by the permit or otherwise proposed by the permittee.

(a) *Other permits and approvals.* Copies of all required permits and approvals for construction of the project, which may be incorporated by reference, and including a copy of any Interconnection Agreements (IA) for the project, prior to the

activity for which the permit or approval is required.

(b) *Quality Assurance and Control Plan*. A Quality Assurance and Control Plan, which shall include:

(1) Job titles and qualifications necessary, demonstrating how the permittee will monitor and assure conformance of facility design, engineering and installation, including general concrete testing procedures with a plan outlining the monitoring and testing of concrete procedures in conformance with and reference to all applicable codes and standards.

(2) The frequency with which the Quality Control Audits will be performed.

(3) Description of how the permittee will ensure that the transmission line structures and components it purchases conform to the specification for structures and components described in the EM&CP.

(c) *Traffic Control Plan.* A Traffic Control Plan to ensure safety and minimize potential delays to local traffic during construction, which shall describe, at a minimum, the following:

(1) Maps and plans showing final haul routes developed in consultation with the office, county and municipal highway officials and local school districts. Final haul routes shall be accurately depicted in drawings submitted with the Traffic Control Plan.

(2) Copies of all necessary transportation permits and approvals from the affected State, county, and municipal agencies and authorities for such equipment and/or materials on such route. Such permits shall include but not be limited to: Highway Work Permits to work within the ROW, permits to exceed posted weight limits, Highway Utility Permits to construct facilities within ROW, Traffic Signal Permits to work within ROW, Special Haul Permits for oversize/overweight vehicles, NYSDOT Use and Occupancy Permit, and Divisible Load overweight Permits.

(3) Copies of all necessary agreements with utility companies for raising or relocating overhead wires where

necessary to accommodate the oversize/overweight delivery vehicles, if applicable.

(4) A copy of all road use and restoration agreements, if any, between the permittee and landowners, municipalities, or other entities, regarding repair of local roads damaged by heavy equipment, construction or maintenance activities during construction and operation of the facility.

(5) Confirmation that:

(i) types and placement of signs shall be determined in consultation with the jurisdictional agency; and

(ii) flag persons shall be present when equipment is crossing any public road, when equipment is being loaded or unloaded from a vehicle parked on a public road, and where multiple-lane traffic has been reduced to less lane(s).

(6) If applicable, the Traffic Control Plan shall include a Work Zone Traffic Control (WZTC) plan(s) identifying procedures to be used to maintain traffic and provide a safe construction zone for those activities within the roadway ROW.

(i) WZTC plans shall also be provided for each location where construction vehicles will access the project ROW from the local roadway.

(ii) WZTC plans shall address temporary signage, lane closures, placement of temporary barriers, and traffic diversion.

(d) *Stormwater Pollution Prevention Plan.*

(1) Include the Storm Water Pollution Prevention Plan (SWPPP) and NYSDEC's Letter of Authorization under the SPDES Construction General Permit for Stormwater Discharges from Construction Activity and/or a NYSDEC-approved SPDES Individual Permit for the project.

(e) *Wetland and Stream Delineation Report.*

(1) A wetland and surface water delineation report including a series of maps identifying the boundaries of all wetlands and waterbodies present within the temporary and permanent ROWs as well as those outside the ROWs, which are within one hundred (100)-feet for freshwater wetlands and three hundred (300) feet for tidal wetlands of any areas to be disturbed. The report shall consist of a description of waterbody and wetland characteristics including Cowardin wetland classifications, the Fisheries Index Number (FIN) or Waterbody Index Number (WIN), a description of stream flow (perennial, intermittent, or ephemeral), summary of the field data collected, and associated spatial data.

(2) *Wetland and Surface Water Jurisdictional Determination.* The office will conduct a site visit, as needed, to inspect the delineated boundaries of all wetlands and waterbodies for accuracy and to assist in determining the classification of any wetlands and surface waters for the purpose of a jurisdictional determination. The office, in consultation with NYSDEC and, where applicable, the APA, shall provide a final approved jurisdictional determination to the permittee within (90) ninety days of receipt of the wetland and surface water delineation report, unless seasonal conditions prevent the office from completing a determination, in which case the office shall provide a jurisdictional determination as soon as practicable following suitable field conditions.

(f) *Wetland Restoration and Mitigation Plan.* A Wetland Mitigation Plan, developed in consultation with the office to compensate for unavoidable loss of wetland functions and values, which shall include the following:

(1) Proposal to address wetland mitigation for all permanent impacts to State-regulated wetlands and federally-regulated wetlands, if prescribed by the Army Corps of Engineers. If such proposal is to prepare a detailed mitigation plan for State regulated wetlands, it shall separately address impacts to each of the wetland benefits described in ECL section 24-0105(7). Plans shall provide for wetland mitigation in the same watershed to the maximum extent possible.

(2) Implement either of the mitigation actions set forth in

paragraphs (3) and (4) of this subdivision or a combination thereof to meet the mitigation requirement.

(3) Plans to compensate for unavoidable loss of wetland functions and values, including the following:

(i) the creation, restoration, or enhancement of compensatory wetlands at appropriate ratios;

(ii) a construction timeline for the mitigation activities;

(iii) construction details for meeting all requirements contained in the permit conditions;

(iv) agreed-upon performance standards for determining wetland mitigation success;

(v) provisions for post-construction annual monitoring and reporting for a period of five years after completion of the wetland mitigation; and

(vi) plans for corrective actions after each monitoring period to implement corrective actions for any areas that do not meet the required performance standards in order to increase the likelihood of meeting the performance standards after five years.

(4) Subject to the approval of the office, payment of wetland mitigation credits for unavoidable wetland impacts into:

(i) an existing wetland mitigation bank; or

(ii) an in-lieu fee program; or

(iii) any other wetland mitigation fee program.

The purchase of mitigation banking credits or payments into an in-lieu fee program or other mitigation fee program shall occur, to the maximum extent practicable, within a service area that includes the location of the facility. The office may give the permittee credit, in whole or in part, for mitigation fees paid to another State or Federal agency or

authority.

(g) *Stream Crossing Plan.* A site-specific Stream Crossing Plan shall be provided for all stream crossings using trenchless crossing methods. Each site-specific Stream Crossing Plan must be prepared and stamped by a qualified engineer licensed in New York State. For each proposed trenchless crossing location, the Stream Crossing Plan must include:

(1) Detailed engineering plans with plan views and cross sections that contains the stream channel, crossing alignment, locations of boring pits, pullback areas, laydown areas, areas of vegetative clearing/cutting, erosion and sediment control measures, and dewatering wells (if necessary).

(2) Geotechnical data characterizing the soils for the entire depth profile of the crossing.

(3) A site-specific analysis of the potential for inadvertent returns, including but not limited to, an evaluation of soil strength to resist drilling fluid pressure, and the likelihood to maintain borehole stability.

(4) A site-specific analysis of the appropriate depth beneath the waterbody to assure sufficient cover is provided considering vertical and horizontal movement of the stream. This analysis should consider 0.2 percent chance flow events anticipated over the life of the facility, including an appropriate design flow multiplier to account for future flows given a changing climate.

(h) *Inadvertent Returns Plan.* A site-specific plan to address inadvertent returns of drilling fluids that occur within a stream or wetland that includes dedicated equipment and staff on site during active directional drilling as well as identification of downstream access points to immediately collect drilling fluid released into the stream and halt additional spread.

(1) The plan shall establish procedures for notifying the office, NYSDEC and, where applicable, the APA, of any inadvertent returns or other releases of drilling fluids within 24 hours.

(2) Within seven (7) days of notifying the office, NYSDEC and, where applicable, the APA, of an inadvertent return or other release of drilling fluids, the permittee must develop and submit to the office a "Corrective Action Plan" to remove any remaining drilling fluid and restore the wetland or waterbody to pre-existing conditions. At a minimum, the "Corrective Action Plan" shall include a description of the condition(s) requiring corrective action, methods and schedule for conducting the corrective action(s). The permittee shall implement the approved "Corrective Action Plan" immediately after receiving written approval from the office, according to the approved schedule.

(i) *Drilling Fluid Management Plan. A plan* describing procedures and requirements for drilling fluid management, including the following:

(1) drilling Fluid Safety Data Sheet and any chemical authorization forms;

(2) description of how drilling fluids will be managed on site, stored, and transported;

(3) description of procedures for disposal of drilling fluids, including plans for characterization of whether drilling fluids constitute hazardous or solid waste, and when such drilling fluids are anticipated to be disposed at an off-site facility, the name and location of any offsite disposal facilities; and

(4) description of how drilling fluids will be neutralized for disposal.

(j) *Spill Prevention Control and Countermeasures Plan.* Provide a plan for the storage, handling, transportation, and disposal of petroleum, fuels, oil, chemicals, hazardous substances, and other potentially harmful substances which may be used during, or in connection with, the construction, operation, or maintenance of the facility.

(1) Address how to avoid spills and improper storage or application in the vicinity of any wetland, river, creek,

stream, lake, reservoir, spring, well, or other ecologically sensitive site, or existing recreational area along the ROW and access roads.

(2) Describe procedures for responding to and remediating the effects of any spill of petroleum, fuels, oil, chemicals, hazardous substances, and other potentially harmful substances in accordance with applicable State and Federal laws, regulations, and guidance.

(k) *Dewatering Plan.* Provide a Dewatering Plan for onshore temporary dewatering operations associated with project construction that includes:

(1) Plans for discharging water generated from dewatering operations that does not exceed NYSDEC standards, criteria, or guidance values.

(2) Measures to avoid direct discharges into any wetland, stream, or other waterbody, except where approved in a SPDES permit.

(3) Plans for handling, treatment and disposal of water generated from dewatering operations that exceeds NYSDEC standards, criteria, or guidance values.

(4) Description of any plans for discharge of effluent from dewatering operations into a municipal sewer system, including:

(i) Procedures for prior notification to the municipality, including the timing and expected amount of effluent to be discharged.

(ii) Confirmation that the permittee will not discharge effluent from dewatering into any municipal sewer system during periods of precipitation, or when a precipitation event is forecasted to occur within twenty-four hours without prior approval.

(l) *Geotechnical Engineering Report.* Provide a Geotechnical Engineering Report for the project, including:

(1) The results of any on-site field observations, borings, test pits, and any other geotechnical field investigations for the facility.

(2) A description of the characteristics and suitability of on-site soils to support underground electrical design, structure foundations, and construction of other facility components.

(3) Where applicable, a description of the subsurface conditions and/or stratigraphy found at foundation level, including factors such as soil corrosivity (for both steel and concrete), soil resistivity, bedrock competence, and subsurface hydrologic characteristics, including at the locations of splice vaults, splice pits, towers, switchyards, substations, converter stations, and other facility components, as appropriate.

(4) An evaluation of the suitability of subsurface conditions where hydraulic horizontal directional drilling is proposed.

(5) Description of mitigation measures, where recommended based on subsurface conditions.

(6) Recommendations for construction of access roads and building and equipment foundations including, as applicable:

(i) An engineering assessment to determine the types and locations of foundations to be employed and access road design specifications.

(ii) If piles are to be used, a description and preliminary calculation of the number and length of piles to be driven, the daily and overall total number of hours of pile driving work to be undertaken to construct the facility, and an assessment of pile driving impacts on surrounding properties and structures due to vibration.

(iii) The identification of mitigation measures regarding pile driving impacts including a plan for securing compensation for damages that may occur due to

pile driving.

(m) *Blasting Plan.* Provide a Blasting Plan (if applicable) consistent with NYSDOT "Geotechnical Engineering Manual GEM-22" that includes or otherwise addresses the following:

(1) Provisions demonstrating compliance with sections 1102-3.4(o) and 1102-3.4(v) of this Part.

(2) The results of any pre-blast surveys of any buildings or other structures within five hundred (500) feet of any proposed blasting locations, including, for each survey:

(i) photos depicting the existing structural integrity of the building, well, or other structure; and

(ii) written inspection report, signed and dated by the property owner, noting both existing flaws at structures at the property and undamaged areas.

(3) Well and water supply intake protection measures consistent with section 1102-3.5(l) of this Part.

(4) Description of measures to control airborne debris, which may include rubber tire or woven steel blasting mats.

(5) Blasting communications protocols describing procedures and timeframes for notifying host communities and adjacent property owners (and persons residing on such properties) within one thousand (1,000) feet of the blasting site. Blasting notifications to host communities and property owners shall occur at least 48 hours before blasting is initiated at a specific location and shall specify:

(i) blasting locations, procedures, and schedule; and

(ii) Procedures for filing a complaint associated with blasting operations consistent with the Complaint Management Plan required by subdivision (s) of this section.

(6) Procedures for post-blasting surveys to assess complaints or reports of blasting impacts on developed

properties, including a description of how and when such post-blast surveys will be performed and documented, and complaints resolved.

(7) A plan for securing compensation for damages that may occur due to blasting.

(n) *Net Conservation Benefit Plan.* An executed Net Conservation Benefit Plan or proof that the required payment was made into the Endangered and Threatened Species Mitigation Bank Fund, if required. The Net Conservation Benefit Plan shall comply with the requirements of section 1102-3.4(x) of this Part.

(o) *Invasive Species Management and Control Plan.* An Invasive Species Control and Management Plan (ISCMP) prepared in compliance with 6 NYCRR Part 575, which shall include the following information:

(1) Baseline mapping of all invasive species within the facility area and for one hundred (100) feet beyond the facility's LOD. The baseline mapping and data shall include the relative abundance and distribution of each invasive species prior to the commencement of any construction activities.

(2) Identification of specific control, removal, and disposal measures to be implemented for each identified and mapped invasive species/plant community during construction activities.

(3) Detailed sequence and schedule for all mechanical and chemical control measures to be implemented during construction activities.

(4) A detailed monitoring plan and specific sampling protocols for each identified and mapped invasive species/plant community within the facility corridor and for one hundred (100) feet beyond the LOD.

(5) Identification of specific control contingency measures to be implemented as part of the ISCMP for each identified and mapped invasive species for the duration of the facility adaptive management and monitoring period (i.e., 5 years,

unless extended). The ISCMP shall include a detailed sequence and schedule for all contingency mechanical and chemical control measures to be implemented during the monitoring period.

(6) Specific contingency measures to be implemented to achieve the final site restoration criteria.

(7) Details regard the responsible party or parties designated to implement the ISCMP and what financial assurances exist to ensure successful monitoring and ISCMP implementation.

(8) Plan for post-construction invasive species monitoring, which shall require:

(i) Post construction surveys of:

(a) LOD, both within the ROW and off-ROW areas and access roads;

(b) temporary off-ROW access road areas during the final SWPPP inspections; and

(c) LOD areas, including permanent access roads, after the second full growing season from final SWPPP signoff.

(ii) All post-construction surveys shall utilize the same invasive species survey protocols used during the baseline pre-construction survey.

(9) The ISCMP shall include construction Best Management Practices (BMPs)for the on-site management of invasive species, including:

(i) contractor/subcontractor/employee training on cleaning and other invasive species management procedures;

(ii) inspection of construction materials and equipment by trained staff;

(iii) minimization of ground disturbance in IS dominated areas;

(iv) proper clearing and disposal practices (i.e., cut and leave in dominated area or dispose off-site in landfill-incinerator or approved disposal site);

(v) equipment cleaning; and

(vi) restoration.

(10) The ISCMP shall describe procedures for minimization for invasive species propagation, including but not limited to:

(i) preparing ROW travel routes to prevent IS spread through contact with equipment/vehicles by any practical combination of matting, IS burial, clean fill cover or IS eradication; and

(ii) providing cleaning stations for equipment/vehicles whenever leaving IS dominated areas along ROW.

(p) *Cultural Resources Avoidance, Minimization and Mitigation Plan.* A Cultural Resources Avoidance, Minimization and Mitigation Plan (CRAMMP) for the project, providing:

(1) For any areas where the permittee could not obtain access permissions prior to application filing:

(i) Copies of completed Phase IB, Phase II and Phase III studies, and approved Site Avoidance Plan(s) if applicable.

(ii) A description and documentation of the permittee's consultation with OPRHP/SHPO, local historic preservation groups, and Indigenous Nations related to such studies.

(iii) Final OPRHP/SHPO effect or impact determination letter(s) for such areas, if applicable.

(2) A narrative summary and demonstration that impacts of construction and operation of the facilities on cultural

resources (including archeological sites and historic/ above ground resources) will be avoided or minimized to the extent practicable by selection the proposed facility's location, design and/or implementation of identified mitigation measures. At a minimum, the Cultural Resources Avoidance, Minimization and Mitigation Plan shall consist of any approved Site Avoidance Plan(s) prepared pursuant to section 1102-1.1(c) of this Part and subdivision (o)(1) of this section, and incorporate any additional avoidance, minimization, or mitigation measures identified by the office, in consultation with OPRHP/SHPO and any Indigenous Nations.

(3) A Final Unanticipated Discovery Plan pursuant to section 1102-2.11(d) of this Part, which shall be updated, at a minimum, to include the current names, titles, and contact information of individuals within the permittee's construction organizational structure, agency contacts, and Indigenous Nation contacts as referenced within the Unanticipated Discovery Plan.

(4) A Cultural Resources Mitigation and Offset Plan, either as adopted by Federal permitting agency in subsequent National Historic Preservation Act (NHPA) section 106 review, or as required by the office, in consultation with OPRHP/SHPO and any Indigenous Nations, in the event that the NHPA section 106 review does not require that the mitigation plan be implemented. Proof of mitigation funding awards for offset facility implementation to be provided within two (2) years of the start of construction of the facility.

(q) *Visual Resources Management Plan.*

(1) The permittee shall implement the approved Final Visual Resources Management Plan required by section 1102-2.10(c) of this Part, including the following:

(i) adoption of visual design feature requirements;

(ii) visual contrast minimization and mitigation measures; and

(iii) final Screen Planting Plans, details,

specifications, and master plant list.

(2) *Construction period oversight.* The permittee shall retain a qualified landscape architect, arborist, or certified nursery and landscape professional (CNLP), to inspect the screen plantings for two (2) years following installation to identify any plant material that did not survive, appears unhealthy, is damaged, and/or otherwise needs to be replaced. Such plant material that fails to provide proper mitigation in workmanship or growth shall be removed and replaced within two years following the completion of the installation of the plantings and maintained accordingly for the life of the project.

(3) *Long term/operational screen plantings management*. Provide an inspection and maintenance program for the life of the project, including plans for replacement of plantings where such visual screenings have failed. The permittee shall at a minimum provide detailed maintenance measures for screen plantings; make any required updates to the master plant list of replacement plants; provide a regular inspection schedule; and conduct an annual screening effectiveness review.

(r) *Drainage Remediation Plan*. A Drainage Remediation Plan to address inadvertent damages to surface or sub-surface drainage, including:

(1) a demonstration of the likelihood of impacts to surface or subsurface drainage and how the interruption of drainage may impact land used in agricultural production within and outside of the facility corridor; and

(2) an identification of methods of repair for damaged drainage features.

(s) *Final operational noise assessment*. At least sixty (60) days prior to construction, the permittee shall file a revised computer sound modeling and assessment as specified in section 1102-2.9 of this Part, to reflect the final specifications of equipment selected for installation; final facility design and layout; list of sensitive sound receptors indicating the use, property type classification, and type of each receptor (see section 1102-2.9(f)

of this Part), and any other changes to demonstrate that the project is designed to meet the design goals specified in section 1102-2.9(b) of this Part, and the operational noise limits specified in section 1102-3.5(a) of this Part at sensitive sound receptors.

(t) *Complaint Management Plan.* A Complaint Management Plan for construction and operation of the project, which shall describe the following:

(1) The name, mailing address, local or toll-free telephone number, and email address of the appropriate facility contact for development, construction, and operations.

(2) Methods for registering a complaint, which shall include a phone number, email address, mailing address, project website, and a form to report complaints. The toll-free or local phone number shall include a recorded outgoing message that will, when a call is not answered by a person, provide the caller with the name of the permittee's representative as well as:

(i) the number to be called in case of emergency; and

(ii) when the caller can expect a return call.

(3) Process for responding to all inquiries or complaints with an acknowledgement of receipt to the complainant within one business day.

(4) Process for responding to and resolving complaints in a consistent, timely, and respectful manner.

(5) Process for logging and tracking of all complaints received and resolutions achieved, with records of the following for each complaint containing:

(i) the name and contact information of the person filing the complaint;

(ii) location and owner of the property where the complaint originated;

(iii) date and time of the underlying event causing the complaint;

(iv) description of the complaint; and

(v) current status and description of measures taken to resolve complaint.

(6) Reporting to the office of any complaints not resolved within ten (10) business days of receipt.

(7) Provisions for mediating complaints not resolved within sixty (60) days.

(8) Provision of annual reports of complaint resolution tracking to the office.

(u) *Long-Range ROW Management Plan.* The Long-Range ROW Management Plan ("LRRMP") shall:

(1) Describe methods for routine maintenance of the ROW for the operational life of the project, including management of danger trees, defined as any tree rooted outside of a project ROW that due to its proximity and physical condition (i.e., mortality, lean, decay, cavities, cracks, weak branching, root lifting, or other instability) poses a particular danger to a conductor or other key component of a transmission facility, specifications for clearances, inspection and treatment schedules, and environmental controls.

(2) Include vegetation management recommendations, based on on-site surveys of vegetation cover types and growth habits of undesirable vegetation species.

(3) Describe proposed chemical and mechanical techniques for managing undesirable vegetation, including herbicide use and limitations, specifications, and control measures.

(4) Establish fence-line clearances, and overhead wire security clearance zone specifications, indicating applicable safety, reliability and operational criteria.

(5) Specify inspection and target treatment schedules and

exceptions.

(6) Describe standards and practices for inspection of facility easements for erosion hazard, maintenance and repair of drainage, stormwater and sediment control facilities, hazardous conditions after storm events, or other incidents.

(7) Describe landowner notification procedures for planned ROW inspection and maintenance activities.

(8) Substantially comply with Part 84 of this Title and the final orders issued by the Public Service Commission in Cases 04-E-0822 and 10-E-0155.

(v) *Pre-Installation Trial Plan (for In-Water Facilities).* A Pre-Installation Trial Plan for any proposed in-water cable installation methods for which suspended sediment and water quality monitoring is required, including jetting or mass flow excavation tools. The plan shall:

(1) Establish that pre-installation trials will be conducted within representative sections or areas proximate to the proposed in-water cable route, approximately one-thousand (1,000) feet in length.

(2) Allow for evaluation of compliance with limits for turbidity, total suspended solids, and applicable water quality standards for any other constituents specified in the permit.

(3) Describe how the results of the trials will be used to establish operating conditions that will minimize the suspension of in-situ sediments and contaminants during in-water cable installation activities.

(4) Describe how water quality monitoring and sampling will be completed during the trials in a manner that is consistent with the Suspended Sediment and Water Quality Monitoring Plan.

(5) Describe how the results of the pre-installation trials will be evaluated in coordination with the Aquatic Environmental Monitor, the office, and NYSDEC, to establish

operational conditions and controls to minimize risks for water quality violations during construction.

(w) *Suspended Sediment and Water Quality Monitoring Plan (for In-Water Facilities).* The Suspended Sediment and Water Quality Monitoring Plan shall establish monitoring and sampling procedures to be conducted during pre-installation trials, dredging, blasting, dewatering of dredged material, barge decanting, pre-sweeping, pre-trenching, jet trenching activities, cable installation and maintenance, and decommissioning activities that involve disturbance of sediments. The plan shall:

(1) Specify sample location, depth of samples, frequency of sampling.

(2) Describe procedures for background sampling and monitoring during construction activities for which sampling and monitoring is required.

(3) Describe the use an Acoustic Doppler Current Profiler, or similar technology, to locate the sediment plume.

(4) Require whole water samples in the vertical water column from at least three depths, as determined by the office, which are representative of surface, mid-depth, and bottom conditions at the edge of the applicable mixing zone.

(5) Include an up-current transect outside the influence of monitored construction activities.

(6) Provide that during monitored construction activities, the permittee will perform real-time turbidity monitoring and water quality sample collection for total suspended solids and any constituents required by the permit.

(x) *Dredge Management Plan (for In-Water Facilities).* The Dredge Management Plan for in-water facility construction shall:

(1) Describe methods and equipment purpose and specifications for any proposed dredging.

(2) Describe measures to ensure all equipment remains in good operating condition throughout dredging operations.

(3) Describe procedures for dredge materials management and disposal.

(4) Describe procedures for complying with dredging requirements defined at section 1102-3.4(aa)(8) of this Part.

(5) Describe procedures for dredge material dewatering or barge decant, where applicable, including:

(i) a minimum settling time of twenty-four (24) hours;

(ii) additionally sampling for projects with contaminated sediments;

(iii) completed authorization request forms for water treatment chemicals, such as flocculants, planned for use; and

(iv) practices that will be implemented to reduce resuspension of sediments.

(6) Describe procedures for handling, storage, and disposal of contaminated dredged materials.

(y) *Anchoring Plan (for In-Water Facilities).* The Anchoring Plan shall:

(1) Discuss how the use of anchoring, if any, during construction and maintenance activities will avoid and/or minimize impacts to sensitive benthic habitats and Significant Coastal Fish and Wildlife Habitats (e.g., use of vessels equipped with dynamic positioning systems, installing mid-line buoys) and avoid impacts to existing buried assets.

(2) Outline the parameters for the use of anchors and spuds and identify discrete "No Anchor" areas within the facility corridor in the event anchoring is ultimately required.

(3) Describe how midline buoys or alternative measures will be employed to minimize sediment disturbance caused by anchor sweeps during construction of the marine route.

(z) *Mariner Notification and Communications Plan (for In-Water Facilities).* For public notification to mariners and NYSDEC-Licensed Fishermen, the Mariner Notification and Communications Plan shall:

(1) Specify the information and relevant contact information that will be provided for notices of project in-water construction and maintenance activities.

(2) Describe plans for posting of notices of in-water project activities on the project website and to the USCG within a reasonable timeframe to allow for the USCG to post such notices prior to commencement of such project activities.

(3) Describe pre-construction consultation with local mariners, NYSDEC-Licensed Fishermen, and recreational fishermen who are known or anticipated to operate within the vicinity of the project. The plan shall summarize any consultations that have occurred and describe any additional consultations that are anticipated prior to construction.

(4) Include confirmation that the permittee has requested from NYSDEC an initial list of mailing and email addresses associated with potentially affected NYSDEC-Licensed Fishermen and describe plans for updating the list periodically throughout construction and as-needed prior to any post-construction in-water activities.

(aa) *Cable Monitoring and Maintenance Plan (for In-Water Facilities).* The Cable Monitoring and Maintenance Plan shall:

(1) Provide methods for determining the actual cable location and burial depth of the in-water cables and the timing for undertaking such efforts, including, for example, the use of distributed temperature sensing (DTS) technology.

(2) Include a requirement that the permittee establish depth of burial relative to sediment surface and the accurate level of the sediment surface relative to vertical datum during post-construction survey operations.

(3) Describe methods for maintaining burial depth.

(4) Establish procedures for periodic monitoring of the actual burial depth (measured from the top of the cable) of the in-water cable throughout the operational life of the project.

(5) Describe procedures for evaluating risks if any section of the in-water cable that is at least twenty-five (25) feet long reaches an actual burial depth of less than four feet at any point during the operational life of the project, unless the actual burial depth at the time of installation was less than four feet.

(6) Describe procedures for remedying cable exposures with any time-of-year restrictions.

(7) Describe procedures for remedying cable exposures that pose a hazard to public safety, navigation, or marine resources outside of time-of-year restrictions, including avoidance and minimization techniques for threatened or endangered species and species of special concern.

(8) Include plans for marking the location of any cable exposures and procedures for immediately notifying the office of any third-party anchor strikes of the cable.

(ab) *Decommissioning and site restoration Plan*. For projects meeting the applicability criteria in section 1102-3.4(ae)(1) of this Part:

(1) a Final Decommissioning Plan consistent with section 1102-3.4(ae) of this Part, including updated decommissioning and site restoration cost estimates;

(2) proof of executed financial security for each host municipality or the State based on the estimated cost associated with the removal and restoration of the facilities located within the jurisdiction of each such host municipality or the State, in accordance with section 1102-3.4(ae) of this Part.

(ac) *Site Security Plan*. Submit a Site Security Plan consistent with section 1102-2.8(b) of this Part.

(ad) *Facility Lighting Plan.* Submit a Facility Lighting Plan(s), which shall address:

(1) security lighting, designed to avoid off-site light trespass, at substations, switchyards, and converter stations, and any exterior equipment storage yards;

(2) plan and profile figures demonstrating proposed lighting arrangement and illumination levels (including lumens, location, and direction of lights for the facility or task use, worker safety, and tall structure marking requirements);

(3) exterior lighting design shall be limited to lighting required for health, safety, security, emergencies, and operational purposes, and shall be specified to avoid off-site lighting effects as follows:

(i) using task lighting as appropriate to perform specific tasks; limiting the maximum total outdoor lighting output based on the lowest allowable Occupational Safety and Health Administration limits; task lighting fixtures shall be designed to be placed at the lowest practical height and directed to the ground and/or work areas to avoid being cast skyward or over long distances, incorporate shields and/or louvers where practicable, and capable of manual or auto-shut off switch activation rather than motion detection;

(ii) require the Use of Luminaires with an Illuminating Engineering Society/International Dark-Sky Association (IES/IDA) IES TM-15-20 Backlight Uplight Glare Rating System Uplight (U0) rating.

Subpart 1102-5. Post-construction Compliance Filings.

Section 1102-5.1. Post-construction compliance filings.

(a) *Updated equipment information*. Any updated information regarding the design, safety, and testing for the major electric transmission facility, including any switchyard, substation, converter station, and components thereof, and other major equipment to be installed during construction, as well as

information regarding the design, safety, and testing for any equipment installed during facility operation as a replacement of failed or outdated equipment, shall be filed within fourteen (14) days of completion. Replacement of major facility components with different make, model, size, or other material modification shall be subject to review and approval of the office pursuant to section 1100-11.1 of Part 1100 of this Title.

(b) *As-built plans*. As-built plans in both physical and electronic copies shall be filed, and may be filed on a confidential basis, within nine (9) months of the in-service date of the facility and shall include the following:

(1) spatial data acceptable to the office, showing all components of the facility (i.e., cables, substation, buildings, access roads, point of interconnection, vaults, structures, etc.), providing final facility component locations and elevations;

(2) actual cable burial depths for underground and in-water cables;

(3) locations and types of any cable protection measures for in-water facilities;

(4) details for all facility component crossings of, and co-located installations of facility components with, existing utility infrastructure and assets: showing cover, separation distances, any protection measures installed, and locations of such crossings and co-located installations; and

(5) structures required for post-construction stormwater and sediment control.

(c) *Final cost*. Within six (6) months following project completion, the permittee shall provide to the office a full accounting of all project costs, including an explanation of variances, if any, between projected and actual costs. Such accounting may be filed on a confidential basis. The accounting shall separately detail all costs incurred by the permittee as a result of its purchase of a structure or component for installation in the project that did not conform to the specification for structures and components described in the

EM&CP. The analysis contained within this accounting shall be divided into the following sections:

(1) summary of project costs for each cost category listed at section 1102-2.20 of this Part;

(2) expenditures breakdown per cost category;

(3) comparison of estimated versus actual expenditures;

(4) conclusion and explanation of significant variances; and

(5) accounting of non-conforming structures or components.

(d) *Invasive species.*

(1) Upon completion of the post-construction surveys, a final report shall be prepared and filed with the office. The final report shall discuss whether the goals of the Invasive Species Control and Management Plan (ISCMP) have been achieved and if any additional post-construction monitoring may be warranted based on whether an expansion of Identified Invasive Species of Special Concern (ISSC) or High Concern (ISHC)are present as a result of construction.

(2) If the post construction monitoring report shows the aerial extent of ISSC or ISHC has expanded as a result of project construction, the final report shall include an Adaptive Management Strategy for achieving the goals of the ISCMP. The office, in consultation with the other agencies, will determine whether the goals of the post construction monitoring have been achieved or, if applicable, whether the Adaptive Management Strategy must be implemented.

(e) *Wetland Planting Remedial Plan.* If, after two (2) years, monitoring demonstrates that the criteria for restoration (eighty (80) percent native species cover) is not met, the permittee must submit a Wetland Planting Remedial Plan (WPRP). The WPRP must include an evaluation of the likely reasons for the results, including an analysis of poor survival; a description of corrective actions to ensure a successful restoration; and a schedule for conducting the remedial work. Once accepted by the

office, the WPRP must be implemented according to the schedule approved by the office.

(f) *Wetland Mitigation Remedial Plan.* If, after five (5) years, monitoring demonstrates that the wetland mitigation is still not meeting the established performance standards, the permittee must submit a Wetland Mitigation Remedial Plan (WMRP). The remedial plan must include an evaluation of the likely reasons for not achieving performance standards, a description of corrective actions to ensure a successful mitigation, and a schedule for conducting the remedial work. Once accepted by the office, the WMRP must be implemented according to the schedule approved by the office.

(g) *Decommissioning.* The decommissioning and site restoration estimates contained in the approved Decommissioning and Site Restoration Plan shall be updated based on the as-built project, and to reflect inflation and any other increases due to labor or other costs, by a qualified independent engineer licensed in the State of New York, after one (1) year of project operation, and every fifth year thereafter, provided that the permittee may submit an attestation with appropriate justification if there are no material changes to the previously filed decommissioning estimates. The value of the letters of credit, or other financial security, secured for decommissioning purposes shall not be reduced below the initial Final Decommissioning Cost Estimate submitted in compliance with section 1102-4.3(aa) of this Part without the express approval of the office, based on a new analysis demonstrating a significant change in market conditions.

(1) Letter(s) of credit (or other financial assurance approved by the office) and copies of agreements between the permittee and the towns, cities, and villages, establishing a right for each municipality to draw on the letters of credit dedicated to its portion of the facility shall be provided to the office after one (1) year of facility operation and updated every fifth year thereafter specifying changes (due to inflation or other cost increases) to the structure of the letters of credit (or other financial

assurance approved by the office).

(h) *Noise*. For converter stations (including any adjoining substation) not located in cities with a population over one million, to evaluate compliance with the operational noise limits, after the commercial operation date of the facility the permittee shall:

(1) Implement a Sound Testing Compliance Protocol (STCP) approved by the office for post-construction noise performance evaluations.

(2) Within eight (8) months following the commercial operation date of the facility, the permittee shall complete at least one post-construction sound compliance test and submit the results by filing a report from an independent acoustical or noise consultant specifying whether the facility is in compliance with all permit conditions regarding noise.

(3) If the results of the post-construction sound compliance test(s), or any subsequent test conducted by the permittee or the office indicate that the facility does not comply with permit conditions for noise, the permittee shall:

(i) Present noise minimization options to the office (e.g., sound barriers, enclosures, replacement or maintenance of noisy components, silencers, low-noise fans), within sixty (60) days after the filing of a non-compliant test result, or a violation of permit conditions on noise.

(ii) Upon approval from the office, implement any noise minimization measures within one hundred and fifty (150) days.

(iii) Test, document, and present results of any minimization measures implemented demonstrating compliance with all permit conditions on noise, no later than 90 days after implementation.

APPENDIX D

COMMISSION SEQRA FINDINGS STATEMENT

State Environmental Quality Review Act

FINDINGS STATEMENT

February 12, 2026

Pursuant to Article 8 (State Environmental Quality Review Act (SEQRA)) of the Environmental Conservation Law and 6 New York Codes, Rules and Regulations (NYCRR) Part 617, the New York State Public Service Commission (Commission), as an involved agency, makes the following findings.

Name of Action: In the Matter of the Rules and Regulations for the Environmental Review, Permitting, and Siting in this State of Major Renewable Energy Facilities and Major Electric Transmission Facilities Under the Renewable Action Through Project Interconnection and Deployment Act (24-M-0433)

SEQRA Classification: Type 1

Location: New York State/Statewide

Date Final Generic Environmental Impact Statement (GEIS) Filed: October 22, 2025.

Final GEIS Available at: https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=24-M-0433&CaseSearch=Search.

I. PURPOSE AND DESCRIPTION OF THE ACTION

In 2019, New York State (the State) enacted the Climate Leadership and Community Protection Act (CLCPA) with the objective of addressing climate change and minimizing its adverse impacts on the economic well-being, public health, natural resources, and the environment of the State. With respect to renewable generation, the CLCPA includes a target for New York to deliver 70 percent of its electric grid generation from renewable energy sources by 2030, with a longer-term target to reach zero-emissions electricity by 2040. To achieve these goals, the State has designed and implemented a series of policies, programs, and regulations to address key barriers and accelerate the transformation of the State's energy system.

On April 20, 2024, the New York State Legislature took further action to expedite achievement of the CLCPA goals by enacting the Renewable Action Through Project Interconnection and Deployment Act (RAPID Act). The purpose of the RAPID Act is to consolidate and expedite the environmental review and permitting of the transmission projects required to meet all the needs of the transmission and distribution (T&D) system, with a particular focus on major renewable energy facilities and major electric transmission facilities necessary to support the State's CLCPA goals. The RAPID Act repealed former Executive Law § 94-c, which since its enactment in 2020 solely governed the siting of major renewable energy generation facilities, and replaced it with a new Public Service Law (PSL) § 3-c and a new PSL article VIII (Article VIII) to accelerate the siting of both major renewable energy facilities and major electric transmission facilities. The law transferred the New York State Office of Renewable Energy Siting (ORES) to the Department of Public Service (DPS) to form the Office of Renewable Energy siting and Electric Transmission, or the Office, to consolidate and expedite the environmental review and permitting of major renewable energy facilities and major electric transmission facilities.

The proposed action under SEQRA is the promulgation of rules and regulations necessary to implement the RAPID Act as codified in PSL § 3-c and a new Article VIII. The new regulations are intended to implement these statutory objectives, while avoiding and minimizing the environmental impacts to the maximum extent practicable, with consideration of all pertinent social, economic, and environmental factors in any permitting decisions.

The Office prepared a GEIS for the proposed regulations that was accepted on October 22, 2025.Consistent with SEQRA regulations at 6 NYCRR §617.10(a), the GEIS is broader and more general than a site- or project-specific environmental impact statement (EIS) and identifies potential areas where environmental impacts could be caused by the construction, operation, and maintenance, and decommissioning of electric transmission infrastructure, and how the regulations should be tailored to avoid or minimize those impacts.

II. FACTS AND CONCLUSIONS RELIED UPON

In developing this findings statement, the Commission has reviewed the Final SGEIS issued on October 22, 2025. The following findings are based on the facts and conclusions set forth in the Final GEIS.

A. Public Need and Benefits

The GEIS examines in detail the public need and benefits associated with the proposed regulations. In sum, the RAPID Act is part of a broader suite of policies and initiatives designed to respond to multiple challenges facing the State's energy system, many of which relate to the electric transmission and distribution system. If successfully implemented, the proposed regulations should result in public benefits through accelerating upgrades to existing infrastructure as well as development of new transmission infrastructure. The proposed regulations will accelerate the construction of new electric transmission infrastructure to support renewable energy development in a timely manner, ensuring renewable energy projects in the State can come online and connect to the grid. A faster clean energy transition in the State would in turn accelerate improvements in environmental, public health, and economic outcomes relative to actions reviewed under current regulatory procedures. In other words, though existing regulations promote similar public benefits, implementing the proposed regulations is intended to allow for earlier realization of these benefits.

Specifically, benefits of the proposed action may include:

- **Environmental.** By accelerating the State's transition to renewable energy, the proposed action is expected to contribute to the State reducing its reliance on fossil fuels. This shift will curtail climate change-inducing GHG emissions, reduce criteria air pollutants, and preserve natural resources. GHGs contribute to the trend of rising average temperatures, changes in precipitation patterns, frequent and severe heatwaves, increased flooding,

rising sea levels, and other deleterious impacts of climate change.

- **Public health.** Fossil fuel electric generation is a source of criteria air pollutants. The release of sulfur dioxide (SO_2) and nitrogen oxides (No_x) from fossil fuel-generated power plants also leads to the formation of particulate matter ($PM_{2.5}$), ozone, and other acidic compounds in the air. Mercury compounds are another pollutant from fossil fuel energy generation, particularly from coal-powered plants. Criteria air pollutants adversely impact local and regional air quality. These pollutants can negatively affect air quality, visibility, and public health. For example, exposure to ozone can aggravate lung diseases including asthma, emphysema, and chronic bronchitis, as well as increase the risk of premature mortality from heart or lung disease. Health effects from $PM_{2.5}$ include aggravated asthma, irregular heartbeat, decreased lung function, nonfatal heart attacks, and premature mortality in those with heart or lung disease. NO_x can increase the risk of respiratory diseases and exacerbate existing respiratory symptoms, especially in children, the elderly, and the poor. Individuals with asthma may experience aggravated symptoms when exposed to NO_x. The proposed action, by accelerating the phasing out of fossil fuel generation plants, will contribute to the reduction of criteria air pollutants, particularly in disadvantaged communities which have been disproportionately exposed to pollutants resulting from dependence on fossil fuels.

- **Economics.** Expedited investments in existing infrastructure will increase grid capacity and help to mitigate reliability and resiliency concerns faster than would occur absent the proposed regulations. A modernized grid will help to ensure New York businesses and residents continue to receive reliable electric service and leverage opportunities for economic development at a reasonable cost.

B. Potential Impacts

The GEIS has not identified any potentially significant adverse environmental impacts that would occur from adoption of the proposed regulations. Overall findings suggest that adverse direct environmental impacts of the RAPID Act are likely to be minimal and similar to impacts under the "no action" scenario, and that a variety of mitigation measures exist to minimize potential impacts. The proposed action does not include any direct approval of applications for the siting of major electric transmission facilities. The RAPID Act is expected to expedite the review and permitting of such facilities in New York, but will not, by itself, change the number or location of transmission projects that will be needed to meet the electric system's needs and the State's policy objectives. In terms of future site-specific impacts, the RAPID Act does not lower the standards for reviewing and approving renewable energy or electric transmission projects. Ultimately, all applications for major renewable energy or major electric transmission projects under the Office's jurisdiction will receive a thorough, comprehensive, and project-specific review that is intended to be at least as comprehensive and protective as would occur under SEQRA.

The GEIS considered three types of transmission infrastructure — overhead, underground, and underwater — and their potential impacts on 12 resource areas in the State. A summary of the environmental impacts across the three technology types follows.

Geology and Soil

Construction, operation, and maintenance of transmission lines have adverse impacts on soil and geologic features, though the severity of these impacts is dependent on location and mitigation measures. The majority of near-term impacts occur during the construction phase. On land, construction could cause soil erosion, necessitate excavation of soils and rocks, increase landslide probability, and increase toxic chemical exposure to the surrounding project area. Underground cables are disruptive, requiring grading, trenching, and other excavation. Underwater transmission lines could also modify lakebed and river microtopography and suspend, transport, and resettle sediments. In the long term, necessary infrastructure such as

access/maintenance roads, converter towers, and transition stations require clearing and grading, which can result in erosion and soil compaction. On agricultural lands, these impacts can diminish crop and livestock productivity.

Land Use

Land use impacts are dependent on pre-existing land uses. Maintaining clear rights-of-way (ROW) is important for avoiding or minimizing contact between transmission infrastructure and vegetation. Vegetation, including forested areas, along the ROW corridor must be cleared entirely for construction to proceed, and ROW maintenance requires frequent clearing of trees and other vegetation. Construction on the ROW may also reduce agricultural productivity if located on agricultural lands. Underwater construction and emergency repair activities may limit access for recreational and commercial vessels. Finally, proximity to above-ground transmission infrastructure may negatively impact property values. Impacts are dependent on proximity to and views of towers and lines, type and size of transmission structures, appearance of easement landscaping, and the surrounding topography.

Surface Water and Groundwater Resources

Construction and operation of transmission infrastructure could have adverse impacts on surface and groundwater resources. Construction activities like vegetation removal and ground disturbance could increase erosion and sedimentation in runoff, especially if transmission routes cross water bodies. Soil compaction could also suppress groundwater recharge, reducing volume and base flow rate to water bodies like streams and wetlands and reducing yield from water supply wells. Construction and operation could also affect drinking water sources like aquifers, especially if the land is composed of sand, gravel, or highly permeable bedrock. Construction of infrastructure with a high probability of water resource contamination, like landfills and oil and gas wells, must be reviewed by the New York State Department of Environmental Conservation's (NYSDEC's) Division of Water if located in proximity to primary or principal aquifers. Transmission infrastructure is not included in this additional review process. Even so, construction activities could disturb water flows and reduce groundwater recharge, which may have negative

consequences for aquifers under strain from excessive pumping or saltwater intrusion. Construction activities could further strain ground and surface water resources if hazardous materials are released, but environmental effects are dependent on material released and location. Potential releases range from small quantities of fuel at the ROW to thousands of gallons of fuel into a riparian drainage. Underwater, horizontal directional drilling (HDD) could also leak fluids and impact surface water quality.

Wetlands

Construction, operation, and emergency repairs may impact wetland ecosystems. During construction, soil disturbance activities could permanently affect wetland soil, vegetation, and hydrology. Disturbances, including soil displacement, altered surface runoff, and vegetation removal could disrupt habitats, groundwater recharge or discharge, soil stability, flood storage, nutrient removal, sediment and toxicant storage, and production export. As habitats change, many wetland species, especially amphibians, reptiles, and nesting birds, may struggle to relocate given their lack of mobility, shifting wildlife composition even as wetland functions like flood storage and water purification remain. Introduction of non-native species can further disrupt community composition as new species spread quickly with the movement of water. In operation, permanent ecological shifts can occur. Vegetation management along the ROW can lead to lasting changes in vegetation structure, preventing the re-establishment of larger trees that block sunlight and suppress surface water temperatures during the summer months. Even if vegetation management avoids altering wetland hydrology, increased surface water temperatures, especially in shallow areas, can affect aquatic organisms. Fish and amphibians are sensitive to thermal changes, and algae growth reduces oxygen levels for wildlife and diminishes water quality. Finally, emergency repairs can cause impacts similar to those during initial construction, especially if repairs require trenching or excavation. However, if cables are installed through HDD, emergency repairs are possible without disturbing the wetland surface.

Flooding

Construction of transmission lines could result in increased risk of localized flooding in areas near the transmission corridor. Vegetation removal during installation of transmission structures could reduce the rate of infiltration of water into the soil, worsening runoff and elevating flood risk. Heavy machinery necessary for some construction activities could result in soil compaction, which has similar impacts. Compacted soil can also exacerbate erosion, straining local drainage systems and increasing sedimentation of nearby streams and rivers, which reduces waterway capacity to accommodate floodwater and increases the risk of flooding downstream.

Coastal Resources

Construction of transmission lines and related infrastructure has the potential to disrupt various coastal resources. Coastal construction activities like vegetation removal and soil exposure may contribute to shoreline erosion, sediment runoff, and increased turbidity in nearby bodies of water. Elevated turbidity, for example, can reduce the filter-feeding capacity of shellfish like oysters, clams, and mussels. These shellfish remove particles, excess nutrients, marine biotoxins, chemical contaminants, and pathogenic microorganisms like bacteria and viruses. They also prevent the spread of algal blooms and improve water quality, which improves conditions for vegetation and organisms that rely on high water clarity. Underwater lines could also have negative impacts on coastal resources. During construction, the accidental release of fuel, hazardous materials, suspended sediment, trash, or debris could be disruptive. After completion, if underwater lines were to deteriorate, they could release similarly disruptive contaminants.

Air

Construction and decommissioning activities on land and in water can have localized temporary adverse effects on air quality. Heavy equipment like bulldozers, rock trenchers, bucket loaders, cranes, and other diesel combustion engines emit air pollutants and release fugitive dust emissions. Installation of underwater cables requires operating diesel-powered heavy equipment, barges, generators, and boats with similar effects. Once operational, transmission infrastructure, especially high-

voltage power lines, is a known source of atmospheric pollutants. Corona discharge of ozone and nitrogen oxides occurs when air close to conductors is ionized. Although transmission lines are designed to limit the corona effect, minor imperfections can increase the rate of ionization. In dry and windy conditions, operating transmission lines can also pose a wildfire risk. If the line were to fall it could spark a fire, releasing large quantities of particulate matter and carbon dioxide. Once transmission infrastructure has degraded, decommissioning activities require similar heavy machinery to initial construction.

Plants, Animals, and Forest Resources

Construction and maintenance of transmission lines could impact terrestrial and aquatic ecosystems. Direct impacts to terrestrial species include sensory disturbance from noise pollution and injury or direct mortality from direct contact with heavy equipment. Vehicles can also introduce invasive and non-native species that lack natural controls on their reproduction and easily spread. Along existing ROWs, long-term population level effects are not expected. If construction does take place along new ROWs, especially in forested areas, habitats could be fragmented and breeding populations could be permanently displaced. A transmission line ROW can fragment large forest blocks into smaller tracts, exposing interior forest species to predators, parasites, competition from edge species, and catastrophic events. Forest clearing and fragmentation would also decrease fire suppression and carbon sequestration important for plant, animal, and human health beyond the transmission ROW. Construction impacts to aquatic species, including sediment disturbance, increased turbidity, and water quality degradation, affect light penetration and resulting ecological productivity. Noise pollution during installation can also alter the acoustic environment of water bodies. Once operational, localized exposure to electromagnetic fields (EMFs) produced by cables could disrupt reproductive cycles and behavior patterns of benthic organisms, though research indicates behavior is unlikely to be impacted significantly. Heat loss could also raise water and sediment temperatures, affecting sediment-dwelling and seafloor species.

Agricultural Resources

Transmission infrastructure construction could affect future crop yields. Soil mixing, erosion, rutting, and compaction, which limit access of crop roots to water and nutrients, are commonly associated with transmission construction. Agricultural soils that have been improperly protected or mitigated may suffer decreased yields for several years after the construction of transmission lines is completed. In the long term, transmission structures on agricultural lands could impact farm operations and revenue, though specific impacts are dependent on infrastructure design and the type of agricultural production. Transmission lines could affect field operations, irrigation, aerial spraying, wind breaks, and future land use. The structures that support these lines could complicate efficient fieldwork patterns, increase the likelihood of weed encroachment, increase safety hazards, interfere with irrigation equipment, and hinder future field consolidation.

Aesthetic Resources

Construction of transmission infrastructure under the proposed action would result in temporary visual impacts due to the presence of construction equipment and activities. Heavy machinery, including cranes, helicopters, and trucks, assemble the foundation site, transport materials, and install transmission wires. Temporary support facilities also must be established along portions of the transmission route. Underwater transmission construction must be supported by cable-laying and support vessels. In the long term, overhead transmission infrastructure can permanently alter the visual landscape, potentially affecting views of natural, cultural, and historic beauty. The large, industrial-looking lattice steel towers, which contrast in color and form with the surrounding environment, further degrade aesthetic resources. Underground transmission lines, however, do not result in visual impacts once construction is complete unless maintenance is required.

Historic and Archeological Resources

Transmission line construction and maintenance may disturb archaeological and historic sites, including cultural resources of Indigenous Nations. The base of overhead transmission structures could encounter and disturb archeological and historical sites and artifacts, though

underground lines are more likely to encounter sensitive materials. It is unlikely that underwater transmission lines would disturb historic or archeological sites.

Open Space and Recreation

Transmission line construction can require large areas of land free from tall vegetation. Towers may also limit future recreational project development, alter local habitat for native animals, impose safety concerns that deter visitation, and pose safety threats to recreational vehicles. While underground lines are less disruptive, large trees must be removed to prevent root disruption. Underwater lines are unlikely to be disruptive after cables are laid.

Critical Environmental Areas

Critical Environmental Areas are frequently designated for their ecological significance and scenic and recreational value. Transmission lines over land could disrupt sensitive ecosystems, destroy habitats, result in biodiversity loss, and degrade water quality during construction as access roads are built, vegetation is cleared, and heavy machinery and blasting relocate natural material. Once completed, overhead transmission lines are visually and, during periods of high humidity, audibly disruptive. Underwater transmission lines could modify sea, river, or lakebed composition and suspend sediments that could influence aquatic life. Underground lines are less likely to be disruptive once complete.

Transportation

Construction of transmission lines within roadway and railway ROWs, which limits potential impacts, would generally be compatible with existing road and railway operations provided they follow all applicable standards. However, construction may disrupt operations and cause temporary disturbances, including roadway lane closures, reduced shoulders, and disrupted pedestrian walkways and bike paths. Temporary disruptions would be longer for underground transmission compared to overhead transmission, but no long-term disruptions are expected. Maintenance or emergency repairs may increase traffic and cause temporary closures once transmission is operational. Co-locating transportation and transmission infrastructure must be done carefully. Transmission line conductors produce an electric

field that, under the right conditions, can induce a voltage in railroad circuits running in proximity. Unintentionally inducing a current to rails could disrupt signals, shut down operations, or damage equipment. To minimize visual impacts, communities can construct transmission lines perpendicular to roadways, avoid complex interchanges when possible, and include additional clearance near bridges, which commonly require cranes for maintenance. Overhead transmission lines are also a potential hazard to aircraft during takeoff and landing. The Federal Aviation Administration limits the height of objects adjacent to runways, brightly colored lights are placed on overhead transmission lines, and during construction large machinery is adorned with visibility markers. Underground and underwater transmission lines will not conflict with air travel. Marine transportation may be temporarily disrupted by underwater transmission line transportation and installation. The U.S National Oceanic and Atmospheric Administration regulates the distance between fishing vessels and both cable-laying vessels and buoys marking submarine cable positions.

Noise, Odor, and Light

Noise and vibration are generated during each phase of transmission infrastructure construction. During land construction vegetation in the ROW may need to be removed using mowers, whole tree processors, or chainsaws. Trucks and other typical construction vehicles are often powered by combustion engines, producing noise, odor, and localized vibration, especially when operating near hard surfaces. Construction is typically done during daylight hours, but if work continues at night, vehicles are fitted with lighting to ensure worker safety. Underwater transmission installation utilizes cable-laying vessels, which, depending on distance between vessels and human activity, may have similar effects to heavy machinery on land. Overhead tower construction requires drilling into the ground and may require blasting if bedrock or large rocks are within the required depth. Once towers are constructed, wires are connected. If implosive connectors are used, significant noise and light are emitted. Underground lines are more complex to install but require equipment with similar effects. Given their longer construction times and applicability to urban areas, underground lines impose more tangible noise, odor,

light, and vibration effects on communities. Even though underwater lines are separated from people, they must be connected to land transmission and require heavy machinery to do so. Once operational, overhead lines can produce occasional sizzles, crackles, or hissing noises, a visible glow of light near the conductor, and visible energy loss that increase with voltage and water content in the air. These issues are not relevant for underground or underwater transmission lines, though regardless of design converter and cooling stations will produce noise and may generate low-level vibration from transformers, pumps, and fans.

Human Health and Safety

Construction, operation, and maintenance of transmission lines could result in short-term and long-term impacts on human health and safety. Overhead transmission line construction is a dangerous activity. Workers navigate high voltage, heavy machinery, and heights to construct towers and connect lines. Among the activities done on or near transmission lines, operating equipment near energized lines is considered the most dangerous, but other tasks with high-risk profiles include energizing lines and equipment, excavation/trenching, installing foundations, climbing, and operating on aerial lifts. Underground and underwater construction are less dangerous, though the major concerns of working with high voltage, including fire and electrocution, remain. No matter the transmission line location, installation workers risk contact with hazardous materials or waste generated as by-products of installation and burial. Once operational, transmission lines create an EMF. There have long been concerns over the impacts of EMFs on human health, but no study has found evidence of a cause-and-effect relationship between low levels of EMF and negative health effects. Of greater concern are fallen lines. Though overhead lines are designed to de-energize when displaced from their operational position, failure to de-energize can be dangerous. Fallen lines carry high-voltage electricity, and if water, metal, a person, a tree, or any conductive object contacts a live wire, electricity will follow the easiest path to the ground, causing fire, burns, injury, or death. Underground lines are less susceptible to extreme weather and natural disasters, but uninformed individuals could contact

lines when digging. Underwater lines are unlikely to be contacted by humans.

Community Plans

In the past, transmission lines often prioritized direct construction from point A to point B. New projects must account for a range of considerations, including impacts on communities, crops, natural resources, and private property. In the design phase, engineers should prioritize minimizing visibility impacts and exploring the feasibility of underground transmission to reduce long-term effects on communities, though any transmission line will have impacts. Both underground and overhead transmission infrastructure could impact existing public utilities and services like water supply, telecommunications, buried gas and electric transmission, sewer systems, and emergency services. Permanent facilities, like transition stations, converter stations, and substations, must also be placed to minimize disruptions and support community goals. During construction, communities could also be impacted by aesthetic changes and noise.

Community Character

Construction of transmission lines and associated infrastructure may have temporary and permanent impacts on the character of communities along the transmission corridor. Residents and businesses may experience short-term disruptions from construction, including increased noise, traffic congestion, and visual changes. Depending on the scale and duration of construction, activities may also lead to changes in population density and demographic composition as temporary opportunities bring new residents and business to communities. In urban communities, transmission infrastructure projects may disrupt neighborhoods and affect transportation and mobility systems while enhancing energy reliability and supporting long-term economic mobility. Rural communities are more likely to be impacted by aesthetic changes, disruptions to agricultural activities, and alterations to open spaces. In both cases, underground transmission may offer reduced visual and environmental impacts.

Cumulative Impacts

The RAPID Act does not change the clean energy goals the State has established. Under the "no action" alternative, any potential environmental and socioeconomic impacts, including benefits, associated with the proposed action would still occur, but they would be anticipated to occur at a slower pace. It is possible that acceleration of transmission upgrades due to the proposed action may generate cumulative impacts, particularly if transmission upgrades are concentrated in specific geographic areas. However, until applications under the new permitting regulations are received, the cumulative site-specific impacts of the proposed action cannot be determined and are beyond the scope of the GEIS, which includes a generic consideration of the potential environmental impacts of the proposed action. Additionally, the use of uniform standards and conditions (USCs), together with any necessary site-specific siting permit terms and conditions imposed in final siting permits will identify, evaluate, mitigate, and minimize potential site-specific impacts associated with a particular project. A summary of mitigation efforts is also provided in the following section.

Mitigation of Potential Adverse Impacts

Consistent with 6 NYCRR §§617.9(b)(5)(iv) and 617.11(d)(5), chapter 6 of the GEIS describes the variety of measures available to minimize or avoid, to the maximum extent practicable, or mitigate (incorporating all practicable mitigation measures), potentially significant adverse environmental impacts that may result from implementation of the proposed action. Chapter 6 also discusses 1) key federal and State laws that may apply during the construction and operation of a specific project, 2) the Office's USCs for the siting, design, construction, and operation of major electric transmission facilities, and 3) the Office's authority to establish site-specific conditions to address site-specific and project-specific impacts associated with a specific major electric transmission facility that are not otherwise addressed by the USCs. Measures to mitigate (i.e., minimize or avoid) the potentially adverse environmental impacts that may result from the proposed action include:

- The RAPID Act required the Office to establish USCs for transmission facilities in addition to the previously established USCs for generation facilities. These USCs are derived from the substantive standards that were developed through Article VII, with some standards borrowed from the 94-c generation regulations. As these standards have been previously vetted, the Office can be assured that the USCs will avoid, minimize, and mitigate, to the maximum extent practicable, those environmental impacts that are common to major electric transmission facilities.
- Site-specific permitting regimes, such as the Office's authority to develop site-specific conditions during review of permit applications. the Office can use these authorities to avoid, minimize, mitigate, and to the maximum extent practicable, environmental or socioeconomic impacts that may be unique to a specific project.

In addition, all siting decisions are subject to existing Federal, State and local statutes - notably PSL Article VIII – and Federal and local regulations (State statutes are implemented through the proposed regulations), which collectively can be expected to result in additional measures whose effect is to avoid or minimize impacts that may otherwise occur.

Figure 6-1 of the GEIS provides an overall summary of potentially applicable regulations. These regulations cover threatened and endangered species, water and air resources, and waste management, and programs to address disadvantaged communities as defined by the CLCPA Climate Justice Working Group.

C. Alternatives Considered

The sole alternative is the "no action" scenario, in which transmission siting continues under the present PSL article VII regulations at 16 NYCRR subchapter G: Certificates of Environmental Compatibility and Public Need, which the RAPID Act required the Office to replace. The anticipated difference between the action and "no action" alternative would be the pace

of permit approvals for the same portfolio of transmission projects. It is also conceivable that an accelerated permit process might lead to a higher rate of transmission construction; however, it is not possible to evaluate that potential impact in any meaningful way due to the multiple factors that affect utility construction schedules.

D. Unavoidable Adverse Impacts

There are no unavoidable adverse impacts that could not be avoided, minimized, or mitigated through applicable federal and State laws, regulations, and review processes.

E. Irreversible and Irretrievable Commitment of Resources

Promulgating the rules and regulations implementing the RAPID Act would not result in irreversible or irretrievable commitment of resources. The proposed action does not include any approval of applications for the siting of major electric transmission facilities. However, the GEIS acknowledges that transmission facilities entail commitments of resources that are likely to be irreversible or irretrievable. The existing electric grid represents an ongoing dedication of "natural, agricultural, and man-made resources." To the extent the State's needs for expanded or new transmission lines require an additional commitment of such resources, the Article VIII USCs and site-specific requirements are designed to ensure that such commitments represent the minimum conversion necessary to meet the public's need for electric services. Specifically, the regulations establish criteria that will reduce or even eliminate possible adverse impacts related to the construction and operation of transmission facilities. For this reason, the proposed action will limit the future "irreversible and irretrievable commitment of resources" required to serve the State's electric system needs.

F. Growth-Inducing Aspects and Socioeconomic Impacts

The proposed regulations are expected to yield primary impacts through accelerating the permitting process for upgrades to existing transmission infrastructure and the development of new infrastructure. Expedited investments in existing infrastructure will increase grid capacity, ensure reliable electric service, and leverage opportunities for economic

development at a reasonable cost. Accelerated construction of new infrastructure will ensure renewable energy projects in the State can come online and connect to the grid, accelerating environmental and public health improvements relative to actions in the regulatory baseline. Although construction, operation, and maintenance of the State's transmission and distribution systems contribute to the same impacts and public benefits under existing regulations, implementing the proposed regulations is intended to allow for earlier realization of these impacts and public benefits. Beyond accelerating renewables as the law requires the Office to do, however, any other growth inducing aspects are not foreseeable.

G. Effects on Energy Consumption

The proposed action will influence the use and conservation of energy in the State to the extent that it leads to the accelerated development of the State's transmission and distribution systems. The proposed action will not impact the demand for energy and will instead support the State's ability to meet such demand.

III. CONCLUSIONS

Based on the discussion set forth in the Final GEIS, the Commission, as an involved agency, makes the findings stated above regarding the potential environmental impacts, as well as benefits, of the regulations implementing the RAPID Act, and certifies that:

1. The requirements of the State Environmental Quality Review Act, as implemented by 6 NYCRR part 617, have been met; and

2. Consistent with social, economic, and other essential considerations from among the reasonable alternatives available, the Action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and the adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measure that were identified as practicable.

3. As applicable to the coastal area, the Action being undertaken is consistent with applicable policies set forth in 19 NYCRR §600.5.

APPENDIX E
ASSESSMENT OF PUBLIC COMMENTS ON REVISED RULEMAKING

Executive Summary

1. Introduction

The Office of Renewable Energy Siting and Electric Transmission (hereafter the Office or ORES) provides this assessment of public comments received on the Office's proposed revised rulemaking issued on October 22, 2025, implementing the Renewable Action Through Project Interconnection and Deployment (RAPID) Act. Pursuant to the provisions of article 2 of the State Administrative Procedure Act (SAPA) and Public Service Law §§ 3-c, 138, 139, and 145, ORES proposes to repeal the current 16 NYCRR Part 1100 (Office of Renewable Energy Siting and Electric Transmission), and replace it with a new Part 1100 (General Procedures), Part 1101 (Major Renewable Energy Facility Siting), and Part 1102 (Major Electric Transmission Facility Siting). The purpose of the rulemaking is to establish procedural rules and uniform standards and conditions for the siting, design, construction, and operation of major renewable energy (MRE) generation and major electric transmission (MET) facilities. The Department of Public Service (DPS), by and through the Office, as lead agency, submitted a draft generic environmental impact statement (DGEIS) pursuant to the State Environmental Quality Review Act (ECL article 8 [SEQRA]) in connection with the proposed rulemaking.

Pursuant to SAPA §§ 202(4-a) and 202-a(6), on October 24, 2025, ORES issued a notice of revised rulemaking as a consequence of to the over 2,000 public comments received on the proposed rule and the DGEIS resulting in substantial revisions to the regulations as originally proposed in several key areas. Those comments were addressed in the Assessment of Public Comments received on ORES's proposed rulemaking implementing the RAPID Act and DGEIS, issued on October 22, 2025 (Primary APC).

Key areas addressed in the revised rulemaking include: revised pre-application procedures; revised alternative route scoping for MET facilities; revised procedures for upgrades and new work for MET facilities located substantially within existing electric transmission rights-of-way; replacement of "environmental justice" with "disadvantaged communities" in compliance with the Climate Leadership and Community Protection Act (CLCPA); and revisions to noise standards for both MRE and MET facilities.

2. Background

On April 20, 2024, the Legislature enacted the Renewable Action Through Project Interconnection and Deployment Act (RAPID Act) as part of the FY 2025 Executive Budget Legislation. The legislation repealed former Executive Law § 94-c, which since its enactment in 2020 solely governed the siting of major renewable energy generation facilities, and replaced it with a new PSL § 3-c and a new PSL article VIII (Article VIII) to accelerate the siting of both major renewable energy facilities and major electric transmission facilities. The RAPID Act consolidates the environmental review, permitting, and siting of major renewable energy facilities and major electric transmission facilities under the purview of the Office. Among other

things, the RAPID Act authorizes the Office, in consultation with DPS and subject to approval by the New York State Public Service Commission (PSC, or the Commission), to promulgate rules and regulations to implement a new siting permit program for major electric transmission facilities.

3. Notice of Proposed Rulemaking

A Notice of Proposed Rulemaking and Acceptance of the DGEIS were published in the State Register on December 18, 2024 (Case 24-M-0433), and comments were requested to be provided through March 18, 2025. On March 7, 2025, ORES extended the public comment period to April 18, 2025. ORES sought public comments on the draft regulations and DGEIS through 20 in-person public comment hearings and two virtual public comment hearings. The Primary APC and Final GEIS was filed on the DPS Document and Matter Management (DMM) system under Case No. 24-M-0433 on October 22, 2025. Pursuant to SAPA §§ 202(4-a) and 202-a(6), on October 22, 2025, ORES issued a notice of revised rulemaking as a consequence of to the over 2,000 public comments received on the proposed rule and the DGEIS, resulting in substantial revisions to the regulations as originally proposed in several key areas. Key areas addressed in the revised rulemaking include: revised pre-application procedures; revised alternative route scoping procedures for MET facilities; revised procedures for upgrades and new work for MET facilities located substantially within existing electric transmission rights-of-way; replacement of "environmental justice" with "disadvantaged communities" in compliance with the Climate Leadership and Community Protection Act (CLCPA); and revisions to noise standards for both MRE and MET facilities.

Written comments in response to the revised rulemaking were directed to be filed through December 8, 2025. In total, 71 public comments were received. Copies of individual comment letters are available through the DPS Document and Matter Management (DMM) system under Case No. 24-M-0433 (accessible at https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=24-M-0433&CaseSearch=Search).

4. Discussion and Analysis of Comments

Comments Unrelated to the Revised Rulemaking

Pursuant to SAPA § 4-a(b), the purpose of this APC is limited to reviewing and discussing comments received since the revised rulemaking was published. ORES is not required to reiterate the previously published Primary APC. ORES received a significant number of comments regarding items or issues that are not relevant to or do not correspond to the changes made to regulatory language through the revised rulemaking and are a reiteration of comments already addressed in the Primary APC. These comments are addressed in the Primary APC and and as such are not addressed in this APC. This APC is limited to responding to comments

directed to the changes in regulatory language proposed in the revised rulemaking and new comments on the originally proposed rulemaking not otherwise addressed in the Primary APC.

Comments Related to Typographical Errors

ORES received a significant number of comments regarding the correction of typographical errors contained in the revised rulemaking. A review of those comments revealed several typographical errors that were inadvertently overlooked and will be corrected, as noted below. Several comments noted what were described to be typographical errors which upon further review were determined not to be errors and remain unchanged; those comments are also noted below.

General Comments

ORES received a significant number of general comments expressing opposition to the State's climate goals and policies (other than the RAPID Act); specific generation, transmission, or battery energy storage projects across the State; and the siting of transmission lines and use of renewable energy in general. Other comments expressed their support for the proposed revised regulations, and the State's wider climate goals and policies.

ORES acknowledged the various comments and different viewpoints, including support for or objection to the regulations implementing the RAPID Act in the Primary APC issued on October 22, 2025. These comments either do not relate to the changes and language implemented through the revised rulemaking or are not new comments not otherwise addressed in the Primary APC and as such are not properly addressed in this APC.

General Comments on the Proposed Regulations

Comment:

A commenter recommended a formal technical assistance program to support municipalities. The commenter also noted that municipalities need early written documentation of local agency account funding availability and application procedures.

Discussion:

A formal technical assistance program is beyond the scope of the revised regulations and ORES's authority under Article VIII. Notwithstanding the above, ORES regularly conducts outreach to affected municipalities and provides guidance documents regarding municipal participation in the Article VIII application review process, public comment procedures, and hearings, including information regarding the availability of local agency account funding to offset a municipality's costs associated with legal and technical review of applications. Applicants are expected to provide such guidance documents to municipalities during the pre-application consultations. Municipalities are also encouraged to contact ORES directly with any questions they may have

regarding the Article VIII permit application review process and their participation in that process.

Comment:

A commenter emphasized the importance of safety in navigable waters, highlighting needed protection for navigational safety and anchorages.

Discussion:

The regulations include numerous informational requirements and provisions for the protection of offshore navigational safety and anchorages. The regulations also require consultations with potentially affected stakeholders and public outreach in order to identify and address project and location specific concerns.

Part 1100. General Procedures.

Section 1100-1.2. Definitions.

Comment:

A commenter recommended the Office define "unduly burdensome" to mean "with respect to a local law, any legislation, adopted by any political subdivision or municipal corporation duly organized and existing under and by virtue of the laws of the State of New York, that: (1) explicitly prohibits the siting of a major electric transmission facility; (2) would render the application economically impossible; or (3) is directly preempted by the rules promulgated herein."

Discussion:

This comment is not responsive to revised regulations and does not require any changes. The Assessments of Public Comments for both the Part 900 regulations and the Primary APC for Part 1100 provide a thorough discussion of the standards that must be met in order for ORES to find a local law to be "unduly burdensome" in light of the CLCPA targets, the environmental benefits of the project and, in the case of transmission, the public need for the facility.

(ap) In-service date

Comment:

A commenter recommended amending the definition of "in-service" for transmission facilities that are part of a stand-alone generation project, so that energization of the transmission facility may not occur at the end of the overall project target completion date.

Discussion:

The definition of “in-service” for electric transmission facilities proposed to be developed as part of an energy generation project has been clarified to address this comment.

(av) Limits of disturbance

Comment

A commenter asked ORES to verify the use of "are" instead of "as" in the current draft definition.

Discussion: The use of “are” is correct. No change.

(ay) Major amendment

Comment:

A commenter stated that the term “material increase” is used in the definition of "major amendment" but it is unclear what constitutes a "material increase."

Discussion:

This comment does not require any changes. In the Office's experience in implementing this language under Part 900 / current Part 1100, it is readily apparent whether a project involves a material increase to a particular impact. Applicants are also free to request a consultation with Office staff during the pre-application phase to review expected impacts and whether they constitute a "material increase."

Comment:

A commenter suggested revising the language regarding changes that may technically require new waivers but do not result in significant or new environmental impacts. Other commenters sought clarification that a modification should only be deemed major if an entirely new waiver is requested, not when a relatively minor change requires review of an already issued waiver.

Discussion:

This comment does not require any change. New local law relief requests must be given the opportunity for public and local government input, hence the finding of "major." Local law relief provided in permits may be applied to a revised facility design and still be considered "minor," but this is dependent upon the specific local law and specific relief provided. Additionally, the Office may process "major" amendments more quickly than the maximum timelines allowed, where appropriate.

(bd) Minor amendment

Comment:

A commenter recommended deleting the language that states "significant adverse impacts resulting from the change are addressed by the uniform standards and conditions" because it is inconsistent with the definition of Major Amendment.

Discussion:

The uniform standards and conditions (USCs) are designed to avoid, minimize, and mitigate, to the maximum extent practicable, any potential significant adverse environmental and public health and safety impacts that are common to each type of major renewable energy or major electric transmission facility. Accordingly, the conclusion that the changes proposed in a permit or certificate amendment application, or to an approved compliance filing, are addressed by the USCs supports the conclusion that such changes would not result in any material increase in any identified adverse impacts and, therefore, do not constitute a major amendment.

(bz) Pollution

Comment:

A commenter stated that the definition in (bz) "pollution," as drafted will allow wind and solar energy facilities to cause whatever ORES determines is "reasonable" interference with the "comfortable enjoyment of life and property," deeming this unconstitutionally vague and a potential governmental taking of property rights.

Discussion:

No changes are warranted. The definition of pollution is taken directly from Environmental Conservation Law (ECL) 1-0303(19) which, in turn, is used to implement the CLCPA's "disadvantaged community" program under ECL article 75 (Climate Change).

(cb) Potential party

Comment:

Several commenters recommended revising the definition of "potential party" to include only those who have filed a petition for party status, rather than those who "intend" to file, as intent is impossible to determine.

Discussion:

As noted in the Primary APC Part 3, p. 131, the purpose of the change to the definition of "potential party" contained in Part 900 / current 1100 and the addition of 1100-8.4(f)(3) in the proposed regulations was to codify the Office's practice under former Part 900 / current Part 1100. Under that practice, prior to the deadline for the filing of party status petitions, participants are limited to making motions and requests pursuant to 1100-8.4(f)(1)(v) addressed to the hearing process and the parties' ability to file petitions for party status for consideration

by the Administrative Law Judge (ALJ) pursuant to 1100-8.7(b)(1)(i). Prior to issuance of a draft permit or notice of intent to deny, participation in ORES staff's permit application completeness review and drafting of a siting permit is generally limited to the posting of public comments or, in the case of municipalities and local agencies, the filing of municipal statements of compliance with local laws and regulations pursuant to 1100-8.4(d). The revised regulations are being modified to reflect the current language of Part 1100 as a clarification of this practice and to avoid confusion.

Similarly, no motion practice is authorized under the regulations during the compliance phase unless ORES staff determines pursuant to section 1100-11.1 or 1100-11.2, as applicable, that the amendment request constitutes a major amendment. Participation in the review of compliance filings and any requests for amendments to the permit or an approved EM&CP or compliance filing by the permittee is limited to the posting of public comments by municipalities and other interested parties.

(cd) Project area or facility site

Comment:

A commenter recommended a revision to clarify that "local contractor facilities used for project specific purposes" is only intended to reference laydown yards, concrete batch plants and other necessary contractor facilities within a proposed project area, and is not intended to reference off-site temporary turn improvements.

Discussion:

This comment does not require any changes. Section 1100-1.2(cd) was revised to clarify the definition of "Project area or facility site" as it pertains to local contractor facilities used for project-specific purposes. Local contractor facilities used for project-specific purposes do not include off-site temporary turn improvements required to access such facilities.

Comment:

Several commenters recommended deleting the parenthetical addition of "(including any portion of local contractor facilities used for project-specific purposes)" or that ORES provide guidance on how to handle the identification of locations during the pre-construction compliance phase.

Discussion:

This was addressed in the Prior APC - Construction Practices and Impacts: Local contractor facilities are not always designated for sole use of the project. The definitions under 1100-1.2(av) and 1100-1.2(cd), as well as the uniform standards and condition established by 1102-3.4(o) have been revised to clarify that this provision applies when the contractor's facility (or a portion therefore) is being designated solely for the use of the project.

(de) Substantially within existing electric transmission rights of way

Comment:

A commenter recommended changes to clarify that an METF remains substantially within an existing right-of-way when it requires additional rights-of-way to avoid impacts of the proposed facility. The commenter recommended that the final regulations and guidance should clarify and ensure that projects be captured under the final regulatory definition of "substantially within existing electric transmission right-of-way" within section 1100-1.2(de).

Discussion:

The goal is to correct an issue that may exist with the existing facility. The Office has revised the definition of "substantially within existing electric transmission right-of-way" to include other qualifying criteria in addition to applicable safety and reliability standards to avoid or minimize significant impacts associated with the existing facility. No further changes to the definition are warranted.

Comment:

A commenter argued that the definition of "substantially within" concerning electric transmission facilities in existing rights-of-way (ROW) is too broad. The commenter suggested ORES should establish a requirement that a certain percentage of the route be located within the public right-of-way to meet this definition.

Discussion:

The establishment of a set percentage to meet the definition would be arbitrary. The draft regulations align with Public Service Law § 143 language to identify projects proposed "substantially within" existing ROW for individual applications. The recommendation to add a specific percentage is not anticipated or supported by section 143. No change is warranted.

Section 1100-1.3. Pre-application procedures.

Comment:

A commenter expressed support for pre-application meetings but suggested ongoing consultations throughout the siting and construction processes, with similar requirements added to other sections.

Discussion:

This was addressed in the Primary APC Part 3, p. 94.

Subdivision (a) Consultation with local agencies.

Comment:

A commenter raised concerns about the streamlining of clean energy facilities and the potential for overlooking important ecological considerations due to a rapid pre-application process. The commenter noted that the Boralex facility in Fort Edward contradicts environmental preservation efforts and that current mitigation practices are based on an incorrect understanding of grassland ecology. The commenter urged DPS to ensure extra oversight during the pre-application process and proper explanation of exhibits by the applicant.

Discussion:

The identification of resources during pre-application is in the existing Part 900 / 1100 regulations. The remainder of the comment is about a specific project, which is outside the scope of this rulemaking. No change is warranted.

Comment:

Several commenters stated that providing notice to the "chief executive officer" is insufficient and suggested requiring applicants to meet with the entire town board.

Discussion:

Addressed in the Primary APC Part 3, p. 93. It is withing the discretion of the chief executive officer of the municipality to determine which other municipal officials, including town board members, should be included in the consultations. No change warranted.

Paragraph (10) Notice of adoption of new substantive local law provisions.

Comment:

Several commenters stated that the 5-day deadline for municipalities to inform applicants of pending new local law provisions is unreasonable and suggested either removing this provision, or revising it to various other timeframes, such as a 30-day period. Other commenters recommended providing clarification on what is intended by the term "pending" local law to a clearer reference, such as "final and enacted local law" and that the law would need to be in effect when the application is filed. Other commenters recommended removal of the term, with respect to a new provision requiring a municipality to notify the applicant of any pending new substantive local law provisions that would be applicable to the project. Other commenters stated that the new regulation places new burdens on municipal corporations in ensuring that applicants can expeditiously obviate local laws and that providing a municipal corporation with only five days to provide a list of potentially responsive local laws is an unduly burdensome timeline. Finally, other commenters expressed concern that this provision violated the State constitution by preempting duly enacted local laws.

Discussion:

The requirement for municipalities to provide notice of any pending new substantive local law provisions and the expected date of enactment is intended to inform applicants of any such local laws that will or may be adopted and in effect prior to the filing date of an application and would therefore be applicable to a proposed major renewable energy facility or major electric transmission facility as provided in 16 NYCRR 1101-2.24 and 1101.28, respectively. The requirement to provide such notice is tied temporally to the required pre-application consultation with local agencies but must be provided no later than five (5) days after the municipality's receipt of a 60-day notice of intent to file an application. As such, pending legislation is meant to include local laws that are under consideration by a municipality at the time of the 60-day notice and would go into effect pursuant to the filing requirements with the Secretary of State under Municipal Home Rule Law § 27(3) prior to the intended application filing date.

Regarding preemption of duly enacted local laws, 1100-1.3(a)(10) does not provide ORES with the authority to preempt a pending local law. Rather, this provision is intended to ensure that an applicant is aware of pending local laws so that it may assess its ability to comply with those laws, should the laws become effective before the date of application filing.

Subdivision (f) Notice.

Comment:

A commenter recommended reversing the proposed deletion of language in (f)(1) and (f)(2)(i), which required a 60-day filing notice only after the conclusion of mandatory municipal consultation and meetings.

Discussion:

This was addressed in the Primary APC Part 3, p. 95.

Subdivision (g) Consultation with the office.

Comment:

A commenter questioned how the consultation process under subdivision (g)(1) will work and how the office will decide what application requirements to waive when facilities are located substantially within existing electric transmission rights-of-way.

Discussion:

Section 1100-1.3(g)(1) has been clarified regarding the timing for preapplication consultations with the Office for projects located substantially within existing transmission rights-of-way (ROW). To understand what application requirements will be required, consult sections 1100-11.2 and 1100-11.6, and the various application requirements applicable to such projects throughout subpart 1102-2. Further, applicants for a project proposed substantially within existing electric transmission ROW may consult with the Office regarding any application

exhibits, in whole or in part, from which the applicant seeks relief. Any such requests for relief will be considered by the Office on a project and location specific basis.

Section 1100-2.1. Filing instructions.

Subdivision (g) Application supplements.

Comment:

A commenter stated that the revised language requires a "full set of plans submitted electronically with revisions clouded" is unclear and potentially overly burdensome, unnecessary and costly. For example, if just one figure, construction detail or a single page of an EM&CP must be revised for clarification, it is much easier to simply modify that single item as opposed to reproducing, filing and submitting the entire "full set of plans".

Discussion:

This provision relates to application exhibits, not EM&CP submissions. In the Office's experience, Office comments result in design modifications that must often be reflect in on multiple sheets of drawings. Additionally, it can be difficult for reviewers, including the public, to be sure they are reviewing correct versions of drawing sets if only modified sheets are submitted. The office agrees that it may be more efficient in limited circumstances (for example when a single sheet must be revised or supplemented) that the application only be supplemented by revised sheets. In such cases, applicants may consult with the office about compliance with this provision. No change is warranted.

Section 1100-4.1. Office of Renewable Energy Siting and Electric Transmission action on application.

Comment:

Several commenters stated that the revised Article VIII regulations do not adequately address the need to limit application completeness review and recommends ORES should ensure in their final regulations that review periods are both limited and reasonable. Although the initial 120-day application review is specified by statute, subsequent review periods under section 1100-4.1(e) should be limited to address only the specific deficiencies identified in the initial review and subsequent review times should be 90 days instead of 120 days.

Discussion:

As noted where the Primary APC addresses section 1100-4.1(e), the Office acknowledges these concerns and will strive to achieve efficiencies in review, when feasible. This comment has been reviewed and does not require any changes.

Section 1100-7.1. Amendment of application.

Subdivision (b) Requests for permission to submit an amendment.

Paragraph (2)

Comment:

Several commenters stated that the potential delay caused by the suspension of the Office's review upon receipt of a major amendment, without limits, could upend this otherwise relatively straightforward and smooth process that, for the most part, has incorporated precise timing guideposts. There should be an outer limit on the suspension of the time limits when reviewing a major amendment. Another commenter suggested that an extension of a maximum of 30 days be automatically triggered upon the Office's findings of a major amendment and if additional time is required, the Office shall inform the applicant as to what issues remain unresolved so as to prevent a completeness determination and proposed additional extension of time to be agreed upon by both the office and the applicant.

Discussion:

Section 1100-7.1(b)(2) provides the Office with fifteen days to determine whether a proposed amendment is minor or major. If an amendment is minor, the Office shall continue to process the application. If the amendment is major, 1100-7.1(e) provides "All applicable statutory time frames for completeness determination, publication of draft permit conditions, and final determination on the application shall run from the submission of the entire major amendment application in accordance with subdivision (c) of this section." No change is warranted.

Comment:

A commentor stated that there must be a time frame for the major/minor determination to be made when an amendment is filed after a notice of complete application. The commenter further criticizes the provision that a major amendment filed after a notice of complete application causes a "vacatur" of the notice of complete application, without affording the applicant any ability to challenge that determination.

Discussion:

Section 1100-7.1(b)(2) expressly provides a 15-day timeframe for the Office to make the minor / major application amendment determination. Accordingly, pursuant to 1100-7.1(b)(2)(ii), requests to amend a pending application filed after a notice of complete application is issued

suspends processing of the draft permit for the original application for up to 15 days while the Office makes the minor / major amendment determination. If the amendment is determined to be major, consent to vacatur of the NOCA is necessary to allow the Office the full statutory timeframes to determine whether the major amendment application is complete and ready for further review and processing. No change is warranted.

Subdivision (d) Additional local agency account fee.

Comment:

A commenter recommended this section should be modified to clarify that an additional local agency account fee (LAAF) payment of $1,000 per megawatt of total proposed nameplate capacity should be required after any major amendment occurring after original LAAF requests are submitted, without regard to whether any local agency or potential community intervenor submits a "written request." This should also clarify the payment is required based on the projects entire proposed nameplate capacity, as amended, without regard to whether the major modification includes any change (increase or decrease) in nameplate capacity. Another commenter proposed a local agency account fee of no less than $1,500.00 per 1,000 kilowatts. Another commenter suggested the regulations should not include a maximum amount for major amendments to allow the Office discretion to require additional local agency account fees.

Discussion:

Local agency account funds are awarded based on the written requests of local agencies and potential community intervenors. It is therefore appropriate to award additional local agency account fees based on the written requests of local agencies and potential community intervenors. The underlying amounts available are established by Article VIII and the limits on additional fees for application amendments are based on the practices under PSL articles VII and 10. No change is warranted.

Section 1100-8.2. Hearing notices.

Subdivision (e) Service on specific persons.

Comment:

A commenter suggested that all notices required under Subpart 1100-8 must be sent to municipalities which may be adversely impacted by the project.

Discussion:

Addressed by the Primary APC Part 3, p. 122. Municipalities that would not have project components located within their jurisdiction do receive notice through the newspaper publication provisions at 1100-8.2(a).

Section 1100-8.3. Public comment hearing and issues conference.

Comment:

Several commenters stated that under the proposed ORES regulations, use of the NYSDEC's standard denies public participation because there are no comparable siting or performance standards and ORES has consistently denied hearing participation to municipalities and other stakeholders.

Discussion:

Siting and performance standards for major renewable energy facilities and major electric transmission facilities, including the avoid, minimize, and mitigate to the maximum extent practicable standard, are provided for throughout Parts 1100, 1101, and 1102. The regulations provide for mandatory consultations with affected host municipalities and community members, and provide multiple opportunities for robust public input and participation throughout the permit application review process. Through this process, municipalities and other stakeholders are free to raise substantive and significant issue regarding an application's compliance with applicable statutory and regulatory standards through public comments, through the filing of municipal statements of local law compliance, and by filing petitions for party status to intervene in the adjudicatory hearing portion of the proceeding. No changes are warranted.

Section 1100-8.4. Hearing participation, petitions for party status, and statement.

Subdivision (b) Mandatory parties.

Paragraph (1)

Comment:

Several commenters requested that this provision be revised to simply stay the one-year time frame pending a successful challenge by the applicant of a notice of intent to deny by the Office. Another commenter recommended that the Office either delete this provision in its entirety or provide for an extension of the final decisional deadline by no more than 60 days in the event that an applicant successfully challenges a notice of intent to deny. Other commenters also recommended removal of this provision, arguing it is unnecessary and counter to the purpose of the RAPID Act.

Discussion:

The purpose of the one-year extension of the timeframe for decision is to provide the applicant with a meaningful administrative appeal from Office staff's determination to deny a permit. If the ALJ, or the Executive Director on appeal, reverses a notice of intent to deny issued by ORES staff, a draft siting permit will have to be prepared for public comment and hearings before a final decision can be made on the application. If the ALJ or Executive Director reverses the intent to deny a permit late in the original one-year period, there may not be sufficient time left in that period to complete the necessary steps, each of which are subject to associated statutory and regulatory timeframes to finalize the permit before the deadline runs. Aa one-year extension, as opposed to a stay, provides applicants the assurance that further proceedings would not exceed the statutory one-year deadline for decision. Finally, the Office may process the application after a reversal more quickly than the maximum timelines allowed, where appropriate. No change is warranted.

Section 1100-8.5. General rules of practice.

Subdivision (c) Motion practice.

Comment:

A commenter recommended that the new requirement for, "an affirmation of an attorney, or an affidavit of the moving party if not represented by an attorney, describing the good faith efforts to resolve the dispute without resort to a motion" should be deleted.

Discussion:

Recommendation accepted. The provision is being removed. Those motions for which an affirmation / affidavit of good faith efforts is required are specified in the regulations.

Section 1100-8.7. Conduct of the adjudicatory hearing.

Comment:

A commenter recommended that section 1100-8.7(a)(5) (Close of the record) either cross reference the service requirements of section 1100-8.5(a) as the proper method for the ALJ to provide notice or clarify that such notice shall be provided electronically.

Discussion:

Recommendation accepted. The provision is being clarified.

Section 1100-8.12. Final decision.

Subdivision (b) Stipulations.

Comment:

Several commenters urged this provision be revised to require that all public comments be made part of the record in each Article VIII proceeding and that there should not be any carveouts to exclude public comments from the record during any portion of the siting process. The commenters interpret section 1100-8.12(b) as only requiring public comments to be part of the record where the parties resolve the proceeding by stipulation.

Discussion:

These comments are address by the APC Part 3, p. 123. As noted there, while public comments are not part of the evidentiary record of a proceeding, all public comments are part of the administrative record of the proceeding. All comments submitted during the public comment period will be addressed either by the ALJ in the judge's issues ruling and hearing report, if one is issued, or in the assessment of public comments issued by Office staff with any final siting permit. In addition, public comments may raise a substantive and significant issue and may provide the basis for joining such issues for adjudication. See 1100-8.3(d)(i)(iv). Further, all public comments are part of the administrative record and are addressed by the Office whether the matter is resolved by stipulation of the parties or by decision of the ALJ or Executive Director. See 1100-8.3(c)(2), 1100-8.12(a)(3), 1100-8.12(b).

Section 1100-9.1. Final determination on applications.

Comment:

A commenter proposed an addition to section 1100-9.1(c)(6)(ii) to require ORES to accompany its finding with a description of anticipated improvements to reliability or reductions to congestion.

Discussion:

Under 1100-9.1(c)(6), the Office issues a finding on need and public/ratepayer interest. This finding is based, in part, on the information supporting such finding in application exhibits 21 and 25. Discussion of impacts on reliability, congestion, and rates should be presented by the applicant in the application. The Office's permit incorporates by reference the information contained within the permit application. No change is warranted.

Section 1100-11.1. Amendments to approved EM&CP or compliance filings requested by the permittee.

Comment:

A commenter stated that the regulation is not clear when "minor changes" can be approved by Office staff and/or must go to the Executive Director of the Office for approval and suggests the regulation should be revised to make this clear.

Discussion:

Minor changes may be approved by the Office if the change does not require a modification to the underlying permit and is not likely to result in any material increase in any identified adverse environmental impact or any significant adverse environmental impact not previously identified. This determination is made by Staff, consistent with previous Part 900 / current Part 1100. No change is warranted.

Section 1100-11.2. Amendments to existing permit or certificate requested by the permittee.

Comment:

A commenter suggested changes for METFs constructed substantially within existing electric transmission right-of-way that have Article VII permits.

Discussion:

This comment does not require any changes. Section 1100-11.2 establishes streamlined processes for proposed amendments to Article VII certificates and Article VIII permits for which the office determines the proposed changes constitute a minor amendment and can be processed administratively. A separate streamlined process for amendments to certificates or permits for projects substantially within existing ROW is unnecessary.

Subdivision (c).

Comment:

Several commenters suggested shortening the timeframe for issuing a permit after a minor amendment determination from 60 days to 20 or 30 days.

Discussion:

The 60-day timeframe for issuance of a final siting permit after amendment parallels the statutory period for issuance of a draft siting permit once the Office has all the information necessary to make permitting decisions. Accordingly, it is an appropriate maximum timeframe for issuance of a final siting permit after the Office determines that applicant's requested permit amendment is a minor amendment. No change is warranted.

Subdivision (d).

Comment:

Several commenters suggested that the period to issue a final amendment and provide a summary and assessment of public comments be reduced from 60 days to 20 or 30 days.

Discussion:

See previous response above. No change is warranted.

Subdivision (e) Major amendments.

Comment:

Several commenters requested that the minimum public comment period for major amendments be reduced from 60 days to 20 days, with a provision permitting the Office to extend the public comment period if the issue garners significant public interest.

Discussion:

The sixty-day minimum public comment period is established by Article VIII. No change is warranted.

Section 1100-11.6. Modifications of existing major electric transmission facilities without a Public Service Law article VII certificate or new work located substantially within existing transmission right-of-way.

Comment:

A commenter noted that rebuild projects that will be substantially within an existing right-of-way should not have to go through a complete Article VIII application process.

Discussion:

This comment does not require any changes. Any applications for projects satisfying the definition of "substantially within existing electric transmission right-of-way" and for which a certificate of environmental compatibility and public need was not previously issued pursuant to Article VII of the Public Service Law will be reviewed by the Office pursuant to the procedures established in section 1100-11.6. Applications to amend an existing facility for which a certificate of environmental compatibility and public need was previously issued will be reviewed by the Office pursuant to the procedures established in section 1100-11.2. If the Office determines that the proposed changes to the existing facility or new work in an existing right of way are not likely to result in any increased or new significant adverse environmental impacts when compared to the existing electric transmission infrastructure, or that all significant adverse impacts are addressed by the uniform standards and conditions, the procedures in sections 1100-11.6 and section 1100-11.2 require the Office to issue a determination of no increased impact and final permit within 60 days of the notice of complete application.

Comment:

A commenter recommended additional exhibits that should not have to be submitted with an application under section 1100-11.6.

Discussion:

Section 1100-11.6 was revised to establish provisions for applications for projects proposed substantially within existing rights-of-way, including identification of specific applications requirements and pre-applications procedures that are pre-emptively waived for such projects. The regulations establish provisions allowing for additional requests for relief on a project-specific basis. Any requests for relief from application requirements specified in the regulations should be presented, with justification, in the application. Such requests and justifications should include a description of any pre-application consultations with the Office. No change is warranted.

Subdivision (a)

Comment:

A commenter recommended clarifying that section 1100-11.6 applies only to projects that would meet the definition of "major electric transmission facility."

Discussion:

This comment does not require any changes. The purpose and applicability of the regulations are established in section 1100-1.1.

Subdivision (d)

Comment:

A commenter recommended the following edit to section 1100-11.6(d)(1): If the application for modification of an existing facility without a certificate or new work in an existing electric transmission right-of-way reveals that the applicant does not have all right-of-way agreements, the office will initiate a sixty (60) day public comment period after application filing to allow landowners to challenge the need for the project. This public comment period will run concurrently with the office’s determination under subdivision (e) of this section as to whether the application constitutes a major modification.

Discussion:

The regulations establish that upon filing of an application for a project substantially within an existing electrical transmission right-of-way for which the applicant has not secured all required property rights, the Office will initiate a 60-day public comment period. The 60-day timeframe in which the Office reviews a complete application to determine if it constitutes a major or minor

modification does not being until a Notice of Complete Application has been issued, which is later in the process than the application filing date. No change is warranted.

Comment:

A commenter recommended that applicants should be allowed to bifurcate their applications so that major modifications do not delay minor modifications.

Discussion:

This comment does not require any changes. The recommendation would be inconsistent with the Office's mandate to provide a forum for comprehensive review of major renewable energy generation and electric transmission projects.

Subdivision (e)

Comment:

A commenter recommended that the final regulations and guidance should clarify and ensure that applications where additional rights-of-way are used to avoid adverse environmental impacts or to address safety or reliability requirements will be captured under the final regulatory definition of "substantially within existing electric transmission right-of-way" within section 1100-1.2(de) and be able to qualify for the accelerated treatment proposed for minor modifications under section 1100-11.6(e)(1).

Discussion:

This comment does not require any changes. The Office's assessment of whether construction and operation of a project substantially within existing electric transmission rights-of-way constitutes a major or minor modification compared to existing facilities will consider the entirety of the project, as proposed in the application, including any proposed impact avoidance and minimization measures, along with the requirements of the uniform standards and conditions.

Comment:

A commenter recommended that section 1100-11.6(e)(1) be modified as follows: If the office determines that the proposed changes to the existing facility or new work are not likely to result in any increased significant adverse environmental impacts or new significant adverse environmental impacts when compared to the existing electric transmission infrastructure, or that all significant adverse impacts are addressed by the uniform standards and conditions and other measures included in the application, or that the proposed changes or new work would be constructed substantially within existing electric transmission right-of-way, the office will have sixty (60) days after issuance of the notice of complete application to issue a written determination that the change does not involve significant increased environmental impacts over existing conditions, and issue the final permit (new language underlined).

Discussion:

The Office's assessment of whether construction and operation of a project substantially within existing electric transmission rights-of-way constitutes a major or minor modification compared to existing facilities will consider the entirety of the project, as proposed in the application, including any proposed impact avoidance and minimization measures in the application, along with the requirements of the uniform standards and conditions, which are designed to avoid, minimize, and mitigate adverse environmental, and public health and safety impacts. The remaining proposed language is overly broad, and does not take into account whether the proposed changes are minor or major. Pursuant to PSL § 141(3), projects may only be relieved from public notice and hearing requirements of Article VIII if they do not involve any material increases in any adverse environmental impacts over existing conditions and, therefore, constitute minor changes.

Subdivision (e)

Comment:

A commenter recommended a new 1100-11.6(e)(2)(i): The office may determine that an application contains both a major and a minor modification. The office may elect to issue separate permits where it finds that the modifications are discrete and that each, when taken on its own, would qualify as a major electric transmission facility.

Discussion:

This comment does not require any changes. The recommendation would be inconsistent with the Office's mandate to provide a forum for comprehensive review of major renewable energy generation and electric transmission projects.

Subdivision (f) Major modification.

Comment:

A commenter recommended that further guidance could clarify when common impacts are likely to be deemed significant and when the uniform standards and conditions or other application measures are likely to be deemed sufficient mitigation for those common impacts.

Discussion:

The Office will consider developing guidance to help provide additional clarity on how the Office will assess major vs. minor modifications for projects substantially within existing ROW in typical circumstances. Project-specific guidance and feedback may be established through pre-application consultations with Office staff.

Part 1101. Major Renewable Energy Facility Siting.

Section 1101-1.1. Pre-application requirements.

Subdivision (a) Wetland and surface water delineation.

Comment:

Commenters recommended allowing renewable generation applicants to conduct wetland and surface water screening based on publicly available data during the pre-application phase, similar to transmission facilities. They also suggest allowing actual delineations and jurisdictional determinations during the EM&CP phase, with a schedule for delineations to be submitted after permit issuance but before EM&CP submission.

Discussion:

Addressed in Primary APC Part 4, p. 150

Comment: A commenter recommended removing the reference to seasonal restrictions between November 15 and May 15 for site visits, as weather and ground conditions may restrict site visits all year long. They also suggest consulting DEC to determine jurisdictional wetlands and surface waters.

Discussion:

The November 15 to May 15 window provided for in this provision only provides the Office with a basis to extend its deadline by an additional 30 days from a site visit, beyond the 60 days otherwise provided, if a site visit is not possible during this seasonal period. In the Office's experience with many site visits, this is a reasonable seasonal window when site visits may not be possible. Regarding consultation with NYSDEC, Office staff are fully qualified to determine wetland jurisdiction within the authority of the Office, but may consult with NYSDEC as needed.

Subdivision (c) Cultural resources.

Comment:

Several commenters suggested that the requirement proposed under 1101-1.1(c)(3)(iii)(a) either be removed from consideration, or revised as the following: "If a Phase II site evaluation study is recommended in the office's determination, then the application may not be filed less than sixty (60) days after receipt of the office's determination above."

Discussion:

Section 1101-1.1(c)(3)(iii)(a) requires that the conclusion of the Phase IB consultation process be reached 60 days prior to application filing. The conclusion of the Phase IB consultation represents the initial opportunity at which OPRHP/SHPO's effect or impact determination

letter(s) may be issued. The applicant is required to provide such letter(s) in the application pursuant to 1101-2.9 of this Part and submit a design that reflects the completion of the consultation process with both OPRHP/SHPO and any Indigenous Nations. The language in 1101-1.1(c) has been clarified to state that an application may be filed at any time after the issuance of OPRHP/SHPO's effect or impact determination letter(s).

Section 1101-2.7. Exhibit 7: Noise and Vibration.

Subdivision (b) Design goals.

Comment:

A commenter stated it does not believe the cumulative noise impact standard will be reasonable to meet, given the challenges in modeling any noise mitigation at neighboring facilities with a different owner, and suggests that ORES maintain the previous draft version of Exhibit 7.

Discussion:

The purpose of conducting a cumulative effects analysis is to ensure total potential noise impacts from all contributing wind and/or solar facilities are considered when determining potential future received sound level impacts at sensitive receptors. The office recognizes that existing solar and wind facilities constructed prior to the effective date of Article VIII may already exceed the non-cumulative design goals established within Article VIII. Therefore, a clarification was made at 1101-2.7(b)(1)(ii) to allow for cases where existing facilities already exceed the non-cumulative design goals established within Article VIII, but the sound produced by the proposed facility does not result in any perceptible increase in noise levels at sensitive receptor locations.

Comment:

A commenter sought clarification for cases where an existing facility is close to or above the non-cumulative goals, and thus recommends, the following revision: "cumulative noise impacts, obtained as specified in subdivision c of this section, shall not exceed any non-cumulative design goals where the proposed facility contributes a higher sound level than the existing facility." In the alternative, ACE NY and IPPNY recommend an alternative formulation of the requirement that would allow an increase of up to one decibel.

Discussion:

The purpose of conducting a cumulative effects analysis is to ensure total potential noise impacts from all contributing wind and/or solar facilities are considered when determining potential future received sound level impacts at sensitive receptors. The office recognizes that existing solar and wind facilities constructed prior to the effective date of Article VIII may already exceed the non-cumulative design goals established within Article VIII. Therefore, a clarification

was made at 1101-2.7(b)(1)(ii) to allow for cases where existing facilities already exceed the non-cumulative design goals established within Article VIII, but the sound produced by the proposed facility does not result in any perceptible increase in noise levels at sensitive receptor locations.

Subdivision (c) Sound study area and radius of evaluation.

Comment:

A commenter recommended that "associated facility component" be defined and that back-up generators not be included in the definition.

Discussion:

Previous response appears in Primary APC Part 4, Section 1101-2.7 -Exhibit 7: Noise and Vibration, p. 164: The language regarding backup generators has been replaced with the term “associated facility components.” The Office anticipates releasing guidance to further clarify some of the general questions received about practical application of the noise provisions of the regulations.

Subdivision (h) Sensitive sound receptors and sound contour maps.

Comment:

A commenter recommended that uninhabitable or unoccupied structures listed or eligible for listing on State or National Historic Places be considered a Type 3 receptor instead of Type 1.

Discussion:

This comment does not require any changes. The current regulations at section 1101-2.8(h)(1) include "any historic resources listed or eligible for listing on the State or National Register of Historic Places" in the list of sensitive sound receptors. Unoccupied and uninhabited structures could include museums and other structures used by the public where the noise standards for Type 1 receptors are appropriate. Further, Applicants are not prevented from seeking participation agreements from the owners of such properties.

Section 1101-2.12. Exhibit 12: NYS Threatened or Endangered Species.

Comment:

Several commenters suggested that proposing mitigation sites is not required in the Net Conservation Benefit Plan if payments are proposed to be made to the mitigation bank.

Discussion:

Section 1101-2.12(f) has been revised to clarify that payment into the Mitigation Bank may be proposed in the Net Conservation Benefit Plan, consistent with section 1101-3.4(x).

Section 1101-2.13. Exhibit 13: Water Resources and Aquatic Ecology.

Comment:

A commenter recommended clarifying whether the requirement in section 1101-2.13(b)(5) for a 50-foot setback from jurisdictional surface waters and avoidance of excavation/fill below the "mean high water elevation" applies only to tidal navigable waterways or if an alternative term/measurement is needed for inland waterways.

Discussion:

The term "Mean High Water" applies to navigable waters regulated pursuant to ECL Article 15 and is intended to clarify that only the excavation and placement of fill in navigable waters, not activities within 50 feet of these waters, are regulated under 1101.

Section 1101-2.14. Exhibit 14: Wetlands.

Comment:

A commenter recommended revisions to sections 1101-2.14(d) and 1101-2.14(e) to comply with DEC's regulations. The language in section 1101-2.14(d) fails to require an analysis of all off-site wetlands within three hundred (300) feet for tidal wetlands. Section 1101-2.14(e) fails to comply with DEC's recently adopted freshwater wetland regulations (6 NYCRR Part 664). DEC may extend that regulated buffer area beyond 100 feet for nutrient poor wetlands or vernal pools. The language in section 1101-2.14(e) ignores the possibility that a regulated adjacent buffer area of more than 100 feet may exist.

Discussion:

Regarding 1101-2.14(d), tidal wetlands are not expected to be impacted by generation projects, however the definition of "regulated adjacent area" in Part 1100 includes specific language acknowledging the various adjacent area limits for tidal wetlands. Additionally, the definition of "regulated adjacent area" had been revised to reflect the provisions of 6 NYCRR Part 664 and section 1101-2.14(e) has been revised to remove reference to "100-foot adjacent areas". Furthermore, the jurisdictional determination process prescribed in 1101-1.1(a) (4) provides the Office with the ability to request additional information as needed, including the location of vernal pools and nutrient poor wetlands that may meet criteria for an extended adjacent area. Finally, the Office has the authority to include Site Specific Conditions in the Draft Permit to address potential affects to these types of wetlands by Facility construction.

Comment:

A commenter recommended that Section 1101-2.14(f)(1) and Section 1102-2.16(f)(1) should be revised to require that the impact minimization summary address why the facility design and siting cannot avoid regulated wetlands and adjacent areas and the reference to NYS-regulated wetlands throughout Part 1101 should be amended to refer to regulated wetlands.

Discussion:

While certain pre-application and application exhibit requirements are only applicable to NYS-regulated wetlands, impacts to all wetlands must be avoided and minimized pursuant to 1101-2.14(f) and the USC's at 3.4. Furthermore, any project impacts to Federal wetlands must be approved by the US Army Corps of Engineers prior to construction as required in 1101-4.2. This provision has been clarified accordingly.

Comment: A commenter recommended that all allowable activities within Class II wetlands for wind and energy storage facilities be subject to the same mitigation requirements in section 1100-2.15(g)(2) as solar facilities (2:1 ratio).

Discussion:

Wind turbines and Energy storage components involve placement of fill, resulting in long-term impacts to wetland areas and therefore the A(M1) mitigation requirement for Class 2 wetlands is warranted (3:1 ratio). No change is warranted in response to this comment.

Section 1101-2.15. Exhibit 15: Agricultural Resources.

Comment:

Commenters requested clarification or guidance on the basis of the mitigation fee amount in sections 1101-2.15(c) and 1102-2.18(a)(3) and how they would be determined as satisfactory to meet the statutory mandate when a facility impacts agricultural production lands.

Discussion:

These comments were addressed in the APC for the Proposed Rulemaking – please see Primary APC Part 4, pp. 181-182. Additionally, the Office will consider issuing guidance on this issue if additional eligible funds are identified. These comments have been reviewed and do not warrant any changes.

Section 1101-2.18. Exhibit 18: Socioeconomic Effects.

Comment:

A commenter expressed support for host community benefit packages and provided a list of PILOT agreements as illustrative examples. They emphasize that PILOT's are only one aspect of a community benefit package and that various factors influence the final PILOT value.

Discussion:

This comment is noted and does not warrant any changes.

Comment:

Several commenters recommended removing the provision that "host community benefits shall be in a form and amount acceptable to the office," or providing clarity on the procedure and standards ORES would use to determine acceptability. Commenters expressed that host community benefits are between the applicant and host communities, and the need to seek Office approval would add delays to project timelines.

Discussion:

This comment has been reviewed and does not warrant any changes. The Office recognizes that host community benefits may take a variety of forms and that the distribution between various forms of benefits may vary greatly based on developer and local community priorities. The purpose of this provision is to provide greater transparency and public awareness regarding expected host community benefits and the status of negotiations at the application stage resulting in more consistent benefit levels across projects and communities over time. Although host community benefits may be preliminary at the time of application filing, the Office's review and acceptance of the host community benefits during the application review is not anticipated to result in additional administrative steps or delays. It is generally expected that final host community agreements will remain a private negotiation between the permittee and host community and remain a required pre-construction compliance filing. The Office may develop guidance to further advance this objective at a future date.

Section 1101-2.21. Exhibit 21: Electrical System Effects and Interconnection.

Comment:

A commenter sought clarification regarding what NYISO Cluster Study reports ORES would accept as "an analysis of system reliability impacts" under section 1101-2.21(b).

Discussion:

This comment has been reviewed and does not warrant any changes. This provision as written provides flexibility to provide system reliability impacts information in any appropriate format. The Office will evaluate any submission which includes a technical reliability analysis and reports on a facility's system reliability impacts as required by 1101-2.21(b), for compliance

with this provision. Applications that can demonstrate having successfully completed the NYISO's interconnection process may be eligible to waive this exhibit requirement.

Section 1101-3.1. Facility authorization.

Subdivision (d) Other permits and approvals.

Comment:

A commenter sought clarification that host community agreements, road use agreements, highway permits, driveway permits, and similar municipal approvals are not franchise rights and fall under ORES review pursuant to section 1101-3.1(d)(1).

Discussion:

The Office and Public Service Commission are responsible for interpreting their enabling statutes and are responsible for coordinating their respective jurisdictions and review. No changes are warranted.

Subdivision (i) Expiration.

Comment:

Commenters expressed concern regarding the permit expiration time period. One commenter objected to giving developers 5 years (instead of 3) to complete construction. Other commenters expressed concern with the timeframe or recommended it be tied to a different project milestone, such as commencement of construction.

Discussion:

This was addressed in the Assessment of Public Comments (APC) for the Proposed Rulemaking – please see Primary APC Part 1 – General, "General Comments and Comments Common to Multiple Filers, Post Permit Issues," The USCs also include provisions at 1101-3.1(k) and 1102-3.1(k) establishing that the Office may extend deadlines and timeframes for good cause shown." No changes are warranted.

Section 1101-3.4. Facility construction and maintenance

Subdivision (a) Construction hours.

Comment:

A commenter recommended reverting to previous construction hours (7 AM – 8 PM Monday-Saturday) as the reduced window will delay projects and add administrative tasks.

Discussion:

The construction hours established in the Part 1101 regulations were revised to be consistent with Part 1102. The regulations include flexibility for permittees to proceed with extended construction hours, when necessary, following appropriate notice to the Office and local communities. No change is warranted.

Subdivision (c) Pre-construction meeting.

Comment:

A commenter noted that Section 1101-3.4(c) fails to require permittee to include NYSDPS in the preconstruction meeting and NYSDPS must be included in the preconstruction meeting.

Discussion:

The Office is included in this provision and the Office is part of NYSDPS. With the Office's move to NYSDPS, inspectors who were formerly NYSDPS staff separate from the Office are now Office staff. Therefore no change is warranted.

Comment:

A commenter questioned the difference in meeting minute circulation times for renewable energy facilities (3 days) versus transmission facilities (7 days) and argues that municipalities should automatically receive meeting minutes.

Discussion:

The language in Part 1101 and Part 1102 has been revised to require the meeting minutes within five (5) business days. In the Office's experience, municipalities do not generally desire a copy of the meeting minutes from this monthly meeting. No further change is warranted.

Subdivision (x): Threatened and Endangered Species

Comment:

Several commenters recommended removing required mandatory bald eagle nest surveys 14 days before construction for all projects. They propose that such surveys should only be required if bald eagle habitat is presumed to exist within the project boundaries based on onsite surveys or publicly available information. They also suggest that 14 days is insufficient time to address potential impacts if a nest is found.

Discussion:

The purpose of the visual inspection is to identify if a new bald eagle nest has been established which would trigger implementation of permit conditions relevant to the presence of a nest discovery. No change is warranted.

Part 1102. Major Electric Transmission Facility Siting.

Section 1102-1.1. Pre-application requirements.

Subdivision (a) Wetlands and surface waters.

Comment:

A commenter stated the revised regulations (Section 1102-1.1(a)) still fail to suggest a time frame for the preliminary screening screening/assessment of the jurisdictional status of all wetlands and streams; particularly, what happens if there is no response within 30 days to the preliminary screening. If such a meeting does not occur, the regulation should state that the detailed screening assessment may then be utilized as a basis for the Application.

Discussion:

Section 1102-1.1(a)(2) has been revised in response to this comment to clarify the timing of pre-application consultations with the Office after a wetland and surface water preliminary screening is submitted.

Comment:

A commenter expressed concern that the revised regulations (section 1102-1.1(a)) still fail to suggest a time frame for the preliminary screening screening/assessment of the jurisdictional status of all wetlands and streams; particularly, what happens if there is no response within 30 days to the preliminary screening. If such a meeting does not occur, the regulation should state that the detailed screening assessment may then be utilized as a basis for the Application.

Discussion:

Section 1102-1.1(a)(2) has been revised in response to this comment to clarify the timing of pre-application consultations with the office after a wetland and surface water preliminary screening is submitted.

Subdivision (b) NYS threatened or endangered species.

Comment:

A commenter objected to basing the wildlife site characterization on citizen initiatives like eBird and Audubon Christmas Bird Counts, suggesting these sources should be optional. They also request clarification on the area subject to the desktop wildlife site characterization. They noted that a desktop approach would help alleviate timing concerns.

Discussion:

The sources objected to for use in desktop wildlife characterization are established standard practice that provide valuable information. No change is warranted.

Comment:

A commenter sought clarification of the intent of the first sentence of 1102-1.1(b)(4)(i).

Discussion: No change is warranted. The language reflects the flexibility of survey requirements based on the specifics of individual proposed projects.

Subdivision (c) Cultural resources.

Comment:

Several commenters recommended that "Any time" be replaced with "within 60 days of identifying a need for a Phase II, the office may schedule a meeting…".

Discussion:

The Office will make every effort to schedule meetings in the most timely manner practicable. This provision allows that if a meeting cannot also be held within the pre-application timeframe, there is no impact to an Applicant's ability to file an application. No change is warranted.

Subdivision (f) Alternative route scoping procedure.

Comment:

Several commenters expressed concern that the provision permitting late-raised alternative routes is unnecessary and could significantly delay the permitting process.

Discussion:

Section 1102-1.1(f)(3)(i)(c) of the regulations has been revised to clarify the standards for consideration of late-raised alternatives. Any late-raised alternatives will be considered by the office within the 120-day application review period and shall not require an extension of the schedule or any reset of the application filing date and associated procedural deadlines.

Comment:

A commenter recommended section 1102-1.1(f)(2)(vi)-(viii) should be deleted because it is unlikely to yield meaningful benefits and would impose unnecessary burdens. If retained, a "reasonable alternative route" should be defined as "a route that would reasonably be expected to avoid and minimize significant adverse impacts to identified environmental resources, and public health and safety, and is in the public and ratepayer interest". The commenter recommends that only individuals or entities that could potentially qualify for "full party status" be permitted to propose alternative routes and further recommends reinstating deleted provisions in § 1102-

1.1(f)(1), specifically subsections (ii) and (iii), regarding applicability of alternative route scoping.

Discussion:

This comment does not require any changes. The regulations provide opportunities for potentially affected parties and individuals to directly introduce alternatives for further evaluation and also provide opportunity for an applicant to respond to any proposed alternatives. The proposed regulations require a description of the proposed alternative and supporting justification appropriate for a newly introduced alternative.

Comment:

A commenter recommended that the statement in support of a reasonable alternative route under section 1102-1.1(f)(2)(vi)(a) should include a demonstration of technical feasibility, including identification of publicly-owned property rights along the proposed route.

Discussion:

The required description and demonstration of environmental, public health, and ratepayer benefits establish an appropriate standard for consideration of any proposed alternatives. A more detailed technical feasibility assessment would be required for any alternatives that the Office determines must be presented and analyzed in the application. No change is warranted.

Comment:

A commenter recommended that ORES should specify what information and level of detail they would like to see in the applicant's response to proposed alternative routes made by a municipality, person, or potential party. If a proposed alternative requires a detailed response or technical analysis, applicants should be entitled to an extension of time.

Discussion:

The nature and level of detail of responses to proposed alternatives will be specific to the nature of the proposal and interests of the responding party or individual. The timeframe for responses may not be extended and is established to ensure a fair and orderly alternatives scoping process. No change is warranted.

Comment:

Several commenters suggested the office reinstate provisions deleted from 1102-1.1(f)(1) regarding applicability of alternative route scoping where office determines no significant adverse impacts would occur considering existing use and conditions and where expansion of existing ROW is necessary.

Discussion:

The referenced deletions reflect removal of language deemed unnecessary in light of revisions to the definition of project substantially within existing ROW and the inclusion of the exemption to the entirety of projects substantially within existing ROW. No change is warranted.

Comment:

A commenter recommended that parties should be allowed to develop alternative routes in coordination with the applicant rather than shouldering the burden of developing the potentially complex alternative routes on their own.

Discussion: The alternative route scoping process is intended to allow municipalities, persons or potential parties the opportunity to directly introduce proposed alternatives. However, these participants may still engage with the applicant on routing concerns and potential alternatives through all other pre-application outreach and engagement opportunities. No change is warranted in response to this comment.

Section 1102-2.1. Exhibit 1: General Information Regarding Application, Overview, and Executive Summary.

Comment:

A commenter sought clarification regarding the logistics of the newly proposed section 1102-2.1(j), including the applicability of pre-application consultations in Exhibit 1 of the application.

Discussion:

Any requests for relief from application requirements specified in the regulations should be presented, with justification, in the application. Such requests and justifications should include a description of any pre-application consultations with the office. No change is warranted in response to this comment.

Section 1102-2.4. Exhibit 4: Real Property.

Comment:

A commenter sought clarification regarding why language was removed from Section 1102-2.4(b).

Discussion:

This comment has been reviewed and does not warrant any changes. The revisions to section 1102-2.4(b) reflect that a full showing of property rights is not required for a major electric transmission facility is not required until construction of a particular phase or segment. This was

also addressed in the Assessment of Public Comments (APC) for the Proposed Rulemaking - please see Primary APC Part 5, p. 198.

Section 1102-2.6. Exhibit 6: Design Drawings.

Comment:

Commenters objected to the requirements of the revised regulations that applicants provide preliminary design drawings and a draft Stormwater Pollution Prevention Plan (SWPPP) in the application phase. Commenters note that under the current Article VII process, the SWPPP is filed much later in the permitting process with the EM&CP, once the applicant has finalized their design. Commenters indicate that developing and providing draft EM&CP drawings, as well as a draft SWPPP, is premature in the application phase and would likely require revisions later in the permitting process, potentially causing further delays in what is to be an expedited permitting process.

Discussion:

The regulations are clear that final design drawings and a final SWPPP are not required as part of the permit application. Rather, review of the preliminary design drawings and draft SWPPP provides the opportunity to identify potential siting and construction constraints and other significant issues and differ from the more granular review of the final plans in the EM&CP phase. Early identification of such constraints or issues reduce risks of significant modifications to project plans and associated impacts to project schedule and costs at the EM&CP stage. No change is warranted.

Section 1102-2.14. Exhibit 14: NYS Threatened or Endangered Species.

Comment:

A commenter recommended a qualifier should be added, stating that proposing mitigation sites is not required in the Net Conservation Benefit Plan if payments are made to the mitigation bank.

Discussion:

Sections 1101-2.12(f) and 1102-2.14(e)(4) have been revised to clarify that payment into the Mitigation Bank may be proposed in the Net Conservation Benefit Plan, consistent with Section 1101-3.4(x).

Comment: A commenter expressed that Exhibit 14 should not apply to species of special concern (SSC) as the protections afforded to threatened and endangered species as per Part 182 and ECL Article 11 do not apply to SSC,

Discussion: The consideration of impacts to SSC in exhibit 14 is consistent with a thorough environmental review that identifies avoidance and minimization measures to a statutorily identified environmental resource. Unavoidable impacts to SSC are not addressed in the same

manner as T&E species and as such do not require mitigation or a net conservation benefit plan. No revisions are warranted.

Section 1102-2.16. Exhibit 16: Wetlands.

Comment:

A commenter recommended Exhibit 16 should be limited to providing field delineations performed, the report(s) generated, and the type of information typically provided as part of Article VII Exhibit 4.

Discussion:

Field work for wetland delineations is not a requirement in the application phase of Part 1102. No change is warranted.

Comment: A commenter recommended that Section 1101-2.14(f)(1) and Section 1102-2.16(f)(1) should be revised to require that the impact minimization summary address why the facility design and siting cannot avoid regulated wetlands and adjacent areas and the reference to NYS-regulated wetlands throughout Part 1101 should be amended to refer to regulated wetlands.

Discussion:

While certain pre-application and application exhibit requirements are only applicable to NYS-regulated wetlands, impacts to all wetlands must be avoided and minimized pursuant to 1101-2.14(f) and the USC's at 3.4. Furthermore, any project impacts to Federal wetlands must be approved by the US Army Corps of Engineers prior to construction as required in 1101-4.2. This provision has been clarified accordingly.

Section 1102-2.21. Exhibit 21: Public Need.

Comment:

A commenter recommended under subsection (a) the language “at a minimum” be removed and the subsection be reworded so that the items under subsection (a) can be considered as supporting a demonstration of public benefits but are not required prior to pursuing permitting.

Discussion:

Section 1102-2.21(b) includes provisions for situations where the applicant cannot comply with (a). No changes are warranted.

1102-2.25. Exhibit 25: Electric System Effects and Interconnection.

Comment:

A commenter recommended this section should be clarified so that, consistent with the System Impact Study (SIS) requirement of Article VII, the New York Independent System Operator (“NYISO”) Staff will determine whether a SIS is required for the project.

Discussion:

A determination of a non-material modification by the NYISO for a proposed project may be submitted along with a statement of justification and would be evaluated by the Office for applicability and compliance with this requirement.

Comment:

A commenter recommended that the Revised Rules be amended further to incorporate an appropriate level of flexibility in cases where the NYISO does not require an SIS prior to interconnection.

Discussion:

This comment was addressed by modifications to this subpart in the Revised Rule. Other comparable NYISO or third-party studies may be submitted for consideration of compliance with the requirements of this subpart as appropriate. No further changes are warranted.

Comment:

A commenter recommended that the second sentence of subsection (b) be revised to clarify the distinction between generation-related transmission upgrades and standalone transmission projects.

Discussion:

Section 1102-2.25(b) has been modified to provide the suggested clarification. Regarding timing of submission of the NYISO-approved system impact study, the Office maintains that such submission should be made with the application filing as requisite requirement for evaluation of siting and permitting viability.

Comment:

A commenter recommended the State should require such facilities to comply with local noise requirements and it should be explicitly stated in the regulations.

Discussion:

This comment has been reviewed and does not warrant any changes. Pursuant to 1102-3.5(a)(1) "Operational Noise Limits. For any converter station, substation, or switchyard located in cities with a population over one million the substantive provisions of that city’s local laws and regulations on noise and vibration shall apply." In addition, applicants are required to compare

potential noise impacts with local requirements in the Part 1102 regulations at 2.9(d)(3)(vi), and 2.9(i).

Section 1102-3.1: Facility authorization.

Comment:

Commenters identified the need for federal approvals. A commenter recommended that "for the facility" be replaced with "for the segment or phase approved in the EM&CP." The commenter also suggested adding "applicable" before "federal" and "for that EM&CP segment." Another commenter asked that this subsection explicitly allow for the issuance of a Notice to Proceed as long as construction will not impact federal jurisdictional areas.

Discussion:

Section 1102-3.1(d) has been clarified to address these comments.

Comment:

Commenters expressed various concerns with the permit expiration time period. A commenter recommended that there should not be an automatic expiration and recommended that "automatically" be replaced with a process by which the Office provides notice to the Applicant of an intent to cancel the permit unless the Applicant can demonstrate reasonable and consistent. Other commenters recommended that the permit expiration be tied to different project milestones, such as commencement of construction rather than commercial operation.

Discussion:

This was addressed in the Assessment of Public Comments (APC) for the Proposed Rulemaking - please see APC Part 1 - General, "General Comments and Comments Common to Multiple Filers, Post Permit Issues," The USCs also include provisions at 1101-3.1(k) and 1102-3.1(k) establishing that the Office may extend deadlines and timeframes for good cause shown." No change is warranted.

Section 1102-3.4. Facility Construction and Maintenance

Subdivision (i) Co-located infrastructure.

Comment:

A commenter recommended that this section must address situations where the applicant has attempted to obtain an agreement from the CI owner, but the CI owner refuses to provide an agreement or a Letter of No Objection ("LONO"), and provide a mechanism for ORES staff to move forward.

Discussion:

Section 1100-10.1(a)(5) identifies a mechanism for relief. No change is warranted.

Subdivision (x) Threatened and endangered species.

Comment:

Several commenters recommended that mitigation for temporary impacts should not be required for transmission facilities/linear projects. A commenter recommended that the net conservation benefit plan mitigation ratio of 0.4 acres concerning grassland bird habitat should not apply to major electric transmission facilities, which generally have a much smaller linear corridor than solar generation facilities.

Discussion:

Mitigation for temporary impacts are not required if projects conform with time of year restrictions or other conditions that prevent a "take" from occurring. However, a NCBP is required for circumstances when a take is determined. The net conservation benefit plan mitigation ratio is suitable for both types of projects. No change is warranted.

Subdivision (y) Wetlands, waterbodies, and streams.

Comment:

A commenter recommended referencing the EM&CP in this section, so it reads "Except otherwise allowed on the permit or approved EM&CP…"

Discussion:

This language has been clarified. Detailed wetland delineations and classifications will be part of the EM&CP, at which point permittees will also be required to demonstrate avoidance and minimization of impacts to wetlands.

Comment:

A commenters recommended qualifying storage as equipment that is not actively being used or anticipated to be used for more than a week.

Discussion:

Section 1102-3.4(y)(2)(ii) addresses equipment storage and provides a provision for not moving equipment if doing so will cause additional environmental impact. No change is warranted.

Section 1102-4.2. EM&CP description and statement of objectives, techniques, procedures, and requirements.

Subdivision (r) Real property.

Comment:

A commenter recommended removing this provision from the EM&CP section because it is at the Notice to Proceed (NTP) that these permits and approvals should be in place and the EM&CP approval can state that they are needed for NTP.

Discussion:

The EM&CP requirements establish what must be provided prior to EM&CP approval and a corresponding Notice to Proceed with construction of the applicable phase or segment. If the required demonstration of property rights is not yet available in the initially filed EM&CP, a supplement may be filed to satisfy the requirements prior to EM&CP approval. The Office may consider issuance of a Limited Notice to Proceed in instances where eminent domain proceedings are required or specific concerns over co-located infrastructure remain outstanding. With respect to the required phasing or segmenting plan in the initial EM&CP, changes to the planned segmenting or phasing may be proposed in subsequent EM&CPs, when necessary. No change is warranted.

Comment:

Commenters recommended that Section 1102-4.2(r) is inconsistent in its wording and should be clarified. Commenters stated for transportation corporations who possess the right of eminent domain, there should not be any percentage requirement at the time the EM&CP is filed.

Discussion:

The regulations establish that the EM&CP must include an attestation that all real property and access rights for construction of the applicable phase or segment have been obtained. For the purpose of this requirement, "all real property and access rights" means 85 percent of such rights for permittees registered as a transportation corporation, and 100 percent of such rights for permittees not registered as a transportation corporation. The EM&CP requirements establish what must be provided prior to EM&CP approval and a corresponding Notice to Proceed with construction of the applicable phase or segment. If the required demonstration of property rights is not yet available in the initially filed EM&CP, a supplement may be filed to satisfy the requirements prior to EM&CP approval. No change is warranted.

Section 1102-4.4. EM&CP additional plans and appendices.

Subdivision (a) Other permits and approvals.

Comment:

A commenter recommended rewording provision (a) to state “of the EM&CP segment/phase" rather than “of the project” and removing this provision from the EM&CP section because it is at the Notice to Proceed (NTP) that these permits and approvals should be in place.

Discussion:

EM&CP approval is expected to coincide with issuance of a Notice to Proceed for the project, or phase or segment of the project associated with the EM&CP. The requirement for copies of all required permits and approvals establishes that they must be provided prior to the activity for which the permit or approval is required. No change is warranted.

Subdivision (e) Wetland and Stream Delineation Report.

Comment:

A commenter stated that a wetland boundary may include an area more than 100 feet around the freshwater wetland. Under DEC’ s new regulations, a regulated adjacent area may be greater than 100 feet for nutrient poor and vernal pool wetlands.

Discussion:

The definition of “regulated adjacent area” has been revised to reflect the provisions of 6 NYCRR Part 664. Furthermore, the wetland screening process prescribed in 1102-1.1(a) provides the office with the ability to request additional information as needed, including the location of vernal pools and nutrient poor wetlands that may meet criteria for an extended adjacent area. Finally, the Office has the authority to include Site Specific Conditions in the Draft Permit to address potential affects to these types of wetlands by Facility construction.