NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

CASE 19-F-0299 - Application of Excelsior Energy Center, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the Public Service Law for Construction of a Solar Electric Generating Facility in the Town of Byron, Genesee County.

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

Issued and Effective: April 6, 2022

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NEW YORK STATE BOARD ON ELECTRIC
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At a session of the New York State Board on Electric Generation Siting and the Environment held in the City of Albany on April 6, 2022

BOARD MEMBERS PRESENT:

Tammy Mitchell, Alternate for
Rory M. Christian, Chair,
New York State Public Service Commission

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

Dr. Elizabeth Lewis-Michl, Alternate for
Mary T. Bassett, M.D., M.P.H., Commissioner,
New York State Department of Health

Vincent Ravaschiere, Alternate for
Hope Knight, Acting Commissioner, President & CEO-designate,
New York State Empire State Development

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

Norman Pawlak, Ad Hoc Member, dissenting

CASE 19-F-0299 - Application of Excelsior Energy Center, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the Public Service Law for Construction of a Solar Electric Generating Facility in the Town of Byron, Genesee County.

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

(Issued and Effective April 6, 2022)

BY THE BOARD:

I. INTRODUCTION

By this Order, we grant to Excelsior Energy Center, Inc. (Excelsior or Applicant) a Certificate of Environmental Compatibility and Public Need (CECPN) to construct and operate a solar energy generating facility in the Town of Byron, Genesee County. With the extensive conditions attached to and made a part of this Order, we determine the solar farm will meet all the statutory requirements for certification under Article 10 of the Public Service Law (PSL). Our decision is supported by the extensive evidentiary record compiled before the Presiding Examiner appointed by the Department of Public Service (DPS) and the Associate Examiner appointed by the Department of Environmental Conservation (DEC), as well as the extensive settlement proposal developed by the settling parties (Signatory Parties).[1] We base our decision on the evidentiary record, the initial and reply briefs of the parties, public comments, and applicable law and policy.

II. BACKGROUND

A. Description of the Project

The proposed Facility, or Project, will be a solar electric generation facility with a generation capacity of up to 280 Megawatts (MW), including a 20 MW/4-hour duration energy storage system. The Project will be located on land leased and/or purchased from owners of private property in the Town of

[1] The Signatory Parties are Excelsior, the Department of Public Service Staff (DPS Staff), and the Department of Environmental Conservation Staff (DEC Staff). The non-settling parties that filed briefs are the Department of Agriculture and Markets (DAM) and Byron Association Against Solar, Inc. (BAAS).

Byron, Genesee County, New York (Town). Proposed Project components include commercial-scale solar arrays, access roads, laydown/staging areas, inverters, fencing, buried electric collection lines, an energy storage system, a collection substation and electrical interconnection facilities. The Project Area totals 3,443 acres but the total area of the Limit of Disturbance (LOD) for construction and operation of the Project is 1,712 acres. The area inside the Project fences is 1,629 acres. The area outside the LOD will not be used by the Project.

The energy storage system with a total capacity of 20 MW for a 4-hour duration will consist of 11 cabinets approximately 11 feet 4 inches in height, located throughout the LOD adjacent to Project inverters.

The collection substation, occupying approximately 3 acres, will step up the 34.5 kV collection lines to 345 kV. The Project will supply electricity to New York State's bulk electric transmission system via a switchyard adjacent to the collection substation. Two approximately 160-foot 345 kV transmission lines will connect the switchyard to the existing New York Power Authority (NYPA) 345 kV Line #DH2, between NYPA's Niagara and N. Rochester substations. The switchyard and transmission lines will be transferred to NYPA to own and operate.

B. Procedural History

Excelsior submitted its Public Involvement Program (PIP) Plan[2] to DPS Staff on April 24, 2019. DPS Staff provided comments on the proposed PIP Plan and Excelsior responded by

[2] Hearing Exhibit (Exh.) 2. Hearing Exhibits (Exhs.) are identified and numbered in Exh. 1, which is attached to the Examiners' November 16, 2021, Ruling Admitting Hearing Exhibits into the Record.

filing its final PIP Plan on June 20, 2019.[3] In the ensuing months, Excelsior engaged stakeholders through the activities identified in the PIP Plan.[4] On September 20, 2019, Excelsior held two open houses at the South Byron Volunteer Fire Company Firehouse to answer questions and provide information about the Project.[5] Throughout Project development, Excelsior has continued to meet with the Town, the Genesee County Economic Development Center, local fire departments, representatives of the Gillam Grant Community Center, leaders of local food pantries and other charitable organizations, local union officials, and other Genesee County officials to discuss Project updates, opportunities for charitable contributions, public involvement, host community and payment-in-lieu-of-taxes (PILOT) agreements, and COVID-19 impacts and support.[6] Excelsior also attended regular community meetings to answer questions about the Project.[7] No party has questioned the sufficiency of Excelsior's PIP Plan activities. DPS Staff testified that, based on the PIP Plan, the "Applicant encouraged participation from municipal officials and affected local, State, and federal agencies; and as evidenced in the meeting tracking logs, sought input from these stakeholders."[8]

On September 24, 2019, Excelsior filed its Preliminary Scoping Statement (PSS), which summarized the proposed scope and methodology of studies to be performed in the Application.[9] The Siting Board Secretary (the Secretary) notified parties that pre-application intervenor funds were available shortly

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3 Id.
4 Id.
5 Id.
6 Id.
7 Exhs. 3, 9, 10, 15, 64, and 192.
8 Evidentiary Hearing Transcript (Tr.), p. 343.
9 Exh. 5.

thereafter. The Genesee County Agricultural & Farmland Protection Board, the Genesee County Soil & Water Conservation District, the Genesee County Sheriff's Office, the Genesee County Highway Department, DPS, DEC, DAM, the Town, and several public members submitted comments on the PSS, to which Excelsior responded on November 22, 2019.[10] A procedural conference was held on November 13, 2019, after which the Town and BAAS were granted $49,000 and $25,000 in intervenor funds, respectively, with $24,000 in additional funding remaining unassigned to any party. After BAAS and the Town filed requests seeking additional funding, on February 12, 2020, each party was awarded an additional $12,000 in available funds in a Ruling Awarding Second Pre-Application Intervenor Funding. On December 27, 2019, Excelsior provided notice that it would negotiate study stipulations with interested parties. Excelsior discussed stipulations with the parties over the next several months. The discussions culminated in proposed stipulations, filed July 6, 2020, which set forth agreement between certain parties on what the Application's exhibits would include.[11] Excelsior filed final stipulations (Stipulations), which were signed by the negotiating parties on or about November 18, 2020, with DPS and DAM agreeing to all stipulations, and the Town and DEC agreeing to stipulations with exceptions.[12] Due to the COVID-19 pandemic, after consultation with DPS Staff, Excelsior postponed its two additional planned in-person open house meetings. To provide updated Project information to the public, Excelsior sent an informational mailer to the Project stakeholder list on August 4, 2020, and invited members of the

[10] Exh. 7.

[11] See Exh. 13.

[12] Exhs. 172–173.

public to submit questions to the Applicant.[13] In addition, Excelsior held two virtual open house sessions that were available to and attended by members of the public. Questions were received from members of the public in writing as well as during the virtual information sessions, to which Excelsior provided responses on September 28, 2020.[14] After providing the required notice, Excelsior filed its Application on September 28, 2020.[15] The Chair of the Siting Board sent Excelsior a letter regarding deficiencies in the Application on November 25, 2020. Excelsior supplemented the Application on December 23, 2020 (the Application Supplement).[16] Previously, on October 2, 2020, the Secretary notified the parties of the availability of application-phase intervenor funds. The Town, BAAS, and the Clean Energy Resources Committee all filed requests for intervenor funding. After review and consideration, the Examiners declined to award any funding to the Clean Energy Resources Committee because its intervenor request was incomplete, vague, and sought funding for issues outside the scope of Article 10. The Examiners awarded the Town and BAAS $191,000 and $89,000 of available funding, respectively, which was granted in a Ruling Awarding Application-Stage Intervenor Funding and Party Status on November 27, 2020. The Chair of the Siting Board deemed the Application compliant with PSL §164 on April 8, 2021. Two virtual information sessions and public statement hearings were held on June 1, 2021. A procedural conference was also held by teleconference on June 1, 2021.

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13 Exh. 14.

14 Exh. 16.

15 Exhs. 17–171.

16 Exhs. 174–191.

On April 8, 2021, the Applicant filed a "Notice of Settlement." Thereafter, through a series of meetings and other communications, the parties exchanged proposed certificate conditions, proposed guidance for the development of site engineering and environmental plans for construction, and other related items. On August 6, 2021, the Applicant filed a settlement proposal, which included (1) proposed Certificate Conditions, and (2) proposed Guidance for the Development of Site Engineering and Environmental Plan (SEEP Guide) and Noise Complaint Resolution Protocol (NCRP).[17] On August 25, 2021, Excelsior filed a revised settlement proposal (Revised Settlement Proposal) with copies of revised Certificate Conditions[18] and the previously filed SEEP Guide and NCRP.[19] Thereafter, on August 31, 2021, DPS Staff, the Applicant and DEC executed signature pages without exception to the Revised Settlement Proposal.[20] In accordance with the Hearing Examiners' Ruling Revising Schedule issued on August 17, 2021, the parties, including DPS Staff, DEC Staff, DAM, and BAAS, submitted prefiled direct testimony on September 1, 2021. The Applicant and BAAS filed rebuttal testimony on October 5, 2021. The Applicant submitted corrected rebuttal testimony on October 19, 2021. On October 6, 2021, an evidentiary hearing was held virtually during which the pre-filed direct testimony and exhibits of the Applicant, DPS Staff, DEC Staff, DAM and BAAS, and the rebuttal testimony and exhibits of the Applicant and BAAS were orally admitted into the evidentiary record.

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17 Exhs. 204, 205, and 206, respectively.

18 Exh. 209.

19 Exhs. 212 and 211, respectively, attached hereto as Appendix A, Appendix B and Appendix C.

20 Exhs. 218, 219 and 220, respectively.

Initial Briefs were filed on December 1, 2021, and Reply Briefs were filed on December 22, 2021.

C. Public Involvement and Comment

The Article 10 regulations require an applicant to actively engage in public involvement throughout the entire siting process, beginning during the planning and pre-application phases and continuing through the certification and compliance phases of a project. This mandate ensures communication between an applicant and interested and affected stakeholders. An applicant must provide timely notice of proposed project milestones and events, and must actively solicit public comments, ideas, and local expertise. These extensive public involvement processes ensure that interested persons have multiple opportunities to provide input into important decisions inherent in the siting of major electric generating facilities.

It is the policy of the Siting Board to enable the public to participate in the decisions that affect their health, safety, and the environment. A robust public involvement program helps ensure that the Siting Board is made aware of stakeholder concerns when deciding whether to grant a Certificate.

Article 10 regulations require that applicants develop and implement a written PIP plan no less than 150 days before the submission of a PSS. These requirements ensure that applicants take steps, early in the Project development process, to establish a community presence and begin communicating with the public. The goal is to ensure that local interests and concerns are considered as part of the development of a proposal. For example, the PIP plan must include consultation with affected agencies and other stakeholders and such pre-application actions encourage stakeholder participation at the

earliest opportunity. In addition, the PIP plan must include the establishment of a project website to make project information widely available to the public.

To ensure that affected stakeholders and members of the general public are kept informed throughout the duration of the Project, DPS Staff also encourages the Certificate Holder to continue following its PIP plan by mailing notices to the Stakeholder list at major milestones during the post-certification compliance process. In this case, the proposed Certificate Conditions also contain provisions for public notice.

The Applicant submitted a PIP Plan on April 24, 2019. DPS Staff reviewed the PIP Plan and provided recommendations on May 21, 2019. The Applicant stated in the PIP Plan that it had developed a stakeholder list by identifying several categories of stakeholders that may be interested or affected by the Project, including affected federal, state and county agencies, adjacent municipalities and school districts in the adjacent and study areas, host and adjacent landowners, legislative representatives, highway departments, emergency responders, utilities, public interest groups, area residents, and airports and heliports. The Applicant also identified other stakeholders based on DPS Staff's guidance, experience in developing other projects, knowledge of its local representatives to identify potential stakeholders, review of GIS data, tax records, personal visits to project and study areas, and consultation with environmental/regulatory counsel and internet research efforts. The DPS Staff Panel in Support of Settlement (SPSS Panel) provided testimony regarding the opportunities provided for public participation and community outreach and education as well as a summary of the public comments. In its testimony, DPS Staff addressed the PIP Plan elements that the Applicant

employed to encourage participation from municipal officials and affected local, state and federal agencies, and sought input from these stakeholders. The Applicant communicated with and provided information about the Project to community members by telephone, through mailings, e-mail, virtual open house meetings, newspaper postings, in-person meetings, document repositories and the Project website.[21] In addition to the PIP Plan developed and implemented by the Applicant, the Siting Board conducted its own public involvement activities. DPS maintains a list of parties to the case, as well as individuals and organizations that request to be informed of Project filings. The party and service lists are advised, by mail or email, of filings, rulings and notices of Project milestones and Project activities, such as comment periods, procedural conferences, technical conferences and public statement hearings. These lists are included as part of the Document and Matter Management (DMM) system on the DPS's website.

The DMM page for the Excelsior Energy Center proceeding on the DPS's website allows for the public to file comments regarding the proposed Project. Over 130 public comments were submitted throughout the proceeding. Comments have been sent in by mail, e-mail and provided at the virtual public statement hearings. Comments in opposition of the Project focused on, but were not limited to, topics such as the potential agricultural, health, visual, wildlife, environmental and financial impacts to the area. Comments in support of the Project focused on better opportunities for the Town residents and farmers, sustainability of solar energy methods, diversification for farm businesses and the overall economic benefits.

[21] Tr. 339-356; SPSS Testimony, pp. 86-102.

D. Settlement Proposals

On April 8, 2021, Excelsior notified all DMM-listed parties that it would commence settlement negotiations to attempt to reach agreement on proposed certificate conditions.[22] After months of negotiations, on August 6, 2021, Excelsior filed a proposed settlement consisting of Certificate Conditions, the NCRP, and the Guidance for the Development of Site Engineering and Environmental Plan (SEEP) (collectively, the Initial Settlement Proposal).[23] After further consultation and exploratory discussions, on August 25, 2021, Excelsior filed a revised settlement proposal including several additional Certificate Conditions, the NCRP and the SEEP (collectively, the Settlement Proposal).[24] DPS Staff, DEC Staff and the Applicant all executed the Settlement Proposal (the Signatory Parties).[25] Briefs opposing the Settlement Proposal were filed by BAAS and DAM.

III. REQUIRED STATUTORY FINDINGS UNDER PSL §168

A. Article 10 Standards

Pursuant to PSL §168(2), the Siting Board must make express findings regarding the nature of probable environmental impacts, including cumulative impacts, resulting from the construction and operation of a proposed facility. These include impacts to (a) ecology, air, ground and surface water, wildlife, and habitat; (b) public health and safety; (c) cultural, historic, and recreational resources, including

22 Exh. 202.
23 Exhs. 203–207.
24 Exhs. 208–213.
25 Exhs. 217–220.

visual, aesthetic, and scenic values; and (d) transportation, communication, utilities, and other infrastructure.[26] Pursuant to PSL §168(3), the Siting Board may not grant a certificate unless it determines that the facility will be a beneficial addition to or substitution for the State's electric generation capacity and serve the public interest; that the facility's adverse environmental impacts have been minimized or avoided to the maximum extent practicable, including any significant disproportionate impacts on the community in which it is located; and that the facility is designed to operate in compliance with applicable State and local laws concerning, among other matters, the environment, public health and safety.[27]

In making these determinations, the Siting Board considers several factors, including available technology, reasonable alternatives, environmental impacts, impacts on related facilities, consistency with the State Energy Plan, impacts on community character and whether the community is disproportionately impacted by cumulative levels of pollutants, and any other social, economic, aesthetic, or environmental considerations deemed pertinent.[28] In issuing a certificate, the Siting Board may impose any terms and conditions it deems necessary and the Department of Public Service or the New York Public Service Commission (PSC) "shall monitor, enforce and administer compliance with any terms and conditions" set forth in the Siting Board's Certificate and Order.[29]

1. Balancing Under PSL §168

No single aspect of an application for a certificate can be looked at in a vacuum; rather the Siting Board must

[26] PSL §168(2)(a)-(d).
[27] PSL §168(3)(a)-(e).
[28] PSL §168(4)(a)-(g).
[29] PSL §168(5).

consider the totality of all the relevant factors in making its determination of environmental compatibility and public need. The relevant factors include, without limitation, the electric system needs, the environmental impact, the availability and impact of design changes and other measures to mitigate environmental impact, the impact on public health and safety, the impact on water quality, the impact on air quality, and compliance with applicable, state, and local laws and the public interest. In rendering a decision granting an application for an Article 10 certificate, the Siting Board may in its discretion grant the application upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the Siting Board may deem appropriate.

2. Burden of Proof

Under the regulations, as the Applicant for a Certificate in this proceeding, Excelsior Solar has the burden of proof to demonstrate to the Siting Board that there is adequate justification for the Siting Board to take each required action and to make each required finding and determination required by PSL §168 in a manner favorable to the proposal put forth by the company in its Application.[30]

B. Beneficial Addition to Electric Generation Capacity and Public Interest Standard

The Siting Board must determine that the Project is a beneficial addition to the electric generation capacity of the State.[31] The Siting Board considers, *inter alia*, a project's consistency "with the energy policies and long-range energy

[30] 16 NYCRR §1000.12(b); Delaney v. Public Service Comm'n., 507 N.Y.S.2d 471, 473 (2d Dep't., 1986).

[31] PSL §168(3)(a).

planning objectives and strategies contained in the most recent state energy plan" when it makes this determination. PSL §168(4)(e). The record demonstrates that the Project is a beneficial addition to the State's electric generation capacity because it is consistent with the goals set forth in the State Energy Plan (SEP),[32] the 2020 amendment to the SEP,[33] the Clean Energy Standard (CES) adopted by the PSC, the Climate Leadership and Community Protection Act (Climate Act),[34] the Order Adopting Modifications to the Clean Energy Standard (incorporating the goals of the Climate Act into the CES),[35] and other State and regional policies.

Excelsior has entered into a contract with the New York State Energy Research and Development Authority (NYSERDA) to deliver a minimum required amount of renewable energy on an annual basis to the wholesale electric market, administered by the New York Independent System Operator (NYISO), of which NYSERDA will purchase from Excelsior the Renewable Energy Credits (RECs) associated with these required energy deliveries. As explained below, the Project is following the steps laid out

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[32] 2015 New York State Energy Plan, New York State Energy Planning Board (June 25, 2015), available at https://energyplan.ny.gov/-/media/nysenergyplan/2015-state-energy-plan.pdf.

[33] The Energy to Lead: 2015 New York State Energy Plan: Climate Leadership and Community Protection Act Amendment, New York State Energy Planning Board (2020) (SEP Climate Act Amendment).

[34] Climate Leadership and Community Protection Act, 2019 N.Y. Sess. Laws Ch. 106 (McKinney).

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

in the Climate Act, SEP, and the CES to help achieve the State's energy and greenhouse gas (GHG) reduction goals.

In addition, the Siting Board must determine that construction and operation of the Project will serve the public interest to issue a certificate.[36] Excelsior asserts that the Project is in the public interest because it is consistent with the SEP and other State energy policies and because it will provide various positive economic benefits, during construction and operation, through job creation, expenditures on products and services, lease payments to participating landowners, real property revenues through PILOT, and Host Community Agreement (HCA) revenues. DPS Staff agreed that the Project would contribute toward the goals of the SEP and other energy policies, and that "the Project should provide additional income for participating property owners, additional real property tax revenues for the local taxing jurisdictions, short-term construction jobs and related construction-period expenditures, and several long-term operation and maintenance jobs."[37]

1. Consistency with the State Energy Plan and Other State Energy Policies

Renewable resources are vital to New York's energy future, "providing resilient power, reducing fuel cost volatility, and lowering [GHG] emissions."[38] The SEP identifies renewable energy development as a top priority, setting New York on the path to generate 50% of its electricity with renewables by 2030.[39] Large-scale renewables (LSR) help power New York's economy and will serve as the backbone to the State's power grid.[40] LSRs offer immediate benefits, including "economic

[36] PSL §168(3)(b).
[37] Tr. 294-295.
[38] SEP, p. 69.
[39] SEP, p. 112.
[40] SEP, p. 70.

development and jobs for communities across the State, greater stability in customer bills, [and] cleaner air . . . ."[41]

New York established renewable energy development at the forefront of its energy policy by implementing the State Energy Plan's renewable target in the CES Order.[42] The Commission stated that "[t]he chief focus of the CES initiative is on building new renewable resource power generation facilities" and reducing "total emissions of air pollutants resulting from fossil fuel combustion."[43] The CES provides for procurement of environmental attributes from LSRs.[44] In recent years, the State's efforts to increase renewable generation have accelerated. In early 2019, then New York Governor Cuomo announced that New York State would more than double the amount of wind and solar generation being developed under the CES.[45] The State then enacted one of the nation's most ambitious climate laws in July 2019: the Climate Act, which ramps up the State's renewable energy goals even further, increased "the State's renewable energy penetration goal to 70% by 2030, with 6 GW of solar generation by 2025" and 100% carbon-free electricity by 2040.[46]

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41 SEP, p. 71.

42 Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting a Clean Energy Standard (issued Aug. 1, 2016), pp. 93–95 (CES Order).

43 CES Order, pp. 3, 78.

44 CES Order, p. 16.

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

46 Climate Act §4 (amending PSL §66-p (2)); SEP Climate Act Amendment.

In recent modifications to the CES Order, the Commission reiterated its commitment to "build[ing] upon the CES in a manner that will benefit New York energy consumers and the overall economy by encouraging new clean energy and related investments in the State, maintaining existing jobs, and attracting capital from outside the State."[47]

We have previously determined that the Climate Act applies to the consideration of Article 10 certificate applications and requires all state agencies to consider whether issuance of a permit would be inconsistent with, or will interfere with, attainment of the statewide [GHG] emission limits.[48]

The Project will advance New York's emissions goals because it is a renewable energy resource. The Project will reduce GHG emissions and help combat the harmful effects of climate change, consistent with the SEP and Climate Act. The Applicant provided forecast estimates using a computer-based modeling tool consistent with the Siting Board's regulations under 16 NYCRR §1001.8 - Electric System Production Modeling. As noted in Exhibit 8 of the Application,[49] environmental emission impacts will be realized in the form of reductions of carbon dioxide (CO2) and nitrogen oxides (NOx). The results of the Applicant's production cost modeling, as presented in Confidential Application Exhibit 8, Table 8-5,[50] further demonstrates that operation of the Facility will have a minimal impact on must-run resources defined as hydroelectric, nuclear,

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47 Modified CES Order, p. 14.

48 Case 16-F-0328, Number Three Wind LLC, Order on Rehearing (issued Feb. 13, 2020) at 14 (citing Climate Act §7[2]) (internal quotation marks omitted).

49 Exh. 26.

50 Exh. 26 – CONFIDENTIAL.

and other renewable energy facilities, and will not result in any material impacts to existing co-generation facilities. DPS Staff's testimony established that "(T)hese impacts are also consistent with DPS Staff's production modeling analysis".[51] No party has disputed these conclusions.

2. Effect on Fuel Diversity and Zonal Energy Prices

The Project will also be a beneficial addition to the State's electric generation capacity because, consistent with findings the Board has made in other renewable cases, it will also help improve fuel diversity in the State, support the modernization of grid infrastructure, and reduce the potential for overdependence on natural gas generation.[52] The SEP recognized this dependency as a concern because the State faces severe weather patterns that cause price volatility.[53] The Project increases fuel diversity by increasing the number of renewables—solar generation facilities, in particular—in the State's supply mix.[54] Additionally, the Project is expected to reduce annual average zonal prices.[55] No party filed testimony or introduced any other evidence disputing these conclusions. To the contrary, DPS Staff recommended that the Siting Board find that the Project will result in a beneficial addition of

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51 Tr. 290; DPS Staff SPSS Testimony, p. 37, lines 1-3).

52 Case 17-F-0597, High River Energy Center, LLC, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued March 11, 2021), p. 32 (High River Order); Case 17-F-0599, East Point Energy Center, LLC, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued January 7, 2021), p. 10 (East Point Order).

53 SEP, p. 26.

54 Exh. 28, p. 3.

55 Exh. 26, p. 2.

electric generation capacity in the State.[56] Based on the above, we find that the Project will be a beneficial addition to the State's electric generation capacity.

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

PSL §168(2)(d) requires that the Siting Board make explicit findings regarding the cumulative impact of emissions on the local community, including whether the construction and operation of a facility would result in a significant and adverse disproportionate environmental impact to an environmental justice (EJ) area. This required finding must be made in accordance with the environmental justice regulations promulgated by DEC at 6 NYCRR Part 487 (Part 487).

In accordance with the provisions of 6 NYCRR §487.5, an applicant must determine whether the impact study area for a project contains an EJ area. The impact study area must, at a minimum, encompass the geographic area within a one-half mile radius around the proposed location of the facility. As set forth at 6 NYCRR §487.5(e), if an EJ area is not present within the impact study area, the applicant is not required to undertake a full environmental justice analysis. If an EJ area is present within the impact study area, the applicant must undertake a full EJ analysis in compliance with the requirements of 6 NYCRR §487.6[57]

Here, based on data obtained from DEC's Geographic Information System Tool for Environmental Justice website, the Applicant identified that there is no Potential Environmental Justice Area in the Project Area or within 0.5 miles of the Project Area.[58] The nearest potential EJ area is approximately 3.6 miles from the Facility area in the City of Batavia.

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[56] Tr. 289.

[57] 6 NYCRR §487.5(d).

[58] Hearing Exhibit 46, Application Exhibit 28, p.2.

Based upon our review of the record, we conclude that no EJ analysis is required by 6 NYCRR §487.6 as there is no EJ area present within the impact study area.

4. Socioeconomic Effects

There are two types of socioeconomic effects discussed in the testimony and briefs in this proceeding. The first is the potential impact of the Project on local employment, and the second is the potential impact of the Project on the local agricultural industry. The effects on local employment, exclusive of the agricultural industry, are not contested by the parties, and are discussed in this section. The issue of impact on the agricultural industry was hotly contested and is discussed below in the section dealing with environmental impacts.

The Siting Board examines the impact of a project on local employment in every Article 10 case. In general, the Applicant is required to, among other things, provide estimates of the number of temporary (e.g., construction period) and permanent (e.g., ongoing operational) (collectively referred to as "direct") jobs related to the Facility, as well as estimates of the secondary construction and operational (referred to as "indirect/induced" by the Applicant) job impacts related to the Facility. The Applicant's job impact estimates for the Facility are contained in Exhibit 27 of the Application.[59] Based on guidance from its engineering, procurement and construction partners, the Applicant estimated that construction of the Facility would result in 290.2 direct construction jobs,[60] while the operation and maintenance (O&M) of the Facility would result in an additional 3.1 direct jobs.[61] The Applicant used the

[59] Exh. 45.

[60] Exh. 45, p. 6.

[61] Exh. 45, p. 13.

National Renewable Energy Laboratory's Jobs and Economic Development Impact (JEDI) model to develop its secondary jobs estimates. Based on the JEDI model's results, the Applicant estimates that between 177.9 – 196.6 indirect and induced jobs would be created related to the construction of the Facility[62] and that 6.7 – 7.4 indirect and induced jobs would be created related to the ongoing O&M of the Facility.[63] In SPSS testimony, DPS Staff Witness Yezzi stated that the Applicant's direct job estimates appeared reasonable for the scale of the Project, as compared to other New York State solar generation projects.[64] Further, Staff endorsed Certificate Condition 35, which requires the Certificate Holder to file with the Secretary, within one year after the Project becomes operational, a tracking report of the actual number of direct jobs created and payments to local jurisdictions made during the construction and operational phases of the Project, under the rationale that this tracking commitment will allow Staff, the relevant Stakeholders, and the Siting Board to analyze and compare the actual job impacts of the Project with the original job estimates prepared by the Applicant.[65]

In regard to the Applicant's secondary job estimates, DPS Staff has previously testified in Cases 14-F-0490 (Cassadaga Wind, LLC), 15-F-0122 (Baron Winds, LLC), and 16-F-0559 (Bluestone Wind, LLC) that the JEDI model has numerous limitations that render its estimated results non-robust and unreliable. Many of these limitations are enumerated on the JEDI model's website, including: 1) results reflect gross impacts and not net impacts; 2) results are based on

62 Exh. 45, pp. 10-11.
63 Exh. 45, pp. 14-15.
64 Tr. 296.
65 Tr. 298.

approximations of industrial input-output relationships, namely they are dependent on the accuracy of the multipliers used; 3) results are based on the assumption that all inputs are used in fixed proportions and respond perfectly elastically; and 4) results are dependent on the accuracy and appropriateness of the project description. In particular, DPS Staff maintained that the secondary (both indirect and induced) job estimates presented in these siting cases were unreliable due to the constraints and limitations of the JEDI model, which enforce overly rigid and positive-only job estimates. DPS Staff argued that the JEDI model's positive-only constraint fails to capture any potential negative job impacts induced by the Project, such as jobs lost as a result of higher retail electric rates and/or jobs displaced at fossil fuel generating stations made unnecessary as a result of the Project. Staff recommended that the Siting Board assign little to no weight to the JEDI-developed secondary job estimates in determining the projects' socioeconomic benefits in the siting cases cited above, given the limitations of the JEDI model and its produced results. In Cases 15-F-0122 (Baron Winds, LLC), 16-F-0062 (Eight Point Wind, LLC), and 16-F-0559 (Bluestone Wind, LLC), the Siting Board concluded that a determination regarding the merits of JEDI-developed secondary job estimates was not necessary in finding that approval of those projects was in the public interest.

We see no reason to depart from our prior precedent, and, in this case, we also give little to no weight to annual secondary employment and economic activity likely to be generated by the facility's construction in determining whether the Project will be in the public interest. We conclude that the presence or absence of secondary job creation and economic benefits from the Project has not been established in this case.

E. Public Interest Standard Summary

Before issuing a certificate, we must determine that construction and operation of the Project will serve the public interest.[66] For the reasons discussed in this order, we find that the Project will serve the public interest because it is consistent with, and will advance, important State energy policy goals and will provide economic benefits to the host communities.

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

Section 168(2) of the PSL requires the Board to make factual findings as to the probable environmental impacts[67] from the construction and operation of the proposed Facility. After making those findings, and before issuing an Article 10 Certificate, the Board must make a legal determination, pursuant to Section 168(3)(c) of the PSL, that any adverse environmental impacts will be minimized or avoided to the maximum extent practicable. The Board must also determine, pursuant to Section 168(3)(e), that the Facility is designed to operate in compliance with all applicable State environmental laws and regulations. In making its determinations, the Board may impose, and monitor compliance with, any terms and conditions the Board deems necessary.[68]

Applicable State laws include the New York State

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66 PSL §168(3)(b).

67 Section 168(2) of the PSL specifies the environmental concerns that must be addressed, and Sections 1001.1 through 1000.41 of 16 NYCRR set forth detailed application requirements for each environmental concern identified in PSL §168(2).

68 PSL §§162 and 168(5).

Environmental Conservation Law (ECL), and its implementing regulations at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR). Specifically, the following statutes and regulations are relevant to Excelsior's application:

(1) ECL Article 9 and Part 575 of 6 NYCRR (control of invasive species);
(2) ECL Article 11 and Part 182 of 6 NYCRR (protected species);
(3) ECL Article 15 and Part 608 of 6 NYCRR (stream disturbances and water quality certifications); and
(4) ECL Article 24 and Parts 663 and 664 of 6 NYCRR (regulated freshwater wetlands and their adjacent areas).

Environmental impacts associated with agricultural land was a disputed issue and was addressed at the evidentiary hearing and in subsequent briefings. Undisputed issues included wetlands, streams, grassland birds and bats, invasive species, plants and forests, and wildlife generally.

The following sections examine each of the environmental topics requiring factual findings, pursuant to PSL §168(2), and discuss the proposed minimization and avoidance measures. The Examiners provide recommendations to the Siting Board as to whether environmental impacts have been avoided or mitigated to the maximum extent practicable, and whether State environmental laws have been complied with, and include recommendations for resolving any disputes about Certificate Conditions.

1. Ecology

Part 1001 of 16 NYCRR requires an applicant to provide information about the terrestrial (16 NYCRR §1001.22) and aquatic ecology (16 NYCRR §1001.23) in the Project Area, analyze

the potential impacts of the construction and operation of the Project on the local ecology, and identify and evaluate measures to avoid or mitigate those impacts. The Applicant provided information regarding the potential environmental impacts of the Project on ecology in its Application Exhibit 22 (Terrestrial Ecology and Wetlands) and Exhibit 23 (Water Resources Aquatic Ecology), and in its Invasive Species Management and Control Plan (revised December 2020).[69]

The Project is located within Genesee County. Land use types occurring within the approximately 3,443 acre property on which the Facility is proposed were determined using National Land Cover Data (NLCD) information (Homer et al. 2015), aerial photos and on-site observation.[70] The Facility area is predominantly agricultural land (70% row crops, 14.1% field crops); approximately 6% is forested; approximately 1.5% is successional old field;2.2% is disturbed developed; 0.2% is open water; <0.1% is grassland; 0.8% is successional shrubland; and 5.1% is wetland areas.[71]

a. Wildlife Habitat

i. Threatened or Endangered (T&E) Species

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

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69 Hrg. Exhs. 40, 41, 119 and 187.

70 Hrg. Exh. 40, App. Exh 22 *Terrestrial Ecology and Wetlands,* p. 3.

71 Id.

applicable State environmental law protecting wildlife.[72] The State environmental law protecting threatened and endangered wildlife is the State Endangered Species Act (ECL §11-0535) and its implementing regulations at 6 NYCRR Part 182.

As a result of settlement negotiations culminating in the parties' settlement proposal and revised Certificate Conditions, there are no issues in dispute between applicant and DEC Staff regarding the Project's compliance with ECL Article 11.

(1) T & E Species other than Grassland Birds

Nine species of bats are present in New York for at least some portion of the year. They are: (1) the hoary bat (*Lasiurus cinereus*); (2) silver-haired bat (*Lasionycteris noctivagans*); (3) eastern red bat (*Lasiurus borealis*); (4) little brown bat (*Myotis lucifugus*); (5) big brown bat (*Eptesicus fuscus*); (6) tri-colored bat (*Permyotis subflavus*); (7) northern long-eared bat (NLEB) (*Myotis septrenionalis*); (8) Indiana bat (*Myotis sodalis*); and (9) eastern small-footed bat (*Myotis leibii*). All New York resident bat species, except for the big brown bat, are designated as species of conservation concern, and the Indiana bat and NLEB are protected pursuant to ECL §11-0535. Applicant consulted with the DEC as well as the US Fish and Wildlife Service (USFWS) to determine what, if any, occupied habitat for state and federally listed bat species had potential to occur in the Project Area.[73] It was determined that no Federal or State listed species habitat were located within 5 miles of the Project Area.[74] No testimony was offered that operation of the Facility is anticipated to impact or cause mortality to any bat species. Applicant, DPS Staff and DEC

[72] PSL §168(3)(c), (e).

[73] Hrg. Exh. 40, p. 24.

[74] Id.

Staff agreed on Certificate Conditions 104 and 105 to provide protections and/or safeguards for the bat population in the Project Area. These two conditions provide that if any maternity roosts are discovered within 500 feet of the Project Area, DEC will be notified within 24 hours of discovery and, during the construction and restoration phase, an area of at least five hundred (500) feet around the roost tree will be posted and avoided.[75] During the operation phase of the Project, an area of at least five hundred (500) feet in radius around any discovered roost tree will be posted and maintenance activities will cease until DEC gives notice to continue.[76] Also, Certificate Condition 105 requires the Certificate Holder to leave uncut all known NLEB roost trees and any trees within a 150-foot radius of a documented summer occurrence and 0.25 miles of a documented winter occurrence.[77]

(2) Threatened and Endangered Grassland Bird Species

Applicant submitted Appendix 22-2 Grassland Breeding Bird Survey Report dated July 2020.[78] The Report was prepared with the use of surveys performed by applicant's consultant at the request of DEC in order to determine the presence and site use by state-listed threatened, endangered, or special concern, grassland bird species during the breeding season. One threatened and endangered grassland bird species was observed, the northern harrier (*Bartramia longicauda*) (NOHA).[79] The NOHA siting was deemed transient and no determination of occupied

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75 Hrg. Exh. 209, Certificate Condition 104.

76 Id.

77 Hrg. Exh. 209, Certificate Condition 105.

78 Hrg. Exh. 104, App. Ex. 22-2. *Grassland Breeding Bird Survey Report*, July 2019.

79 Tr. 303.

habitat was made.[80] The July 2020 Report concluded that "development of the Project is not expected to negatively affect endangered or threatened grassland breeding birds."[81]

No party has disputed the findings of the Report and there are no unresolved issues related to grassland birds.[82] Certificate Conditions 99-106 provide for protections for threatened and endangered species should a nest or roost be discovered in the Project Area or a damaged, injured or dead State-listed T & E species be discovered at the Project Area during the life of the Project.[83]

(3) Eagles

Two bald eagles (*Haliaeetus leucocephalus)*(BAEA) were observed at the Project Site during a 2019-2020 Winter Raptor Survey (WRS) conducted by Applicant's consultant.[84] DEC Staff testified there were "multiple EBird Reports of BAEA" observed during a 2012-2021 timeframe both in the Project Area as well as adjacent to the Project Area.[85] No BAEA nest or roost will be disturbed by the planned construction or operation.[86] BAEA is a State-listed threatened species subject to the protections found in 6 NYCRR Part 182.The NYS Bald Eagle Conservation Plan (2015)(BAEA Conservation Plan) has guidelines to assist DEC in its goal of a healthy bald eagle population in NYS.[87] Based upon the record, including the WRS, DEC staff concluded that construction of the Project as proposed is "not likely to impact BAEA" based upon the distance from the nearest nest to the

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80 Tr. 303.
81 Hrg. Exh. 104 Confidential(CONF),p. 10.
82 Tr. 305.
83 Hrg. Exh. 209.
84 Hrg. Exh. 105, Appendix 22-3.
85 Tr. 243.
86 Tr. 303.
87 Hrg. Exh. 235.

Project components, and that with the Siting Board adopting the agreed upon Certificate Conditions and SEEP Guide, the Project would comply with the guidelines of the BAEA Conservation Plan.[88] DEC Staff, based upon settlement discussions held between the parties and subsequent revisions to the Certificate Conditions, has concluded that applicant has avoided all impacts to bald eagles by siting project components and construction activity outside of the 660-foot buffer around BAEA nests.[89] As a result, there are no issues in dispute between applicant and any party regarding the Project's compliance with ECL Article 11.

No party disputed the applicant's assertions regarding impacts to wildlife and habitat. Based on the record and the agreed upon Certificate Conditions and SEEP Guide, we determine that the Project complies with ECL Article 11 and that impacts related to threatened and endangered species and habitat have been avoided or mitigated to the maximum extent practicable.

ii. Invasive Species

Environmental Conservation Law (ECL) Article 9 requires that projects subject to State review be examined for any risks posed to the State's environment by invasive species, and that wherever practical, invasive species be prohibited and actively eliminated at project sites regulated by the State.[90] The Application contains field studies documenting the presence and extent of invasive species in the Project Area, and a proposed Invasive Species Management and Control Plan (ISMCP) detailing procedures for handling and preventing the spread of invasive species.[91] Applicant submitted an updated ISMCP in

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88 Tr. 247.

89 Hrg. Exh. 209, Certificate Conditions 99-103.

90 ECL §§9-1701, 9-1709(2)(b)(iv).

91 Hrg. Exh. 119, App. Exh. 22-8, revised December 2020; Hrg. Exh. 187.

December 2020.[92] The Certificate Conditions provide several measures to control invasive species.[93] Applicant will implement an ISMCP under which the results of control measures will be monitored.[94] Applicant has agreed to post-construction monitoring of invasive species to be conducted in year one, year three, and year five following completion of construction and restoration.[95] Interim reports will be prepared for each year of monitoring and a final report detailing the success of the ISMCP will be provided to DEC, DPS, the Town of Byron and DAM. If it is determined that the goals of the five (5) year post-construction monitoring plan are not being met, applicant will meet with DEC, DPS, the Town and DAM to determine appropriate actions to be taken.[96] DEC testified that the revised ISMCP meets the standards of Article 9 of the Environmental Conservation Law and its implementing regulations set forth in 6 NYCRR Part 575.[97]

Based on the record, proposed Certificate Conditions and SEEP Guide, and the revised ISMCP, we determine that the Project complies with ECL Article 9 and that impacts related to invasive species have been avoided or mitigated to the maximum extent practicable.

iii. Impacts to Forest Ecology

With respect to impacts to area ecology other than from invasive species, the Siting Board must determine that any adverse impacts to area ecology resulting from the construction

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92 Hrg. Exh. 187.

93 Hrg. Ex. 209, Certificate Conditions 78, 79, 110, 117, 123, 127.

94 Id.

95 Hrg. Exh. 187, p. 11; Hrg. Exh. 209, Certificate Condition 78.

96 Hrg. Exh. 187, p. 11; Hrg. Exh. 209, Certificate Condition 78.

97 Tr. 222.

and operation of the facility will be minimized or avoided to the maximum extent practicable.[98] As noted in the Application materials, the Project Area is approximately 3,443 acres and is predominantly agricultural land, forest lots, successional old fields and successional shrublands.[99] The Project footprint is projected to be 1,716.7 acres or 49.9% of the Project Area.[100] This includes all areas within the LOD and fence line, access road areas and tree clearing areas.[101] Temporarily impacted areas will be restored to their original condition.[102] Permanent impacts to vegetation will total 49.1 acres resulting from placement of access roads (41.9 acres), energy storage, collection lines, culverts, drainage/filtration basins, drainage tiles, inverters, rip rap, solar array posts and, substation/switchyard.[103] Solar panel installation will result in the clearing of 588.7 acres of vegetation with areas under and between panels being restored and revegetated following construction.[104]

Measures undertaken by applicant to avoid, minimize, and mitigate plant community impacts include: (1) the co-locating of components, (2) locating components in areas already disturbed to the maximum extent practicable, (3) a comprehensive erosion and sediment control plan will be developed to protect adjacent resources during construction and remediation; (4) complying with guidance from the on-site Environmental Monitor during construction and operation, (5) maintaining clean work sites, (6) implementing best management practices during

98 PSL §168(3)(c).
99 Hrg. Exh. 40, App. Exh. 22, p. 11.
100 Id., p. 9.
101 Id.
102 Id.
103 Id., pp. 9-10.
104 Hrg. Exh. 40, p. 10.

construction, operation, and maintenance, and (7) by demarcating and avoiding areas that are highly susceptible to adverse disturbances.[105]

The Applicant anticipates that 1.0 acre of forest will be temporarily impacted and 0.4 acres will be permanently replaced with project components which is 0.2% of forested habitat within the Project Area.[106] Applicant has indicated the clearing in forested areas within the Project will result in less than 10% reduction of forested areas.[107] Applicant identified the forest area within the Project Area as small, isolated patches with limited connectivity to other forested areas.[108]

No party disputes the effectiveness of the avoidance and minimization measures for the forested areas. In addition, the parties have agreed to proposed Certificate Conditions related to the protection of forest ecology, including providing for the Environmental Monitor to assist with project oversight.[109]

Based on the record and the agreed upon Certificate Conditions and SEEP Guide, we conclude that the Project's impacts to plant and forest ecology have been avoided, minimized and mitigated to the maximum extent practicable.

b. Ground Water and Surface Water

i. Groundwater and Wells

Before granting an Article 10 Certificate, the Siting Board is required by PSL §168(2) to make findings regarding the nature of the probable environmental impacts of construction and

[105] Id., p. 15.
[106] Hrg. Exh. 40, p. 11.
[107] Id.
[108] Id., p. 1.
[109] Hrg. Exh. 209; Certificate Condition 88.

operation of a facility on ground and surface water resources. Pursuant to PSL §168(3)(c) and (e), the Board must determine that the adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable, and that the facility is designed to operate in compliance with applicable State freshwater wetland protection, water pollution control, and stream protection laws and regulations, and State water quality standards.

During a preliminary geotechnical investigation, groundwater was identified at depths ranging between 0 to 25 feet.[110] The average representative depth to the water table is 32 inches and the average depth to a restrictive layer is 6.3 feet.[111] Most construction is not expected to intercept or affect groundwater on site with posts anticipated to be embedded to depths between 6 feet and 12 feet.[112] Applicant's report concluded that temporary dewatering may be required during construction if perched water, groundwater, or seepage is encountered.[113]

The nearest sole source aquifer is the Cattaraugus Creek Basin Aquifer located in Wyoming County, New York; approximately 32 miles south of the nearest point within the Project Area (EPA, 2017).[114] No principal aquifer is located within the Project Area and the closest primary aquifer is the Tonawanda Aquifer with its watershed and closest point starting slightly over 3 miles south of the Project Area's southern limit (Terry et al., 1986).[115] The Batavia Aquifer underlies approximately 23 square miles of the Tonawanda Creek Valley in

[110] Hrg. Exh. 41, p. 1.
[111] Id.
[112] Id.
[113] Hrg. Exh. 41, p. 1.
[114] Id., p. 2.
[115] Id., p. 3.

Batavia, New York and its closest point is approximately 2.3 miles southwest of the Project Area.[116] Applicant's report concluded no permanent impacts to aquifers (primary, principal, or sole source) or groundwater in general are anticipated to result from this Project.[117]

Protections to the water supply have been established in Certificate Condition 98, including but not limited to no pier or post driving within 100 feet of any drinking water source, no blasting within 500 feet of any water supply well or intake, as well as pre- and post-construction testing of nearby drinking water supplies.[118]

These requirements were not disputed by any party and are consistent with Siting Board precedent established in previously issued Certificates of Environmental Compatibility and Public Need issued pursuant to PSL Article 10.[119]

Based upon the record and proposed Certificate Conditions and SEEP Guide, we conclude that the Project will comply with applicable State public health and safety requirements for drinking water, and that the probable impacts to groundwater and wells have been avoided or mitigated to the maximum extent practicable.

ii. Oil and Gas Wells

Theodore Loukides, DEC Chief of Oil and Gas Compliance, and Linda Collar, Regional Mineral Resource

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116 Id.

117 Id., p. 5.

118 Hrg. Exh. 209, Certificate Condition 98 and Hrg. Exh. 41, p. 9.

119 See, e.g., Case 17-F-0617, Application of Hecate Energy Albany 1 LLC and Hecate Energy Albany 2, Order Granting Certificate of Environmental Compatibility and Public Need; Mohawk Solar (17-F-0182); East Point Solar (17-F-0599); Trelina Solar (19-F-0366).

Supervisor for DEC Regions 6, 7 and 8, testified about the history of oil and gas well mining in New York State. They review proposed energy projects and the potential impacts to oil and gas well infrastructure in a proposed project area.[120]

The State began regulating oil, gas and solution mining in 1963, however, the first well in the State was drilled in 1821.[121] The State database, created beginning in 1963, contains approximately 46,000 wells but the State estimates that there are over 75,000 wells present in New York, meaning that the State has thousands of undocumented wells whose details are unknown.[122] Many of the undocumented as well as documented wells are orphaned, meaning that there is no known owner or operator.[123] Loukides and Collart testified that orphaned wells pose a significant threat to public safety and pose environmental hazards, in part because they present a route for the escape of methane gas, a contributor to climate change.[124]

DEC began an orphan well plugging program in 2014 to address these risks and plug wells.[125] ECL Article 23 and its implementing regulations at 6 NYCRR §555.5 govern the procedures for the plugging of wells. In order to plug a well, a service rig and ancillary equipment needs to be brought to the well location to perform the necessary work.[126] Applicant submitted Exhibit 161, Figure 21-5, which identified 3 wells in the Project Area, including two orphaned wells.[127] DEC Staff requested a minimum setback of 100 feet from the unplugged wells

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120 Tr. 226.
121 Tr. 230.
122 Tr. 231.
123 Id.
124 Tr. 231.
125 Id.
126 Tr. 233.
127 Hrg. Exh. 161.

to allow for sufficient access to "cap, plug, remove or otherwise contain pipelines."[128] Applicant agreed, after discussions with DEC, to Certificate Condition 92(j) that provides for the requested setbacks around the known wells in the Project Area.[129]

Based on the record, and the proposed Certificate Conditions and SEEP Guide, we conclude that the Project is designed to operate in compliance with ECL Article 23 and 6 NYCRR §555.5.

iii. Stormwater Management and Erosion Control

Applicant has agreed to minimize or avoid impacts to existing drainage patterns and stormwater quality by obtaining coverage under the State Pollution Discharge Elimination System (SPDES) General Permit for Stormwater Discharge from construction activity and filing a DEC accepted Stormwater Pollution Prevention Plan (SWPPP).[130] DPS staff testified that as long as the Siting Board adopts the proposed certificate conditions and SEEP Guide, the facility will operate in compliance with applicable laws and regulations regarding stormwater management and erosion.[131]

iv. Freshwater Wetlands and Streams

The public policy of the State of New York is to preserve, protect, and conserve freshwater wetlands and the benefits they provide, to prevent the despoliation and destruction of freshwater wetlands, and to regulate use and development of such wetlands to secure the natural benefits of

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128 Hrg. Exh. 209, Certificate Condition 92(j).

129 DEC Initial Brief, p. 10.

130 Hrg. Exh. 209, Certificate Conditions 36 & 48; see also Exh. 123, App. Exh. 23-3.

131 Tr. 325.

freshwater wetlands, consistent with the general welfare and beneficial economic, social, and agricultural development of the State.[132] State approval must be obtained for any proposed project that may impact State-regulated freshwater wetlands, or the associated regulated adjacent area, which generally extends 100 feet from the boundary of a State-regulated wetland.[133] Applicant agreed to Facility design layouts that avoid and minimize adverse impacts to wetlands and State-protected streams.[134]

The wetland delineation report for this Project, as verified by DEC Staff, identified that nine (9) wetlands subject to Article 24 protection are present in the Project's proposed boundary.[135] DEC Staff has concluded that applicant has addressed all impacts and the Project, as proposed, entirely avoids Article 24 protected wetlands.[136]

The Project, as proposed, does not avoid all impacts to Article 24 wetland adjacent areas. Solar arrays, road improvements, fencing and tree clearing are proposed in adjacent areas.[137] DEC staff testified that applicant has demonstrated that these impacts cannot be avoided and/or minimized. To address these impacts, both the agreed upon Certificate Conditions and the SEEP Guide provide for applicant to submit a Wetland Mitigation Plan in consultation with DEC staff that will meet the requirements of 6 NYCRR §663.5(g) and the DEC's Guidelines on Compensatory Mitigation.[138] Applicant has agreed to work in consultation with DPS and DEC staff to create a

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132 ECL 24-0103
133 See 6 NYCRR §663.2(b).
134 Tr. 301-302.
135 Tr. 214.
136 Tr. 216.
137 Tr. 217.
138 Tr. 218.

Wetland Mitigation Plan.[139]

Based on the record, and the agreed upon Certificate Conditions and SEEP Guide, we conclude that the Project is designed to operate in compliance with all applicable State freshwater wetland protection laws and regulations, and that there will be no impacts to State regulated wetlands. We also conclude that impacts to adjacent areas have been avoided and/or minimized and the Project, as proposed, meets the requirements of Article 24 and Part 663.

DEC is entrusted with protecting the valuable water resources of the State.[140] Article 15 of the ECL and its implementing regulations found at 6 NYCRR Part 608 give DEC statutory and regulatory authority for the review of proposed activities that may involve disturbance of protected streams. A protected stream is defined at 6 NYCRR §608.1(aa) as follows: "any stream or particular portion of a stream for which there has been adopted by DEC or any of its predecessors any of the following classifications or standards: AA, AA(t), AA(ts) A, A(t), A(ts), B, B(t), B(ts) or C(t), C(ts). Streams designated (t)(trout) also include those more specifically designated (ts)(trout spawning)."141

The application has identified seven streams in the Project Area, with one stream being contiguous with a DEC Class C stream with regulatory number 898-396 (Minor Tribs to Upper Seneca River).[142] Although the Project will require a total of four waterbody crossings, no permanent impacts to State-protected streams are proposed.[143] DEC staff has concluded, after

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139 Tr. 218, CC 124 and SEEP Guide.

140 ECL 15-0501.

141 6 NYCRR §608.1(aa).

142 Tr. 221.

143 Id., p. 302-303.

reviewing the application and Project shapefiles, that there will be no impacts to the seven streams in the Project Area.[144] DEC staff concluded that, as long as the agreed upon certificate conditions and SEEP Guide are included with the Article 10 certificate issued herein, the Project meets applicable Article 15 standards.[145]

Based on the record, and the agreed upon Certificate Conditions and SEEP Guide, we conclude that the Project is designed to operate in compliance with all applicable State statutory and regulatory standards set forth in ECL Article 15 and Part 608 and find that applicant has avoided and minimized the Project's impacts to streams to the maximum extent practicable.

v. Section 401 Water Quality Certification

The Federal Clean Water Act (CWA) requires applicant to seek a Water Quality Certification (WQC) pursuant to Section 401 of the CWA to conduct "an activity that may result in a discharge into navigable waters."[146] The Project will require a WQC as the construction and/or operation of the Project may result in a discharge into navigable waters. As noted by DEC panel witnesses, the standards for issuance of a WQC are outlined in 6 NYCRR §608.9 with related regulations at 6 NYCRR Parts 701, 202, 703, 704 and 750 (State Pollutant Discharge Elimination System (SPDES) Permits).

DEC staff accepted the Proposed Certificate Conditions and SEEP Guide related to wetlands, waterbodies, and invasive species. DEC staff testified that the applicant's Proposed Certificate Conditions and SEEP Guide capture DEC staff's recommendations to ensure the Project complies with the

144 Tr. 221.

145 Id.

146 Tr. 222.

requirements of Environmental Conservation Law, including Article 15 and 24, the State water quality program pursuant to section 401 of the CWA, and associated implementing regulations including 6 NYCRR Parts 608, 664, 701, 702, 703, 704, and 750 and Part 575.[147]

Based on the record, and the agreed upon Certificate Conditions and SEEP Guide, we conclude that the Project is designed to operate in compliance with ECL Articles 15 and 24 and the CWA.

c. Agricultural Resources

Section 1001.22(q) of 16 NYCRR requires an applicant to provide an analysis of the temporary and permanent impacts of the construction and operation of the facility and the interconnections on agricultural resources including the acres of agricultural land temporarily impacted, the number of acres of agricultural land that will be permanently converted to nonagricultural use, and mitigation measures to minimize the impacts.

Here, approximately 1000 acres of the Facility Area consists of prime farmland or priority soil groups 1-4.[148] The Town of Byron has approximately 11,858 acres of cropland.[149] The agricultural lands in the Project Area constitute 2% of all Agricultural District land in Genesee County and 19% of the Town of Byron mapped Agricultural District land.[150] Agricultural

[147] Tr. 222-223.

[148] Tr. 406. DAM's land classification system developed pursuant to Article 25-AA of the Agriculture and Markets Law includes 10 mineral soil groups (1-10) ranked based on potential to produce livestock feed, measured as tons of digestible nutrients (TDN) per acre per year. See Ag & Mkts Law 304-a and 1 NYCRR §370.8.

[149] Hrg. Exh. 22, p. 3.

[150] DAM IB, p. 6.

Districts are formed by property owners to gain protections of Agriculture and Markets Law Article 25-AA which is intended to conserve farmland in the State. The Project's agricultural lands consist primarily of crop fields where vegetables, hay and other grain crops are grown.

As noted in the Initial Brief of DAM, "Article XIV Section 4 of the New York State Constitution directs that the policy of the State shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products."[151] DAM has stated in this proceeding, as it has in prior Article 10 proceedings involving solar energy generating projects, "[t]he only responsible balance between the State's policy to preserve agricultural lands as well as its initiative to increase alternative energy development is to preserve the agricultural areas involving the most productive soils, classified as soil groups 1-4, for the production for food and fiber, and not object to proposed development on lesser productive soils."[152]

Although Applicant, DPS and DEC have agreed to proposed certificate conditions and the SEEP Guide which resolves all issues, DAM and BAAS have not entered into a settlement agreement with applicant. DAM, BAAS and the Applicant disagree as to whether the impacts to priority soil groups are temporary or permanent, as well as on the Facility's impact to

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151 DAM Initial Brief, p. 9.

152 DAM Initial Brief at 11. See Case 17-F-0617, Application of Hecate Energy Albany 1 LLC and Hecate Energy Albany 2 LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the Public Service Law for Construction of a Solar Electric Generating Facility Located in the Town of Coeymans, Albany County, DAM Initial Closing Brief p. 12 and Transcript at 122.

the local agricultural community. DAM has argued several points as to how the facility, as proposed and agreed to by applicant, DPS and DEC, is not complying with the requirement under PSL §168(3) to avoid or minimize impacts to the agricultural community.[153]

DAM contends that the impact to farmland from construction of a commercial solar facility is a "permanent conversion of farmland to a non-agricultural use."[154] Michael Saviola, Associate Environmental Analyst in the DAM Division of Land and Water Resources testified that this conclusion is based on several factors, including the premise that the area will not fully resume agricultural operation at decommissioning as the Project is likely to repower at the end of the 30 year project life.[155]

DAM acknowledges that the argument that a solar project results in a permanent conversion of agricultural land to nonagricultural has been rejected by this Siting Board in other Article 10 solar facility matters.[156] These same arguments were presented in the matter of the *Application of Hecate Energy Albany 1*, Case No. 17-F-0617 and were rejected by this Siting Board.[157] Also, DAM notes that the Siting Board has found that leaving soil fallow for the life of a solar project may improve soil quality. DAM argues, however, that soil quality will decrease over the life of the Project according to "literature on the subject that suggests that carbon and nitrogen levels are significantly lower than adjacent farmland where active farming and use of nutrient management practices creates higher

153 DAM Initial Brief (IB) p. 12; Tr. 390-400.
154 DAM IB at 12; Tr. 390-391.
155 DAM IB, p. 14-15.
156 Id., p. 14, See Hecate Energy Albany 1, pp. 27-28.
157 Id.

physical, chemical, and biological soil properties than farmland left in a fallow state."[158] No support or citations were offered to support this position.

DAM also argues that this Project is a permanent conversion of farmland as it is known that once farmland has been converted to a nonagricultural use, federal subsidies to assist "new" farming at the site will not be available and, as soil quality diminishes it becomes less productive farmland.[159] DAM also argues there is a question of whether there will be individuals who will farm the site at the end of the project life, noting the Project has not offered assistance for agricultural start-up at the time of decommissioning.[160]

DAM calculates the total area impacted as over 3,500 acres.[161] DAM argues that due to placement of components and access roads, certain areas will not be accessible to larger farm equipment making the area unable to be farmed,[162] as well as areas outside the fence line that will be orphaned or become fallow due to screening and setbacks, increasing the total impacted acreage.[163] All of these factors combined, posits DAM, support the proposition that the Project constitutes a permanent conversion of over 3,500 acres of farmland, with 1,002 being prime farmland.[164]

DAM notes that the requirement found in PSL §168(3) that applicant avoid or minimize potential impacts associated with the construction and operation of the Project could be achieved by (1) reducing scope of Project so that less than 10%

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158 DAM IB, p. 15.
159 Id.
160 DAM IB, p. 15.
161 Tr. 395.
162 Tr. 392.
163 Id.; DAM IB, p. 12.
164 Tr. 391, 406.

of soil quality 1-4 is impacted, (2) incorporating agricultural co-utilization, (3) reducing the Project footprint, and (4) alternative siting.[165] DAM states that applicant has made no effort to avoid or minimize impacts to agricultural land and with an improved layout, less farmland would be lost as orphaned or odd shaped pieces that cannot be farmed could be reduced.[166] DAM offers the example of access roads being relocated so as to not divide larger fields into smaller fields and being built "at grade" with surrounding fields to assist farming operations.[167]

DAM witness Saviola testified that there will be an impact to local agriculture at the nearby Zuber Farm, a dairy farm which estimates it will lose 25% of the land it leases to the solar project.[168] Saviola testified that Zuber Farm relies on leased farmland to grow feed necessary to sustain its cows and heifers and to recycle manure nutrients in order to comply with its concentrated animal feeding operation (CAFO) permit.[169] Saviola notes that the loss of farmland to lease will result in higher overhead and less profit for Zuber Farm in an area with competitive leases due to solar projects.[170] This issue is addressed in detail in the BAAS section below.

DAM has proposed that applicant, which has consented to comply with DAM *Guidelines for Solar Energy Project* be required to consult DAM for acceptable alternatives in the event that it cannot comply with the *Guidelines*.[171] Further, Mr. Saviola noted the importance of ensuring the Environmental Monitor agreed to in the Certificate Conditions and SEEP Guide

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165 Id., p. 15.
166 DAM IB, p. 12.
167 Tr. 393-394.
168 Tr. 398.
169 Tr. 397-398.
170 Tr. 398.
171 DAM IB, p. 16.

have strong agricultural knowledge to ensure that permanent impacts to such a large amount of farmland are avoided as much as possible.[172]

Mr. Saviola noted that Project components are to be located in fields where he observed a Central Pivot Irrigation System in use which he described as a "significant investment" by the farmers that will be lost.[173] Also, he noted the presence of drain tiles in areas where components are to be located.[174] Saviola testified that solar components will not benefit from the irrigation system and drain tiles, so these improvements will be lost, as will be future crop yields that would have benefited from the drainage tiles.[175] He also noted that pipeline installation projects have damaged other drainage infrastructure and that this is a possibility with this Project Area.[176] He testified that, if such damage occurs with this Project, the repairs should be undertaken immediately, rather than after the Project is decommissioned and should be supervised by a specialist.[177] Also, DAM would like applicant to ensure it has "additional temporary workspace [ATWS] width of 10 feet along collection line runs located in agricultural fields" to preserve the quality of the disturbed soil.[178]

Excelsior Energy

Excelsior Energy argues that the record demonstrates that the Facility, as governed by the Certificate Conditions, avoids or minimizes agricultural impacts to the maximum extent practicable, thereby complying with PSL §168(3). Applicant

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172 Tr. 399.
173 Tr. 400.
174 Id.
175 Tr. 401.
176 Tr. 401-402.
177 Id.
178 Tr. 405.

submitted Exhibit 9 (Hrg. Exh. 27) which detailed that Project components have been relocated to lessen the impact to agricultural use. The alternatives adopted include designing the Project layout to reduce the amount of access roads which would leave more land available for agricultural use in the Project Area, using technology that minimizes impacts to soils, and placing components in such a way as to enable continued agricultural use of more land in the Project Area.[179] Excelsior argues that the proposed layout specifically excludes certain lands to allow more agricultural use and the proposed layout integrated setbacks to allow for continued agricultural use.[180] Additionally, "[t]he proposed layout enables continued agricultural use around the perimeter of Project fencing on parcels within the Project Area where no Project Components are placed."[181] Excelsior notes that the limit of disturbance (LOD) is 1,712 acres, 1,635 of which is agricultural land and 1002 acres of which is prime farmland.[182]

Excelsior notes that the issue of whether there is a permanent loss of agricultural land has been previously addressed by this Siting Board which has found that there is not a permanent loss from a commercial solar facility.[183] Excelsior

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179 Hrg. Exh. 27 at 4.

180 Id., p. 8.

181 Id., p. 10.

182 Tr. 113.

183 See also Case 17-F-0617, Hecate Energy Albany 1 and Hecate Energy Albany 2, Order Granting Certificate of Environmental Compatibility and Public Need (issued Jan. 7, 2021), p. 27; Case 17-F-0599, East Point Energy Center, LLC, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued Jan. 7, 2021), pp. 31–32; and Case 17-F-0597, High River Energy Center, LLC, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued Mar. 11, 2021), p. 48.

noted that Certificate Condition 59 requires the certificate holder to decommission the Project at the end of its "useful life and restore the land to agricultural state to the maximum extent practicable."[184] Also, Excelsior has agreed to Certificate Conditions 47, 59(h) and 95 which require applicant adhere to DAM's *Guidelines for Solar Energy Projects-Construction Mitigation for Agricultural Lands.*[185]

Excelsior notes that DAM's argument that leaving some soils fallow for 30 years makes the soil less productive is not supported by the record.

As previously noted, DAM requested four mitigation measures in its Initial Brief. DAM argues that for Excelsior to comply with 168(3) it must impact only 10% of the highest quality soil, reduce the scope of the Project, incorporate co-utilization, and/or chose an alternate site. Excelsior argues that these arguments are raised without detail, support or foundation, and in a general manner, rather than addressing Project specific details.[186] Excelsior argues that DAM's request for an Environmental Monitor qualified to address agricultural concerns has been met with the agreed upon certificate conditions.[187]

Excelsior disagrees with DAM's argument that Excelsior fails to address the approximately 30 year loss of the production of crops, livestock, and livestock products.[188] Excelsior notes that DAM has made general representations with no support for the arguments. Also, the position fails to acknowledge that the owners of the agricultural land have voluntarily entered into lease agreements with Excelsior.

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184 Hrg. Exh. 209, Certificate Condition 59(h).
185 Hrg. Exh. 209.
186 Excelsior Reply brief, p. 17.
187 Hrg. Exh. 209, Certificate Conditions 20(a), 80(a); Tr. 149.
188 DAM IB, p. 17.

Excelsior's Rebuttal Panel notes that solar panels will cover 565 acres but the land under the panels will be restored after construction and maintained with suitable grass seed mix.[189] Access roads (25.5 acres) will cause the greatest permanent impact. However, Excelsior notes that the total permanent impact to farmland will be to 30.88 acres, or 0.90% of the total Project Area, thus meeting the DAM goal of no more than 10% of Project Area impacting prime farmland.[190] The Rebuttal Panel notes that the PSC addressed the impact to agriculture Statewide, noting that the PSC found that even if 6,900 MW of utility-scale solar were installed exclusively on agricultural land in New York, it would occupy only approximately 0.16 percent of such land and therefore, DAM's arguments about the impact to farming in the State are unfounded.[191]

The Siting Board held in *Hecate Albany* that it agreed with DAM Staff that agricultural soils, and particularly the State's most productive soils (i.e. mineral soil groups 1-4), are an important natural resource.[192] The Siting Board has also held that a solar project's primary impact to agriculture is not permanent.[193]

We do not find that the record supports DAM Staff's characterization of the Facility's impacts to agricultural lands as permanent. DAM's argument that the Project constitutes a permanent loss of agricultural land does not take into

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189 Id.

190 Id.

191 Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting Modifications to the Clean Energy Standard (issued Oct. 15, 2020), App. E, pp. 7-8.

192 Hecate Albany at 27.

193 Id.

consideration the fact that the facility will be decommissioned at the end of its "useful life." We also note that Excelsior has agreed to follow DAM's *Guidelines* with regards to construction, operation and decommissioning.

DAM does not provide evidentiary support for its argument that leaving agricultural lands in the Project Area fallow for the life of the Project will constitute a permanent loss. DAM's argument that Excelsior has made no effort to avoid or mitigate impacts to agricultural land does not acknowledge that applicant identified impacts were avoided and/or minimize to agricultural land as detailed in application Exhibit 9[194] and Excelsior's agreement to comply with DAM's *Solar Guidelines*.

We agree with Excelsior that DAM has made general statements alleging issues but has failed to provide support for the arguments. As an example, DAM has not provided any support for its argument that the Project will cause a significant loss of revenue from crop sales that will impact the local economy. It also fails to acknowledge that the PILOT payments that Excelsior will be making to the Town of Byron, Genesee County and Byron-Bergen School District will provide a significant economic benefit to the area.[195]

We agree with DAM that any damage to drainage tiles during construction of the facility should be repaired immediately, rather than after the Project is decommissioned and should be supervised by someone with experience and knowledge of drainage tile placement and use. The Certificate Conditions and SEEP Guide allow for that supervision by the agreed upon Environmental Monitor and any additional requirement to supervise the repair of drainage tile damage would be redundant and unnecessary.

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[194] See Hrg. Exh. 27, Excelsior Rebuttal Panel Testimony.

[195] Tr. 128.

We also agree that DAM's request that Excelsior ensure it has "additional temporary workspace width of 10 feet along collection line runs located in agricultural fields" will provide additional protection for priority soil groups and should be included in the Certificate Conditions and SEEP Guide. This will allow for the soil integrity to be preserved and will assist Excelsior's compliance with DAM *Solar Guidelines* that Excelsior has agreed to follow.

BAAS

BAAS argues that the Project does not comply with PSL §168(3) as it will have a "massive negative impact" on farming in the Town of Byron and could "change the identity and culture" of the Town of Byron and Genesee County.[196]

BAAS's arguments as to how the Project will impact local farming is based in part on the April 18, 2021 report of Econsult Solutions, Inc. (ESI) entitled "Economic Impact to the Agriculture Industry in Byron, NY"[197]; the testimony of Julia Cohen of ESI; the testimony of James Lamkin and Erik Zuber, members of BAAS; and the rebuttal testimony of James Peck of ConsulAgr, Inc.

The ESI Report concludes that the Project will result in a loss of critical farmland in Byron, NY and have economic impacts in the agriculture industry stemming from the transfer to non-agricultural uses of over 3,500 acres of farmland.[198] BAAS submitted the ESI Report along with the testimony of Julia Cohen, Associate Director of ESI. The Report was premised on the Project removing approximately 3,500 acres of agricultural land to "rolling fields of solar panels."[199] All of the Report's

[196] BAAS IB, pp. 3-4.
[197] Hrg. Exh. 245.
[198] Cohen Direct testimony, p. 3.
[199] Hrg. Exh. 245, at introduction.

conclusions are based on the premise that 3,500 acres of agricultural land will be removed from use for the life of the Project. It fails to acknowledge that the LOD is 1,712 acres, less than half of the 3,500 acres used to prepare its report.

We cannot accept the conclusions of the ESI Report. The foundational premise of the ESI Report that 3,500 acres of agricultural land will be removed for the life of the Project is not supported by the record. The record supports the finding that 1,712 acres of agricultural land will be removed from use during the Project life.[200] This represents 1% of the prime farmland in the County and 9% of the prime farmland in the Town of Byron.[201] The calculation of 1,712 acres is based upon the LOD detailed in the application and supporting documents.[202] Because the ESI Report more than doubles the actual acres to be impacted, we agree with Excelsior that the Report is unreliable and erroneous.

Excelsior also objects to the ESI Report because, in calculating the economic impacts from the Project, the Report relies on one year's data of crop prices in preparing its estimates for impacts. Excelsior argues that due to the fluctuating nature of farming, (pricing as well as production) one year is not a credible model.[203] Instead, Excelsior argues that a five-year average would be more reliable as it captures the fluctuations in farming productivity and pricing that are known to occur in the Project Area.[204] Excelsior Rebuttal Panel submitted ERP-1 to support their testimony.[205] ERP-1 details the fluctuations that occurred over a five year period in the Town

200 Tr. 113., Excelsior IB, p. 2.
201 Excelsior Reply brief, p. 2.
202 Hrg. Exh. 22, 40.
203 Tr. 114.
204 Id.
205 Hrg. Exh. 222.

of Byron for the top crops grown in the Town.[206] Between 2016 and 2020 ERP-1 shows a price variation range for the top ten crops from a low of 44% (alfalfa) and a high of 6,800% (sweet corn).[207] This adequately supports Excelsior's argument that the ESI Report is not credible because it used a one year price method only.

In addition to the ESI Report and testimony of Julia Cohen, BAAS offered the rebuttal testimony of James Peck of ConsulAgr.[208] Mr. Peck provided an Agricultural Impact Report dated October 4, 2021.[209] The Report confirms the priority soil groups found at the Project Area.[210] The Report also finds that the number of acres impacted is 1650 acres.[211] This is a significant difference in impacts than the ESI Report found. It also notes that areas in the Project Area may still be used for farming during the life of the Project. "There may be smaller parcels within the project that could remain in some sort of agricultural production. That may be an opportunity for current users to retain a limited use of the land that is not used for the project."[212]

The Peck Report notes that those who have used the land for agricultural uses will have to find replacement land, and finding replacement agricultural land will be difficult.[213] Also, it states the cost to lease other land will be higher thereby impacting the cost of farming in the area.[214] The Peck Report

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206 Id.
207 Hrg. Exh. 222, Table 2.
208 Hrg. Exh. 254.
209 Hrg. Exh. 254.
210 Id., pp. 6-10. (The Report pages are not numbered)
211 Id., p. 1.
212 Id., p. 15.
213 Id.
214 Id., p. 20.

concludes the Project will cause a redistribution of farms and the land that they operate. .[215] Finally, it concludes, it may impact the size of some of the operations and cause a few farms to "reconsider their operations and decide to make some changes to reflect the changes within their neighborhoods and the greater farming community."[216]

The Peck Report conclusions fail to offer any support or data for its findings, such as the potentially increased cost of farming. Because of the lack of any support for its findings, we cannot rely on this Report in making our findings.

Erik Zuber and James Lamkin

Two founding members of BAAS testified in support of BAAS. James Lamkin resides in Byron but does not appear to be in the farming business. Mr. Lamkin, a former or current member of the Town of Byron Planning Board, testified how, in his opinion as a private citizen, the Excelsior Project is not consistent with the Byron Comprehensive Plan or the Genesee County Farming and Agricultural and Farmland Protection Plan.[217] Mr. Lamkin was not testifying in an official capacity for either the Town or the County and as such is not qualified to represent the positions of either the Town or the County. His testimony also is contrary to the actions of the Town which passed a solar law permitting this Project.[218] He also testified that the Project, in his opinion, is not consistent with the small town, rural nature of Byron.[219] He sees living near this Project as living in the middle of a large industrial solar plant rather than a rural area.[220]

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[215] Id., p. 21.
[216] Hrg. Exh. 254, p. 21.
[217] Lamkin Direct Testimony, p. 2.
[218] Tr. 129-130.
[219] Id., p. 5.
[220] Id., p. 6.

Erik Zuber, also a founding member of BAAS, offered testimony in support of BAAS. Mr. Zuber operates a dairy farm in the Town. He currently uses 545 acres of property owned by a landowner who has chosen to enter into lease agreements with Excelsior Energy. Therefore, Mr. Zuber will no longer have this property available for his use. Mr. Zuber testified that he currently uses the 545 acres to spread manure from his dairy farm.[221] Apparently there is no lease in place but rather Mr. Zuber has a verbal agreement with the landowner to spread manure on the 545 acres.[222]

Mr. Zuber objects to the participating landowner leasing his property to Excelsior. He does not address how his objection should block a private landowner from leasing their land as they see fit. Mr. Zuber has been aware of the Project since 2018.[223] The record is silent as to whether he has attempted to secure other property to lease for his use.

Excelsior Rebuttal Testimony indicates that the applicant contacted Mr. Zuber in June 2020 "to connect him with a company that has developed solutions for managing agricultural waste" and indicate Project representatives met Mr. Zuber at Zuber Farms about installing a vermicomposting facility at Zuber Farms.[224] According to Excelsior's Rebuttal Panel testimony, the vermicomposting would use 5 acres, negating Mr. Zuber's need to spread manure off his property.[225]

The Excelsior Rebuttal Panel testimony identifying a possible option for Mr. Zuber reinforces the proposition that the participating landowner is not the only option for Mr.

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221 Zuber testimony, p. 1.
222 Tr. 136.
223 Tr. 137.
224 Tr. 137.
225 Tr. 137-138.

Zuber. Further, we do not believe that a participating landowner should have his actions limited due to a preference of Mr. Zuber. We also note that although Mr. Zuber and BAAS made representations that the Zuber operations would have to be curtailed as much as 25% if the leased land is not available, no support for that conclusion was offered by Mr. Zuber or BAAS. DAM also relied on Mr. Zuber's estimates without establishing any factual support for the calculation. The Rebuttal Panel testimony offered by Excelsior demonstrated that there are options available to Mr. Zuber that could avoid any herd reduction, including possibly using his own land for manure spreading.[226]

Based on the record before us, we find that the Certificate Conditions and SEEP Guide, which include applicant's required adherence to DAM's *Solar Guidelines*, employment of a Health, Safety and Environmental Manager with agricultural qualifications, as well as various reporting and coordinating requirements involving DAM Staff[227], the Facility's impacts are avoided or minimized to the extent practicable.

2. Air Quality

No issues were raised in this case with respect to air emissions. According to applicant, during construction, there may be minor, temporary adverse air impacts associated with vehicle emissions, dust from earthmoving activities and travel on unpaved roads, and emissions from fossil fuel-fired generators.[228] To minimize localized air impacts, the Applicant would require contractors to adhere to best management

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[226] Tr. 140.

[227] See Exh. 209, Certificate Conditions 8, 20(a), 47, 59(h), 88(a), 95-96, 103(d); Exh. 212, SEEP Guide at §§ A.7.a, .e, B.2, B.6, B.10, B.12.xii, B.17.d.ii, .v.a.

[228] Hrg. Exh. 35. App. Ex. 17.

practices, including prohibiting unnecessary idling of equipment and adherence to New York State guidance on fugitive dust emissions.[229] No party has disputed applicant's representations regarding air emissions.

After construction, the Facility would generate electricity without combusting fuel or releasing pollutants into the atmosphere.[230] According to the Applicant, operation of the Facility will result in a reduction of approximately 205,432 tons of CO2 from the New York State power sector in 2023, when compared to a base-case with the Facility not in service.[231] As noted by DPS Staff, the Facility does not require any federal, State, or local air emissions permits. DPS Staff urges the Siting Board to find that the impacts associated with air emissions during construction of the Facility will be avoided, minimized, or mitigated to the maximum extent practicable.[232]

Based upon the record, we conclude that the Facility's potential impacts to air quality have been mitigated, minimized or avoided to the maximum extent practicable, and that the Facility will be constructed and operated in compliance with all applicable State air pollution control laws and regulations.

3. Public Health, Safety and Security

a. Noise and Vibration

There are no disputed issues concerning noise or vibration. The Signatory Parties agreed to proposed Certificate Conditions that contain noise limits reasonably limit the daytime and nighttime impacts from noise for non-participating residences, non-participating portions of lands, and for

[229] Id.
[230] Hrg. Exh. 35, pp. 3-4.
[231] Hrg. Exh. 26, pp. 1-2; DPS Staff Initial Brief, p. 26.
[232] DPS Staff Initial Brief, pp. 26-27.

participating residences.[233] Proposed Conditions also include provisions for construction noise and incorporate the (NCRP), which contains provisions about how complaints from construction and operation of the Facility will be handled, should they occur.[234] Proposed Certificate Conditions 52 and 57, and the NCRP, also contain provisions for complaint resolution during operation of the Facility.[235] Therefore, DPS Staff asserts, and we agree, that the potential adverse environmental noise impacts from operation of the Facility have been minimized with the design presented in the Application, subject to the Certificate Conditions on noise and vibration, the SEEP Guide provisions on Noise, and the NCRP (collectively, the Noise Package).[236]

Based on the estimated sound impacts from the design and the Noise Package agreed to by the Applicant and DPS Staff, a post-construction sound test at the most impacted participating and non-participating residences will not be required, as has previously been required for wind generating facilities under Article 10.[237] Instead, the Applicant has agreed to present final design and computer noise modeling 60 days prior to the start of construction to demonstrate that the final design, including any changes to the design presented in the Application, complies with all proposed Certificate Conditions on noise.[238] The Applicant has also agreed to perform the modeling and calculations by following the provisions included in the section entitled "Sound" in the proposed SEEP Guide.[239] In addition, the Applicant has agreed to follow the

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233 Exh. 209.
234 Tr. 313, Exhs. 209 and 211.
235 Exhs. 209 and 211.
236 Tr. 314-315; Exhs. 218-220.
237 Tr. 313-314.
238 Exh. 209.
239 Exh. 212.

NCRP to investigate noise complaints during both construction and operation, perform noise measurements, and reduce sound levels or provide mitigation, if necessary.[240] In this Order we are adopting proposed Certificate Conditions 52, 57, 83 through 85, 90, and 91(b), the SEEP Guide protocols on noise, and the NCRP, which will have the effect that the anticipated adverse environmental noise effects from the operation of the Facility will be minimized or avoided to the maximum extent practicable.[241]

b. Safety, Security, and Emergency Response

The regulations at 16 NYCRR §§ 1001.2, 1001.5, 1001.18 and 1001.40 set forth application requirements related to considerations that impact the cybersecurity requirements of a proposed facility. Among other things, Application Exhibit 18 must contain a description of a cyber security program for the protection of digital computer and communication systems and networks that support the facility demonstrating compliance with current standards issued by a standards setting body generally recognized in the information technology industry. There must be a provision for periodic validation of compliance with the applicable standard by an independent auditor. In addition, Exhibit 18 must include a Safety response plan, a Health and Safety Plan and an Emergency Action Plan to ensure the safety and security of the local community, including an identification of contingencies that would constitute a safety and security emergency, and emergency response measures by contingency. Exhibit 18 also must include plans for any electronic security and surveillance facilities to be described in detail. If an applicant does not plan to have electronic security and

[240] Tr. 314; Exh. 211.

[241] Tr. 315.

surveillance measures in place, the application must explain the reason why not and the specific conditions that would require installation of an electronic security and surveillance at the facility. In Application Exhibit 18, the Applicant indicated that electronic and surveillance facilities are not proposed for this Project during construction but if the need for such facilities arises, it will establish appropriate systems to ensure appropriate monitoring and surveillance of the Project.[242] Community notification procedures by contingency should provide multiple methods of communication including cell phone numbers of affected residents within a specific radius that would be called, and who is responsible for making those calls.

In addition, the Applicant is required to provide the date of submission or confirmation from the New York State Division of Homeland Security and Emergency Services (NYSDHSES) that the Applicant has provided a copy of the plans required pursuant to §900-2.7(b) and (c) above to, and requested review of such plans and comment by, the NYSDHSES.

The Applicant provided the required documentation in its Application Supplement.[243] In addition to what was provided in Exhibit 18 of the Application, the Certificate Conditions and SEEP Guide specify that the Certificate Holder shall offer training drills with emergency responders at least once per year.[244] This coordination with State and local entities when combined with furnishing copies of the Final Site Security Plans for Facility Construction and Operations, Emergency Response Plans and Health and Safety Plans to all identified stakeholders will help ensure the Project will be constructed and operate

[242] Exh. 36, p. 2.
[243] Exh. 181.
[244] Exh. 209, Certificate Condition 60.

safely.[245] On the basis of these uncontested showings, we find that adequate safety and security plans will be prepared to ensure the Facility will be constructed and operated safely and securely.

c. Public Health, Safety and Security Summary

The record information described above provides a sound basis for finding that the construction and operational impacts of the Project will not adversely impact public health or safety. Accordingly, we find that the adverse environmental effects of the construction and operation of the Facility related to public health, safety, and security have been avoided or minimized to the maximum extent practicable.[246]

4. Decommissioning, Site Restoration, and Financial Security

There are no issues regarding the requirements for decommissioning and financial security. The Siting Board's Article 10 regulations require the Applicant to provide a plan for the decommissioning and restoration of the facility site. That plan must specify the funding mechanism for decommissioning and site restoration and set forth a schedule for decommissioning and site restoration.[247] The Applicant's Exhibit 29 to the Application, and Application Appendix 29-1, address these requirements.[248] DPS Staff has concluded that the Applicant has fulfilled these regulatory requirements.[249]

Proposed Certificate Condition 59 includes thorough details regarding the structure of decommissioning and site restoration provisions, financial assurance requirements, and

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[245] Exh. 212, SEEP Guide, Section B, No. 4.

[246] PSL §168(2)(b), (3)(c).

[247] 16 NYCRR §1001.29.

[248] Exhs. 47, 136.

[249] DPS Staff Initial Brief, p. 30.

obligations regarding submissions of estimates and financial agreements.[250] Through settlement negotiations, the Applicant agreed to this certificate condition, which requires filing with the Secretary a final "Decommissioning Plan" including a decommissioning and site restoration estimate based on final design of the Project. As stipulated to in the condition, the Applicant will restore agricultural lands according to the New York State Department of Agriculture and Markets Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands to the maximum extent practicable. Additionally, this condition calls for financial assurance exclusively in the form of a letter of credit to be held by the Town. The proposed Condition further requires that the letter of credit shall be based on the final overall decommissioning and site restoration estimate, offsets for project salvage value are not permitted in the calculation of the estimate, and updates reflecting inflation will be submitted to the Secretary after one year of operation and every fifth year thereafter.[251] As part of the requirements of Condition 59, the Secretary will receive the following material from the Certificate Holder: proof that the letter of credit has been obtained in the final decommissioning and site restoration estimate amount; updated estimates after one year of operation and every fifth year thereafter; and proof of financial security adjustments based on updated estimates. The agreed upon requirements of proposed Certificate Condition 59, as discussed above, are consistent with the decommissioning and site restoration certificate conditions included in the Siting Board's orders in prior proceedings for wind and solar

[250] Exh. 209, Revised Certificate Conditions, Certificate Condition 59.

[251] Hearing Exh. 209; Revised Certificate Conditions, Certificate Condition 59.

generating facilities seeking Certificates of Environmental Compatibility and Public Need pursuant to Article 10.[252]

BAAS does not take issue with the specific decommissioning requirements proposed by the Signatory Parties, but argues as part of its overall opposition to the Project that restoration of agricultural land after decommissioning would be unlikely or even "almost impossible," due to the cost and difficulty of restoration.[253] The Applicant responds that the decommissioning process will restore the land to its former agricultural state to the maximum extent practicable.[254] We are satisfied that the agreed-upon restoration process and conditions are consistent with our past precedent. We find that the claims that restoration may be too costly or "nearly impossible" are overstated and unsupported by detail in the record sufficient to outweigh our past precedent.

We find that the record, along with our adoption of proposed Certificate Condition 59, supports the conclusion that the probable environmental impacts resulting from decommissioning and site restoration have been satisfactorily addressed. Additionally, with the above referenced financial assurances regarding decommissioning and site restoration of the

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[252] *Cassadaga Wind* (14-F-0490); *Eight Point Wind* (16-F-0062); *Baron Wind* (15-F-0122); *Number Three Wind* (16-F-0328); *Bluestone Wind* (16-F-0559); *Canisteo Wind Energy Project* (16-F-0205); *Alle-Catt Wind Energy* (17-F-0282); *Deer River Wind Project* (16-F0267); *Mohawk Solar LLC* (17-F-0182); *High River Energy Center, LLC* (17-F-0597); *East Point Energy Center, LLC* (17-F-0599); *Hecate Energy Albany 1 LLC, Hecate Energy Albany 2 LLC* (17-F-0617); *Hecate Energy Greene 1 LLC, Hecate Energy Greene 2 LLC, Hecate Energy Greene 3 LLC* (17-F-0619); *Flint Mine Solar LLC* (18-F-0087); and *Trelina Solar Energy Center, LLC* (19-F-0366).

[253] BAAS Initial Brief at 11-12, citing Exh. 254 and Tr. 381.

[254] Excelsior Reply Brief at 10.

Facility in place, we find and determine that the Project will avoid or minimize any potential significant adverse environmental effects of decommissioning and site restoration to the maximum extent practicable, pursuant to PSL §168(3).

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

a. Visual Impacts

The Siting Board must make findings that adverse impacts that the Project may create to cultural, historic, and recreational resources, including aesthetic and scenic values, be avoided or minimized to the maximum extent practicable.[255] Excelsior conducted a visual impact assessment (VIA), which examined a visual study area (VSA) encompassing a 5-mile radius around the fence line of the Project.[256] The viewshed analysis results show that there is minimal expected visibility within the overall VSA. There would be limited areas from which the Project would be visible but, in contrast, a multitude of areas from which it would not be seen.[257] The VSA includes, inter alia, several towns and villages within Genesee and Orleans Counties, including the Town, and the Byron-Bergen Swamp.[258] The landscape in the VSA and in the central portion where the Project is located is primarily a rural mix of open farmland that is mostly active field crop production with several small intermittent blocks of forest groups.[259] Viewshed mapping was created to predict potential Project visibility throughout the VSA.[260] Photographic simulations with and without the Project were created to demonstrate the predicted appearance of the

[255] PSL §168(2)(c).
[256] Exh. 42 at 2.
[257] Id. at 20.
[258] Id. at 2-3.
[259] Exh. 124 at 7.
[260] Exh. 42 at 27; Ex. 124 at 4.

Project from multiple representative viewpoints around the VSA.[261] Viewpoints were selected based on an initial desktop viewshed analysis to identify areas with potential visibility; consideration of local, State, and federal visual resources pursuant to 16 NYCRR §1001.24(b)(4)(ii); varying lighting conditions; different viewer types; and consideration of DPS Staff comments and stakeholder and agency consultations.[262] The viewshed analysis model employed to predict regional Project visibility assumes all viewers have perfect vision at all distances, ignoring distance factors such as haze or other atmospheric and meteorological conditions that would interfere with the visibility.[263] Solar panels have a low vertical height profile in comparison to larger objects in the landscape, such as houses, barns, vegetation, and rolling topography.[264] The model predicts where parts of solar panels might be seen geographically by including elevation data, along with building heights and individual tree heights. The model does not differentiate between full or partial views.[265] All these factors lead to an overestimation of predicted visibility, a very conservative approach. This conclusion was not challenged by any party. The VIA makes it clear that there is minimal expected visibility within the overall VSA. The VIA shows that only 8.0% of the 144.5-square mile VSA has predicted potential views of the Project.[266] A majority of the overall visibility will occur within one-half mile of the arrays (5.6%) although there are several tree groups surrounding the Project that will

[261] Exh. 124 at 28–29; *see, e.g.,* Exh. 126, Attachment 4.
[262] Id. at 18–19.
[263] Exh. 42 at 28.
[264] Id. at 6.
[265] Id. at 27-28.
[266] Id. at 9, 20.

block some views.[267] The general visual appearance of the low-profile panels as a group contribute to a homogenous form at distance, which consists of a horizontal pattern similar to the background forested areas and field edges found in many views.[268]

Excelsior minimized the Project's predicted visibility of the Project through both Project design and by proposing mitigation measures. Excelsior's siting and design used the existing surrounding woodlands and hedgerows as visual barriers.[269] Setbacks of at least 200 feet have been provided from non-participating adjacent parcels and 300-foot setbacks are provided from residences.[270] The Project is sited away from large population centers and the collection substation is designed to be located near the existing transmission right-of-way in order to minimize potential visibility.[271] Collection lines have been designed to be placed underground and the Project is proposed to be sited in a way that minimizes the need to clear existing vegetation outside of the arrays.[272]

Excelsior also reviewed the Town of Byron Land Use Code and Zoning Law to understand how and where to apply vegetative visual screening.[273] The Applicant asserts that the visual screening proposed with the Project complies with the substantive requirements of that Code.[274] Native evergreen and deciduous shrubs and trees were chosen for the vegetative barriers that reach an adequate height and width to provide visual screening, yet not too high at maturity that they could

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267 Id.
268 Id. at 20.
269 Id. at 24.
270 Id.
271 Id.
272 Id.
273 Id. at 25.
274 Id.

ultimately produce shade over the Project.[275] Excelsior is proposing vegetative screening along portions of the Project where it faces residential locations as depicted on the Landscape Plan drawings included in Appendix 11-2.[276] Visual Project contrast from solar panels is anticipated to be avoided or minimized in areas where landscaping is proposed.[277] Certificate Condition 68 expressly requires the final Project design to incorporate the visual mitigation measures discussed above.[278]

DPS Staff stated that the Proposed Certificate Conditions and SEEP Guide provisions regarding screen plantings for visual mitigation should be adopted.[279] It also agreed that the Project, as modified by the Certificate Conditions, avoids, minimizes, or mitigates impacts to visual resources.[280]

Regarding the Facility's potential for offsite glare occurrences, DPS Staff's testimony states "Because tracker arrays are designed to maintain a maximum achievable angle to incoming solar radiation, glare occurrences offsite would be expected to be significantly less as compared to fixed arrays."[281] DPS Staff's testimony further notes that the Settlement Package includes appropriate Stipulated Certificate Conditions and SEEP Guide provisions for reasonable design and control measures for minimizing adverse lighting impacts at the Facility Site, including proposed Certificate Condition 63

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275 Id.
276 See Exhs. 76–77.
277 Exh. 42 at 21.
278 Exh. 209, Certificate Condition 68.
279 Tr. 322.
280 Tr. 322–24, 356–57.
281 Tr. 323, lines 17-21.

requiring a final detailed Facility Exterior Lighting Plan to be submitted as a compliance filing prior to construction.[282]

BAAS does not take direct issue with the Applicant's visual impact studies or the specific proposed mitigation measures but argues generally that the visual impact of the Project because of its size and scope would create "a destroyed rural community." BAAS asserts that there would no longer be a "small town feeling" with a tight-knit community of people whose lives intersect through their activities and a shared love of small-town life in a setting with a lot of greenery, wildlife and nature.[283] The Applicant responds that these claims are the personal opinions of one resident and are not supported by the record.[284]

We find that the assertions of BAAS are overstated and that they do not support rejection of the Project. We are not convinced that a project of this size, with the visual mitigation measures proposed by the Applicant and agreed to by DPS Staff, would lead to a destroyed rural community. We recognize that some members of the community are adamantly opposed to the Project, but we do not see a basis in the record to conclude that the small town feeling and tight-knit community described by Mr. Lamkin will be eliminated by the Project. We are satisfied with the highly detailed mitigation measures proposed by the Applicant, which are not specifically addressed by BAAS. We therefore find that the record supports the Applicant's approach to the mitigation of visual impacts. We find that, based upon this record, the visual impacts of the

[282] Tr. 324.

[283] BAAS Initial Brief at 21, citing Lamkin testimony at Tr. 366.

[284] Excelsior Reply Brief at 10-11.

construction and operation of the Project will be avoided or minimized to the maximum extent practicable.[285]

a. Cultural, Historic, and Recreational Resources

The Application identifies the historic, cultural, and recreational resources within the 5-mile VSA.[286] Certain visual resources were identified within the VSA.[287] Two cemeteries (Sodom Cemetery and Byron Cemetery) listed as sites of community importance may experience views of the Project.[288] The Southwoods RV Resort may have partial views of the Project.[289] Further, users of parts of the West Shore Trail are expected to experience intermittent and partial views but only in short durations where there are gaps in vegetation.[290] However, the Applicant asserts that the Project will not impede recreational activities or interfere with the general enjoyment of recreational resources in the VSA[291] and that none of the historic sites and districts have expected views.[292] Excelsior states that it optimized the design of the Project to minimize visibility.[293] Where practicable, panels were sited against tree lines, within forested areas, and with setbacks of several hundred feet in order to reduce visibility.[294] Additionally, Excelsior has proposed to implement vegetative screening to further minimize impacts to cultural, historic, and recreational resources. For example, roadside vegetation is proposed in some

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285 PSL §168(2)(c) and (3)(c).
286 Exh. 42 at 30-33.
287 Id.
288 Exh. 124 at 25.
289 Id. at 32, tbl. 24-3.
290 Exh. 124 at 25.
291 Exh. 42 at 22.
292 Id. at 33.
293 Exh. 42 at 24-25.
294 Id. at 24.

areas that offer minimal open gaps to the Project where views can be obtained. Excelsior's final Project design must include a Final Planting Plan that provides details on the locations and vegetation types to be planted at each visual mitigation area.[295] DPS Staff agreed that the analyses in the Application, together with the applicable Certificate Conditions, demonstrate that the Project will avoid or minimize potential adverse impacts to visual and cultural resources to the maximum extent practicable.[296]

As to archaeological resources, both Phase 1A and Phase 1B archaeological surveys were performed.[297] The Phase IB archaeological survey considered archaeological sites in the Project's area of potential effects, which is defined as those areas of substantial proposed ground disturbance for the Project that also have a high or moderate archaeological sensitivity.[298] The New York State Office of Parks, Recreation and Historic Preservation (OPRHP) determined that the Project would have potential impacts on register eligible historic viewsheds of the Sodom Cemetery at 7482 Batavia Byron Road, the residence at 7271 Batavia Byron Road, the Byron Cemetery at Townline and Swamp Roads, and the farm at 6548 Townline Road, all located in the Town.[299] Accordingly, Excelsior has agreed to develop a mitigation plan in consultation with OPRHP to mitigate potential impacts.[300] Further, as a backstop measure, should any archaeological resources be discovered, then measures to avoid impacts to such resources will be undertaken throughout Project design. Cultural Resources Protection Measures will be

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295 Exh. 209, Certificate Condition 68(e).
296 Tr. 322–24.
297 Exh. 38; see also Exh. 182.
298 Ex. 182 at 1.
299 Tr. 331.
300 Ex. 209, Certificate Condition 82(f).

submitted as a Compliance Filing before Excelsior commences with construction.[301] This filing will include plans to avoid or minimize impacts to archaeological and historic resources to the extent practicable, along with procedures for unanticipated discovery of archaeological resources.[302] Where these resources are identified within 100 feet (31 meters) of proposed Project-related impacts, Excelsior will designate their locations as "Environmentally Sensitive Areas" on the Project construction drawings and will mark them in the field by construction fencing with signs that restrict access prior to construction.[303] If Excelsior cannot avoid an archaeological site, it will consult with the OPRHP and DPS to determine if Phase II investigations or mitigation are warranted.[304] These measures will avoid and protect any newly discovered potentially significant archaeological resources.[305]

DPS Staff agreed that the Siting Board can find that, with the Certificate Conditions and the SEEP Guide provisions, the Project will avoid and protect cultural and historic resources to the maximum extent practicable.[306] No party has challenged the Project on the basis of its impact on cultural and historic resources, other than the general objection by BAAS, discussed above, with respect to visual impact. We agree with DPS Staff and find that the Project will avoid and protect cultural and historic resources to the maximum extent practicable.

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

PSL §168(2)(d) requires the Siting Board to make

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301 Exh. 209, Certificate Condition 82.
302 Id., Certificate Condition 82(a)-(b).
303 Id., Certificate Condition 82(a).
304 Id., Certificate Condition 82(c).
305 Id.; Tr. 333-34.
306 Tr. 333-34; DPS Staff Initial Brief, p. 34.

findings regarding the nature of probable environmental impacts of the construction and operation of a facility including impacts on transportation, communication, utilities, and other infrastructure. PSL §168(3)(c) requires a determination that the adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable. No party has raised any issues with respect to these requirements.

a. Transportation

The regulations at 16 NYCRR §1001.25 require, among other things, an applicant to provide a conceptual site plan of all facility site access roads and driveways, and an analysis of traffic and transportation impacts related to the construction and operation of the facility. The Applicant identified the probable impacts to transportation in Exhibit 25 of the Application, which concludes that most traffic impacts will be short-term, occurring during construction activities and that no impacts on future traffic conditions are anticipated due to operation of the Project.[307] Through settlement with DPS Staff, and as reflected in the proposed Certificate Conditions, the Applicant has agreed to multiple Certificate Conditions to mitigate potential transportation impacts associated with construction and operation of the Facility. Proposed Certificate Condition 37 requires the Certificate Holder to file copies of all necessary transportation permits as information reports with the Secretary at least 10 days before a distinct construction activity commences or prior to use of a route requiring such a permit.[308] Proposed Condition 89 requires the Certificate Holder to hold a pre-construction meeting with State

[307] Exh. 43, Application Exh. 25: Effect on Transportation.

[308] Exh. 209, Revised Certificate Conditions, Certificate Condition 37.

and Local agencies, including the New York State Department of Transportation (DOT) and the Town's Supervisor and Highway Superintendent. This Condition requires that all attendees of the meeting are to be provided maps showing designated travel routes, construction worker parking, access road locations, and a general Project schedule.[309] Proposed Certificate Condition 64 requires the Certificate Holder to submit a compliance filing consisting of a final "Route Evaluation Study" (unless the originally submitted Application version is unchanged) including mapping of final Project component delivery routes.[310] Also, proposed Certificate Condition 65 requires the Certificate Holder to provide to the Secretary, as a compliance filing, a "Traffic Control Plan" regarding any municipality determined likely to experience traffic delays during construction activities.[311] Through proposed Certificate Condition 41, DPS Staff recommends that the Siting Board delegate to DOT the authority, pursuant to PSL §172, to issue all approvals, consents, licenses and permits (to be filed as Information Reports to the Secretary) within NYSDOT's jurisdiction, for the construction and operation of the Project.[312] Proposed Certificate Condition 84 requires the Certificate Holder to comply with all local substantive provisions of local laws regarding construction noise, maintaining functioning mufflers on vehicles and machinery used during construction, and requires the Certificate Holder to respond to noise and vibration

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309 Exh. 209, Revised Certificate Conditions, Certificate Condition 89.

310 Exh. 209, Revised Certificate Conditions, Certificate Condition 64.

311 Exh. 209, Revised Certificate Conditions, Certificate Condition 65.

312 Exh. 209, Revised Certificate Conditions, Certificate Condition 41.

complaints according the "Noise Complaint Resolution Protocol" (Appendix B).[313] In addition to these conditions and those noted above with respect to noise and vibration, the proposed Certificate Conditions contain provisions regarding construction work hours. Under proposed Condition 90, construction work hours are generally limited to 7:00 a.m. to 7:00 p.m. Monday through Saturday. These construction hours are in line with or more conservative than Siting Board precedent.[314]

Based on this record, we find that the potential impacts of Project construction and operation on transportation will be avoided or minimized to the maximum extent practicable.

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[313] Exh. 209, Revised Certificate Conditions, Certificate Condition 84.

[314] See, e.g., Case 16-F-0267, Application of Atlantic Wind LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for Construction of the Deer River Wind Energy Project in Lewis and Jefferson Counties, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued June 30, 2020), at Appendix A, p. 25 (establishing permissible construction work hours of 6:00 a.m. to 8:00 p.m. Monday through Saturday and 7 a.m. to 8 p.m. on Sunday and national holidays); Case 16-F-0205, Application of Canisteo Wind Energy LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for Construction of a Wind Energy Project in Steuben County, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued March 13, 2020), at Appendix A, p. 29 (establishing permissible construction work hours of 7:00 a.m. to 7:00 p.m., or daylight hours outside of this window, Monday through Saturday); Case 16-F-0062, Application of Eight Point Wind, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a Wind Energy Project, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued August 20, 2019), at Appendix A, p. 63 (establishing permissible construction work hours of 7:00 a.m. to 7:00 p.m. Monday through Sunday).

b. Communications

The regulations at 16 NYCRR §1001.26 require inclusion of analyses and a discussion of proposed facilities related to potential impacts to communication systems. This information was provided in Application Exhibit 26. In this exhibit, the Applicant reported that it reviewed Federal Communications Commission (FCC) license data and other appropriate databases to review television, radio, cellular, microwave radio communications as well as Doppler radar.[315] Additionally, the Applicant has consulted with the Byron and South Byron Fire Departments, Genesee County Emergency Management Office, the Genesee County Sheriff's Office, New York State Division of Homeland Security & Emergency Services, and the Genesee County Department of Planning to inform these agencies about the Project and assess effects and concerns regarding potential impacts to emergency services or emergency communications systems.[316] According to the conclusions in the Application, the Project is not anticipated to interfere with any existing communications systems.[317] Further, as reported in the Application, outlined in proposed Certificate Conditions 53-54, and detailed in the proposed SEEP Guide, in the event that the Project causes a significant adverse effect to communications systems post construction, it can be resolved through the complaint resolution process.

No party introduced any scientific or factual evidence contradicting these conclusions.

c. Related Utilities

Among other things, the regulation at 16 NYCRR §1001.12 requires that applications include discussions of both

315 Exh. 44 (Application Exh. 26).

316 Id.

317 Id.

conformance with PSC requirements and plans to avoid interference with existing utility systems.[318] In Application Exhibit 12, the Applicant identified the Empire Pipeline, a 24-inch diameter natural gas pipeline, and a NYPA electric transmission line. Both existing utilities run along the Project Area. The Applicant does not expect to have permanent crossings with transmission lines, fiber optic lines, or natural gas and/or oil pipelines, with the exception of the Empire Pipeline and NYPA electric transmission line. Certain electrical distribution lines and municipal water lines will be crossed, and the Applicant will coordinate with applicable authorities concerning the safe methods to be implemented for these crossings. Each permanent crossing will be subject to site-specific engineering and construction requirements. The Applicant will adhere to all requirements set forth by Dig Safely New York and all applicable engineering codes and guidelines associated with each permanent utility crossing and will work with the utility companies to ensure that any interference with existing/operating utilities is avoided or minimized for any permanent crossings. Proposed collection lines of the Project will need to cross the rights-of-way (ROWs) for both the existing NYPA transmission line and the Empire Pipeline. According to Application Exhibit 12, coordination with the owners of this transmission line and pipeline will continue during the Project's design.[319] Additionally, regarding the two discussed existing utilities, proposed Certificate Condition 51 requires the Certificate Holder to file with the Secretary as an Information Report the agreement between itself and National Fuel demonstrating that National Fuel has granted the Certificate Holder permission to install facilities within

[318] Exh. 30, Application Exhibit 12.

[319] Id.

pipeline easements, and the agreement between itself and NYPA regarding work in close proximity or crossing of the existing transmission line.[320] Proposed Certificate Condition 86 requires the Certificate Holder to comply with the requirements of the PSC's regulations regarding the protection of underground facilities,[321] and, prior to the commencement of operations, the Certificate Holder shall become a member of Dig Safely New York. Proposed Certificate Condition 87 further requires the Certificate Holder to comply with all requirements of the PSC's regulations regarding identification and numbering of aboveground utility poles.[322] Additionally, regarding impacts on existing utilities, the SEEP Guide includes comprehensive guidelines and requirements for identification of existing utilities and installation of Project facilities to be co-located with or crossing existing utilities within the Project area, including potential submission of utility owner approved details of such installations and any required impact studies.[323]

Based on the record in this proceeding, including the proposed Certificate Conditions and SEEP Guide provisions, we find that the probable transportation, communications, and utility impacts from construction and operation of the Project have been identified and will be avoided or minimized to the greatest extent practicable.[324]

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

PSL §168(3)(e) addresses the applicability of State and local procedural and substantive legal requirements to the

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320 Exh. 209, Revised Certificate Conditions, Certificate Condition 51.

321 16 NYCRR Part 753.

322 Exh. 209, Revised Certificate Conditions, Certificate Conditions 86 & 87, respectively; 16 NYCRR Part 217.

323 Exh. 212, Excelsior SEEP Guide.

324 PSL §168(2)(d).

construction and operation of a proposed major electric generating facility under Article 10. With certain exceptions, PSL §168(3)(e) preempts State and local procedural requirements that otherwise would be applicable, unless the Siting Board expressly authorizes the enacting local authority to exercise such procedural requirements.[325] With respect to substantive State and local legal requirements, the Siting Board cannot grant a Certificate unless it determines that "the facility is designed to operate in compliance with applicable state and local laws and regulations issued thereunder concerning, among other matters, the environment, public health and safety."[326]

The Siting Board, however, "may elect not to apply, in whole or in part, any local ordinance, law, resolution or other action or any regulation issued thereunder …, which would be otherwise applicable if it finds that, as applied to the proposed facility, such is unreasonably burdensome in view of the technology or the needs of or costs to ratepayers whether located inside or outside of such municipality."[327] An applicant seeking a waiver of a local substantive law has the burden of justifying its waiver request by showing "the degree of burden caused by the requirement, why the burden should not reasonably be borne by the Applicant, that the request cannot reasonably be obviated by design changes to the proposed facility, the request is the minimum necessary, and the adverse impacts of granting the request are mitigated to the maximum extent practicable."[328]

1. Compliance with State Laws

No party alleges noncompliance with State laws. We conclude that the Project, if constructed and operated in

[325] PSL §172(1); 16 NYCRR §1001.31(a).
[326] PSL §168(3)(e); 16 NYCRR §1001.31(d).
[327] PSL §168(3)(e).
[328] 16 NYCRR §1001.31(e).

accordance with the Order, including the Certificate Conditions adopted herein, will comply with applicable State laws.

2. Compliance with Substantive Local Laws and Requests to Siting Board Not to Apply Local Substantive Requirements

Before issuing a certificate under PSL Article 10, we must find that construction and operation of the Project will comply with all applicable substantive local laws.[329] An applicant may request the Siting Board to elect not to apply a local substantive requirement because it is unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers.[330]

We find that the Project will comply with all applicable substantive provisions of State and local law except for ten substantive requirements of the Town's local laws and regulations.[331] Pursuant to PSL §168(3)(e) and 16 NYCRR §1001.31(e), Excelsior requested waivers of these provisions. Excelsior set forth its positions in Exh. 49 as to why these waivers should be granted by the Siting Board. DPS Staff agreed with Excelsior's positions.[332] No other party took issue with respect to these specific local law requirements.

The local law provisions in question deal with permissible uses in zoning districts, underground requirements, roads and berms, tree cutting, setbacks from dwellings, the height of solar panels, fencing requirements for visual screening, screening and visibility, security cameras and electromagnetic fields. We have examined Excelsior's detailed analysis of these

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329 PSL §168(3)(e), 16 NYCRR §1001.31.

330 16 NYCRR §1001.31(d)-(e). Procedural local laws are supplanted by Article 10, PSL §172.

331 Exh. 49 at 9-22; Ex. 215; Ex. 209, Certificate Condition 16.

332 Tr. 335-337.

items in Exh. 49 and find it to be reasonable and well-justified. We find that the Project could not be built economically if these 10 local laws were applied. In the absence of any dispute on these matters, we find that the provisions in question are unreasonably burdensome in view of the existing technology or needs of or costs to ratepayers, and we grant the requested waivers.

BAAS claims that the Project as a whole is non-compliant with the Town of Byron Comprehensive Plan (Byron Plan) and the Genesee County Agricultural and Farmland Protection Plan (County Plan).[333] Through the testimony of long-time resident Mr. Lamkin, BAAS argues that the Project is contrary to the stated goals of the Byron Plan of "protecting its [the Town's] rural character", and to "seek to preserve its rural nature and agricultural base." BAAS argues that the Project is inconsistent with the County Plan's stated first goal "to retain farmland for agricultural use."[334]

Excelsior responds that Mr. Lamkin lacks the land-use planning credentials to make these conclusions and argues that the conclusions are only personal observations. Excelsior also argues that the Byron Plan and the County Plan are not enshrined in local laws, codes or regulations, and therefore fall outside the scope of PSL §168(3)(e). Excelsior concedes that whether a proposed project is consistent or not with such a plan must be addressed in an application,[335] but argues that there is no finding or determination the Siting Board must make pursuant to the statute or regulations.[336]

Excelsior further notes that the Byron Plan includes a

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333 BAAS Initial Brief, pp. 20-21; Tr. 363-365.

334 Id.

335 16 NYCRR §1001.4(e).

336 Excelsior Initial Brief, p. 56.

goal to encourage the development of green energy projects. Most on point with respect to the Project, Excelsior notes that the Town adopted a solar law specifically approving construction of solar projects on agricultural land and that the Town was legally required to determine that its solar law was consistent with the Byron Plan.[337]

With respect to the County Plan, Excelsior argues that the Project disturbs less than 1% of the County's Prime Farmland and that the County Planning Board reviewed and approved the Town's solar law, implicitly finding that the solar law was consistent with the County Plan.[338]

We agree with Excelsior with respect to the Byron and County Plans and reject BAAS's assertion that the Project must be rejected based on the general goals of the Plans. The general provisions of these comprehensive plans must be considered in light of the specific solar farm legislation enacted by the Town and approved by the County Planning Board. It is apparent from this specific local legislation that the Town and County support solar energy development even in agricultural areas, and we note that neither the Town nor the County has chosen to oppose the Project in this proceeding. We therefore find no inconsistency between the Project and the Plans. Given these circumstances, we do not need to reach the questions of Mr. Lamkin's qualifications to testify as to the legal consistency between the Project and the Town and County Plans, or whether a Project must legally comply with or seek a waiver of a comprehensive plan that is not a local law.

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[337] Excelsior Initial Brief, p. 57; Exh. 49.

[338] Id.

IV. PREFILING OF COMPLIANCE FILINGS AND INFORMATIONAL REPORTS

Proposed Certificate Condition 8 states in part: "Compliance Filings and Informational Reports may be filed pursuant to 16 NYCRR Part 1002, commencing the review and public comment process, prior to the issuance of a Certificate." Although this provision is moot because no such filings have been made to date, it is inconsistent with our order in the Number Three Wind case, which prohibits the filing of compliance filings before the issuance of a Certificate.[339] The reasoning in that order with respect to compliance filings applies with equal force to the early filing of informational reports. We are therefore removing this sentence from Certificate Condition 8 in Appendix A to this Order.

V. CONCLUSION

Based on the record before us, the arguments of the parties, and all applicable laws and policies, we grant the Certificate of Environmental Compatibility and Public Need to the Applicant, subject to the Certificate Conditions attached to this Order as **Appendix A**. We also require compliance with the Guidance for the Development of Site Engineering and Environmental Plan attached to this Order as **Appendix B**, and the Noise Complaint Resolution Protocol attached to this Order as **Appendix C**.

[339] Case 16-F-0329, Number Three Wind LLC, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued Nov. 12, 2019), pp. 26-32.

The Board on Electric Generation Siting and the Environment orders:

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

2. Subject to the conditions set forth in this Order and appended to it, a Certificate of Environmental Compatibility and Public Need is granted, pursuant to Article 10 of the Public Service Law, to Excelsior Energy Center, LLC, for the construction and operation of a solar generating facility with a capacity of up to 280 megawatts, including a 20 megawatt/4-hour duration energy storage system, consisting of utility-scale arrays of photovoltaic solar generating panels located on private land, either leased or purchased from the landowners, and associated facility components to be located in the Town of Byron, New York, and connecting to the existing, and adjacent, 345 kV Line #DH2 transmission line owned by the New York Power Authority, provided that Excelsior Solar Energy Center, LLC, files a written acceptance of the Certificate pursuant to 16 NYCRR §1000.15(a) within 30 days after the date of issuance of this Order or within 30 days after the issuance of the Siting Board's final decision upon a petition for a rehearing, if any.

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

4. Prior to the commencement of construction, Excelsior Solar Energy Center, LLC, shall comply, to the extent required by law, with those requirements of Public Service Law §68 that do not relate to the construction and operation of the Facility.

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

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

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

8. This proceeding is continued.

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

(SIGNED) MICHELLE L. PHILLIPS
Secretary

Excelsior Energy Center
Certificate Conditions

I. Project Authorization

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

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

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

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

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

6. Commencement of commercial operation or commercial operation date (COD) is defined as the date on which the Facility as a whole first commences generating or transmitting

electricity for sale, excluding electricity generated or transmitted during the period of on-site test operations and commissioning of the Project.

7. Except with respect to the activities authorized by the Limited Notice to proceed, as provided in Condition 55 herein, commencement of construction is defined as the beginning of unlimited and continuous site clearing, site preparation and grading activity, and construction of the Facility and does not include staging, activities related to testing, or surveying (such as geotechnical drilling and meteorological testing), together with such testing, surveying, drilling and similar pre-construction activities, including limited tree clearing to perform such pre-construction activities, to determine the adequacy of the site for construction and the preparation of filings pursuant to these conditions.

8. Construction may begin in phases or stages provided the Certificate Holder files all applicable. Phases of construction have been identified as (a) Site Preparation, which includes tree clearing and grading, installation of soil erosion and sediment control measures and stabilized construction entrances, construction of stormwater management measures, and installation of construction access roads and any associated wetland and/or stream crossing (should any be proposed); (b) Commencement of Civil Construction (including installation of solar arrays, inverters, energy storage, collection lines, fencing, and all permanent Project Components); and (c) Commencement of Operations.

9. Facility construction is authorized for an approximately 280-megawatt (MW) solar energy center, with a 20 MW/4-hour duration energy storage system located in the Town of Byron, Genesee County, New York. The Project components include commercial-scale solar arrays, access roads, inverters, fencing, buried electric collection lines, energy storage system, and electrical interconnection facilities. The Project also includes a collection substation and interconnection facilities on land within the Project Area that will tap into the existing New York Power Authority's (NYPA's) 345 kilovolt (kV) Line #DH2 between Niagara and N. Rochester substations. The proposed interconnection facilities will include a 345-kV switchyard to be transferred to NYPA to own and operate.

10. The Certificate Holder has not demonstrated that the feasibility of the Project relies in any way upon the Certificate Holder exercising the power of eminent domain to acquire permanent or temporary real property rights in specific, identified parcels of land for the Facility or for any of the access roads, construction staging areas or interconnections necessary to service the Facility. By granting this Certificate to the Certificate Holder, an entity in the nature of a merchant generator and not in the nature of a public and fully regulated utility company with an obligation to serve customers, the Siting Board is not making a finding of public need for any particular parcel of land such that a condemnor

would be entitled to an exemption from the provisions of Article 2 of the New York State Eminent Domain Procedure Law (EDPL) pursuant to Section 206 of the EDPL. As a condition of this Certificate, the Certificate Holder shall not commence any proceedings or cause any other entity having the power of eminent domain to commence any proceedings under the EDPL to acquire permanent or temporary real property rights for the Facility or for any of the access roads or construction staging areas necessary to service the Facility without an express amendment to this Certificate granted by the Siting Board finding a public need for such acquisition.

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

II. General Conditions

12. No impacts to wetlands or waterbodies are proposed. If it is later determined that impacts are required, then prior to the commencement of construction of the Facility, the Certificate Holder shall file a request/application for a Clean Water Act Section 401 Water Quality Certification with the Secretary, which shall be filed and served and noticed pursuant to 16 New York Codes, Rules and Regulations (NYCRR) 1000.8(a)(8). This request shall be filed concurrently with the permit application filed with the United States Army Corps of Engineers pursuant to Section 404 of the Clean Water Act. All construction activities regulated under federal law may not commence until a Water Quality Certification has been issued.

13. No impacts to wetlands or waterbodies are proposed. If it is later determined that impacts are required, then upon receipt, all copies of any federal permits and/or approvals required to conduct jurisdictional activities under Sections 401 or 404 of the Clean Water Act associated with various aspects of construction and operation of the Facility shall be filed with the Secretary. If relevant Project plans require any modifications due to conditions of the federal permits, the final design drawings and all applicable compliance filings shall be revised accordingly and submitted pursuant to 16 NYCRR 1002.

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

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

16. The Certificate Holder shall construct and operate the Facility in accordance with the substantive provisions of the applicable local laws as identified in Supplemental Exhibit 31 of the Application and as such Application has been further clarified and supplemented in the evidentiary record of this proceeding by the Certificate Holder, except for 10 substantive requirements of the Local Law No. 1 of 2021, Amendment to the Zoning Law of the Town of Byron and Regulating the Construction, Operation, and Decommissioning of Solar Energy Facilities (Dated 2/26/2021). These 10 provisions are determined by the Siting Board to be unreasonably burdensome in the view of existing technology, or consumer needs and shall not apply to the Project.

Town of Byron Local Law No. 1 of 2021 (Dated 2/26/2021)

a. Permissible Uses Within Zoning Districts. (11.15, Article II, §2.12.1)

b. Underground Requirements (11.15, Article II, §2.12.3)

c. Roads and Berms (11.15, Article II, §2.12.4)

d. Tree-cutting (11.15, Article II, §2.12.8)

e. Setback from Owner-occupied or Tenet-occupied Dwelling (11.15 Article II, §2.12.12 and Appendix 1)

f. Height of solar panels (11.15, Article II, §2.12.12 (c))

g. Fencing Requirement for Visual Screening (11.15, Article II, §2.12.12 (e))

h. Screening and Visibility (11.15, Article II, §2.12.12 (f))

i. Security Cameras (11.15, Article II, §2.12.12 (h)(iii))

j. Electromagentic Fields (11.15, Article II, §2.13.4)

17. The Certificate Holder shall construct the collection facilities in accordance with the latest edition of American National Standards Institute (ANSI) for operation. The Certificate Holder shall construct the collector cables in accordance to the latest edition of ANSI (ICEA S-93-639, AEIC CS8) and operate the Facility in a manner that conforms to all substantive State requirements identified in Exhibit 32 of the Application.

18. The Certificate Holder shall incorporate and implement as appropriate, in all Compliance Filings and construction activities, the ANSI standards and measures for engineering design, construction, inspection, maintenance and operation of its authorized Facility,

including features for Facility security and public safety, utility system protection, plans for quality assurance and control measures for Facility design and construction, utility notification and coordination plans for work in close proximity to other utility transmission and distribution facilities, vegetation and Facility maintenance standards and practices, emergency response plans for construction and operational phases, and complaint resolution measures.

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

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

    a. Sixty (60) days prior to commencement of construction, as defined in Condition 7, the Certificate Holder shall provide, pursuant to 16 NYCRR 1002.4, an Information Report to DPS Staff, with a copy to the Siting Board and the Town of Byron Supervisor, that identifies the Certificate Holder's construction organizational structure, contact list, and protocol for communication between parties. The Certificate Holder shall provide to DPS Staff and the Town the names and contact information of individuals responsible for Project oversight. The Certificate Holder may utilize one or more qualified individuals to satisfy the Project oversight responsibilities associated with the Environmental Monitor. The Environmental Monitor shall also have the experience, be trained or have the qualifications in agricultural matters consistent with the qualifications listed in the New York State Department of Agriculture and Markets (AGM) *Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (Revision 10/18/2019).* This filing may be provided prior to the issuance of the Certificate by the Siting Board. The contents of this report will be subject to consultation with DPS staff and the Town of Byron Supervisor, after the report is filed;

    b. The Certificate Holder shall regard the Department of Public Service Staff (Staff or DPS Staff) representatives, authorized pursuant to PSL §66(8), as the Siting Board's representatives in the field and, after the Siting Board's jurisdiction has ceased, as the Commission's representatives in the field. In the event of any emergency resulting from the specific construction or maintenance activities that violate, or may violate, the

terms of the Certificate, Compliance Filings, or any other order in this proceeding, such DPS Staff representatives may issue a stop work order for that location or activity. Any stop work orders shall be, to the maximum extent possible, limited to affected portions of the Project;

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

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

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

f. If the DPS Staff representative determines that a significant threat exists such that protection of the public or the environment at a particular location requires the immediate implementation of specific measures, the DPS Staff representative may, in the absence of responsible Certificate Holder supervisory personnel, or in the presence of such personnel who, after consultation with the DPS Staff representative, refuse to take appropriate action, direct the Certificate Holder or the relevant Contractors to implement the corrective measures identified in the approved Certificate or Compliance Filings. However, all directives must follow the protocol established for communication between parties as required by subpart (a) above. The field crews shall immediately comply with the DPS Staff representative's directive as provided through the communication protocol identified in a flowchart of proper communications which will be included in the relevant Facility plans (QA/QC, Site Security Plan, and Complaint Resolution Plan, as appropriate), and made available at the construction site for the Project. The DPS Staff representative will immediately thereafter inform that Certificate Holder's Construction Inspector(s) and/or Environmental Monitor(s) of the action taken. DPS Staff will promptly notify the New York State Department of Environmental Conservation (NYSDEC), Division of Environmental Permits, 625 Broadway, Albany, NY 12233-5060 and the Region 8 Division of Environmental Permits, of any activity that involves a violation of a permit issued by the NYSDEC for the Project pursuant to federally delegated or approved authority, as required by Article 10. The field crews shall immediately comply with DPS Staff's directive as provided through the communication protocol. Thereafter, the DPS Staff will immediately inform Certificate Holder's Construction supervisor(s) and or Environmental Monitor(s) of the action taken.

g. The Certificate Holder shall construct and operate the Facility in a manner that conforms to all substantive State requirements as identified in Exhibit 32 of the Application and in the Certificate Conditions adopted by the Siting Board in the Order Granting Certificate and will adhere to NYPA and NYISO requirements for any additional studies, as well as any design parameters involving relays and other necessary components per the interconnection agreement.

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

III. Notifications

22. At least 14 days prior to the commencement of construction the Certificate Holder shall notify the public as follows:

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

b. Notice by mail to owners and operators of water wells within 500 feet of the final layout;

c. Provide notice to the Town of Byron and Genesee County officials and emergency personnel;

d. Publish notices in The Daily News, The Democrat & Chronicle, and The Batavian newspapers for dissemination;

e. Provide notice for display in public places, which will include, but is not limited to, the Town of Byron Town Hall, Byron-Bergen Public Library, the Project website, and the Project construction trailers/offices; and,

File notice with the Secretary for posting on the Project's DPS Document and Matter Management (DMM) website.

23. The Certificate Holder shall write the notice(s) required by Condition 22 in language reasonably understandable to the average person and shall ensure that the notifications will contain the following information:

i. A map of the Project;
ii. A brief description of the Project;
iii. The construction schedule and transportation routes;
iv. The name, mailing address, local or toll-free number, and email address of the Project Development Manager and Construction Manager;
v. A description of how to obtain additional information about the Project (e.g., local repositories, Project website);
vi. The contact information and procedure (e.g., in writing, by telephone, in-person and on-line) for registering a complaint; and
vii. Contact information for the Secretary to the Siting Board and NYPSC

24. Upon distribution of Notice, and prior to commencement of construction, the Certificate Holder shall notify the Town Supervisor and Town Clerk of all areas where information regarding the Project, Project activities, and Project contact information have been posted.

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

26. Prior to the end of construction, the Certificate Holder shall notify the entities identified in Condition 22(a) through 22(c) with the contact name, telephone number, email, and mailing address of the Operations Manager, and shall file the same with the Secretary.

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

IV. Information Reports & Compliance Filings Requirements

Information Reports

General

28. Documentation demonstrating that all necessary agreements are in place for use of the Facility Site for construction and/or operation (e.g., redacted landowner agreements, easements, or "good neighbor" agreements) shall be filed with the Secretary as an Information Report within six months of the issuance of the Certificate. Protected status may be sought for some or all of these documents.

29. A copy of the Interconnection Agreement between NYISO, NYPA, and the Certificate Holder shall be filed with the Secretary before commercial operation as an Information Report. Any updates or revisions to the Interconnection Agreement shall be submitted to the Secretary throughout the life of the Project. Additionally, except in the event of an emergency, if any interconnection equipment or control system with materially different characteristics is installed throughout the life of the Project, the Certificate Holder shall, at least 90 days before any such change is made, provide information regarding the need for, and the nature of, the change to NYPA and file such information with the Secretary.

30. All Facilities Studies issued by NYPA and the NYISO and any updated facilities agreements will be filed with the Secretary throughout the life of the Facility within 60 days of receipt by the Certificate Holder. Protected status may be sought for these documents.

31. Any System Reliability Impact Study (SRIS) required as part of a future Facility modification or upgrade, performed in accordance with the NYISO Open Access Transmission Tariff (OATT) approved by the Federal Energy Regulatory Commission, and all appendices thereto, reflecting the interconnection of the modified Facility will be filed with the Secretary within 60 days after receiving any required approvals. Protected status may be sought for these documents.

32. The following information shall be filed as an Information Report prior to the installation of solar array posts and Project component foundations:

Details and specifications of the selected solar panel modules, tracking system(s) (and associated motors), inverters (including cut sheets (including length, width, height, and material), energy storage system (including the exact model and specifications), including third-party certification documenting that the solar panel modules and inverters meet international design standards; the technical/safety manual for the panel modules, tracking system(s), inverters, and energy storage systems; foundation drawings for the solar panel modules, inverters, and energy storage system (including plan, elevation, and section details); and manufacturer specification sheet and warranty that the selected panel modules and inverters do not exceed the total height of the panel modules and inverters presented in the Application.

33. Code references regarding installation and operation of the energy storage system and a summary of correspondence with the local fire department (including any recommendations) regarding energy storage system installation and operations shall be provided to the Secretary as an Information Report prior to commencement of operations.

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

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

Permits and Approvals

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

37. At least 10 days before a distinct construction activity commences, prior to using a route for any Project activities requiring a road/transportation permit, copies of all necessary transportation permits, for that activity, from the affected State, County, and/or Town shall be submitted to the Secretary as an Information Report. Such permits shall include, but not be limited to: Copies of fully executed Road Use Agreements or, in lieu thereof, a written commitment by the Certificate Holder to the affected municipality that it will repair any roads damaged by the Project construction vehicles, Highway Work Permit to Work Within Right-of-Way (ROW), Highway Utility Permit to Work Within ROW, Permit to Exceed Posted Weight Limit Roads, Traffic Signal Permit to Work Within ROW, Special Haul Permit for Oversized/Overweight Vehicles, and Divisible Load Overweight Copies of road use agreements, crossing agreements with utility companies, or the aforementioned in -lieu letter, shall be provided as Information Reports to the Secretary prior to work relevant to the specific road in those agreements.

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

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

Health and Safety

40. The Certificate Holder shall, at least 60 days prior to the commencement of construction, contact all known pipeline operators within the Project Area on which Project facilities are to be located within the pipeline easement and, if applicable, shall reach an agreement with each operator to provide that the collection system will not damage any identified pipeline's cathodic protection system or produce damage to the pipeline, either with fault current or from a direct strike of lightning to the collection system, or the 345-kV interconnection line, specifically addressing 16 NYCRR § 255.467(g) (External corrosion control; electrical isolation), subject to the provisions of Condition 3 herein. A copy of any agreements (such agreement may be included in the filing described in Certificate Condition 51) so entered into shall be provided to the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased, by filing with the Secretary as an Information Report prior to any proposed work requiring pipeline owner approved agreements or requirements.

41. The Board hereby delegates to the New York State Department of Transportation (NYSDOT) the authority, pursuant to PSL 172, to issue all approvals, consents, licenses

and permits, within NYSDOT's jurisdiction, for the construction and operation of the Project. Approvals shall be filed with the Secretary as an Information Report.

Plans, Profiles, and Detail Drawings

42. As-built drawings in both hard and electronic copies (including final, updated GIS shapefiles) shall be filed with the Secretary within one year following the commercial operation date of the Facility and provided the Town of Byron Supervisor, DPS and NYSDEC. Drawings will include final locations, subject to filings made under applicable trade secret protection regulations, of all Project Components, including the energy storage systems, final grading plan, elevation plan of switchyard and collection substation, and a profile of the final collection lines and interconnection line locations, and shall include the following:

    a. GIS shapefiles detailing all components of the Project (PV panel array locations, electrical collection system, substation, access roads, point of interconnection, energy storage systems, etc.);

    b. Collection circuit map; and

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

43. The Certificate Holder shall file an Operation and Maintenance Plan (O&M Plan) for the Facility, including emergency procedures and list of emergency contacts, as an Information Report within 60 days of the commencement of commercial operation.

44. The Certificate Holder shall file annually with the Secretary, the Town of Byron, and Genesee County an updated copy (if modifications have occurred) of its emergency procedures and list of emergency contacts and with documentation of any modifications.

Environmental

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

46. If blasting is required, prior to the initiation of any blasting activities, a Final Blasting Plan shall be prepared and filed as an Information Report with the Secretary that describes procedures and timeframes for blasting operations, emergency and safety protocols, and notifications for host communities and property owners (or those living on the property, if different). If blasting is determined to be required during the bald eagle nesting season (January 1 through September 30), the Certificate Holder will consult with NYSDEC and NYSDPS staff to develop a Final Blasting Plan that avoids and/or minimizes impacts to the species, consistent with Condition 99 herein. The Final Blasting Plan shall demonstrate compliance with the following requirements:

    a. Blasting shall be designed and controlled to meet the limits for ground vibration set forth in United States Bureau of Mines Report of Investigation 8507 Figure B-1 and air overpressure shall be under the limits set forth in the Conclusion section in United States Bureau of Mines Report of Investigation 8485 (USBM RI 8507 and USBM RI 8485) to protect structures from damage.

    b. Landowners, or those residing on the property, if different, within a one-half mile radius of the proposed blasting location shall be notified via electronic mail, U.S. Mail, or by leaving a hardcopy notice at the residence, at least seven (7) days before the proposed blasting. The Town of Byron Supervisor will also be notified within that timeframe. The notification shall include contact information and procedures for filing a blasting operations related complaint.

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

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

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

    a. Vegetation management recommendations based on on-site surveys of vegetation cover types and growth habits of undesirable vegetation species;

b. Herbicide use and limitations, specifications and control measures;

c. Inspection and target treatment schedules and exceptions;

d. Standards and practices for inspection of facilities easements for erosion hazard, failure of drainage facilities, hazardous conditions after storm events or other incidents;

e. Review and response procedures to avoid conflicts with future use encroachment or infrastructure development;

f. Wetland and stream protection areas, principles and practices;

g. Landowner notification procedures; and

h. Periodically assess effectiveness of plan and adjust accordingly.

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

51. Prior to the commencement of construction in the affected pipeline easements, the Certificate Holder shall file with the Secretary as an Information Report the agreement between itself and National Fuel demonstrating that National Fuel has granted the Certificate Holder permission to install facilities within pipeline easements. The Certificate Holder shall also file with the Secretary as an Information Report the agreement between itself and NYPA regarding work in close proximity or crossing of the existing transmission line. Copies of any required crossing or co-location agreements with utility companies will be provided prior to work relevant to the subject of those agreements. Any utility approved drawings, descriptions, details, mapping and safety protocol required as part of those agreements with utility companies will be provided to the Secretary as an Information Report prior to commencement of work related to the specific activity (including temporary crossings of pipelines by construction machinery). For example, if general agreements require utility owner approval for studies, details, or other plans related to work within existing easements, access road installations over/under, collection line crossings or temporary crossings by machinery of existing utilities for each distinct activity, then these items shall be submitted to the Secretary as a supplement to general agreements (if general agreements are required) prior to the commencement of any activities requiring approval at each such location. General and/or specific agreements with utility owners/operators and associated information as described above shall be filed for activities related to existing National Fuel's Empire Pipeline and NYPA's existing transmission line within the Project area prior to commencement of any activity requiring utility owner approvals. Any similar agreements required during operation or maintenance of the Project shall also be filed with the Secretary as Information Reports prior to the start of such activities requiring utility owner/operator approvals (for crossing or access during repairs, vegetation management, maintenance, and all other activities requiring any agreements with utility owners/operators).

Complaint Resolution

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

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

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

Compliance Filings

The following plans, drawings, and other documents shall be filed for approval by the Siting Board or Public Service Commission in accordance with the rules for submittal, public comment, and decisions set forth in 16 NYCRR §1002.2 and §1002.3, unless otherwise authorized in Condition 8 herein. The Certificate Holder shall implement all requirements of the Compliance Filings, as approved or amended by the Siting Board. Required Compliance Filings shall be filed with the Secretary prior to the commencement of construction of component facilities related to the filing, unless otherwise noted.

General

55. Upon the filing of the plans and reports listed in Appendix 2 to the SEEP Guide, entitled the Clearing and Grading Filing Framework, as a compliance filing, and following certification of the Project and approval of said plans and reports by the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased, the Director, Facility

Certification and Compliance of the Department of Public Service, or their designee, is authorized to issue a Limited Notice to Proceed to the Certificate Holder to conduct the Clearing and Grading Activities described in said plans and reports; provided, however, that said plans and reports are consistent with and implement the Certificate Conditions approved by the Board, together with the applicable substantive requirements of the SEEP Guide.

56. Except with respect to clearing and grading activities that are the subject of a separate Compliance Filing that is reviewed and approved by the Siting Board and submitted pursuant to Condition 8 herein, the Certificate Holder shall submit a Site Engineering and Environmental Plan (SEEP) in accordance with Appendix A "Guidance for the Development of Site Engineering and Environmental Plan for the Construction of the Excelsior Energy Center Project" (the SEEP guide), which shall describe in detail the final Facility design and the environmental protection measures to be implemented during construction of the Facility. Any deviation from the requirements of the SEEP Guide shall be justified in the SEEP and shall be subject to approval by the Siting Board, as applicable. The SEEP will include a table outlining the specific Certificate Conditions, Information Reports, and Compliance Filings incorporated into the SEEP with references to the section of the SEEP where those conditions may be found.

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

58. A final site-specific construction Quality Assurance and Quality Control Plan (QA/QC Plan), to be developed in coordination with the selected Balance of Plant (BOP) contractor, shall be submitted prior to commencement of construction (however, compact version may be submitted for approval prior to the Limited Notice to Proceed) as a Compliance Filing.

59. Prior to the installation of solar panels, and based on the final Project layout, a Decommissioning Plan and proof of financial security shall be submitted as a Compliance Filing that contains the requirements of the Decommissioning Plan filed in Exhibit 29 Appendix 29-1 of the Application and the information contained in this paragraph. Financial security shall be in the form of a letter of credit in the amount of the decommissioning and site restoration estimate (cannot include salvage value offset), established by the Certificate Holder, to be solely for the benefit of, and held by the Town of Byron. The letter of credit shall remain in effect for the life of the Project and shall not be subject to claims or encumbrances of the Certificate Holders' secured or unsecured creditors nor considered to be property of a bankruptcy estate. The Certificate Holder shall execute a decommissioning agreement with the Town establishing a right for them to draw on the letter of credit if the Certificate Holder defaults on its decommissioning obligations. Without relinquishing the authority granted to the Siting Board, and the PSC under PSL 168.7, the Town of Byron is hereby delegated the authority, pursuant to PSL 172.1 to enforce the approved Decommissioning Plan subject to the provisions of Condition 3 herein. The Decommissioning Plan shall also include:

a. the anticipated useful economic life of the Project;

b. the estimate of decommissioning and site restoration in current dollars (no offset for projected salvage value is permitted), and the decommissioning and site restoration estimate contained in the Plan shall be updated, based on the final Project layout, by a qualified independent engineer licensed to practice engineering in the State of New York to reflect inflation and shall be updated after one year of Project operation, and every fifth year thereafter. The Certificate Holder shall also file with the Secretary, with a copy to the Town of Byron, proof that the letter of credit has been obtained in the decommissioning and site restoration estimate amount, as calculated pursuant to the Siting Board's direction. Proof of financial security adjustments based on updated estimates after one year of operation and every fifth year thereafter shall be submitted to the Secretary as Compliance Filings and shall include copies of those updated estimates;

c. agreement with the Town of Byron Supervisor regarding decommissioning and a copy of the final letter of credit;

d. the method of ensuring that funds will be available for decommissioning and restoration as provided in the Plan;

e. the method that the decommissioning estimate will be kept current;

f. the manner in which the Project will be decommissioned and the site restored;

g. decommissioning will commence if the Project has not generated electricity for a period of 12 continuous months, unless the 12-month period of no energy output is the result of a repair, restoration, or improvement to an integral part of the Project that affects the generation of electricity and that repair, restoration, or improvement is being diligently pursued by the Certificate Holder, or a Force Majeure event. The Certificate Holder shall file notice with the Secretary if it is anticipated that repairs (or similar) will extend beyond a 12-month period, as detailed in Certificate Condition 149; and

h. procedures and timeframes for providing written notice to the Town, DPS, NYSDEC, AGM, and adjoining and participating landowners of planned decommissioning and site restoration activities prior to commencement of those activities. Where former agricultural lands will be returned to their former agricultural state, the Certificate Holder will follow the restoration of agricultural lands according to the *Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands Revision 10/18/2019* to the maximum extent practicable. If at the time of decommissioning the AGM have been updated, the Certificate Holder will consult with AGM on applicable version changes from revision 10/18/2019.

Health & Safety

60. An Emergency Response Plan (ERP) that shall be implemented during Facility construction, operation, and decommissioning shall be submitted as a Compliance Filing. It shall address, amongst other potential contingencies, provisions for the notification of emergency situations or in the event of damage to Project equipment. The Certificate Holder shall offer training drills with emergency responders at least once per year. Copies of the final plan shall be provided to DPS Staff, the Supervisor for the Town of Byron, the NYS Division of Homeland Security and Emergency Services, and local emergency responders that serve the Facility. The Certificate Holder may submit separate emergency procedures for construction and operation, if preferred. Emergency procedures for construction must be submitted prior to the commencement of construction must be submitted prior to the commencement of construction and emergency procedures for operation must be submitted prior the commencement of commercial operation.

61. The Final Site Security Plans for Facility Construction and Operations will be submitted. Copies of the final plan shall be provided to the DPS Staff, NYS Division of Homeland Security and Emergency Services, Genesee County Emergency Management, the Town Supervisor, and local emergency responders that serve the Facility shall be submitted as a Compliance Filing. The Certificate Holder may submit separate Site Security Plans for construction and operation (prior to commencement of each). Security procedures for construction must be submitted prior to the commencement of construction and security procedures for operation must be submitted before the commencement of commercial operation.

62. A Final Health and Safety Plan shall be submitted prior to commencement of construction (however, compact versions may be submitted for approval prior to commencement of construction, operation and as part of the decommissioning & site restoration compliance filing requirements listed in Certificate Condition 59) as a Compliance Filing and shall be implemented during Facility construction, operation, and decommissioning. The Certificate Holder may submit separate health and safety procedures for construction and operation. Health and safety procedures for construction must be submitted before the commencement of construction and health and safety procedures for operation must be submitted prior the commencement of commercial operation.

63. A detailed Facility Exterior Lighting Plan shall be filed prior to the commencement of construction as a Compliance Filing. The Lighting Plan will be included on the final design drawings and shall address:

    a. Security lighting needs at the collection substation and switchyard;

    b. Plan and profile figures to demonstrate the lighting area needs and proposed lighting arrangement at the substation or any other areas to be lighted;

c. Lighting should be designed to provide up to a 3.4 foot-candle average to eliminate unnecessary light trespass beyond the collection substation and switchyard and to provide safe working conditions at appropriate locations; and

d. Exterior lighting design shall be specified to avoid off-site lighting effects, by:

(i) Use of task lighting as appropriate to perform specific tasks; task lighting shall be designed to be capable of manual or auto-shut off switch activation rather than motion detection;

(ii) Full cutoff fixtures, with no drop- down optical elements (that can spread illumination and create glare), shall be required for permanent exterior lighting to minimize potential impacts to the surrounding public; and

(iii) Manufacturer's cut sheets of all proposed lighting fixtures shall be provided.

Transportation

64. The Certificate Holder will file a final Route Evaluation Study as a Compliance Filing (or reference to the originally filed Study of the Application, if unchanged; in this case, a compliance filing will not be required). The final Route Evaluation Study will include mapping for final transportation routes for Project Component deliveries.

65. The Certificate Holder will file a Traffic Control Plan as a Compliance Filing. The Traffic Control Plan will involve traffic control in any municipality determined likely to experience traffic delays during construction of the Project.

Plans, Profiles, and Detail Drawings

66. Maps, site plans and profile figures, and construction details for the Facility to be constructed shall be submitted as a Compliance Filing prior to the commencement of construction (pertaining to the relevant phase of construction). Shapefile data shall be provided to DPS and NYSDEC Staff for the locations of solar panels, low-medium transformers and inverters, collection substation, energy storage systems, grading, collection lines, interconnection facilities, associated mounting features (concrete pads, foundations, etc.), designated construction and laydown areas, access ways, and other Project Components. Final design drawings, site plans, and construction details will conform to the SEEP Guide and include setback and height dimensions that adhere to the following requirements for Project Component locations:

a. 20-foot maximum height of the solar array;

b. 14.5-foot minimum setback from the right-of-way line of a road;

c. 100-foot minimum setback from all side and rear properties in the R-1and C-2 zoning districts and a 200-foot minimum setback from all side and rear properties in the A-R zoning district;

d. 300-foot minimum setback from any residential structure located on another parcel.

67. Maps showing the locations for construction trailers/offices and location of access to public roads will be submitted as a Compliance Filing.

68. The final Facility design should incorporate the visual mitigation described in Exhibit 11 and depicted in the Preliminary Landscape Plan included in Appendix 11-2 of the Application and any measures that have been incorporated in the Preliminary Landscape Plan to address potential glare from solar panels at residential receptors.

a. Additionally, collection lines shall be placed underground to the extent practicable to decrease additional aboveground impacts. This configuration allows continued use of the land within the Project Site and help minimize any impediments to the land uses that have created the rural character of the Visual Study Area.

b. Minimized vegetation clearing outside of the arrays.

c. Vegetative buffers: plantings of native pollinator species included in proposed buffer.

d. The Certificate Holder will retain a qualified Landscape Architect, Certified Arborist, or ecologist to inspect the screen plantings for two years following installation to identify any plant material that did not survive, appears unhealthy, and/or otherwise needs to be replaced. The Certificate Holder will remove and replace plantings that fail in materials, workmanship or growth within 2 years following the completion of installing the plantings.

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

f. Mitigation plantings to address complaints of residents regarding glare from solar panels shall be installed and maintained in accordance with these specifications

69. Final plan for the collection substation and collection line circuits' configuration and location map, indicating locations of overhead and underground installations and the number of required circuits per circuit-run, shall be submitted as part of the compliance filing design plans (described in Certificate Condition 66; this plan shall be filed prior to construction of the collection substation and installation of collection lines). A breakdown

of the number of feet per installation shall be included as a legend (including installation distances for single, double, triple, etc.).

70. Final details of any proposed overhead collection lines, and any single and multiple-circuit overhead 345 kV electric line layouts shall be submitted in the Compliance Filing, as applicable. Each Project circuit layout (single, double, triple, etc.) shall include, if applicable, the following drawings (may be included in the compliance filing design plans described in Certificate Condition 66; these details shall be filed prior to the installation of any overhead collection lines and any single and multiple-circuit overhead 345 kV electric lines):

    a. "Right-of-Way Clearing Diagram";

    b. "Riser Dead-End Structure Diagram";

    c. "Tangent Structure Diagram";

    d. "Angle Structure Detail";

    e. "Clearing Diagram-Adjacent to Roadway Detail";

    f. Final layout details of any required guy support systems.

71. Cross sections including clearing widths shall be provided for each proposed underground collection circuit layout (single, double, etc.). These details may be provided, prior to collection line installation, as part of the compliance filing design plans described in Certificate Condition 66.

72. Maps showing anticipated installation methods (i.e., trenching or HDD) to be performed during construction of underground collection lines. To the extent the contractor determines, during construction activities, that installation methods should differ from that which is depicted on the site plans, such change in upland areas shall be permitted following on-site consultation with, and verbal approval by, the DPS Staff representative and the Environmental Monitor, following any necessary consultation with other state agencies. As provided in Certificate Condition 123(h), if the Project layout changes from that approved in this Certificate, a final wetland mitigation plan addressing potential new impacts to State protected wetlands and their associated adjacent areas regulated pursuant to 6 NYCRR Part 663-664, not previously addressed by the certificate conditions herein, shall be developed in coordination with the DEC and DPS, as necessary to satisfy applicable State regulations, including without limitation, the weighing standards in 6 NYCRR Part 663. If the Certificate Holder proposes changes to an approved compliance filing involving the crossing of State-protected wetlands and associated wetland adjacent areas, regulated pursuant to 6 NYCRR Parts 663-664, or regulated streams, it shall first consult with the DPS Staff representative, Environmental Monitor, and NYSDEC staff

representative, and then comply with 16 NYCRR Part 1002.2 (j). Such changes must be consistent with federal and State regulations

73. Final wetland, wetland adjacent area, and stream impact drawings, site plans, and construction details shall be submitted in the Compliance Filing and incorporate and accurately depict methods for minimization of impacts to each wetland, wetland adjacent area, and stream. The plan shall include a table that identifies all wetlands and streams within the Project area and provides the following information for each individual resource:

    a. Wetland delineation types and NYSDEC stream and wetland IDs and classifications;

    b. Identification and assessment of methods to minimize impacts, including crossing methods and identification of any time of year restrictions, as applicable; and

    c. References to the location of each resource where shown in the final design drawings, site plans, and construction details.

Environmental

74. Prior to clearing, a Timber Salvage Plan shall be filed in the Compliance Filing.

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

    a) The alignment of roads, bridges, and culverts;

    b) The location, quantity, and type of any fill associated with construction;

    c) The location and installation details of any dewatering measures;

    d) Drainage and flow calculations; and

    e) A description of the dry crossing methods that will be used to install the crossing.

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

lead to the conclusion that all trenchless crossing methods are not constructible or not feasible at the particular stream crossing.

77. Plans for the creation, modification or improvement of any permanent access road stream crossing, prior to the commencement of the Site Preparation phase, shall be included in a Compliance Filing and must meet the following requirements:

    a. Culvert pipes shall be designed to safely pass the 1% annual chance storm event;

    b. Culvert pipes must be embedded a minimum of 20% of the diameter of the culvert beneath the existing grade of the stream channel;

    c. Width of the structure must be a minimum of 1.25 times (1.25X) width of the mean high-water level channel; and

    d. The culvert slope shall remain consistent with the slope of the adjacent stream channel.

78. An Invasive Species Management and Control Plan (ISMCP) shall be submitted prior to commencement of construction as a Compliance Filing. The Final ISMCP shall include pre-construction invasive species control (if necessary), construction materials inspection and sanitation, invasive species treatment and removal, and site restoration in accordance with the Facility's final approved Storm Water Pollution Prevention Plan (SWPPP). Post-construction invasive species monitoring shall be conducted for a period of no less than five years following completion of Project related activities on site. A post-construction monitoring program (MP) shall be conducted in year 1, year 3, and year 5, following completion of construction and restoration. Monitoring will be conducted per the ISMCP with intention to achieve the goals outlined in the ISMCP, including the goals to prevent construction activities from resulting in no net increase at the Project Area of (1) the number of invasive species present and (2) the areal distribution of invasive species. The MP shall collect information to facilitate evaluation of ISMCP effectiveness. At the conclusion of the MP, a report shall be submitted to DPS Staff, NYSDEC and AGM, and filed with the Secretary, that assesses how well the goal of no net increase of invasive species per the recommendation of the Invasive Plant Species Survey Baseline Report (Baseline Species Report), due to construction of the Facility, is achieved.

79. If, after the conclusion of the MP phase, all invasive species control requirements have not been achieved, the Certificate Holder must evaluate the likely reasons for these results in consultation with NYSDEC, AGM, and DPS and submit an "Invasive Species Remedial Plan" to the Secretary for approval. The "Invasive Species Remedial Plan" must describe the likely reasons for not achieving NYSDEC requirements, describe the actions necessary to correct the situation, and the schedule for conducting the remedial work.

Once approved, the "Invasive Species Remedial Plan" will be implemented according to the approved schedule.

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

81. Prior to the initiation of any HDD operations, an Inadvertent Return Plan for any HDD operations shall be submitted as a Compliance Filing. The plan shall assess the potential impacts for inadvertent returns at the proposed drilling locations, establish measures for minimizing the risk of adverse impacts to nearby environmental resources, and contain details as outlined in Section B of SEEP Guide. Biodegradable drilling solutions shall be described therein and shall be used for HDD to minimize harm to aquatic species in the event of a drilling frac-out. The Certificate Holder agrees to consult with NYSDEC concerning the type of biodegradable solutions. HDD exit and entry points shall be located a minimum of 50 feet from the edge of the stream/wetland or 100 feet from the edge of a NYSDEC protected wetland, regulated pursuant to 6 NYCRR Parts 663-664, and associated wetland adjacent area. At a minimum, the plan shall include procedures to address inadvertent surface returns (frac-out), a response procedure, and a list of spill response equipment to be maintained on-site. All equipment and provisions of the plan shall be readily accessible at the locations where HDD technology is used during construction.

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

    a. Plans to avoid or minimize impacts to archaeological and historic resources to the extent practicable. Construction, including site preparation, clearing or other disturbance, shall not be allowed in any areas that have not been evaluated or inventoried and assessed by the Certificate Holder and New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) for the presence of historic and archaeological properties. The Certificate Holder shall indicate in the final SEEP measures for avoidance of archaeological sites and cemeteries identified within the Facility site. The mapped locations of all identified archaeological sites and cemeteries within 100 feet of proposed Facility-related impacts shall be identified as "Environmentally Sensitive Areas" or similar on the final Facility construction drawings

and marked in the field by construction fencing with signs that restrict access at the distance(s) prescribed in a NYSOPRHP-approved Avoidance Plan.

b. Final Unanticipated Discovery Plan, establishing procedures in the event that resources of cultural, historical, or archaeological importance are encountered during Facility construction. The plan will include a provision for immediate work stoppage of all ground-disturbing construction-related activities within 100 feet of the discovery of possible archaeological or human remains; Certificate Holder will promptly notify DPS Staff indicating details of any such discovery of possible archaeological or human remains. Evaluation of such discoveries, if warranted, shall be conducted by an independent Registered Professional Archaeologist, qualified according to New York Archaeological Council Standards. Work shall not resume in the area of the discovery of such remains until written permission is received from the NYSOPRHP. If the archaeologist determines that an archaeological resource has been discovered, additional information will be provided to the New York States Office of Parks, Recreation, and Historic Preservation/State Historic Preservation Office (NYSOPRHP/SHPO) following the archaeologist's site visit. The additional information will either: (a) explain why the archaeologist believes the resource to be non-significant with respect to the State/National Register of Historic Places (S/NRHP); or (b) explain why the archaeologist believes the resource to be significant with respect to the S/NRHP and propose a scope-of-work for evaluating the significance of the resource and evaluating Facility-related impacts to it. In the latter case, the NYSOPRHP will be advised that unless an objection is received within five business days, the archaeologist will consider the proposed scope-of-work to have been accepted by the NYSOPRHP and proceed with its implementation.

c. If complete avoidance of archaeological sites is not possible, the Certificate Holder shall consult with the NYSOPRHP and DPS Staff to determine if Phase II investigations or mitigation is warranted. The results of any Phase II investigations and/or identification of mitigation measures will be included in the plans.

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

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

f. In a letter dated April 8, 2021, the OPRHP indicated that as part of its review of the Project in accordance with Section 14.09 of New York State Parks, Recreation and

Historic Preservation Law, they recommend that the involved parties proceed with the development of an appropriate historic preservation mitigation plan. The purpose of the plan is to mitigate what the OPRHP has indicated are direct impacts to the "setting" of Sodom Cemetery at 7482 Batavia Byron Road (vic), the residence at 7271 Batavia Byron Road, the Byron Cemetery at Townline and Swamp Roads, and the farm at 6548 Townline Road, all located in the Town of Byron, which OPRHP considers eligible for inclusion in the New York State Register of Historic Places. The Certificate Holder will develop a mitigation plan in consultation with OPRHP which will be filed as a compliance filing prior to the commencement of operation. Proof of mitigation funding awards for offset project implementation shall be provided within two years of the start of construction of the Facility shall be included.

Noise and Vibration

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

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

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

(ii) Proposed grading and noise source heights and ground elevations;

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

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

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

b. Revised sound modeling with the final specifications of equipment selected for construction to demonstrate that the Project is modeled to meet the substantive requirements of Local Laws on noise (if any effective as of August 30, 2021) and the following sound goals for residences and boundary lines existing as of the date of the order as noted:

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

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

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

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

(v) Any noise sources, other than the ones identified in Certificate Conditions 83(b)(i) and 83(b)(ii) (e.g., tracking systems, motors, emergency generators), that exceed the design goals specified in Certificate Conditions 83(b)(i) during the nighttime; 83(b)(ii) during the daytime; or 81(b)(iii) and 83(b)(iv) (nighttime or daytime), or approach those goals within 10 dBA, will be included in the final computer model modeling subject to the design goals indicated in this section, as applicable to the time of the day those noise sources will be operating (e.g., daytime, nighttime). For these noise sources a tonal analysis will be conducted as specified in Condition 83(b)(ii) and SEEP Guide.

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

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

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

b. Maintain functioning mufflers on all transportation and construction machinery;

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

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

V. Facility Construction and Maintenance

General

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

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

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

a. Preparation Phase: Established Environmental Monitors will review the Certificate Conditions and any environmental permits and prepare an environmental management program that will be used for the duration of the construction and operation of the Project. This program will identify all environmental requirements for construction and restoration included in all Project-related certificates, permits, and approvals; and will be used as a resource for the management of environmental issues that may occur. The Environmental Monitor shall perform daily inspections of construction work sites. In addition, the Environmental Monitor will consult with DPS

Staff on a schedule requested by DPS Staff. Compliance audits shall be conducted with DPS Staff as necessary. When soliciting input from the DPS Staff, the Certificate Holder shall identify one or more candidates and provide qualifications and contact information for the Environmental Monitor. The Environmental Monitor shall have the qualifications of an agricultural and Environmental Monitor consistent with the AGM guidelines, entitled *Guidelines for Solar Energy Projects- Construction Mitigation for Agricultural Lands (Revision 10/18/19)* (2019) and the Environmental Monitor must be trained to identify and properly report on threatened and endangered (TE) species during construction of the Project, per Certificate Conditions 103(a-d).

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

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

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

e. Restoration Phase: When the construction phase of the Project is nearing completion in select areas, the monitor will work with the contractors to locate areas that require restoration. The Environmental Monitor will provide guidance in accordance with the Project environmental restoration plans when needed, coordinate the proper restoration efforts of the specific area, and incorporate the monitoring of these restoration areas in their daily task list. As these areas approach final restoration, the Environmental Monitor will document the results and determine if further restoration

effort is needed or if the restoration area can be removed from the daily inspection list.

89. At least 14 days before the commencement of construction, the Certificate Holder shall offer to hold a pre-construction meeting with DPS Staff, AGM, New York State Department of Transportation (DOT), Town Supervisor and Highway Superintendent, and NYSDEC; The Certificate Holder may elect to combine the previously described meeting with the listed parties and NYPA or conduct a separate meeting with NYPA at least 14 days before the commencement of construction activities affecting facilities owned or to be owned by NYPA. The Certificate Holder's construction contractor and the environmental compliance monitor shall be required to attend these meetings. The Certificate Holder shall adhere to and provide the following material regarding such meeting(s):

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

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

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

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

90. Construction work hours shall be limited to 7:00 a.m. to 7:00–p.m. Monday through Saturday, with the exception of construction and delivery activities which may need to occur during extended hours beyond this schedule on an as-needed basis. Post installation and HDD will be limited to daytime hours. Construction work hour limits apply to facility construction, all construction-related activities including the delivery and unloading of materials, and maintenance and repairs of construction equipment at outdoor locations. Since these activities can result in extensive noise, large vehicles idling for extended periods at roadside locations, and related disturbances are not allowed. Crews will be allowed to assemble in Project Area laydown yards and conduct pre and/or post work day meetings (e.g. morning plan of the day and/or safety brief, evening progress meeting) outside of the 7:00 a.m. to 7:00 p.m. window as these activities do not create a level of noise that is considered disturbing.

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

    a. If, due to safety or continuous operation requirements, construction activities are required to occur beyond the allowable work hours, the Certificate Holder shall notify DPS Staff, affected landowners and the municipality. Such notice shall be given at least 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 24 hours in advance. In such cases, as much advance notice as is practicable shall be provided.

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

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

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

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

    c. The Certificate Holder will notify the NYSDEC Region 8 Regional Engineer, DPS, and NYSDEC's Spill Hotline (1-800-457-7362) of the impacted material should the property owner not be located within 2 hours of the discovery or if conditions exist at the site which are determined to be immediately dangerous to public safety, health or the environment. In an emergency situation, the Certificate Holder will work (to the extent practicable) to contain the impacted material until appropriate emergency spill response services arrive;

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

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

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

g. To the extent practicable, the Certificate Holder and Project engineer will adjust ground intrusive construction activities at the site to avoid working within the limits of impacted material discovered during construction. If the limits of impacted material cannot be avoided, the project owner, in consultation with the property owner, will evaluate options for planning and implementing remediation activities, which may be required, including identification or adequate staging areas where impacted soils would be temporarily stockpiled. If the Project owner elects to undertake the remediation activities, the work will be performed under a plan prepared by the Certificate Holder and approved by the NYSDEC Region 8 Regional Engineer;

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

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

j. NYSDEC records indicate three existing gas wells within the Project Area (API numbers 31037103100000 (plugged in 2015), 31037101790000 (plugged status unknown), 31037104920000 (plugged status unknown). Setbacks around all unplugged gas wells located on the Project Area must be sufficient to allow for a

service rig and ancillary equipment to set up over a well to plug it. All permanent structures, including solar arrays and buildings, must have a minimum setback of 100 feet from all unplugged gas wells located in the Project area, and there shall be sufficient space to construct or maintain a road of at least 30 feet in width to access such wells. Performance of any site clean-up, including containment or remediation of any existing contamination, to plug any existing orphaned wells or to cap, plug, remove or otherwise contain pipelines that it might discover is subject to all applicable laws. EPC Contractor Project Supervisor agrees to notify the affected landowner, the NYSDEC Energy Project Management Bureau and NYSDEC Region 8 Regional Minerals Manager of the discovery of any unplugged oil or gas well as soon as practicable considering cell coverage and internet service in the field. GPS coordinates for, and access to the newly discovered well location, will be provided by the EPC Contractor Project Supervisor, to the NYSDEC Region 8 Regional Minerals Manager, and NYSDEC Division of Environmental Permits, Energy Project Management Bureau, subject to the requirements of this Certificate.

93. Any debris or excess construction materials shall be removed to a facility duly authorized to receive such material. No burying or burning of construction debris or excess construction materials will be allowed.

Environmental

94. Tree and vegetation clearing shall be limited to the minimum necessary for Facility construction. SEEP documents and Tree Clearing and Grading Compliance Filing shall indicate limits of tree and vegetation clearing, and also specify vegetation protection measures to avoid disturbance of vegetated areas necessary for visual screening.

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

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

correspondence between contacts with respective farmland operators and AGM in order to properly mitigate issues.

97. Blasting and pier and post driving 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.

98. Water Supply Protection:

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

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

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

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

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

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

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

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

Threatened and Endangered Species

For the purposes of Conditions 99-106 of this Certificate, Project Area shall be defined as those areas that are owned or controlled by the Certificate Holder as indicated in the SEEP, including areas that would be disturbed or occupied by Project Facilities, including access roads, laydown

areas, and trees that are immediately adjacent to the limits of disturbance or fence line. In addition, the Certificate Holder may request and NYSDEC will supply the Certificate Holder the identity of the DEC office(s) for notifications required by Conditions 99-106 where notification must be made within 24 hours of the discovery of a Threatened or Endangered (TE) species. The office(s) identified may be revised as necessary. The Certificate Holder may file the information with the Secretary as an Informational Filing.

99. No construction activities or project components are planned or sited within 660 feet of the known Bald Eagle nest. Should changes to the project layout, construction schedule, or types of construction activities be proposed that may result in potential impacts to the eagles or nest, the Certificate Holder will contact NYSDEC for direction on avoidance and minimization measures, and if necessary, mitigation requirements that will result in a net conservation benefit for unavoidable impacts to nesting eagles. Impacts may occur if: any project components are sited within 660 feet of the nest; any temporary or permanent construction activity occurs within 660 feet of the nest between January 1 and September 30; or if blasting or other noisy activities occur within one mile of the nest between January 1 and September 30. Such direction required by NYSDEC shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

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

101. If at any time during operation of the Project, a nest or roost of any federally or State-listed TE bird species is discovered and confirmed by the Certificate Holder or if any federally

or State-listed TE bird species is observed displaying roosting or breeding behavior for that species within 500 feet of the Project Area (or one quarter mile for eagles), the following actions will be taken: NYSDEC and DPS Compliance Staff will be notified within 24 hours of discovery and prior to any further disturbance around the nest, roost, or area where the species were seen exhibiting any breeding or roosting behavior, an area of at least 500 feet in radius around the nest or roost of the TE species will be posted (for eagles, the avoided area shall be at least one-quarter (1/4) mile in radius if there is no visual buffer, or an area of at least six hundred and sixty (660) feet in radius if there is a visual buffer) and maintenance activities will cease until approval to continue such maintenance activities is granted by NYSDEC except if necessary for the protection of human life and property. The nest(s), nest tree(s), or roost(s) will not be approached under any circumstances unless authorized by the NYSDEC. The Certificate Holder's observation may also include a recommendation pertaining to: 1) if the discovered TE species nest or roost has the potential to be impacted by operation and maintenance activities; 2) if the avoided area radius can be reduced according to the species identified and the associated operation and maintenance activities and, 3) what measures are necessary to protect the nest or roost and to provide a timeline for the implementation of such measures. Notwithstanding the above, consistent with the aforementioned recommendations described in the preceding sentence, nothing prohibits the Certificate Holder from repairing the Project in order to permit the continued generation and delivery of electricity from the Project so that it can continue to deliver renewable energy to meet its contractual obligations and/or contribute to satisfying New York State's renewable energy targets or goals, consistent with the substantive requirements of 6 NYCRR Part 182, as implemented by the applicable Certificate Conditions herein.

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

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

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

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

a. Construction: During construction the onsite Environmental Monitor shall be responsible for recording all occurrences of TE species. All occurrences shall be reported in the bi-weekly monitoring report submitted to the DPS and NYSDEC and shall include the information described below. If a TE avian species is demonstrating breeding or roosting behavior for that species it will be reported to NYSDEC within 24 hours.

b. Operation and Maintenance: During regular operation and maintenance, the Certificate Holder will be responsible for training O&M staff to focus on identifying the following TE bird species: short-eared owl (*Asio flammeus*), northern harrier (*Circus hudsonius*), upland sandpiper (*Bartramia longicauda*), Henslow's sparrow (*Ammodramus henslowii*), and sedge wren (*Cistothorus stellaris*). The Certificate Holder will keep a record of observations of these species and report each observation to NYSDEC within 7 days of the observation.

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

d. In consultation with the landowner, all temporary disturbance or modification of grassland habitat that occurs as a result of construction, restoration, or maintenance activities will be restored to pre-existing grassland habitat conditions by re-grading and re-seeding with an appropriate, native seed mix after disturbance and construction activities are completed unless returning to agricultural production or otherwise agreed

to by NYSDEC and AGM. These areas shall include, but are not limited to temporary roads, material and equipment staging and lay-down areas, areas between and beneath the solar panels, and collection line ROWs.

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

a. During the construction and restoration phase, an area at least five hundred (500) feet in radius around the roost tree will be posted and avoided and will remain in place until notice to continue construction, ground clearing, grading, maintenance, or restoration activities, as applicable, at that site is granted by NYSDEC, which authorization shall not be unreasonably delayed. The Certificate Holder's observation may also include a recommendation pertaining to: 1) if the NLEB maternity roost tree has the potential to be impacted by construction, maintenance, or restoration activities; 2) if the avoided area radius can be reduced according to site-specific conditions and the associated construction, maintenance, or restoration activities; and, 3) what measures are necessary to protect the species and to provide a timeline for the implementation of such measures. All authorizations required by NYSDEC shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

b. During the operation phase, an area at least 500 feet in radius around the roost tree will be posted and maintenance activities will cease until notice to continue such non-essential maintenance activities is granted by NYSDEC. The Certificate Holder's observation may also include a recommendation pertaining to: 1) if the NLEB maternity roost tree has the potential to be impacted by maintenance activities; 2) if the avoided area radius can be reduced according to site-specific conditions and the associated operation or maintenance activities; and, 3) what measures are necessary to protect the species and to provide a timeline for the implementation of such measures. Notwithstanding the above, consistent with the aforementioned recommendations described in the preceding sentence, nothing prohibits the Certificate Holder from repairing the Project in order to permit the continued generation and delivery of electricity from the Project so that it can continue to deliver renewable energy to meet its contractual obligations and/or contribute to satisfying New York State's renewable energy targets or goals, consistent with the substantive requirements of 6 NYCRR Part 182, as implemented by the applicable Certificate Conditions herein. All authorizations required by NYSDEC shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

105. The Certificate Holder shall leave uncut all known and documented NLEB roost trees and any trees within a 150-foot radius of a documented summer occurrence and 0.25 miles of documented winter occurrence. If any bats are observed flying from a tree, or from a tree that has been cut, tree clearing activities within 150 feet of the tree shall be suspended and NYSDEC shall be notified as soon as possible, and in that event, the Certificate Holder

shall have an Environmental Monitor present on site during the aforementioned tree clearing activities. If any bat activity is noted, a stop work order for tree clearing shall immediately be issued and shall remain in place until such time as NYSDEC and DPS staff have been consulted and both agencies authorize resumption of work. All authorizations required by NYSDEC shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

106. A Post-Construction Avian Monitoring (Monitoring Plan) shall be developed in consultation with NYSDEC and a final, NYSDEC-accepted Monitoring Plan filed prior to the start of Project operation. The Monitoring Plan shall include breeding and wintering bird surveys, and include details of the studies (i.e., start and end dates; transect and point count locations; frequency, duration and scope of monitoring; methods for observation surveys; reporting requirements, etc.). The Monitoring Plan will be used to gather data regarding use of the Project Area by breeding and wintering birds, including State-listed species, after construction, and will include at least one multi-season survey during the first three years of Project operation. Findings from the survey conducted will not trigger additional surveys or additional mitigation and will not result in changes to operations of the Project. Results of monitoring will be submitted in a report to NYSDEC under appropriate confidentiality protections.

Wetlands and Streams, Vegetation, and Invasive Species

107. No federal wetland impacts are proposed. If any federal wetland/stream permits are required for the construction, operation and/or maintenance of the Facility, the Certificate holder shall meet all federal standards and conditions of the permit(s) as well as any conditions and regulatory requirements issued under the Section 401 Water Quality Certification and 6 NYCRR Part 608 in consultation with DPS staff and DEC. All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate, or any other environmentally deleterious materials associated with the Project.

108. The Certificate Holder shall submit a Notice of Intent to Commence Construction to the Region 8 Division of Environmental Permits, NYSDEC Region 8 Headquarters, 6274 East Avon-Lima Rd, Avon, NY 14414, the NYSDEC Energy Project Management Bureau, Division of Environmental Permits, 625 Broadway, Albany, DPS, and the Town of Byron at least 72 hours in advance of the commencement of construction and shall also notify them in writing within 10 business days of the completion of work.

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

110. During construction, erosion control devices and measures as described in the SWPPP, including, but not limited to, straw bales or silt fences shall be installed to prevent erosion of excavated material or disturbed soil. All erosion control devices, shall be installed in accordance with construction techniques described in 2016 New York State Standards and Specifications for Erosion and Sediment Control (Blue Book), including placing the straw bales and silt fence in a shallow trench, backfilling the toe of the silt fence and securing the straw bales with stakes. All erosion and sediment control practices shall be installed prior to any grading or filling operations, or other ground disturbance. They shall remain in place until construction is completed and the area is completely restored to pre-existing conditions. In order to minimize the risk of introduction of invasive species, use of hay bales is strictly prohibited. All disturbed soils within regulated freshwater wetlands and the associated adjacent areas must be seeded with a native seed mix appropriate to the site.

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

112. Fuel or other chemical storage tanks shall be contained and located at all times in an area more than 300 feet landward of any protected wetland regulated pursuant to Parts 663-664, stream or waterbody. If the above requirement cannot be met by the Certificate Holder, then the storage areas must be designed to completely contain any and all potential leakage.

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

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

115. If inadvertent drilling fluid surface returns occur in wetlands or streams, the NYSDEC's Division of Environmental Permits, Energy Project Management Bureau, NYSDEC's Region 8 Bureau of Ecosystem Health, and DPS Staff shall be notified within 2 hours or as soon practicable, considering internet and cell phone coverage in the area. A written

monitoring report describing the location, estimated volume, and cleanup efforts shall be submitted to NYSDEC and DPS Staff within 24 hours of the occurrence.

116. All equipment used on banks of streams or in protected wetlands regulated pursuant to Parts 663-664 and 100-foot adjacent areas must be inspected daily for leaks of petroleum, other fluids, or contaminants. A spill kit must be on hand at the immediate work site and any equipment observed to be leaking must be removed from the work site, and leaks must be contained, stopped and cleaned up immediately.

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

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

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

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

    c. All wetland topsoil up to a maximum of 12 inches deep shall be removed first and temporarily placed onto a geo-textile blanket running parallel to the trench, if necessary;

    d. Wide-track or amphibious excavators shall be used for wetland installations;

    e. Subsoil dug from the trench shall be sidecast on the opposite side of the trench from the topsoil, on another geo-textile blanket running parallel to the trench, if necessary;

    f. The length of the trench to be opened shall not exceed the length that can be completed in one day. This length of trench generally should not exceed 1,500 feet in a wetland;

    g. If there is an inadvertent puncturing of a hydrologic control for a wetland, then the puncture shall be immediately sealed, and no further activity shall take place until DPS and NYSDEC are notified and a remediation plan to restore the wetland and prevent

future dewatering of the wetland has been approved by the agency staffs, which approval shall not be unreasonably delayed, withheld or conditioned;

h. Only the excavated wetland topsoil and subsoil shall be utilized as backfill;

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

j. All excess materials shall be completely removed to upland areas more than 100 feet from the wetland and suitably stabilized;

k. The duration of work in wetlands will be minimized to the maximum extent practicable.

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

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

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

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

123. All State-protected freshwater wetlands regulated pursuant to Parts 663-664 and associated 100-foot adjacent areas temporarily disturbed due to construction activities shall be restored to pre-existing conditions and documented cover type to the extent practicable and in accordance with the following requirements:

a. Restoration to pre-construction contours must be completed within 48 hours of final backfilling of the trench within regulated freshwater wetland boundaries and any NYSDEC regulated 100-foot adjacent area boundaries, as applicable. Within 14 days

of the completion of grading, the area shall be seeded with native vegetation at densities as existed prior to construction. Seeding shall be completed to help stabilize the soils with an appropriate native wetland species mix such as an Ernst Wetland Mix (OBL-FACW Perennial Wetland Mix, OBL Wetland Mix, Specialized Wetland Mix for Shaded OBL-FACW, or equivalent), unless returning to agricultural production or otherwise agreed to by DEC, as applicable, in regulated 100-foot adjacent areas;

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

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

d. These replanted areas shall also be monitored for invasive species consistent with Certificate Conditions 78 and 79.

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

f. Impacts to the adjacent areas of protected wetlands regulated pursuant to 6 NYCRR Part 663-664 W-JDV-5, W-JDV-14, W-JJB-10, W-JJB-13, W-JJB-30, W-JJB-31, W-JJB-33, W-JJB-34, and W-JJB-36 are outlined in the SEEP Guide along with restoration measures. (Section B.17.d.v).

g. The Certificate Holder shall develop a Wetlands Mitigation Plan (“Plan”) for the 100 foot adjacent areas to wetlands W-JDV-5, W-JDV-14, W-JJB-10, W-JJB-13, W-JJB-30, W-JJB-31, W-JJB-33, W-JJB-34, and W-JJB-36, as detailed in Section B.17.d.v of the SEEP Guide. The Certificate Holder shall work with DEC to develop the final Wetland Mitigation Plan and shall submit the Wetland Mitigation Plan for DPS, and DEC review within six months of the commencement of construction.

   If, after five years, monitoring demonstrates that the wetland mitigation is still not meeting the goals and standard of the Plan, the Certificate Holder shall develop a Wetland Mitigation Remedial Plan in consultation with DPS and DEC staffs, wherein restoration shall be revised or adjusted.

h. If the Project layout changes from that approved in this Certificate, a final wetland mitigation plan addressing potential new impacts to State protected wetlands and their associated adjacent areas regulated pursuant to 6 NYCRR Part 663-664, not previously addressed by the certificate conditions herein, shall be developed in

coordination with the DEC and DPS, as necessary to satisfy applicable State regulations, including without limitation, the weighing standards in 6 NYCRR Part 663. If federally regulated wetlands are to be impacted by the new Project layout that have been not previously addressed in the certificate conditions herein, then the Certificate Holder shall obtain any additional applicable approvals from ACOE.

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

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

126. Permanent alteration of wetland hydrology is prohibited.

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

a. Make sure crews are trained to identify the Asian Longhorned Beetle (*Anoplophora glabripennis*) and the Emerald Ash Borer (*Agrilus planipennis*) and any other insects that the NYSDEC identifies as a potential problem in accordance with 6 NYCRR Part 575, Prohibited and Regulated Invasive Species. If these insects are found, they must be reported to the NYSDEC Region 8 Division of Lands and Forests;

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

c. Targeted Species Treatment and Removal: Targeted removal is used in instances where invasive species are encountered during construction and cannot be avoided. Removal in that instance would prevent spread of the species to other areas of the

Project Area. Targeted removal includes options such as hand-pulling, burning, cutting, burying, excavating, or herbicide application shall be carried out in accordance with Part 325 of 6 NYCRR, Application of Pesticides, by a duly licensed DEC applicator. Removal methods will be determined based on the species and density of the encountered invasive. Invasive species that are removed should be either, left in the infested area, or placed in a secure container for proper disposal offsite;

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

e. Restoration: Invasive species spread most readily in disturbed soil and stabilizing the site quickly will limit the amount of time that invasive species have to get established in a particular area. Therefore, once construction is complete, disturbed areas should be regraded and stabilized (with seed and mulch) as quickly as practicable. Once the site is regraded, native seed mixes should be applied along with seed free mulch to reestablish vegetative cover. BMPs should also be implemented in accordance with the Stormwater Pollution Prevention Plan to prevent erosion and limit the potential for spread of invasive species bearing soil offsite.

128. On-site waste concrete containment from concrete truck clean out activity and/or any wash water from trucks, equipment or tools, must be contained in a manner that will prevent it from escaping into waterbodies, water channels, streams, and wetlands. If a discharge occurs, NYSDEC Region 8 Division of Environmental Permits, DPS, and the Town of Byron shall be contacted within 2 hours. Disposal of waste concrete or wash water is prohibited within 100 feet from any waterbody or wetland or to any area that drains to a waterbody or wetland.

129. No streams will be impacted by the construction of access roads. All streams that will be crossed by collection lines will be done via HDD. If it is later determined that a stream cannot be crossed via HDD, then the restored stream channel shall be equal in width, depth, gradient, length and character as the pre-existing stream channel and tie in smoothly to the profile of the stream channel upstream and downstream of the project area. The planform of any stream shall not be changed.

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

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

132. HDD will be used under streams and wetlands to avoid impacts on water quality, habitat, and stream bed stability.

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

    b. Drilling fluid circulation for HDD installations shall be maintained to the extent practical. If inadvertent surface returns occur in upland areas, the fluids shall be immediately contained and collected. If the amount is not enough to allow practical collection, the affected area will be diluted with freshwater and allowed to dry and dissipate naturally. If the amount of surface return exceeds that which can be collected using small pumps, drilling operations shall be suspended until surface volumes can be brought under control. If inadvertent drilling fluids surface returns occur in, or may flow into, an environmentally sensitive area (i.e., wetlands and water bodies) the returns shall be monitored and documented as described in the Inadvertent Return Plan. Drilling operations must be suspended if the surface returns pose a threat to the resource or to public health and safety. Removal of released fluids from environmentally sensitive areas will take place only if the removal does not cause additional adverse impacts to the resource. If inadvertent drilling fluids surface returns occur in an environmentally sensitive area the NYSDEC Region 8 Division of Environmental Permits shall be notified immediately and a monitoring report, as described in the Inadvertent Return Plan, shall be submitted within 48 hours of the occurrence; and

    c. While conducting HDD operations under DEC protected wetlands regulated pursuant to Parts 663-664, and streams, the Certificate Holder will monitor for possible “frac-outs” that would result in the release of drilling fluids to sensitive areas as described in the Inadvertent Return Plan. The Certificate Holder will maintain a HDD spill response plan and the necessary response equipment will be kept on-site for the duration of the drilling. All releases of drilling fluids to sensitive areas (e.g., wetlands, NYSDEC regulated 100-foot adjacent areas, streams) shall be reported to the NYSDEC Region 8 Division of Environmental Permits and DPS Staff within 2 hours or as soon as practicable considering internet and cell phone coverage in the area.

    d. A vacuum truck and equipment required to contain and clean up a frac-out release will be located on site when conducting HDD operations under Bigelow Creek and Black

Creek, and will be accessible (within 15 minutes of the project site) during remaining HDD operations.

133. If, based on the results of the "Site-Specific Constructability Assessment" described in Certificate Condition 76, and the Board approves stream crossings using trenched methods, then all in-stream work shall only occur in dry conditions. Trenches shall be opened for the installation and backfilled in one continuous operation. Before trenching through stream banks occurs, upland sections of the trench shall be backfilled or plugged to prevent drainage of possible turbid trench water from entering the stream. Intermittent and ephemeral streams must be crossed during times of no flow, while perennial streams must be crossed using a temporary water control device such as a dam and pump or cofferdam to isolate the work area and redirect the water around the work site. Temporary water control devices/cofferdams for perennial streams must adhere to the following:

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

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

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

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

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

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

g. Dewatered sections of stream cannot exceed 50 linear feet (measured from the inside edges of the cofferdams) for each stream crossing unless the Certificate Holder has

prior written approval from the NYSDEC Region 8 Division of Environmental Permits, which approval shall not be unreasonably delayed, unreasonably conditioned or unreasonably withheld and shall be subject to the terms of the dispute resolution procedures contained in Condition 3 herein;

h. If approved dewatering measures fail to divert all flow around the work area, in-stream work must immediately stop until dewatering measures are in place and properly functioning again.

i. All temporary water control structures shall be removed in their entirety upon completion;

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

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

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

134. To reduce thermal impacts to exposed streams, if applicable, native woody plants will be planted at stream crossings disturbed by construction activities. Plant cover will be restored to its pre-construction condition. For stream crossings that are disturbed by construction activities that have, pre-construction, 50% or greater woody plant cover, a minimum of 50% woody plant cover will be established on such stream banks disturbed by Project construction by the end of the two full growing seasons following construction. Planting may be done at top of bank and/or among rocks along toe of slope. Restoration of these select riparian areas will be monitored along the same time frames as the ISMCP, per the provisions of Condition 78 herein, by the appointed Environmental Monitor to document the proper establishment of cover, survivorship of species, and mitigate any unforeseen issues with the revegetation effort. Copies of the stream restoration assessments produced by the Environmental Monitor will be provided to DPS and NYSDEC.

135. Stream beds shall be restored to original elevation, width, and gradient. All other areas of soil disturbance above the ordinary high-water elevation shall be stabilized with natural fiber matting, seeded with an appropriate perennial native conservation seed mix, and mulched with straw within two days of final grading. Mulch shall be maintained until

suitable vegetation cover is established. Destroyed bank vegetation shall be replaced with shrub willow or silky dogwood planting, native trees, or other suitable species.

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

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

138. A buffer zone of 100 feet, referred to as “Restricted Activities Area” or similar on the final Facility construction drawings, shall be established where Facility construction traverses streams, wetlands and other bodies of water. Restricted Activities Areas shall be marked in the field. Restrictions will include: no deposition of slash within or adjacent to a waterbody; no accumulation of construction debris within the area; herbicide restrictions within 100 feet of a State protected wetland regulated pursuant to Parts 663-664, or a regulated stream, (or greater as required per manufacturer’s instructions); no degradation of stream banks; no equipment washing or refueling within the area; no storage of any petroleum or chemical material; and no disposal of excess concrete or concrete wash water.

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

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

141. Where any temporary or permanent access roads are to be constructed through wetlands, a layer of geotextile fabric shall be placed across the wetland after removal of vegetation and before any backfilling occurs. Where installation of access roads is to be constructed through wetland:

a. Temporary access roads shall use construction matting or similar;

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

c. Permanent access roads in wetlands shall be designed to maintain hydrological connectivity of the wetland and be designed to the minimum size needed for operational and maintenance activities, including emergency access requirements.

VI. Facility Operation

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

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

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

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

entities). When applied to the Certificate Holder, the term Good Utility Practice shall also include standards applicable to an independent power producer connecting to the distribution or transmission facilities or system of a utility. Except for periods during which the authorized facilities are unable to safely and reliably convey electrical energy to the New York transmission system (e.g., because of problems with the authorized facilities themselves or upstream electrical equipment) the Facility shall be exclusively connected to the New York transmission system via the facilities identified and authorized in these conditions.

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

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

148. If, subsequent to the completion of construction and testing of the Facility, no electric power is generated and transferred out of such plant for a period of more than 12 months, the Commission may consider advising the Siting Board that the amendment, revocation or suspension of the Certificate may be appropriate.

149. In the event that a malfunction of the Facility causes a significant reduction in the capability of such Facility to deliver power, the Certificate Holder shall promptly file with the Secretary and provide to NYPA copies of all notices, filings, and other substantive written communications with the NYISO as to such reduction, any plans for making repairs to remedy the reduction, and the schedule for any such repairs. The Certificate Holder shall provide monthly reports to the Secretary and NYPA on the progress of any repairs. Decommissioning will commence if the Project has not generated electricity for a period of 12 continuous months; however, decommissioning is not required if the 12-month period of no energy output is the result of a repair, restoration or improvement to an integral part of the Project that affects the generation of electricity and that repair, restoration or improvement is being diligently pursued by the Certificate Holder, or a Force Majeure event. If such events arise, the Certificate Holder shall file a notice with the Secretary describing the issue. If such equipment failure is not completely repaired within nine months of its occurrence, the Certificate Holder shall provide a detailed report to the Secretary, within nine months and two weeks after the equipment failure, setting forth the progress on the repairs and indicating whether the repairs will be completed within three months; if the repairs will not be completed within three months, the Certificate Holder

shall explain the circumstances contributing to the delay and demonstrate why the repairs should continue to be pursued.

150. In the event of a fire or other catastrophic event involving the solar panels, energy storage systems and any associated equipment, the DPS' Chief of Bulk Electric Systems will be notified within 12 hours following such an event; the Town's designated representative, and local emergency agencies/responders shall also be notified within 12 hours following such an event. The Certificate Holder will make every reasonable effort to report before 12 hours.

EXCELSIOR ENERGY CENTER SEEP GUIDE CASE 19-F-0299

APPENDIX B

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

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

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

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

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

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Definitions

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

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

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

Facility or Project Area: The parcels hosting Project Components.

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

Section A – Plans, Profiles and Detail Drawings

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

As indicated in Certificate Condition 8, construction may begin in phases or stages provided the Certificate Holder files all applicable compliance and informational filings prior to the commencement of construction for each phase or stage of the Facility. Compliance Filings and Informational Reports may be filed pursuant to 16NYCRR Part 1002, commencing the review and public comment process, prior to the issuance of a Certificate. Phases of construction have been identified as:

(a) Site Preparation, which includes tree clearing and grading , installation of soil erosion and sediment control measures and stabilized construction entrances, construction of stormwater management measures, and installation of construction access roads and any associated wetland and/or stream crossing (should any be proposed);
(b) Commencement of Civil Construction (including installation of solar arrays, inverters, energy storage, collection lines, fencing, and all permanent Project Components); and,
(c) Commencement of Operations.

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

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

Solar Arrays and Related Non-Linear Components:

For all proposed solar array locations and other Non-Linear Project Components, the Certificate Holder shall provide site plans, profiles, and detail drawings (scale minimum 1 inch = 200 feet)[1] including (all items listed below shall be filed as Compliance Filings unless otherwise noted; should there be a discrepancy between the Certificate Conditions and SEEP, the type of filing shall be determined as listed in the Certificate Conditions):

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

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

utility infrastructure shall be submitted as an Information Report prior to Site Preparation as defined in Certificate Condition 8(a).

b. *Solar Array and Inverter Specifications* including details and specifications of the selected commercial-scale solar array and inverter model(s) (including a specification sheet) to be provided as an Information Report prior to Commencement of Civil Construction as defined in Certificate Condition 8(b). A description of the photovoltaic (PV) panels and associated infrastructure selected for the Facility including any manufacturer provided information regarding the design, safety and testing information for the panels, collection substation, inverters, energy storage systems, and electric interconnection facilities to be installed during construction.

c. A *Foundation Drawing Set* shall be provided prior to Commencement of Civil Construction as defined in Certificate Condition 8(b) and will include plan, elevation, and section details for each foundation type proposed; the foundation type at the collection substation and switchyard location shall be specified in the Foundation Drawing Set; and applicable criteria regarding foundation design shall be listed and described in the drawings and details. Additionally, the Foundation Drawing Set shall describe general concrete testing and monitoring procedures with reference to standards that the Certificate Holder will comply with (including reference to specific standards of the American Concrete Institute (ACI), International Building Code (IBC), and any other authorities). This set will also show and describe concrete chute washout locations and any other cleaning activities (e.g., equipment cleaning for control of invasive species).

d. *Construction Limit Detail Set* showing limits of clearing, temporary and permanent grading, and laydown space required for solar panel installation; SWPPP details should be indicated. These requirements shall be submitted prior to Limited Notice to Proceed activities and shall be submitted for each subsequent phase of construction (or can be submitted for all phases) as listed in Certificate Condition 8.

e. *Planting Plan* to be provided prior to Commencement of Civil Construction as defined in Certificate Condition 8(b). This plan shall show the location, placement, number, specific vegetation type, height at the point of planting, as well as maximum height to be planted at each designated visual mitigation area in accordance with the specifications and planting layout depicted in the Final Landscape Screening Plan will be developed and implemented at each designated visual impact area.

f. *Temporary Yard Package* shall be submitted prior to the use of any areas listed herein prior to commencement of specified construction phase/Limited Notice to Proceed activities and will include the location and boundaries of any areas proposed to be used for fabrication, designated equipment parking, staging, access, lay-down, conductor pulling; yards and equipment storage areas. Indicate any planned fencing, surface improvements or screening of storage and staging areas. Demonstrate setback distances appropriate to Facility design; and conformance with applicable requirements of the Certificate.

<u>Linear Project Components:</u>

For all Linear Project Components including: electric collection lines, and temporary and

permanent access roads, site plan and profile figures shall include profile drawings of the Project centerline. The following information shall be included in the *Linear Components Package* and will be provided as Compliance Filings (unless otherwise noted) prior to the Commencement of Civil Construction (or earlier phase) as defined in Certificate Condition 8(b) unless otherwise noted below (this set may be included as part of the final site plan and profile drawings or submitted as stand-alone plans) (scale of site plan and profile drawings to be minimum 1 inch = 200 feet)[2]):

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

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

c. Final section details of single and multiple-circuit overhead 34.5kV electric collection line layouts, if proposed. Each Project circuit layout (single, double, triple, etc.) shall include typicals for all overhead structures, proposed guying, and associated clearing.

d. The boundaries of any new, existing, and/or expanded utility right-of-way or road boundaries, and where linear Facility lines or cables are to be constructed overhead or underground; plus, any areas contiguous to the Facility or street within which the Certificate Holder will obtain additional rights. Requirements of this sub-part shall be provided prior to Limited Notice to Proceed activities for the Site Preparation phase.

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

f. Each Facility access road will be identified by a unique name designation. Each access road will be shown on a scaled drawing indicating the width used during construction and the proposed width post- construction on the restoration plan. Temporary and permanent cut and fill contours for each road shall also be shown at two-foot contours. Access controls such as gates shall be indicated, with typical or specific design indicated as applicable to individual sites and identifying construction and material details of gates and berms. This information shall be submitted prior to Site Preparation as defined in Certificate Condition 8(a) and as noted in the Appendix 2 Clearing & Grading Framework.

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

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

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

This information shall be submitted prior to Site Preparation as defined in Certificate Condition 8(a) and as noted in the Appendix 2 Clearing & Grading Framework.

h. For each temporary and permanent access type, provide a typical installation plan view, cross section with appropriate distances and dimension and identification of material. Where existing access ways will be used, indicate provisions for upgrading for Facility construction. Demonstrate accommodation of planned or proposed future access to sites including accommodating access for emergency response vehicles and lands within or adjacent to the facilities locations (and landowner requested improvements (e.g., access roads across linear facilities such as wires, pipes, or conduits.)). This information shall be submitted prior to Site Preparation as defined in Certificate Condition 8(a) and as noted in the Appendix 2 Clearing & Grading Framework.

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

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

This information shall be submitted prior to Site Preparation as defined in Certificate Condition 8(a) and as noted in the Appendix 2 Clearing & Grading Framework.

j. Indicate the type(s) of stream and/or wetland crossing method to be used, as applicable, in conjunction with temporary and permanent access road construction. Provide diagrams and specifications (include plan and side view with appropriate dimensions, alignment, extent of clearing) for each crossing device and rationale for their use. Requirements of this sub-part shall be provided prior to the proposed stream or wetland crossing (to be provided prior to the Site Preparation phase as defined in Certificate Condition 8(a)). Stream crossing methods and design may include but not be limited to:

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

k. All diagrams and specifications should include material type and size to be placed in streams and/or wetland and on stream or on wetland approaches. This information shall be submitted prior to Site Preparation as defined in Certificate Condition 8(a) and as noted in the Appendix 2 Clearing & Grading Framework.

l. Identify existing utility and non-utility structures on or adjacent to the Facility, indicating those to be removed or relocated, if necessary (include circuit arrangements where new structures will accommodate existing circuits, indicate methods of removal of existing facilities, and show the new locations, types and configurations of relocated facilities). Depict each Facility conductor's clearance from the nearest adjacent overhead electric transmission or distribution lines and communications lines.

m. Indication of existing underground utility or non-utility structures, including, but not limited to, gas, water, telecommunication or electric cable or pipeline. The relationship of the Facility to adjacent fence lines; roads; railways; airfields; property lines; hedgerows; fresh surface waters; wetlands; other water bodies; significant habitats; associated facilities; water springs; adjacent buildings; water wells; or structures; major antennas; oil or gas wells, pipeline facilities, and compressor and pressure-limiting and regulating stations. Regarding co- location and crossing of existing utilities by Project components, the following additional information shall be provided (information listed below may be filed with requirements of Certificate Condition 97); required information listed at i. through v. shall be provided as Information Reports prior to commencement of the proposed related activity):

i. Results of any cathodic protection impact studies;
ii. Any approval documentation (including a statement that Facility installations meet existing utility owner technical and safety requirements and copies of all relevant technical and safety manuals) from each existing utility that will be co-located with or that will be crossed by Project Components (including construction equipment crossings of existing utilities);
iii. Details of existing utility owner approved crossing plans (crossed by Project Components) showing methods, separation of existing utility and Project Components, cover, installation of protection measures, and workspace, including any bore pits or similar features;
iv. Details of existing utility owner approved co-location installations (with Project components) showing separation distances of existing utilities and Project components and any required or recommended protection measures; and
v. Details and descriptions of existing utility owner approved methods regarding Project construction equipment crossing of existing utilities approved by each existing utility owner. Requirements of this sub-part shall be provided prior to any

Project construction equipment crossings (as proposed for Limited Notice to Proceed activities, etc.).

n. The location, design details, and site plan of any proposed Project Components, generator sites, collection station, control building, new or expanded switching station, substation, or other terminal or associated utility or non-utility structure (attach plan[3] - plot, grading, drainage, and electrical – and elevation views with architectural details at appropriate scales). Indicate the color and finish of all structures; the locations of temporary or permanent access roads, parking areas, construction contract limit lines, property lines, designated floodways and flood-hazard area limits, relocated structures, and details of any plans for waste disposal.

o. Provide an exterior lighting plan, which addresses:

a) Security lighting needs at the collection substation and switchyard;

b) Plan and profile figures to demonstrate the lighting area needs and proposed lighting arrangement at the substation or any other areas to be lighted;

c) Lighting should be designed to provide a 3.4 foot-candle average to eliminate unnecessary light trespass beyond the collection substation and switchyard and to provide safe working conditions at appropriate locations; and

d) Exterior lighting design shall be specified to avoid off-site lighting effects, by:

(i) Use of task lighting as appropriate to perform specific tasks; task lighting shall be designed to be capable of manual or auto-shut off switch activation rather than motion detection;

(ii) Full cutoff fixtures, with no drop- down optical elements (that can spread illumination and create glare), shall be required for permanent exterior lighting to minimize potential impacts to the surrounding public; and

b. Manufacturer's cut sheets of all proposed lighting fixtures shall be provided.

2. Stormwater Pollution Prevention

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

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

contingencies for construction during extreme weather events (e.g., a 100-year storm) to avoid and minimize the cumulative impacts of multiple proximate disturbed areas. A construction sequencing plan that identifies the order of operations for installation of appropriate erosion and sediment controls best management practices prior to conducting ground-disturbing activities (including vegetation clearing) will be included in the SWPPP and denoted on appropriate drawings and plans. The construction sequencing plan will include processes related to stream crossings, installation of riprap and culverts, and trenching. This information shall be submitted prior to Site Preparation as defined in Certificate Condition 8(a) and as noted in the Appendix 2 Clearing & Grading Framework.

3. Vegetation Clearing and Disposal Methods

Vegetation clearing is proposed to occur in the Site Preparation phase as defined in Certificate Condition 8(a) and as noted in the Appendix 2 Clearing & Grading Framework.

Identify on the plan and profile drawings:

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

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

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

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

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

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

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

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

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

4. Building and Structure Removal

a. Indicate the locations of any structures to be acquired, demolished, moved, or removed. Provide plans for site access; and plans and standards for control of dust, runoff, and containment of any debris or other waste materials related to removals. This information shall be submitted prior to commencement of the above listed activities.

5. Streams and Other Waterbodies

Stream and waterbody information shall be submitted prior to Site Preparation as defined in Certificate Condition 8(a) and will consist of:

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

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

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

6. Wetlands

Wetland information shall be submitted prior to Site Preparation as defined in Certificate Condition 8(a) and will consist of:

a. All Federal regulated wetlands, and State protected wetlands, regulated under 6 NYCRR Parts 663-664, and State associated 100-foot adjacent areas ("adjacent areas") located

within the Facility or crossed by or adjacent to any access road to be constructed, improved, used or maintained for the Facility shall be depicted on plan drawings. Each wetland will be identified by a project identification number and by the New York State Department of Environmental Conservation (DEC) designation as appropriate.

b. Indicate the community type (e.g., emergent, scrub-shrub, forested), location, and identification code(s) of any federal regulated wetland, or state protected wetland, regulated under 6 NYCRR Parts Part 663-664, within or adjoining the Facility and its components, as determined by site investigation and delineation.

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

d. Prior to Commencement of Civil Construction as defined in Certificate Condition 8(b), the perimeter of wetlands and associated buffers shall be flagged in the field to clearly identify clearance/disturbance limits and other wetland areas to be avoided during construction.

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

7. Land Uses

Land use information shall be submitted prior to Site Preparation as defined in Certificate Condition 8(a) and will consist of:

a. Agricultural Areas:

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

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

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

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

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

vi. In areas of proposed access roads, laydown areas, and workpads where access is required for continued agricultural activities, ensure sufficient access for farm

operators (crossings or turn-offs) for the site-specific agricultural equipment and/or livestock.

b. Sensitive Land Uses and Resources:

   i. Identify and indicate the location of known sensitive land uses and resources that may be affected by construction or maintenance of the Facility or by construction-related traffic (e.g., hospitals, emergency services, sanctuaries, schools, and residential areas).
   ii. For noise sensitive sites, show the locations of existing participating and non-participating residences and boundary lines as of the date of the Order. Identify locations and specifications of measures to mitigate construction noise as required by the Certificate.

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

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

d. Recreational Areas:

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

e. Ecologically and Environmentally Sensitive Areas

   i. Indicate the general locations of any known ecologically and environmentally sensitive sites (e.g., archaeological sites; rare, threatened, and endangered species or habitats; agricultural districts; wetlands and other water bodies; and special flood hazard areas) that are adjacent to the Facility or within 100 feet of any facility component to be constructed, improved or maintained for the Facility. Specify the measures that will be taken to protect these resources (e.g., fencing, flagging, signs stating “Sensitive Environmental Areas, No Access” or “Avoidance Area”).
   ii. Measures for avoidance of archaeological sites identified within the Facility shall be indicated on the final site plans. The mapped locations of all identified archaeological sites within 100 feet of proposed Facility-related impacts shall be identified as “Avoidance Areas” or similar on the final Facility construction drawings and marked in the field by construction fencing with signs that restrict access.

f. Invasive Species

   i. Identify the location(s) of prohibited invasive plant species pursuant to 6 NYCRR Part 575 and identified in the Invasive Species Management and Control Plan and the results of pre-construction invasive species surveys as required by the

Certificate, and the prescribed method(s) to control the spread of the identified species on the site during construction and restoration. The need for an "Invasive Species Remedial Plan" as described in the Certificate Conditions will be determined in consultation with DEC.

g. Vegetation Controls and Herbicides

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

h. Visual Mitigation Landscaping and Buffers

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

   ii. Location of existing vegetation to be retained as visual screening, with specification of protection measures to avoid construction damages and retain such vegetation.

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

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

1. Facility Location and Description

This section of the SEEP should contain:

a. A brief description of the final Facility location;

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

2. Environmental Compliance and Monitoring Plan.

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

a. Full-time (when appropriate)[4] environmental monitor;

b. Full-time construction supervisor;

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

d. Part-time health and safety inspector.

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

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

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

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

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

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

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

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

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

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

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

3. <u>Complaint Resolution Plan</u>

The SEEP shall include a copy of the final *Complaint Resolution Plan* (plan can be submitted per construction phase, or for entirety of construction and operation of the Project), which shall include protocols for:

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

b. Notifying the Town, host and adjacent landowners, and the public of the complaint procedures;

c. Registering a complaint;

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

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

f. Logging and tracking of all complaints received, and resolutions achieved and making access by the Town of Byron and DPS to the complaint log upon request except that confidential information will be protected and not disclosed;

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

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

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

4. Health and Safety Plans

The SEEP shall include copies of the following final plans for construction (listed plans may be filed separately for construction phases or provided for all construction phases and operation of the Project):

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

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

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

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

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

5. General Construction

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

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

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

1. Trench Plugs:

Temporary trench plugs will be placed in the excavated trench to impede the flow of water down the trench. Hard plugs (unexcavated earth segments of the ditch line) will be maintained adjacent to streams and wetlands to protect those resources until cable installation activities occur. Soft plugs (replaced trench spoil, fill, sandbags) will be spaced in the trench in sloping areas to reduce erosion and trench slumping. Hay or straw bales will not be used as material for temporary trench plugs.

After cable installation, permanent sandbag or alternative trench breakers will be installed and spaced according to Appendix 1 "Trench Breaker Spacing" before backfilling. At the request of landowners or at the discretion of the environmental inspector or construction supervisor, un-disturbed areas ("hard plugs") will be left in place until cable installation commences, to accommodate equipment crossings. Hard plugs should be a minimum of 50 feet in length for areas where cable splices will occur. For animal and vehicle crossings of the trenchline area, a plug 25 to 30 feet in length should suffice.

2. Trench Breakers:

Trench breakers may be constructed of sandbags or alternative materials. Impervious materials may be used to retain water in the wetlands. Trench breakers should be installed at all wetland edges. The location of these impervious trench breakers will be determined in the field based on locations identified in the construction plan documents. Trench breakers should also be installed up to the top of bank of each waterbody crossing.

3. Backfill:

Backfill operations will commence immediately after cable installation operations and will continue until completed. When backfilling the trench, the following will apply:

a) Only on-site, native material should be used in backfill operations unless the native material does not meet specifications, or ledge rock is encountered in the trench. Imported material may be brought in to protect the cables and achieve depth-of-cover requirements. Imported backfill must be free of invasive species pursuant to Invasive Species Management and Control Plan.

b) Where topsoil has been segregated from trench spoil, backfill will be done in reverse order with trench spoil returned first.

c) Excess spoil will be spread throughout areas adjacent to or in close proximity to the trench. Under no circumstances will excess spoil be spread along the ROW or stockpiled in a manner that permanently changes the soil profile.

d) Trench breakers made of foam, sandbags, or other impervious materials shall be installed at the edge of all wetlands. For those areas where conditions and

topography warrant, and the Certificate Holder identifies prior to the start of construction, the installation of trench breakers at the upland/wetland boundaries is appropriate to minimize changes to hydrologic regime in the wetlands such as drainage from the wetland.

b. Prior to Site Preparation, Certificate Holder shall submit a Spill Prevention, Containment and Control (SPC) Plan for construction to minimize the potential for unintended releases of fuels, waste oils, petroleum products, or hazardous materials during Facility construction and operation. The SPC Plan shall be applied to all relevant construction activities and address the following:

   i. General Information about water bodies, procedures for loading and unloading of oil, discharge or drainage controls, procedures in the event of discharge discovery, a discharge response procedure, a list of spill response equipment to be maintained on-site (including a fire extinguisher, shovel, tank patch kit, and oil-absorbent materials), a statement that methods of disposal of contaminated materials in the event of a discharge will follow the appropriate requirements, and spill reporting information. A statement that any spills shall be reported in accordance with State, local and/or federal regulations with a list of the specific applicable reporting requirements including phone numbers and time requirements.

   ii. Storage, handling, transportation, and disposal of petroleum, fuels, oils, or hazardous materials which may be used during, or in connection with, the construction, operation, or maintenance of the Facility.

   iii. Avoiding spills and improper storage or application.

   iv. Reporting, responding to and remediating the effects of any spill of petroleum, fuels, and oil in accordance with applicable State and Federal laws, regulations, and guidance, and include proposed methods of handling spills of petroleum, fuels, oils, or hazardous materials which may be stored or utilized during the construction and site restoration, operation, and maintenance of the Facility.

   v. Providing of SPC Plan to the Town and local emergency responders; notifying the Town and local emergency responders of locations of hazardous substance storage.

6. Clean up and Restoration Package

The Certificate Holder's program for clean-up and restoration following construction will be described in the Site Restoration Plan to be filed as a Compliance Filing within 30 days of Commencement of Operations as defined in Certificate Condition 8(c), and will include at a minimum:

a. The removal and restoration of any temporary roads or staging areas; the finish grading of any scarified or rutted areas; the removal of waste (e.g., excess concrete), scrap metals, surplus or extraneous materials or equipment used; and

b. Plans, standards and a schedule for the restoration of vegetative cover, including but not limited

to, specifications indicating:

i. design standards for ground cover, including:

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 % by cover type.

ii. planting installation specifications and follow-up responsibilities, if needed;

iii. a schedule or projected dates of any seeding and/or planting if needed.

c. To address temporary impacts to wetlands, the Certificate Holder will restore wetland and adjacent area using native wetland seed mixes which shall be specified.

d. If subject to continued agricultural use, restoration seeding will be consistent with pre-existing crop species or as requested by landowner.

7. <u>Transportation</u>

a. The SEEP shall include copies of the Road Use Agreements (or may be provided as stand-alone Information Reports prior to using roads subject to a Road Use Agreement) with any County and local municipalities. The SEEP will include copies of any crossing agreements with utility companies as discussed above in section A.1.M. Should a final Road Use Agreement and/or utility crossing agreement not be in place prior to the start of the Site Preparation phase, then the Certificate Holder shall provide a copy of a letter sent to the applicable municipality, County or utility, as the case may be, wherein the Certificate Holder commits to comply with the applicable substantive requirements of the municipality, County or utility and agrees to reimburse said entity for any damage caused by the Certificate Holder to roads or utility structures, as the case may be, during the Site Preparation phase.

b. The SEEP shall attach a Traffic Control Plan prior to affecting traffic patterns related to such plans that identifies:

i. The delivery route(s) in the Town of Byron for oversize or over length equipment or materials and the route(s) for delivery of earthen materials and concrete.

ii. The plan shall describe the delivery of materials to the facilities site and shall indicate mitigation measures to manage traffic during construction and operation.

iii. Copies of all permits (submitted as Information Reports) associated with the delivery of such equipment and materials shall be provided prior to using a route to haul equipment or materials requiring a permit.

iv. The Certificate Holder shall not permit construction vehicles or construction equipment to park or idle at public roadside locations for extended periods of time.

8. Construction Vegetation Clearing and Disposal Methods

Vegetation clearing is proposed to occur in the Site Preparation phase as defined in Certificate Condition 8(a) and as noted in the Appendix 2 Clearing & Grading Framework.

For vegetation clearing during construction, the phased or overall SEEP regarding such activity shall:

a. Describe the specific methods for the type and manner of cutting and disposition or disposal methods for cut vegetation.

b. Indicate specifications and standards applicable to salvage, stockpiling or removal of material.

c. Identify ownership of cleared vegetation based on landowner agreements (as applicable).

d. The SEEP shall describe clearing measures to be implemented during construction (e.g. time of year restrictions, distance buffers, etc.) to avoid and minimize impacts to Threatened and Endangered species and habitats as outlined in the Certificate Conditions.

e. Specify the locations where herbicides are to be applied. Provide a general discussion of the site conditions (e.g., land use, target and non-target vegetation species composition, height and density) and the choice of herbicide, formulation, application method and timing. Provide lists of desirable and undesirable vegetation species.

f. Describe the procedures that will be followed during chemical application to protect non- target vegetation, streams, wetlands, sources of potable water supply (i.e. wells and reservoirs) and other water bodies, and residential areas and recreational users on or within 100 feet of the ROW.

9. Plans, Profiles, and Detail Drawings

See Section A of the SEEP Guide for the details to be provided on the Plans, Profiles and Detail Drawings.

10. Land Uses

a. The SEEP shall attach the *New York State Department of Agricultural and Markets Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (Revision 10/18/2019)* which shall describe the programs, policies, and procedures to mitigate agricultural impacts. If required by the issued Certificate, a description of avoidance, minimization or mitigation for impacts to any other sensitive land uses not covered by other sections of the SEEP.

11. Final Geotechnical Engineering Report

a. The SEEP shall attach a final Geotechnical Engineering Report prior to Commencement of Civil Construction as defined in Certificate Condition 8(b) and shall be submitted as an Informational Filing per Certificate Condition 45.

12. Inadvertent Return Plan

a. The SEEP shall attach an *Inadvertent Return Plan* showing all locations where HDD or other trenchless method(s) are proposed. The plan shall assess potential impacts from frac-outs, establish measures for minimizing the risk of adverse impacts to nearby environmental resources, and require the following:

i. Prior to conducting HDD or other trenchless method typical material safety data sheets will be provided to DPS and DEC staff, and the Town.

ii. Drilling fluid circulation shall be maintained to the extent practical.

iii. If inadvertent returns occur in upland areas, the fluids shall be immediately contained and collected.

iv. If the amount of drilling fluids released is not enough to allow practical collection, the affected area will be diluted with freshwater and allowed to dry and dissipate naturally.

v. If the amount of surface return exceeds that which can be collected using small pumps, drilling operations shall be suspended until surface volumes can be brought under control.

vi. If inadvertent drilling fluids surface returns occur in an environmentally sensitive area (i.e. wetlands and water bodies) the returns shall be monitored and documented.

vii. If inadvertent returns of drilling fluids occur in Bigelow Creek or Black Creek (S1/S2 mussel streams) drilling operations must be suspended and the impacted area isolated. No further activity shall take place until DPS and DEC Staff are notified and a plan to minimize additional impacts to mussels and their habitat has been evaluated by DPS and DEC, which review shall not be unreasonably withheld, unreasonably delayed or unreasonably conditioned.

viii. Drilling operations must be suspended if the surface returns may result in a violation of water quality standards or Certificate Conditions.

ix. Removal of released fluids from environmentally sensitive areas will take place only if the removal does not cause additional adverse impacts to the resource. Prior to the removal of fluids from environmentally sensitive areas DPS and DEC Staff will be notified and consulted.

x. If inadvertent drilling fluids surface returns occur in an environmentally sensitive area DPS and DEC Staff shall be notified immediately and a monitoring report shall be submitted within 48 hours of the occurrence. The monitoring report shall include:

a. Name and telephone number of person reporting;

b. Location of the release;

c. Date and time of release;

d. Type and quantity, estimated size of release;

e. How the release occurred;

f. The type of activity that was occurring around the area of the release;

g. Description of any sensitive areas, and their location in relation to the release;

h. Description of the methods used to clean up or secure the site; and

i. Listing of the current permits obtained for the project.

xi. The plan shall establish protocols for recovery of inadvertent releases, handing and disposal.

xii. Any drilling fluid inadvertently discharged must be removed from agricultural areas.

13. Final Blasting Plan

a. Prior to any blasting activities, the SEEP shall attach a site-specific *Final Blasting Plan* (if blasting is required) designed to protect surrounding structures, including groundwater wells. If detailed design determines that blasting is required, the *Blasting Plan* shall include:

i. Setbacks;

ii. Blasting safety protocols;

iii. Notification procedures for the public, adjacent landowners (or those residing on the property), and emergency responders;

iv. Water well survey protocols; and

v. Seismic monitoring protocols.

14. Visual Mitigation

a. Prior to the Commencement of Civil Construction as defined in Certificate Condition 8(b), the SEEP shall attach a *Final Landscape Screening Plan*, based on the mitigation section presented in the VIA (and Solar Glint and Glare analysis) that meets or exceeds the certificate conditions, and shall include:

i. Details showing the location and specific vegetation type to be planted at each designated landscape screening area in accordance with the specifications, and planting layout depicted in the Final Landscape Screening Plan as prepared by the Certificate Holder's Landscape Architect. A distinct, site-specific module will be developed and implemented at each designated visual impact area.

ii. A construction timeline and schedule including:

a) Installation guidelines, and

b) Field assessment.

iii. Maintenance/replacement program.

The *Final Landscape Screening Plan* will be implemented (i.e., planting will occur) in conjunction with the installation of the solar panel arrays, to the extent practicable. All plantings should occur during the spring or fall planting season.

15. Cultural Resources

a. Prior to Site Preparation as defined in Certificate Condition 8(a) and as noted in the Appendix 2 Clearing & Grading Framework, the SEEP shall attach a *Final Unanticipated Discovery Plan*, establishing procedures to be implemented in the event that resources of cultural, historical, or archaeological importance are encountered during Facility construction.

b. If complete avoidance of archaeological sites is not possible, the Certificate Holder shall consult with the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) and DPS Staff to determine if mitigation is warranted. The identification of mitigation measures will be discussed with the Town and included in the plans.

16. Threatened and Endangered Species

a. Prior to Site Preparation as defined in Certificate Condition 8(a), the SEEP shall identify those areas that are owned or controlled by the Certificate Holder which constitute the "Project Area" for the purposes of the Threatened and Endangered Species Certificate Conditions (numbers 98-105), including: areas that would be disturbed or occupied by Project Facilities, access roads, laydown areas, and trees that are immediately adjacent to the limits of disturbance or fence line.

17. Wetlands and Waterbodies

a. Prior to Site Preparation as defined in Certificate Condition 8(a), the SEEP shall include a table listing all delineated federal and State wetlands, streams, vernal pools and other waterbodies located within or adjacent to Project Area. For each resource, the following information will be provided: Town name, centroid coordinates of the resource, location within/relative to the Project Area (i.e., associated site plan and profile drawing sheet number and reference location); stream name (as applicable), delineated feature identification code, community type, DEC Stream Classification (as applicable), DEC Freshwater Wetland designation (as applicable) DEC Water Index Number (for streams), specific construction activities or crossing method affecting the resource, specify the crossing distance across the resource or to the associated Project construction area.

b. A description of construction activities within delineated federal wetlands, and State protected wetlands regulated under 6 NYCRR Parts 663-664, streams[5], and other waterbodies outlining the following requirements, where applicable:

   i. Where any access roads in wetlands are to be constructed through wetlands

      a. Temporary access roads shall use construction matting or similar material; and

      b. Permanent access roads shall use a layer of geotextile fabric and at least six inches of gravel shall be placed in the location or the wetland crossing after vegetation and topsoil is removed.

      c. Permanent access roads in wetlands shall be designed to maintain hydrological connectivity of the wetland and be designed to the minimum size needed for operational and maintenance activities, including emergency access requirements.

   ii. The Certificate Holder shall utilize free span temporary equipment bridges or culverts designed to DEC and/or US Army Corps of Engineers (USACE) standards where applicable to cross all delineated streams with flow at the time of the proposed crossing. This will outline how:

      a) Bridges or culverts may not be dragged through the stream and must be suitably anchored to prevent downstream transport during a flood.

      b) Fill may not be placed within the stream channel below bankfull elevation and placement of abutments or fill is authorized only above and outside bankfull boundaries.

      c) Geotextile fabric must be placed below and extending onto the bank and suitable side rails built into the bridges to prevent sediment from entering the stream.

   iii. If there is an inadvertent puncturing of a hydrologic control for a wetland, then the puncture shall be immediately sealed, and no further activity shall take place until DPS and DEC Staff are notified and a remediation plan to restore the wetland and prevent future dewatering of the wetland has been approved by DPS and DEC;

   iv. Low weight to surface area equipment shall be used and/or equipment shall be placed on temporary matting as needed to minimize soil compaction and erosion;

   v. Work areas shall be isolated from flowing streams by use of sandbags, cofferdam, piping or pumping around the work area. Waters accumulated in the isolated work area shall be discharged to an upland settling basin, field or wooded area to provide for settling and filtering of solids and sediments before water is returned to the stream. Return waters shall be as clear as the flowing water upstream from the work area. Temporary

[5] Delineated streams refer to the stream features identified and delineated by TRC.

dewatering structures (i.e., cofferdams, diversion pipes, etc.) and associated fill shall be completely removed, and the disturbed area shall be regraded and restored immediately following the completion of work;

vi. All fish trapped within cofferdams shall be netted and returned, alive and unharmed, to the water outside the confines of the cofferdam, in the same stream; and

vii. All excess materials shall be completely removed to upland areas more than 100 feet from state-protected wetlands regulated under 6 NYCRR Parts 663-664, and protected streams and shall be suitably stabilized.

viii. Logs and large branches will not be deposited into any regulated freshwater wetland or 100-foot adjacent area, including unmapped wetlands greater than 12.4 acres that DEC has stated are eligible for inclusion in the State wetland map and their associated adjacent areas. However, small branches that are cut in a drop and lop method within wetland and adjacent areas may be spread out and left in place, in a manner that does not alter the hydrology of the wetland and does not materially restrict or limit the wetland's functions and values in any capacity.

c. Description of construction activities to facilitate utility crossings that will temporarily impact delineated federal wetlands, and State protected wetlands regulated under 6 NYCRR Parts 663-664 and their associated adjacent areas, streams, and other waterbodies, including a site-specific assessment of constructability for all utility crossings that cannot use trenchless methods; specific plans with the alignment for each wetland crossing; the extent of clearing and ground disturbance; description of methods used to minimize soil disturbance and compaction; and adherence to the following requirements:

i. Excavation, installation, and backfilling must be done in one continuous operation;

ii. Work within wetlands should be conducted during dry conditions without standing water or when the ground is frozen, where practicable;

iii. Before trenching occurs, upland sections of the trench shall be backfilled or plugged to prevent drainage of turbid trench water from entering wetlands or waterbodies;

iv. Trench breakers/plugs shall be used at the edges of wetlands as needed to prevent wetland draining during construction as described in Section B(5);

v. Only excavated wetland topsoil, hydric soils, and subsoil shall be utilized as backfill at wetland restoration areas;

vi. Wetland topsoil shall be removed and stored separately from wetland subsoil and temporarily placed onto a geo-textile blanket;

vii. The length of the trench to be opened shall not exceed the length that can be excavated, cables installed and backfilled in one day. This length of trench generally should not exceed 1,500 feet in a wetland; and

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

d. Description of restoration measures for State-protected wetlands regulated under 6 NYCRR Parts 663-664, including:

i. Contours shall be restored to pre-construction conditions within 48 hours of final backfilling of the trench within wetlands and state-regulated adjacent areas;

ii. Immediately upon completion of grading, wetland and adjacent areas shall be seeded and/or replanted with native shrubs and herbaceous plants at pre- construction densities. Seeding with an appropriate native wetland species mix (e.g., Ernst Wetland Mix (OBL-FACW Perennial Wetland Mix, OBL Wetland Mix, Specialized Wetland Mix for Shaded OBL-FACW), or equivalent), or seeding with crop species mix consistent with existing, continued agricultural use, shall be completed to help stabilize the soils;

iii. The restoration areas of State-protected wetlands, regulated under 6 NYCRR Parts 663-664 shall be monitored for a minimum of 5 years or until an 80% cover of plants with the appropriate wetland indicator status has been reestablished over all portions of the restored area. At the end of the first year of monitoring, the Certificate Holder shall replace lost wetland and/or wetland adjacent area plantings if the survival rate of the initial plantings is less than 80%; and

iv. If at the end of the second year of monitoring as provided in iii above, the criteria for restoration plantings (80% cover, 80% survival of plantings) are not met, then the Certificate Holder must evaluate the reasons for these results and submit an approvable Wetland Planting Remedial Plan (WPRP) for DEC and DPS approval. The WPRP must including the following:

a) Analysis of poor survival;

b) Corrective actions to ensure a successful restoration; and

c) Schedule for conducting the remedial work. Once approved, the WPRP will be implemented according to the approved schedule.

v. Notwithstanding the requirements of the preceding subsections i-iv above, the following wetland adjacent areas do not require additional mitigation but shall be restored and maintained as follows:

a. Permanent impacts to wetlands W-JDV-5, W-JDV-14, W-JJB-10, W-JJB-13, W-JJB-30, W-JJB-31, W-JJB-33, W-JJB-34, and W-JJB-36 shall be avoided. Impacts to their 100-foot adjacent areas are proposed (as indicated on the figure provided as Appendix 3 hereto). Temporary impacts due to the installation of an underground collection line will occur no nearer than 12.5 feet from the wetland within this 25-foot wetland setback only at wetland W-JJB-10.

. Following construction-related disturbance, disturbed portions of the adjacent areas will be restored by seeding with a solar farm grass seed mix comprised of grasses that are native and/or indigenous to the area. The Certificate Holder will minimize adjacent area impacts in these areas during operation by limiting mowing outside the Project perimeter fencing to a 10-foot wide strip along the fence. Any vegetation with greater than a 3-inch diameter at breast height growing within the adjacent area will be hand cut. All other vegetation between the 10-foot wide maintained strip along the perimeter fencing and the wetland will remain uncut and will be allowed to revert to a natural condition. Based upon the proposed restoration efforts described above, the conversion of the agricultural land cover of these adjacent areas from active agriculture to a stabilized vegetative land cover will result in an enhancement of the adjacent areas and will not negatively impact the wetlands.

e. A wetland mitigation plan detailing these restoration methods and the locations of restoration measures within the identified wetlands will be attached to the SEEP. No streams will be impacted by the construction of access roads. If it is later determined that a stream crossing cannot be avoided, then a site-specific Stream Crossing Plan shall be provided as a Compliance Filing prior to Site Preparation as defined in Certificate Condition 8(a) for each permanent access road-stream crossing and shall include detailed plan, and cross-sectional view plans; drainage area and flow calculations; and location, quantity and type of fill. Bridges that span the stream bed and banks should be utilized where practicable. If a bridge is not practicable, culverts can be utilized and shall be designed as follows:

    i. Sized per DEC and/or USACE culvert sizing criteria;

    ii. To safely pass the 1% annual (100-year return) chance storm event;

    iii. To contain native streambed substrate or equivalent using an open bottom arch, three-sided box culvert, or round/elliptical culvert with at least 20% of the culvert height embedded beneath the existing grade of the stream channel at the downstream invert;

    iv. Shall be a minimum width of 1.25 times (1.25X) the bankfull width of stream channel;

    v. The slope shall remain consistent with the slope of the adjacent stream channel. For slopes greater than 3%, an open bottom culvert shall be used, where practicable;

    vi. Shall facilitate downstream and upstream passage of aquatic organisms; and

    vii. Water handling plan describing the measures to direct stream flow around the work area and measures to dewater the isolated work area.

f. No streams will be impacted by the construction of access roads. If it is later determined that a stream crossing cannot be avoided, a description of stream restoration will be included in Compliance Filings prior to Site Preparation as defined in Certificate Condition 8(a) demonstrating adherence with the following:

    i. The restored stream channel shall be equal in width, depth, gradient, length and character

as the pre-existing stream channel and tie in smoothly to the profile of the stream channel upstream and downstream of the location of the stream channel disturbance. The planform of any stream shall not be changed;

ii. Any instream work or restoration shall not result in an impediment to passage of aquatic organisms;

iii. Any in-stream work (excluding dewatering practices associated with dry trench crossings) and restoration shall be constructed in a manner which maintains low flow conditions and preserves water depths and velocities similar to undisturbed upstream and downstream reaches necessary to sustain the movement of native aquatic organisms. Any in-stream habitat structures shall not create a drop height greater than 6-inches;

iv. All disturbed stream beds must be restored to original elevation, width, and gradient, and adequately stabilized;

v. All other areas of soil disturbance above the ordinary high-water elevation, or elsewhere, shall be stabilized with natural fiber matting, seeded with an appropriate perennial native conservation seed mix, and mulched with straw within two (2) days of final grading. Mulch shall be maintained until suitable vegetation cover is established; and

vi. Destroyed bank vegetation shall be replaced with appropriate native shrubs, live stakes, and/or tree plantings as site conditions, as appropriate.

g. If on-site wetland mitigation is required, the SEEP shall attach a copy of the final Wetland Mitigation Plan, developed in coordination with DEC, DPS Staff, and USACE addressing permanent impacts to federal regulated wetlands, and state-protected wetlands regulated under 6 NYCRR Parts 663-664. The Wetlands Mitigation Plan shall:

i. Describe all activities that will occur within State protected wetlands regulated under 6 NYCRR Parts 663-664 and their associated adjacent areas, and federal wetlands.

ii. For each State-protected wetland regulated under 6NYCRR Parts 663-664 or associated adjacent areas, indicate the type of activity (e.g., construction, filling, grading, vegetation clearing, and excavation) and summarize how the activity is consistent with the weighing standards set forth in 6 NYCRR 663.5(e) and (f).

iii. Describe how impacts to wetlands, adjacent areas, associated drainage patterns and wetland functions will be avoided, and how impacts will be minimized.

iv. Describe the precautions or measures to be taken to protect all other wetlands (e.g., town, vernal pool, or federal wetlands) associated drainage patterns, and wetland functions, including describing the measures to be taken to protect stream bank stability, stream habitat, and water quality including, but not limited to: crossing technique; crossing structure type; timing restrictions for in-stream work; stream bed and bank restoration measures; vegetation restoration measures; and other site-specific measures to minimize impacts, protect resources, and manage Facility construction.

v. Include the creation of compensatory wetlands at a ratio that is consistent with State and federal regulations;

vi. Provide a project construction timeline;

vii. Describe construction details for meeting all requirements contained in these proposed certificate conditions;

viii. Describe performance standards that meet state and federal requirements for determining wetland mitigation success;

ix. Include specifications for post construction monitoring after completion of the wetland mitigation. After each monitoring period, the Certificate Holder shall take corrective action for any areas that do not meet the above referenced performance standards to increase the likelihood of meeting the performance standards. If monitoring demonstrates that the wetland mitigation is still not meeting the established performance standards, the Certificate Holder must submit a Wetland Mitigation Remedial Plan (WMRP). The WMRP must include the following:

a. Evaluation for why performance standards are not being achieved;

b. Corrective actions to ensure a successful mitigation; and

c. Schedule for conducting the remedial work. Once approved, the WMRP will be implemented according to the approved schedule.

h. Map(s) showing where horizontal directional drilling (HDD) is planned for installation of buried cables under wetlands or streams, including location of boreholes and associated erosion/pollution controls.

i. Where trenchless crossings of buried collection are not proposed, include a plan of construction methods, practices, and BMPs to be employed for conventional trenching through wetlands.

j. Similarly, if conventional trenching is proposed for any stream crossing, prepare a site specific plan showing the appropriate dry-crossing technique and BMPs to be employed.

18. Invasive Species Control Plan

a. Prior to the Site Preparation phase, the SEEP shall attach a Final Invasive Species Management and Control Plan (ISMCP), based on the pre-construction invasive species survey of invasive species conducted within the Project Area during the previous growing season. The ISMCP shall include:

i. Measures that will be implemented to minimize the introduction of Prohibited invasive species pursuant to 6 NYCRR Part 575 and control the spread of existing invasive species during construction (i.e., as a result of soil disturbance, vegetation clearing, transportation of materials and equipment, and/or landscaping/re-vegetation). Control measures may

include construction materials inspection and sanitation, mechanical/chemical treatment, and site restoration, among others.

ii. A post-construction monitoring program (MP) shall be conducted in year 1, year 3, and year 5 following completion of construction and restoration. The MP shall collect information to facilitate evaluation of ISMCP effectiveness and inform potential remedial action.

19. Sound

a. Prior to Commencement of Civil Construction, Certificate Holder will identify locations and specifications of measures to mitigate construction noise (e.g., blasting, piling, HDD), if necessary.

b. Specify procedures to be followed to minimize noise impacts related to Project Area clearing and construction of the Facility. Indicate the types of major equipment to be used in construction and Facility operation; sound levels at which that equipment operates; days of the week and hours of the day during which that equipment will normally be operated; any exceptions to these schedules; and any measures to be taken to reduce audible noise levels caused by either construction equipment or Facility operation.

c. Final computer noise modeling shall be conducted by using:

i. The ISO-9613-2 Sound Propagation Standard with no meteorological correction (Cmet);

ii. All noise sources operating at maximum sound power levels, as applicable to the daytime and nighttime periods;

iii. A maximum ground factor of G=0.5;

iv. A factor of G=0 for waterbodies, if any;

v. A height evaluation of 1.5 meters for all receptors;

vi. A temperature of 10 degrees Celsius and 70% Relative Humidity; and

vii. At a minimum, the sound results (Broadband, dBA, and at the full-octave frequency bands from 31.5 Hz up to 8,000 Hz (dB)) will be reported.

d. Sound modeling results shall conform to the following:

i. Results shall be included in a report that shall include among others, sound results in tabular and graphical format.

ii. Sound contours shall be legible and rendered above a map that shall include all sensitive sound receptors and boundary lines (differentiating participating and non-participating parcels); noise sources within the Sound Study Area (including transformer(s), inverters, and other noise sources, if any); collection lines and solar arrays.

iii. Sound contours shall be rendered at a minimum, until the 30 dBA noise contour is reached, in 1 dBA steps.

iv. Full-size, hard copy maps (22" x 34") in appropriate scale shall be submitted to DPS Staff.

v. Only properties that have a signed contract with the Certificate Holder prior to the date of filing shall be identified as "participating."

vi. GIS files used for the final computer noise modeling, including noise source and receptor locations and heights, topography, final grading, boundary line, and participating status shall be forwarded to DPS Staff in digital media.

vii. Final computer noise modeling files shall be delivered to DPS Staff by digital means.

e. For noise sources, other than the substation transformer(s) (e.g., inverters, Medium to Low Voltage transformers) and for non-participating receptors exceeding a sound level of 40 dBA L_{eq} as modeled above, a prominent tone analysis will be presented subject to the following requirements:

i. The "prominent discrete tone" constant level differences (Kt) in ANSI S12.9-2013/Part 3 Annex B, section B.1, will be used as follows; 15 dB in low-frequency one-third-octave bands (from 25 up to 125 Hz); 8 dB in middle-frequency one-third-octave bands (from 160 up to 400 Hz); and, 5 dB in high-frequency one-third-octave bands (from 500 up to 10,000 Hz).

ii. The analysis will use one-third octave band information from the manufacturers (from 20 Hz up to 10,000 Hz, if available). If no manufacturers information is available, sound information can be based on field test(s). The field test(s) will report at a minimum sound pressure and sound power levels and clear explanations about how the test was conducted and Sound Power Levels were obtained. The analysis will be performed for a single noise source (e.g., central inverter) or a group of noise sources (inverters/transformer package), depending on available sound power level information.

iii. For the purposes of tonality assessment, calculations will include the following Attenuations as specified in ANSI/ASA S12.62/ISO 9613-2: 1996 (MOD). Acoustics – Attenuation of Sound During Propagation Outdoors-Part 2: General Method of Calculation:

a) Attenuation due to geometrical divergence (Adiv)[6],

b) Atmospheric absorption for a temperature of 10 degrees Celsius and 70% Relative Humidity (Aatm)[7]

[6] Adiv can be assumed to be the same at all 1/3 octave bands and/or be omitted from analysis.
[7] The same full-octave band atmospheric attenuation coefficients indicated in Table 2 of ANSI S12.62, can be used for the three adjacent one-third octave bands corresponding to each full-octave band.

c) Attenuation to the ground effect (Agr[8,9]),

d) Attenuation due to a barrier (Abar) if any[10],

e) No miscellaneous attenuations (Amisc) will be included.

iv. If no manufacturers information or pre-construction field tests are available, sounds will be assumed to be tonal and the broadband overall (dBA) noise level at the evaluated position as determined with computer noise modeling shall be increased by 5 dBA for evaluation of compliance with applicable Certificate Conditions in the Order.

20. Operations Schedule and Timing

a. This section of the SEEP should include a discussion of Pre-Operational and Post-Operational Filings and Expected Timing of Submissions.

b. The Facility Operations & Maintenance Plan (O&M) will include, at a minimum, a flowchart of proper communications and proper protocol for communications among parties, as relevant to the operations and maintenance of the Facility.

c. A long-range Facility and Corridors Management Plan shall be filed within one year after the Commencement of Operations as defined in Certificate Condition 8(c). The plan shall address specific standards, protocols, procedures and specifications including:

i. Vegetation management recommendations based on on-site surveys of vegetation cover types and growth habits of undesirable vegetation species;

ii. All proposed chemical and mechanical techniques for managing undesirable vegetation;

iii. Where feasible, to limit the introduction and spread of invasive species, the New York Utility Company Best Management Practices for Invasive Species Transportation Prevention (Environmental Energy Alliance of New York [Jan 2015]) will be employed;

iv. Herbicide use, limitations, specifications, and notification requirements will be included. In areas where herbicides are allowed, such use will be conducted by DEC certified pesticide applicators in accordance with all label restrictions and notification requirements;

v. Substation Fence-line Clearances, and Overhead Wire Security Clearance Zone specifications, indicating applicable safety, reliability and operational criteria;

vi. Review and response procedures to avoid conflicts with future use encroachment or infrastructure development;

[8] The same full-octave band attenuations as indicated in Table 3 of ANSI S12.62, can be used for the three adjacent one-third octave bands corresponding to each full-octave band.
[9] Calculations will use the maximum height of the equipment as the height of the noise source.
[10] Should the analysis show that a barrier will be needed, the barrier will be implemented before the start date of operations.

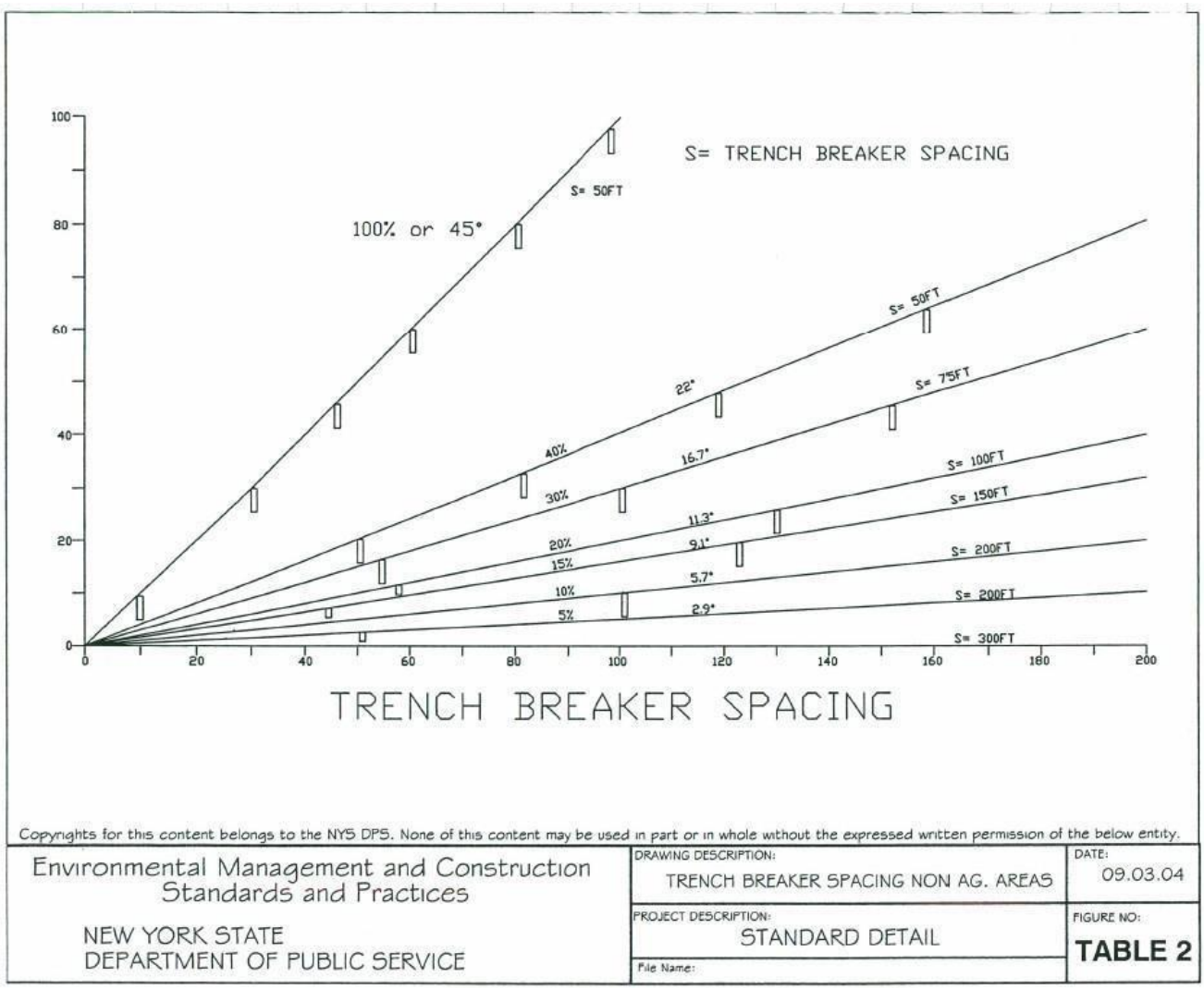
vii. Host landowner notification procedures;

viii. Inspection and target treatment schedules and exceptions;

ix. Standards and practices for inspection of facilities easements for erosion hazard, failure of drainage facilities, hazardous conditions after storm events or other incidents; and

x. Wetland and stream protection areas, principles and practices.

Appendix 1 - Trench Breaker Spacing



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Environmental Management and Construction Standards and Practices NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE	DRAWING DESCRIPTION: TRENCH BREAKER SPACING NON AG. AREAS	DATE: 09.03.04
	PROJECT DESCRIPTION: STANDARD DETAIL File Name:	FIGURE NO: **TABLE 2**

Appendix 2 – Clearing and Grading Filing Framework

Clearing and Grading Filing FRAMEWORK

Consistent with Certificate Condition 56, upon the filing of the plans and reports listed in this appendix, entitled the Clearing and Grading Filing Framework , as a compliance filing, and following certification of the Project and approval of said plans and reports by the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased, the Director, Facility Certification and Compliance of the Department of Public Service, or their designee, is authorized to issue a Limited Notice to Proceed to the Certificate Holder to conduct the Clearing and Grading Activities described in said plans and reports; provided, however, that said plans and reports are consistent with and implement the applicable Certificate Conditions approved by the Board.

The purpose of this Clearing & Grading Filing Framework is to commence the Site Preparation phase as defined at Certificate Condition 8(a), which includes tree clearing and grading , installation of soil erosion and sediment control measures and stabilized construction entrances, construction of stormwater management measures, and installation of construction access roads and any associated wetland and/or stream crossing (should any be proposed); The following provides a brief summary of the construction activities proposed for this clearing and grading phase of work.

Clearing & Grading (Limited Notice to Proceed) Construction Activities

Access to the Project Area will be established prior to beginning clearing, grading, and construction activities. Construction limits, sensitive areas, and existing utilities will be staked/flagged prior to construction, and erosion and sediment controls will be installed prior to soil disturbance activities. Stabilized construction entrances and construction access roads will be installed as indicated on the Tree Clearing and Grading Drawings. Timber matting will be placed in areas requiring tree clearing where access is not available from the construction access roads, in environmentally sensitive areas, or in soft soil areas where rutting and significant soil disturbance is a concern (if necessary). Refer to the Tree Clearing and Grading Drawings for the proposed location of timber matting for tree clearing and grading work. Equipment required for construction access roads, tree clearing, grading, and general construction will arrive at the Project as it is required for the current phase of construction.

Tree clearing activities will commence as access to tree clearing areas is being established, following best management practices and SWPPP guidelines. As trees are cleared, the timber will be stockpiled either at the two landowner-designated timber stockpile locations or at the construction laydown yards as explained in the Timber Salvage Plan. Access roads will be graded and stabilized prior to loading and hauling away the trees. Upon completion of clearing activities, the site will be graded and stormwater management measures will be constructed as detailed in on the Grading Plans.

Subsequent Construction Activities

Array construction will commence upon completion of clearing and grading activities. If final solar array and electrical design compliance filing approval is not sought by the Certificate Holder concurrent with

this grading and clearing filing, then a second compliance filing for the construction of the solar energy components including the final array layout, inverter locations and collection line routes, consistent with the SEEP and Project certificate conditions will be submitted at a later date. Depending upon design status, the final layout of the Project's point of interconnection facilities (e.g. collection substation, switchyard, and interconnection to the existing NYPA 345 kV transmission line) will be included with this second compliance filing or submitted as a separate future filing. Following the completion of all construction, disturbed soils will be restored as required by the Stormwater Pollution Prevention Plan (SWPPP). Construction and soil restoration may be completed in stages to reduce the overall amount of soil disturbance at the Project Area at any one time.

Clearing & Grading Filing Drawings and Documents

A. Site Plans & SWPPP:

1. **Site Plans:** Consistent with Certificate Condition 66, site plan drawings for activities proposed during the clearing and grading phase shall be provided. The drawings shall be prepared consistent with the SEEP Guide requirements of Section A – Plans, Profiles and Detail Drawings applicable to clearing and grading activities. Additional Project Components may be included within the drawings for context/reference (e.g. solar arrays, collection lines, fencing). All site plans will be drawn at a scale of 1" =200' or smaller. Contents:

    a. Site plans depicting proposed tree clearing and grading activities. Prepared with GIS or CAD, with aerial background. Drawings shall be full size (22x34 or larger) and 11x17 drawings shall be made available to DPS staff upon request.

    b. Access Road Plans: plan drawings created with CAD. Typical cross sections. Plans will show final road widths and expected grading limits during construction.

    c. Consistent with Certificate Condition 67, maps showing the locations for construction trailers/offices and location of access to public roads will be submitted. A construction laydown yard plan shall also show planned areas for trailers, parking, and storage.

    d. Stormwater management measures and erosion and sediment control measures.

    e. Consistent with Certificate Condition 73, final wetland impact drawings, site plans, and construction details for activities associated with clearing and grading shall be submitted and incorporate and accurately depict methods for minimization of impacts to each wetland.

    f. If applicable, where proposed access roads cross streams, a Stream Crossing Plan shall be provided consistent with the requirements of Certificate Conditions 75 and 77.

    g. Vegetation clearing and disposal methods consistent with the SEEP Guide requirements of Section A.3 and B.8.

2. Stormwater Pollution Prevention Plan (SWPPP)

a. A SWPPP shall be submitted consistent with the SEEP Guide requirements of Section A.2. The Certificate Holder shall specify if the Project will be constructed under a single NOI or if a separate NOI will be filed for subsequent construction phases.

3. Wetlands and Stream Plan

a. The plan shall be consistent with Certificate Conditions 73, and 123; and SEEP Guide Sections A.6. and B.17.
b. Wetland and stream drawings, showing areas where roads, cross wetlands and/or streams, shall indicate topographic contours, delineated wetlands and streams, specifying access and construction measures, crossing method (e.g., culvert or bridge; trenchless or trenched installation, timber matting or geotextile/gravel, etc.); and any designated streamside "protective or buffer zones" in which construction activities will be restricted. 1" =50' scale.
c. Tables listing wetland and stream impacts, with the following for each impact: area, type of wetland or stream classification, type of impact, jurisdiction.
d. A Wetland Mitigation Plan, as applicable under SEEP Guide Section B, Item 17.d.v and Certificate Condition 123. The Wetland Mitigation Plan shall be consistent with SEEP Guide Section 17.g.

<u>B. Plans, Agreements, and Shapefiles</u>

The following plans, agreements and shapefiles will be prepared based upon construction activities associated with Site Preparation as defined in Certificate Condition 8(a) to address the Certificate Condition noted for each. Should the same plan, agreement and/or shapefiles be required for subsequent construction phases, they will be included with the applicable Compliance Filings for the Commencement of Civil Construction and Commencement of Operations phases as defined in Certificate Condition 8.

1. Agricultural Area Plan

a. Consistent with Certificate Condition 47 and SEEP Guide Section A.7.a.

2. Timber Salvage Plan

a. Consistent with Certificate Condition 74.

3. Complaint Resolution Plan

a. Consistent with Certificate Condition 52 and SEEP Guide Section B.3.

4. Invasive Species Management and Control Plan

a. Consistent with Certificate Condition 78 and SEEP Guide Section B.18.

5. Notification Plan

a. Outlining the intended procedures for notifications required by Certificate Conditions 22-27.

6. Emergency Response Plan for Construction

a. Consistent with Certificate Condition 60 and SEEP Guide Section B.4.a.

7. Health and Safety Plan

a. Consistent with Certificate Condition 62 and SEEP Guide Section B.4.c.

8. Unanticipated Discovery Plan and Archaeological Avoidance Plans

a. Consistent with Certificate Condition 82 and SEEP Guide Section B.15.

9. Dig Safe New York Documentation

a. Consistent with Certificate Condition 86.

10. Traffic Control Plan

a. Consistent with Certificate Condition 65 and SEEP Guide Section B.7.c.

11. Quality Assurance and Quality Control Plan

a. Consistent with Certificate Condition 58 and SEEP Guide Section B.4.d.

12. Construction Spill Prevention, Containment and Control (SPC) Plan

a. Consistent with Certificate Condition 80 and SEEP Guide Section B.5.b.

13. Utility Crossing Agreements

a. Consistent with Certificate Condition 51, prior to the Commencement of Civil Construction as defined in Certificate Condition 8(b), the Certificate Holder shall file as an Information Report the agreement between itself and National Fuel and NYPA demonstrating that National Fuel/NYPA has granted the Certificate Holder permission to install facilities within pipeline/transmission line easements. If final agreements have not been executed and crossings are required during Site Preparation the provisions of Section 7.a herein addressing the crossings for this phase shall govern.

14. Setbacks and GIS Files: Consistent with Certificate Conditions 41(a) and 64(a)-(d). GIS files shall be submitted as confidential information for use by State agencies.

Appendix 3 –Facility Components and Wetland Boundaries

Tower Hill Rd
Tower Hill Rd
Tower Hill Rd
TRANSIT Rd
Bridge Rd
Chapel Rd
Chapel Rd
Chapel Rd
TRANSIT Rd
RT-262
RT-262
RT-262
TRANSIT Rd
TRANSIT Rd
W-JDV-14
W-JDV-15
Bank St Rd
Cockram Rd
Cockram Rd
Cockram Rd
Edgerton Rd
TRANSIT Rd
Bank St Rd

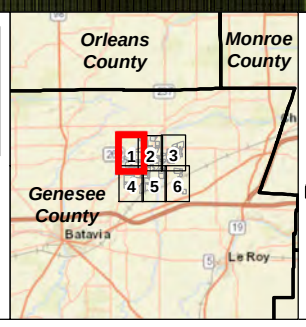
PSS WETLANDS CLAIMED ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP*
PUB WETLANDS CLAIMED ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP*
100-FT BUFFER FROM CLAIMED ELIGIBLE WETLANDS*
PROPOSED PROJECT LAYOUT
PROJECT AREA

*Per the NYSDEC's Freshwater Wetlands Determination signed 03/24/2021

Data: TRC
Base Map: APEM 2019, NYS Office of Information Technology Services, GIS Program Office, 2017; Esri and its contributors

0 250 500 Feet

N



NEXTera ENERGY

WETLANDS ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP PER NYSDEC

EXCELSIOR ENERGY CENTER, LLC
TOWN OF BYRON, NY

FIGURE 1

MAP 1 OF 6 | APRIL 2021

Map Produced by TRC

S:\1-PROJECTS\NEXTERA\328808_Excelsior\Excelsior_Fig1_Wetlands_Eligible_NYSDEC_11x17P.mxd

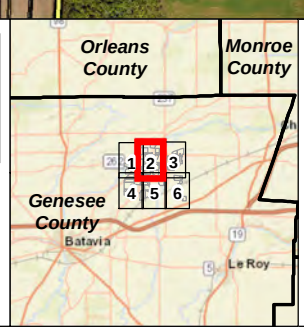
PEM WETLANDS CLAIMED ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP*
PFO WETLANDS CLAIMED ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP*
PSS WETLANDS CLAIMED ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP*
100-FT BUFFER FROM CLAIMED ELIGIBLE WETLANDS*
TRC DELINEATED MAPPED NYSDEC WETLANDS
100-FT NYSDEC ADJACENT AREA
PROPOSED PROJECT LAYOUT
PROJECT AREA

*Per the NYSDEC's Freshwater Wetlands Determination signed 03/24/2021

Data: TRC
Base Map: APEM 2019, NYS Office of Information Technology Services, GIS Program Office, 2017; Esri and its contributors

0 250 500 Feet

N



NEXTera ENERGY

WETLANDS ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP PER NYSDEC

EXCELSIOR ENERGY CENTER, LLC
TOWN OF BYRON, NY

FIGURE 1

MAP 2 OF 6 | APRIL 2021

Map Produced by TRC

S:\1-PROJECTS\NEXTERA\328808_Excelsior\Excelsior_Fig1_Wetlands_Eligible_NYSDEC_11x17P.mxd

PEM WETLANDS CLAIMED ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP*

PFO WETLANDS CLAIMED ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP*

PSS WETLANDS CLAIMED ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP*

100-FT BUFFER FROM CLAIMED ELIGIBLE WETLANDS*

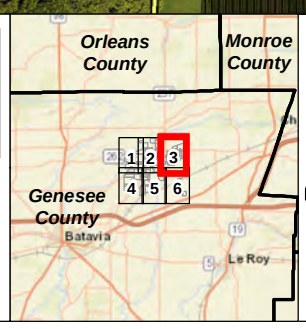
PROPOSED PROJECT LAYOUT

PROJECT AREA

*Per the NYSDEC's Freshwater Wetlands Determination signed 03/24/2021

Data: TRC
Base Map: APEM 2019, NYS Office of Information Technology Services, GIS Program Office, 2017; Esri and its contributors

0 250 500 Feet



NEXTera ENERGY

WETLANDS ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP PER NYSDEC

EXCELSIOR ENERGY CENTER, LLC
TOWN OF BYRON, NY

FIGURE 1

MAP 3 OF 6 | APRIL 2021

Map Produced by TRC

S:\1-PROJECTS\NEXTERA\328808_Excelsior\Excelsior_Fig1_Wetlands_Eligible_NYSDEC_11x17P.mxd

NEXTera ENERGY

WETLANDS ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP PER NYSDEC

EXCELSIOR ENERGY CENTER, LLC
TOWN OF BYRON, NY

FIGURE 1

MAP 4 OF 6	APRIL 2021

Map Produced by TRC

S:\1-PROJECTS\NEXTERA\328808_Excelsior\Excelsior_Fig1_Wetlands_Eligible_NYSDEC_11x17P.mxd

W-JJB-33
W-JJB-34
W-JJB-30
W-JJB-31
W-JJB-36
Caswell Rd
Walkers Corners Rd
E Main St
RT-237
Conrail
Griswold Rd
Mechanic St

PEM WETLANDS CLAIMED ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP*
PFO WETLANDS CLAIMED ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP*
PSS WETLANDS CLAIMED ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP*
PUB WETLANDS CLAIMED ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP*
100-FT BUFFER FROM CLAIMED ELIGIBLE WETLANDS*
PROPOSED PROJECT LAYOUT
PROJECT AREA

*Per the NYSDEC's Freshwater Wetlands Determination signed 03/24/2021

Data: TRC
Base Map: APEM 2019, NYS Office of Information Technology Services, GIS Program Office, 2017; Esri and its contributors

0 250 500 Feet

N

Orleans County
Monroe County
Genesee County
Batavia
Le Roy
1 2 3 4 5 6

New York

NEXTera ENERGY

WETLANDS ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP PER NYSDEC
EXCELSIOR ENERGY CENTER, LLC
TOWN OF BYRON, NY

FIGURE 1

MAP 5 OF 6 | APRIL 2021

Map Produced by TRC

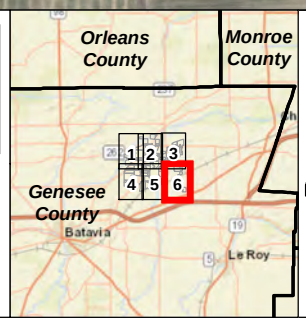
S:\1-PROJECTS\NEXTERA\328808_Excelsior\Excelsior_Fig1_Wetlands_Eligible_NYSDEC_11x17P.mxd

PEM WETLANDS CLAIMED ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP*
PFO WETLANDS CLAIMED ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP*
PSS WETLANDS CLAIMED ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP*
100-FT BUFFER FROM CLAIMED ELIGIBLE WETLANDS*
PROPOSED PROJECT LAYOUT
PROJECT AREA

*Per the NYSDEC's Freshwater Wetlands Determination signed 03/24/2021

Data: TRC
Base Map: APEM 2019, NYS Office of Information Technology Services, GIS Program Office, 2017; Esri and its contributors

0 250 500 Feet



NEXTera ENERGY

WETLANDS ELIGIBLE FOR INCLUSION ON THE STATE WETLAND MAP PER NYSDEC

EXCELSIOR ENERGY CENTER, LLC
TOWN OF BYRON, NY

FIGURE 1

MAP 6 OF 6 | APRIL 2021

Map Produced by TRC

S:\1-PROJECTS\NEXTERA\328808_Excelsior\Excelsior_Fig1_Wetlands_Eligible_NYSDEC_11x17P.mxd

APPENDIX C
EXCELSIOR ENERGY CENTER PROJECT
Noise Complaint Resolution Protocol

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1. COMPLAINT RESOLUTION PROTOCOL FOR CONSTRUCTION AND OPERATIONAL NOISE FROM SOLAR FACILITIES

This Noise Complaint Resolution Protocol has been prepared to establish the procedures by which the Certificate Holder will address public complaints during the construction and the operation of the Project. All activities will adhere to the requirements of appropriate governing authorities, and will be in accordance with all applicable federal, state and local rules, regulations, Orders and agreements.

2. PROCEDURE FOR FILING COMPLAINTS

a. Complaints can be made by following any of the following procedures.

   i. Call the Certificate Holder at its headquarters (800-674-8613), or its representatives (e.g. Construction Manager during construction, or the Site Manager once the Project is operational),

   ii. Meet with Certificate Holder employees in person at the temporary construction office or at a location near the Project once the Project is operational,

   iii. Submit a complaint in writing by mailing a detailed complaint, or

   iv. Submit a complaint in writing by emailing a detailed complaint to the Certificate Holder or its representatives (info@excelsiorenergycenter.com) (e.g. Construction Manager during construction or the Site Manager once the Project is operational),

   v. Refer to Appendix D for contact information.

b. The complaint should be as detailed as possible and include the information (available online at both the Project website and the Town website) indicated in Appendix C, entitled "Complaint Form". The form can be used to submit a complaint by mail. These forms will also be available at the temporary construction office during construction.

c. The Certificate Holder encourages complainants to submit complaints directly to the Certificate Holder or its representatives to be able to address such complaints in a timely manner according to this protocol. Complaints submitted to other third parties may not be communicated to the Certificate Holder and therefore may not get addressed in a timely manner.

d. In circumstances whereby a third party receives a complaint about the Project, the Certificate Holder requests that the third party refers the complainant to the Complaint Resolution Protocol on the Certificate Holder's website and, if possible, forward the complaint to the Certificate Holder within seven (7) business days of receipt. The Certificate Holder will communicate the receipt of complaints to emergency service providers, NY State agencies, the Town of Byron, and other third parties that should be notified of complaints about the Project.

3. RESOLUTION OF COMPLAINTS

a. The Certificate Holder will work in good faith to address and/or resolve reasonable complaints as soon as is practicable, however, some complaints may take more time than others to evaluate and

determine proper resolution, and some complaints may not reasonably be resolved. If a complaint cannot be reasonably resolved, the Certificate Holder will advise the complainant in writing as to why and share said response with emergency service providers, NY State agencies, the Town of Byron, and other third parties that should be notified of complaints about the Project. Please also refer to Certificate Conditions of the Order for other specific requirements.

b. The Certificate Holder will contact the complainant as quickly as possible and in all cases within 3 days to confirm that the complaint was received and within 7 days of receipt to gather additional information and/or discuss a resolution plan.

c. The Certificate Holder will resolve complaints within the time frames specified in the Certificate Order, if any. Otherwise the Certificate Holder will work in good faith to address and/or resolve complaints as soon as is reasonably practicable and commits to resolving complaints within 60 days, unless circumstances dictate that more time is necessary for evaluation or resolution and the Applicant is working toward a resolution. In instances where resolution will take longer than 60 days, the Applicant will contact the complainant within 30 days of receipt of the complaint to explain why resolution will take, or is taking, longer and will provide a timeframe for resolution. The complainant may contact the Certificate Holder to obtain status updates concerning the response to the complaint.

4. DISPUTE RESOLUTION AND UNRESOLVED COMPLAINTS

a. In some instances, the Certificate Holder and a complainant (the parties) may not agree on a resolution to a complaint. In such instances, the Certificate Holder will consult New York State Department of Public Service (DPS) and notify the Town of Byron. If necessary, the complaint will be referred as specified by applicable regulations.

b. In other instances, the Certificate Holder may determine that a complaint does not have a reasonable resolution. For such complaints (for example a complaint about the value of solar energy), the Certificate Holder will add the complaint to the complaint log and notify the complainant that no resolution is feasible unless a different procedure is required by the Certificate Order or applicable regulations.

5. DOCUMENTATION OF COMPLAINTS

a. During construction and operation of the Project, the Certificate Holder will keep a complaint log, recording complaints that it receives. The complaint log will include, at a minimum, the information required by the Certificate Order. A sample complaint log form is included as Appendix E.

b. At a minimum, the log will contain the name(s) and contact information of the person(s) that lodges the complaint, name of the property owner(s), address of the residence where the complaint was originated, the date and time of the day underlying the event complained of, and a summary of the complaint, if available.

c. The complaint log will be maintained by the Certificate Holder and will be made available to DPS and the Town of Byron upon request.

6. PUBLIC NOTIFICATION OF COMPLAINT PROCESS

a. No less than two (2) weeks prior to the commencement of construction, the Certificate Holder will publish a summary of the Complaint Resolution Protocol in such newspapers, including local community and general circulation newspapers, including the newspaper of record for the Town of Byron, as will serve substantially to inform the public of such Complaint Resolution Protocol. The summary will include contact information of the Certificate Holder including phone numbers, email and physical addresses.

b. The Protocol will be provided to the Town Supervisor and Town Boards where the Project is sited.

c. The Protocol will also be posted on the Certificate Holder's website and will be available to the public at the Certificate Holder's temporary construction offices.

7. NOISE COMPLAINT AND RESOLUTION PROTOCOL

This Protocol is in effect upon commencement of construction and will be in effect for the life of the project.

a. Complaint Response – Construction

i. At a minimum, complaints from construction will be addressed as specified in the Certificate Order.

ii. If the Sound Complaint location is more than one (1) mile[1] from active construction activity, the complaint will be logged but no action will be taken.

iii. If the Sound Complaint location is one (1) mile[1] or less from active construction activity, the following steps will be taken:

1. A representative from the construction firm will visit the site of the complaint during construction activity to listen and observe.

2. The Certificate Holder will determine whether the Certificate Conditions of the Order on construction noise are met and if not, correction(s) will be taken, or

3. Construction personnel in consultation with the EM will determine if any equipment is not functioning properly and thus creating unusual sound. If so, this equipment will be repaired or replaced as soon as practical.

b. Complaint Response - Operation

If the Sound Complaint is originated in a residence within half mile of the facility, and based on final computer noise modeling or any preliminary monitoring, there appears to be a reasonable possibility that the sound levels induced by the Project exceed or are within 5 dBA of any applicable noise limit or design criteria specified in a Certificate Condition of the Order, then the Certificate Holder will investigate the incident as follows:

i. The Applicant is not required to conduct sound testing if:

1. the modeled sound levels are lower than 5 dBA below any applicable noise limit.

2. the complaint has occurred as a result of abnormal operation. In this case, the Certificate Holder shall make necessary repairs.

ii. The Certificate Holder shall conduct sound monitoring if:

1. The complaint location is further than 0.5 miles from any previously evaluated monitoring locations, or

2. The location is closer than 0.5 miles of a previously evaluated monitoring location but the final computer noise modeled levels or the results of any preliminary measurements of sound levels are higher or expected to be higher than the positions previously evaluated, or

3. There is a reasonable possibility that mechanical or operational conditions have changed that affect Inverter/Medium to Low Voltage Transformer or substation equipment sound levels, or,

4. The issue is different than the one previously evaluated, or

5. The last monitoring was conducted more than three years ago.

iii. The Certificate Holder will not, as a result of additional complaints, repeat sound monitoring in a previously evaluated location during any three-year period following the first monitoring for that receptor, unless changes in system operation or maintenance can be reasonably assumed to have resulted in higher sound levels.

iv. The Certificate Holder may request that a Complainant maintain a written log of potentially offending sound events over some reasonable period of time, in order to assist in identifying influences that may affect the sound from the Facility.

[1] Two (2) miles for complaints from blasting noise.

v. If Certificate Conditions of the Order or any preliminary investigation suggests that sound monitoring is warranted, the Certificate Holder shall conduct such sound monitoring through an independent third party capable of producing verifiable results.

vi. The Certificate Holder shall inform a resident when it intends to conduct any exterior sound monitoring and cooperate with the resident to determine an appropriate location for the monitoring equipment. If the investigation determines that a sound complaint is the same as previously lodged and that the Facility is found to be compliant with the relevant certificate conditions for two separate instances at the same location during the last 3 years, then any future complaint, beyond the first two, may require the complainant to pay the cost of additional sound testing.

vii. If, as the result of an investigation of a complaint, it is determined that the sound level at any residence, attributable to the Project, does not comply with any Certificate Condition or design goal of the Order, the Certificate Holder will evaluate and implement practical measures to reduce sound levels at the receptor and/or mitigate the issue by other measures.

viii. Complaints associated with the operation of motors/tracking systems, will be addressed by implementing operational mitigation strategies (e.g. staggering), or physical mitigation measures (e.g., lubrication, replacement of noisy components), as feasible and appropriate.

8. REPORTING

a. For any complaint-based monitoring conducted by the Certificate Holder, the results of the testing shall be submitted in a report as specified in the Certificate Order and in this Complaint Resolution Protocol.

b. Copies of the report will be delivered to the complainant, NYS DPS, and, to the Town of Byron.

c. The report shall include at a minimum the following information collected during the monitoring period:

i. Ground-level wind speed and direction during monitoring (1.5 meters above the ground),

ii. Operational status of the noise sources or substation components, as applicable,

iii. Summary of sound levels,

iv. Raw sound level data as logged by the sound level meter during the program

v. Conclusions.

APPENDIX C: COMPLAINT FILING FORM (for public)

Date of filing: _____

Name of Property Owner: _____

Name of the Complainant: _____

Address: _____

Phone #: _____

Email Address: _____

Date and time of the day underlying the event: _____

_____

Location(s) of the property where the issue is/was noticed: _____

_____

Duration of the issue: _____

_____

Description of Complaint:* _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

*If possible, include weather conditions and any other details that can help identifying the issue.

APPENDIX D: CERTIFICATE HOLDER'S CONTACT INFORMATION

Excelsior Energy Center
700 Universe Blvd., FEW/JB
Juno Beach, FL 33408

Telephone: 800-674-8613
Email: info@excelsiorenergycenter.com

APPENDIX E: COMPLAINT LOGGING FORM (for Operator)