

STATE OF NEW YORK
OFFICE OF RENEWABLE ENERGY SITING AND ELECTRIC TRANSMISSION

Application of Fort Edward Solar, LLC for a Major Renewable Energy Facility Siting Permit Pursuant to Article VIII of the New York Public Service Law to Develop, Design, Construct, Operate, Maintain, and Decommission a 100-Megawatt (MW) Solar Energy Facility Located in the Town of Fort Edward, Washington County

Matter No. 23-03023

**APPLICANT'S RESPONSE IN OPPOSITION TO
AMERICAN LAND RESCUE FUND, INC'S MOTION TO
SUPPLEMENT AND AMEND PETITION AND APPEAL**

Dated: March 11, 2026

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I. PRELIMINARY STATEMENT

Fort Edward Solar, LLC (Fort Edward or Applicant) hereby submits its response to American Land Rescue Fund Inc.'s (ALRF) Motion to Supplement and Amend Petition and Appeal filed on March 4, 2026.¹ For the reasons set forth below, the Applicant opposes the request in full. If and only if, despite its untimeliness, the Administrative Law Judges (ALJs) consider ALRF's motion, the motion should also be denied. For one, to excuse this late filing would set an unnecessary precedent for future proceedings that potential parties and opposition groups can ignore prior opportunities to participate in the proceeding, fund additional environmental studies after all administrative remedies have expired, incorrectly apply legal standards, fail to provide timely comments and input on the proposed project, ignore deadlines, without facing any ramifications. In addition, there is nothing in the submission that would change the avoidance, minimization and mitigation measures already included in the Record for the Facility and ALRF's belated attempt to introduce new evidence at this stage is merely an effort to cloud the already clear Record on potential impacts and how they have been fully addressed in this proceeding.

II. PROCEDURAL BACKGROUND

On August 22, 2024, Fort Edward submitted an Application to the Office pursuant to Article VIII of the New York State Public Service Law and the Office's regulations.² On February 3, 2025, the Office of Renewable Energy Siting and Electric Transmission (ORES) issued a Minor Application Amendment Determination.³ Supplemental material was submitted by Fort Edward on March 28, 2025, and May 23, 2025, to address the *Notice of Incomplete Application*⁴ issued by ORES on October 21, 2024. On May 27, 2025, ORES issued a *Notice of Complete Application*.⁵ On July 28, 2025, ORES issued a *Draft Permit* to Fort Edward.⁶ A *Combined Notice* was also issued with the *Draft Permit*, instructing potential parties to submit requests for Party Status,

¹ ALRF Motion to Supplement and Amend Petition (ALRF Motion), DMM Item No. 107.

² 16 NYCRR § 1100-1.6(a); Application, DMM Item Nos. 24-41.

³ Response to Amendment Request, DMM Item No. 67.

⁴ Notice of Incomplete Application, DMM Item No. 54.

⁵ Notice of Complete Application, DMM Item No. 78.

⁶ Draft Permit, DMM Item No. 80.

including identification of the substantive and significant issues each proposed Party sought to adjudicate, by October 6, 2025.⁷

On November 7, 2025, over a month after responses were due, ALRF filed a motion to requesting ORES to accept a Petition for Late Party Status and Issues Statement.⁸ Both the Applicant and ORES filed responses to ALRF's motion on November 24, 2025.⁹ Counter to the regulatory process set by Article VIII, ALRF filed a Request for Leave to File Reply.¹⁰ On December 11, 2025, Administrative Law Judges Henry James Joseph and Dawn MacKillop-Soller (the ALJs) issued a Ruling on Issues and Party Status (Ruling) rejecting the motion and request for leave.¹¹ On December 18, 2025, ALRF filed an Appeal of the Ruling.¹² Both the Applicant and ORES filed responses to ALRF's Appeal on December 24 and 26, 2025, respectively.¹³ Now, nearly three months later while all parties are waiting on a decision from the Executive Director, ALRF has filed a Motion to Supplement and Amend Petition.¹⁴

ALRF's Motion to Supplement and Amend Petition should be denied because it is yet another untimely request and falsely states the requisite legal standard, continues to mischaracterize the nature of Fort Edward's redacted materials, and because the Record establishes that Fort Edward has adequately addressed the impacts of the Fort Edward Solar Project (Facility or Project) to the Washington County Grasslands and more than sufficient justification for ORES to make the Findings that impacts have been avoided, minimized or mitigated to the extent practicable in accordance with ORES's statutory mandate.

III. STANDARD OF REVIEW

A. Standards for Supplementing a Petition for Party Status, Obtaining Party Status, and Adjudicable Issues Under Article VIII

⁷ Combined Notice, DMM Item No. 81.

⁸ ALRF Motion to Accept Late Filing, DMM Item No. 94.

⁹ Applicant Response to ALRF Motion, DMM Item No. 96, ORES Response to ALRF Appeal, DMM Item No. 97.

¹⁰ ALRF Request for Leave, DMM Item No. 98.

¹¹ Ruling of the Administrative Law Judges on Issues and Party Status, DMM Item No. 101.

¹² ALRF Appeal of Issues Ruling, DMM Item No. 102.

¹³ Applicant Response to ALRF Appeal, DMM Item No. 104, ORES Response to ALRF Appeal, DMM Item No. 105.

¹⁴ ALRF Motion, DMM Item No. 107.

Despite the fact that the filing was late along with the lack of any justification for the late filing, which is a basis to deny the Motion in and of itself, the Motion should also be denied because ALRF does not meet its burden to demonstrate why it should be allowed to supplement its original petition for party status that was previously denied (and was also late). A petition may only be supplemented, “where the ALJ finds, based on good cause shown by the petitioner, that a potential party did not have adequate time to prepare its petition for party status.”¹⁵ ALRF has not demonstrated good cause, let alone any cause at all, in its Motion that it did not have adequate time to prepare its petition for party status. ALRF does not even discuss why it could not have commissioned the Hudsonia Report earlier. Notably, this submission is nearly three months *after* issues have been fully addressed and on the eve of issuance of the Final Siting Permit.

Even if the ALJs consider granting ALRF’s Motion, which they should not, the Motion does not raise any substantive and significant issues or warrant any further review by ORES at this juncture in the proceeding. Article VIII requires a potential party to demonstrate that they have raised substantive and significant disputed issues; if no such issues are raised, party status is not granted.¹⁶ An issue is subject to adjudication at an evidentiary hearing where it is both “substantive and significant”.¹⁷ The regulations and ORES precedent make it clear that the burden is on a potential party to demonstrate that the issues raised are substantive and significant.¹⁸ An issue is substantive “if there is sufficient doubt about the applicant's ability to meet statutory or regulatory criteria applicable to the project, such that a reasonable person would require further inquiry”.¹⁹ An issue is significant “if it has the potential to result in the denial of a siting permit, a major modification to the proposed project or the imposition of significant permit conditions in addition to those proposed in the Draft Permit, including uniform standards and conditions”.²⁰ Importantly, issues for adjudication must be questions of fact—questions of law or policy are not factual issues appropriate for an evidentiary hearing.²¹ Accordingly, the regulatory standard limits adjudication

¹⁵ 16 NYCRR § 1100-8.4(e)(4).

¹⁶ 16 NYCRR § 1100-8.3(c)(2).

¹⁷ 16 NYCRR § 1100-8.3(e)(1)(ii).

¹⁸ 16 NYCRR § 1100-8.3(d)(4).

¹⁹ 16 NYCRR § 1100-8.3(d)(2).

²⁰ 16 NYCRR § 1100-8.3(d)(3).

²¹ *Application of Heritage Wind, LLC* (Matter 21-00026) Ruling on Issues and Party Status at 5, (July 8, 2021), DMM Item No. 47 [hereinafter “Heritage Issues Ruling”].

to genuine factual disputes where resolution is necessary to determine whether the Applicant has met the requirements of Article VIII and the Office's regulations. Mere opposition or the raising of immaterial issues does not necessitate the granting of party status.

Based on this standard, and as discussed in greater detail below, assuming that the ALJ's ignore the untimeliness of the submission, ALRF has failed to identify substantive and significant fact issues for adjudication, as required by 16 NYCRR § 1100-8.3(d)(1)(ii) and (iv), 8.3(e)(1)(i), and 8.4-(c)(2)(i). The issues raised in the Motion are (1) issues which are not substantive or significant; (2) general objections to the Facility, Article VIII and its implementing regulations, including the uniform standards and conditions; and/or (3) repeated arguments that have already been addressed by the ALJs. Therefore, as outlined in greater detail below, ALRF has not achieved the prerequisite step, showing good cause for why it did not have adequate time to prepare its original petition, nor did it identify any substantive and significant issues sufficient to support the granting of Full Party Status.

B. Standards of Proof, Witnesses and Scientific Credibility

ALRF submitted a report, Preliminary Biodiversity Analysis of the Washington County Grasslands, New York, and Potential Impacts of the Fort Edward Solar Proposal," by Erik Kiviat PHD PWS and Andrew Leonardi MS of Hudsonia (Hudsonia Report) in an attempt to amend its petition for party status.²²

Applying the governing standards, the ALJs correctly found that ALRF failed to present substantive and significant factual issues warranting adjudication, ALRF previously did not meet the standard for achieving late party status and now, should not allow ALRF to supplement the original petition. Even if the Hudsonia Report was considered timely, it still does not raise a substantive and significant issue and ALRF would still not receive party status. For example, Erik Kiviat and Andrew Leonardi's statements in the Hudsonia Report did not demonstrate unmitigated site-specific impacts; instead, they reflected a difference of opinion, which is insufficient where ORES and New York State Department of Environmental Conservation (NYSDEC) staff had already reviewed the data and imposed enforceable mitigation through the conditions of a net conservation benefit plan. The Hudsonia Report does not demonstrate that its authors conducted a

²² ALRF Motion, Exhibit A: Hudsonia Report, DMM Item No. 107.

thorough review of the publicly available Application exhibits, resulting in unsupported and inaccurate assertions about the project. The Applicant's exhibits, which have been available on the DMM since the Project's application was submitted, contain detailed information that Hudsonia appears to have overlooked, leading to broad and erroneous claims about project-related risks. For example, regarding karst concerns, "*Based on review of publicly available data and the results of the geotechnical investigation, it is expected that there will be low risk to the Facility development.*"²³ This information, along with similar analyses in other exhibits, was readily accessible and contradicts the conclusions presented by Hudsonia. The claims in the report also represent a disagreement with the standards and procedures established by the Article VIII regulations. The ALJs likewise rejected claims that the Facility as proposed will not achieve a net conservation benefit based on the terms of the Draft Permit and mitigation proposed by the Applicant. Taken together, the submission from ALRF reflects a disagreement with ORES's determinations and the application process and ultimately fails to demonstrate any omissions, errors, or contrary facts sufficient to cast doubt on the adequacy of the Application. Under 16 NYCRR § 1100-8.3(d), such speculative, duplicative, or conclusory assertions cannot meet the substantive and significant standard. Therefore, ALRF's untimely submission of the Hudsonia Report does not raise any substantive and significant issues.

IV. ALRF'S MOTION TO SUPPLEMENT AND AMEND PETITION SHOULD BE DENIED

For the reasons discussed in this response, ALRF's Motion should be denied. ALRF's claims, through the Hudsonia Report, can be categorized as an incorrect interpretation of the Petition Supplement Standard, a misunderstanding of the Article VIII process and evidence standard, and inaccurate characterizations of Fort Edward Solar's application. ALRF has submitted another late motion in a last-ditch effort to muddy the record and prevent the further development of the Fort Edward Solar Project. Its Motion continues to mischaracterize the nature of the Facility's redacted application materials and ALRF has failed to explain why it refuses to simply sign the Protective Order and obtain the requested materials. Even if ALRF's Motion was

²³ Application, Exhibit 10 (Revision 1), DMM Item No. 73.

incorrectly granted, the Hudsonia Report does not raise any substantive and significant issues because it simply disagrees with the Article VIII process.

A. ALRF’s Motion is Untimely and Misinterprets the Standard Required to Supplement a Petition

i. ALRF’s Motion is Untimely

ALRF has now, for the second time, submitted a late motion. ALRF incorrectly claims that it originally “timely filed a Petition for Party Status.”²⁴ The ALJs noted that the filing was late and properly denied the late-filed Petition for Party Status.²⁵ Initially, and as discussed above, ALRF submitted a motion to accept a late filing on November 7, 2025, that was subsequently denied on December 11, 2025. Fort Edward’s Application was deemed complete on May 27, 2025. According to the Article VIII regulations, within one year of ORES deeming an application complete, the Office must either issue a final permit or a denial.²⁶ Therefore, the date for a final decision on Fort Edward’s Application is May 27, 2026. ALRF is now attempting to disrupt the Article VIII process and confuse the Record by submitting a new environmental study at the 11th hour. As stated in the Document, “ALRF does not seek to introduce new legal claims. Rather, it seeks to supplement the record...” which shows ALRF knows it has not raised substantive and significant issues, but is a direct admission that it is doing so to delay the permitting process.²⁷

ALRF has previously argued that because it was incorporated in 2024, earlier participation was impossible.²⁸ However, as noted by the ALJs in the Ruling, ALRF was aware of the proceeding early enough to participate.²⁹ Additionally, ALRF attended the public comment hearing on September 30, 2025, and presented public comments.³⁰ Despite the ALJs’ determination that ALRF’s did not meet the threshold requirements for consideration of its late-filed petition and its request to submit a late-filed petition for party status was denied, along with ALRF submitting an appeal of the Ruling in December that is currently waiting for a decision, ALRF chose to fund an additional and separate environmental study.

²⁴ ALRF Motion to Accept Late Filing at 2, DMM Item No. 94.

²⁵ Ruling at 43, DMM Item No. 101.

²⁶ 16 NYCRR § 1100-9.1(a)(2).

²⁷ ALRF Motion at 3, DMM Item No. 107.

²⁸ ALRF Appeal at 4, DMM Item No. 102.

²⁹ Ruling at 28, DMM Item No. 101.

³⁰ Ruling at 39, DMM Item No. 101.

Throughout the issues determination process, ALRF has attempted to delay or stop the Facility. First, ALRF blamed ORES and the Applicant and vaguely claimed that “procedural irregularities and concealment of critical environmental information...made timely, informed participation impossible.”³¹ As discussed later in this Response, ALRF continues to mischaracterize the nature of the Facility’s redacted materials. Next, ALRF claimed that the Protective Order was not reasonably disclosed to the public.³² Notably, multiple parties were able to access and sign the protective order, with the first one being executed on August 21, 2024.³³ ALRF then tried to argue that because it was incorporated in 2024, earlier participation was impossible.³⁴ Now, ALRF is attempting to amend the previously denied late petition for party status with a recently funded environmental study. ALRF has clearly been aware of the Fort Edward Solar Project, has had every opportunity to participate in a timely manner, and the untimely Motion to Supplement a petition to include a belatedly prepared environmental study is nothing more than yet another attempt to either confuse the Record at best, or delay or stop the development of the Facility altogether, at worst.

ii. ALRF Misinterpreted the Standard Required to Supplement a Petition

ALRF has also misinterpreted the reason why an ALJ may allow for the supplementation of the petition. According to the Article VIII regulations, “when an ALJ finds, *based on good cause shown by the petitioner*, that a potential party did not have adequate time to prepare its petition for party status, the ALJ shall provide an opportunity for supplementation.”³⁵ The burden to show good cause is therefore placed on ALRF to show why it did not have adequate time to prepare its petition. However, ALRF’s motion incorrectly states that “16 NYCRR § 1100-8.3(e)(4) permits supplementation of petitions where additional material information becomes available.”³⁶ The mere introduction of “additional material information” is not the correct standard and is also a much lower bar than showing good cause. A petitioner must provide specific reasons why it was unable to prepare a petition. ALRF does not provide a good cause reason why it did

³¹ ALRF Motion to Accept Late Filing, DMM Item No. 94.

³² ALRF Request for Leave to File Reply, DMM Item No. 98.

³³ Benjamin Wisniewski Protective Order, DMM Item No. 36; Joel Merriman Protective Order, DMM Item No. 76.

³⁴ ALRF Appeal at 4, DMM Item No. 102.

³⁵ 16 NYCRR § 1100-8.3(e)(4) (emphasis added).

³⁶ ALRF Motion at 3, DMM Item No. 107.

not have adequate time to prepare. It merely states that the basis for supplementation is that the newly authored report by Hudsonia “supports and further substantiates the issues previously raised by ALRF” and that the “scientific analysis was not available at the time” of the original petition.³⁷ Belatedly requesting that a consultant prepare a report, and then have that consultant prepare the report months after the deadline for submission of evidence, is not a sufficient basis. Certainly, waiting until after submitting an appeal of a ruling denying party status to commission a new environmental study in an attempt to supplement a previously denied petition for party status is in no way “good cause shown by the petitioner, that a potential party did not have adequate time to prepare its petition for party status.”³⁸

The ALJs should deny ALRF’s Motion to supplement the petition because if granted, it will disrupt the entire Article VIII process and set damaging precedent by applying an incorrect standard and allowing the belated submission of evidence without cause or excuse. This precedent would then open the door for parties to avoid procedural requirements, routinely submit late filings, and ultimately delay future major renewable energy facilities. This is also during a time when New York State is actively trying to accelerate the deployment and construction of reliable and clean energy projects, such as Fort Edward, in accordance with the mandates of the Climate Leadership and Community Protection Act (CLCPA) mandates.³⁹

B. ALRF Continues to Incorrectly Describe the Nature of the Facility’s Redacted Materials

ALRF, through its use of the Hudsonia Study, is once again incorrectly describing the nature of Fort Edward’s redacted materials. The report makes ten separate references to the redacted materials in the Application.⁴⁰ Most of these references are commentary on how “unusually heavily redacted” the materials are.⁴¹

As an initial point, ALRF has still not signed the Protective Order. Not only has the Protective Order been available since August 20, 2024⁴², but the Applicant explained the purpose

³⁷ ALRF Motion at 2, DMM Item No. 107.

³⁸ 16 NYCRR § 1100-8.3(e)(4).

³⁹ <https://www.governor.ny.gov/news/governor-hochul-directs-state-agencies-accelerate-renewable-energy-development-and>.

⁴⁰ ALRF Motion, Exhibit A: Hudsonia Report, DMM Item No. 107.

⁴¹ ALRF Motion, Exhibit A: Hudsonia Report at 2, DMM Item No. 107.

⁴² *Fort Edward* Protective Order, DMM Item No. 38.

of the Protective Order as well as how to execute the Order in its November 24, 2025 response to ALRF's first Motion.⁴³ At this point, it is clear that ALRF is deliberately choosing to not sign the Protective Order.

According to the Hudsonia Report, the "unusually heavily redacted" Application materials "obfuscate and foreclose the ability of the public and other scientists to understand the project and its potential impacts."⁴⁴ The Hudsonia Report also reflects on the "large portions" and "extensive" redactions in the Application materials, and claims that they can only assume the redactions are intended to conceal the exact locations of Endangered and Threatened species and that in their opinion, most of that information is not sensitive.⁴⁵ There would be no need to speculate at all if ALRF had merely signed the Protective Order to legally access the confidential documents. Additionally, the Report's authors could have also signed the Protective Order to avail themselves of the information and eliminating the need to "reasonably assume" what is in the Application's environmental reports.

Regarding the Report's statement that redactions of locations are not necessary, if the Applicant did not redact the information, it would be violating state law. Under New York State's Environmental Conservation Law, records that identify locations of habitats and species that are designated as endangered, threatened, or species of concern are protected from disclosure.⁴⁶ Additionally, ORES has taken a broad view with respect to these redactions and requires applicants to redact any information which could be used to identify the location of endangered or threatened species' location or habitat. Therefore, the information is appropriately redacted in the Application as noted by the ALJs in the Ruling.⁴⁷

Lastly, the Report claims that the Applicant, along with ORES, "are concealing critical biodiversity information to expedite approval of the solar project."⁴⁸ Not only is this statement outright false, it also mischaracterizes and misrepresents the entire Article VIII process as the information is readily available to ALRF and any consultant it seeks to hire. This statement

⁴³ Applicant Response to Motion to Accept Late Filing, DMM Item No. 96.

⁴⁴ ALRF Motion, Exhibit A: Hudsonia Report at 2, DMM Item No. 107.

⁴⁵ ALRF Motion, Exhibit A: Hudsonia Report at 19, DMM Item No. 107.

⁴⁶ NY ECL § 3-0301(2)(r).

⁴⁷ Ruling at 42, DMM Item No. 101.

⁴⁸ ALRF Motion, Exhibit A: Hudsonia Report at 21, DMM Item No. 107.

requires no further response as it is patently untrue and has already been rejected by the ALJs in this proceeding.

ALRF cannot be allowed to repeat the same confidentiality argument which has been rejected previously when it has been informed of the correct process to access the confidential information but refuses to do so. Therefore, ALRF's motion should be denied in its entirety.

C. Fort Edward Solar Has Sufficiently Addressed the Impacts of the Facility to the Washington County Grasslands

According to the Hudsonia Report, Fort Edward has not sufficiently addressed the impacts of the Facility to the Washington County Grasslands because Fort Edward has not conducted enough environmental studies and the Applicant's proposed mitigation is not sufficient.⁴⁹ The Report argues that not only is Fort Edward missing several studies but that "preserving other nearby grassland at the ratio of 1 unit of solar arrays to 0.4 unit of mitigation area does not compensate for the loss of 567 acres of grassland bird habitat."⁵⁰ The Hudsonia Report characterizes the mitigation ratio as 'inadequate' but provides no quantitative analysis, regulatory citation, or empirical modeling supporting that conclusion. Additionally, the Grassland Bird Trust map referenced in the Report, has already been ruled as a "gross overstatement"⁵¹ of the facility, and the other map referenced does not represent the most up-to date map that Boralex has on the project website⁵², which accurately displays that the Limits of Disturbance (LOD) is 527 acres, with the solar arrays making up 484 acres of that, not the 567 acres that has been misquoted in this Report. Essentially, the Report claims that due to the nature of the local environment where the Facility is sited, Fort Edward has not done enough studies to determine the impact and has not provided enough mitigation. This statement and overall argument of the Report is nothing more than a disagreement with Article VIII and the Uniform Standards and Conditions (USCs) established by ORES and NYSDEC. This claim also does not raise any substantive and significant issues. Fort Edward has sufficiently conducted all studies required by ORES and NYSDEC to ensure that the Facility avoids, minimizes, and mitigates impacts.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Ruling at 24, DMM Item No. 101.

⁵² <https://us.boralex.com/en/projects-and-sites/solar-fort-edward>.

As determined by the ALJs, the Facility does not require additional SSCs to address grassland bird impacts.⁵³ The Applicant conducted wildlife surveys and impact assessments in accordance with Article VIII regulations and ORES protocols, including grassland bird and raptor surveys, habitat characterizations, and the preparation of a Net Conservation Benefit Plan (NCBP). The Facility's location in and around the grassland bird areas does not invalidate these efforts, nor does it mean the Facility Site requires additional protections due to the Facility. The Hudsonia Report claims that additional studies are recommended to help provide necessary data that is currently missing from the Application materials.⁵⁴ The Report also selectively cites literature suggesting solar-related bird mortality while omitting more recent peer-reviewed analyses questioning those estimates.⁵⁵ The Report also ignores literature showing grassland bird use of solar sites. Fort Edward Solar has already completed all surveys and impact assessments under Article VIII to accurately understand what species are on the Facility Site and the appropriate mitigation efforts necessary. Based on the results of the surveys and impact assessments, the Applicant carefully developed mitigation efforts, including a significant redesign of the Facility, to address impacts. The Facility has been designed to avoid, minimize, and mitigate impacts and where impacts are unavoidable, has prepared a NCBP to ensure that the Facility will have a net conservation benefit that will benefit all of the species necessary.

Additionally, several of the species identified by the Hudsonia Report are either not in the Facility Site and will not be impacted by the Facility or are not a listed Threatened and Endangered species. For example, the Hudsonia Report discusses the presence of the endangered Karner blue butterfly, but the butterfly is eight miles southwest of the Facility Site and was not observed during any of Fort Edward's environmental studies.⁵⁶ Additionally, the Report claims that the American eel "may occur" in the Facility Site.⁵⁷ The American eel is not a Threatened and Endangered species and there were no sightings of it in the Facility Site.⁵⁸ The Report also includes a list of species of listed and non-listed plant species from a separate project in a different area and claims the Fort Edward Facility Site should be checked for those as well.⁵⁹ Identifying potential species

⁵³ Ruling at 28, DMM Item No. 101.

⁵⁴ ALRF Motion, Exhibit A: Hudsonia Report at 22, DMM Item No. 107.

⁵⁵ ALRF Motion, Exhibit A: Hudsonia Report at 18, DMM Item No. 107.

⁵⁶ Application, Exhibit 12: Threatened and Endangered Species, DMM Item No. 70.

⁵⁷ ALRF Motion, Exhibit A: Hudsonia Report at 2, DMM Item No. 107.

⁵⁸ Application, Exhibit 12: Threatened and Endangered Species, DMM Item No. 70; Appendix 12-A: Wildlife Site Characterization Report, DMM Item No. 26.

⁵⁹ ALRF Motion, Exhibit A: Hudsonia Report at 15, DMM Item No. 107.

that may or may not be near the Facility, and were not observed while conducting any of the environmental surveys, does not represent flaws or inadequacies of Fort Edward Solar's efforts and overall Application.

The Hudsonia Report's claim that solar construction "could remobilize PCBs into the air and water" exemplifies the reckless speculation pervading the report.⁶⁰ Instead of conducting testing at the Facility Site, Hudsonia extrapolated from a 2002 study of Hudson River floodplain soils to upland parcels located 0.5-1.5 kilometers from the river on geologically distinct glaciolacustrine clay. Even Hudsonia's cited source, found elevated PCBs only within 0.75 miles of the river, encompassing less than 10% of the project area.⁶¹ No peer-reviewed literature, no fate and transport modeling, no regulatory guidance, and no geochemical analysis supports the assertion that driving piles into upland agricultural soils poses PCB mobilization risk. This unfounded claim appears calculated solely to exploit public fear rather than provide defensible scientific analysis. It is emblematic of the low value of the report that Hudsonia would rekindle legacy contamination issues, invoking PCB fears without evidence or logic.

The Hudsonia report's claim that Boralex's proposed mitigation parcels are "already under conservation easement unrelated to the Fort Edward Solar project" and therefore "fail to protect or produce any new habitat" reflects either a fundamental misunderstanding or deliberate misrepresentation of the critical distinction between agricultural conservation easements and wildlife habitat conservation.⁶² The existing easement on parcels 180.-2-14 and 180.-2-13.2, held by the New York Agricultural Stewardship Association (ASA), restricts land use to agriculture and explicitly requires that the property maintain the land for agricultural use. The Boralex mitigation plan proposes to convert these 271 acres from unrestricted agricultural use to grassland bird habitat management through: (1) seasonal mowing restrictions prohibiting all field management between April 23 and August 15 to protect breeding activities; (2) winter management restrictions from November 15 to March 31 to protect wintering raptor foraging; (3) native warm-season grass establishment on 50 acres specifically targeting Grasshopper Sparrow habitat; and (4) delayed harvest timing post-August 15 to ensure nest success and fledgling

⁶⁰ ALRF Motion, Exhibit A: Hudsonia Report at 16, DMM Item No. 107.

⁶¹ ALRF Motion, Exhibit A: Hudsonia Report at 16, DMM Item No. 107.

⁶² ALRF Motion, Exhibit A: Hudsonia Report at 21, DMM Item No. 107.

survival.⁶³ These management practices represent a categorical transformation from baseline agricultural use to high-quality breeding and wintering habitat where none currently exists under the ASA easement framework, creating an estimated 60-120 additional breeding pairs. Hudsonia's assertion that this constitutes "no new habitat" is scientifically indefensible and demonstrates a willful distortion of the facts to manufacture opposition to a project.

Hudsonia's present characterization of solar development and grassland bird habitat also appears inconsistent with its own prior work. In earlier research conducted for the permitted 100MW Flint Mine Solar Project in Greene County, Hudsonia conducted biological surveys and habitat assessments and described how solar development, when paired with appropriate site design and vegetation management practices, could maintain or improve conservation outcomes for wildlife and plants of concern.⁶⁴ That report noted that Hudsonia's recommendations were intended to guide site design and land management practices that would improve the conservation functions of a solar facility for wildlife and plants of conservation concern. The Hudsonia Report submitted here, by contrast, adopts a markedly different framing of solar development impacts without reconciling these earlier conclusions or acknowledging the role of mitigation and vegetation management practices discussed in its prior work. This inconsistency raises questions regarding the analytical approach employed in the present report and suggests that the conclusions reached reflect advocacy rather than the balanced scientific evaluation reflected in Hudsonia's prior work. The Hudsonia Report is a last-minute attempt from ALRF to raise new issues and require additional studies that are beyond the scope of the Article VIII regulations, does not raise any substantive and significant issues, and therefore ALRF's Motion to include it should be denied.

V. CONCLUSION

For the reasons set forth herein, the Applicant respectfully requests an Order denying ALRF's Motion and rejecting its request to supplement its petition for party status in all respects and granting such other and further relief as is just and proper.

⁶³ Application, Appendix 12-E: Net Conservation Benefit Plan, DMM Item No. 70.

⁶⁴ Case 18-F-0087: Application of Flint Mine Solar, Appendix 22-A, DMM Item No. 100.

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