

NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

CASE 19-F-0366 - Application of Trelina Solar Energy Center, LLC
for a Certificate of Environmental
Compatibility and Public Need Pursuant to
Article 10 to Develop, Construct and Operate a
Solar Generating Facility with a Maximum
Generating Capability of 80 MW in the Town of
Waterloo, Seneca County.

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

Issued and Effective: November 30, 2021

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NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

At a session of the New York State
Board on Electric Generation Siting
and the Environment held in the City
of Albany on November 30, 2021

BOARD MEMBERS PRESENT:

Tammy Mitchell, Alternate for the Chair of the
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
Howard A. Zucker, M.D., J.D., Commissioner
New York State Department of Health

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

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

Richard Swinehart, Ad Hoc Member

Joseph Wukitsch, Ad Hoc Member, dissenting

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BY THE BOARD:

I. INTRODUCTION

By this Order, we grant to Trelina Solar Energy Center, LLC ("Trelina" or "Applicant") a Certificate of Environmental Compatibility and Public Need ("CECPN") to construct and operate a solar energy generating facility in the Town of Waterloo, Seneca 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 Examiners appointed by the Department of Public Service ("DPS") and the Associate Examiner appointed by the Department of Environmental Conservation ("DEC"), as well as the extensive settlement proposal developed by the parties.¹ We base our decision on the evidentiary record, the initial and reply briefs of the parties, public comments, and applicable law and policy.

II. BACKGROUND

A. Description of the Project

The proposed Facility, or Project, will be a solar electric generation facility with a generation capacity of up to 80 megawatts ("MW"), consisting of commercial scale arrays of solar photovoltaic ("PV") panels, together with associated facilities, that will occupy a fenced-in area of 418 acres ("Facility Area") within a 1,067-acre Project Area, in the Town

¹ The parties to this case include Trelina, the trial staff of the Department of Public Service ("Staff" or "DPS Staff"), the Department of Environmental Conservation ("DEC"), the Department of Agriculture and Markets ("DAM"), the Department of Health ("DOH"), and the Town of Waterloo ("Waterloo").

of Waterloo, Seneca County, New York.

In addition to the PV panels, the Project will include inverters, fencing, access roads, collection lines, laydown/staging areas, a collection substation, and interconnection facilities (collectively, the "Project Components"). To supply electricity to New York State's bulk electric transmission system, the Project will interconnect with the existing, and adjacent, "Border City-Station 122" 115-kilovolt ("kV") transmission line owned by the New York State Electric and Gas Corporation ("NYSEG").

After reviewing Trelina's Article 10 application (the "Application"), including the Supplement to the Application, and participating in settlement negotiations, the Applicant, DPS Staff, DEC, DAM, and Waterloo agree that the Project, as proposed and subject to the agreed upon conditions ("Certificate Conditions"), can be granted a CECNP by the New York State Board on Electric Generation Siting and the Environment ("Siting Board" or "Board").

B. Procedural History

Trelina submitted its Public Involvement Program ("PIP") Plan to Department staff on May 13, 2019. Department staff provided comments on the proposed PIP Plan and Trelina responded by filing its final PIP Plan on July 12, 2019.² Thereafter, Trelina engaged stakeholders through the activities identified in the PIP Plan.³ On September 25, 2019, Trelina held two open house meetings at the Serven Volunteer Fire Company Firehouse to answer questions and provide information about the Project.⁴ Throughout Project development, Trelina continued to

² See Hearing Exh. 1.

³ See Hearing Exh. 67.

⁴ Id.

meet with Waterloo, the Seneca County Chamber, local fire departments, local union officials, and other Seneca 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.⁵ No party has questioned the sufficiency of Trelina's PIP Plan activities.

On October 10, 2019, Trelina filed its Preliminary Scoping Statement ("PSS"), which summarized the proposed scope and methodology of studies to be performed and included in the Application.⁶ The Secretary to the Siting Board ("Secretary") notified parties that pre-application intervenor funds were available shortly thereafter. Comments on the PSS were submitted by the New York State Department of Transportation, DPS, DEC, DAM, and Waterloo, and Trelina responded to those comments on November 21, 2019.⁷ A procedural conference was held on January 2, 2020, during which the Town was granted \$28,000 in pre-application intervenor funding, representing the full amount of funds available.

On January 21, 2020, Trelina provided notice that it would negotiate pre-application stipulations with interested parties.⁸ Trelina negotiated stipulations with the parties over the next several months. These negotiations resulted in proposed stipulations, filed June 22, 2020, setting forth agreement between the stipulating parties regarding the studies to be performed and the resulting data to be included in the

⁵ Id.

⁶ Hearing Exh. 5.

⁷ Hearing Exh. 7.

⁸ Hearing Exh. 9.

Application.⁹ Trelina filed the agreed-upon stipulations ("Stipulations").¹⁰ The DPS Staff, DAM, and Waterloo agreed to all stipulations. The DEC agreed to the stipulation, but with certain exceptions.¹¹

Due to the COVID-19 pandemic, and after consultation with DPS Staff, Trelina postponed its two additional planned in-person open house meetings. To provide updated project information to the public, Trelina sent an informational mailer to the Project stakeholder list on June 2, 2020, and invited members of the public to submit questions to the Applicant.¹²

After providing the required notice,¹³ Trelina filed its Application on August 10, 2020.¹⁴ The Chair of the Siting Board notified Trelina of deficiencies in the Application by letter dated October 13, 2020. In response, Trelina filed a supplement to its Application on October 29, 2020 (the "Application Supplement").¹⁵

On November 5, 2020, the Secretary notified the parties of the availability of application-phase intervenor funds. The Town and the Packwood, Serven and Pre-Emption Neighborhood Association (the "Neighborhood Association") filed requests for intervenor funding. The Town requested the full amount of intervenor funding available, \$80,000, while the Neighborhood Association requested half the available funds.

⁹ See Hearing Exh. 13.

¹⁰ The Stipulations were signed by the stipulating parties between August and September of 2020.

¹¹ Hearing Exhs. 174-176.

¹² Hearing Exh. 16. Several questions were received from members of the public and Trelina provided responses on August 7, 2020. Hearing Exh. 17.

¹³ See Hearing Exh. 15.

¹⁴ See Hearing Exhs. 18-173.

¹⁵ See Hearing Exhs. 177-187.

After review and consideration, the Examiners denied the Neighborhood Association's request for intervenor funding because they failed to request party status, made no showing that any of their members met the criteria for party status, failed to include enough information or basis for its request, and were seeking to address issues that were not eligible for funding. As a result, the Town was awarded the full amount of available funding, which was granted in a Ruling on Intervenor Funding on January 27, 2021. The Neighborhood Association did not object or otherwise seek any additional review of the Examiners' Ruling.

A second notice of the availability of application-stage intervenor funds was issued by the Secretary on March 31, 2021, because the Town did not seek disbursement of any of the pre-application phase intervenor funds. The Town was the only party to submit a request for the funds and was awarded the full \$28,000 in available funds in a Second Ruling Awarding Application Funding on June 29, 2021. The Neighborhood Association did not file any request for the funds or attempt to correct the deficiencies previously noted by the Examiners in order to secure funding.

The Chair of the Siting Board deemed the Application compliant with PSL §164 on December 8, 2020. Virtual information sessions and public statement hearings were held on February 16, 2021.

On February 17, 2021, Trelina notified all parties that it would commence settlement negotiations regarding the Applicant's proposed certificate conditions.¹⁶ After months of negotiations, on April 15, 2021, Trelina filed a proposed settlement consisting of Certificate Conditions, the Noise

¹⁶ Hearing Exh. 193.

Complaint Resolution Protocol ("NCRP"), and the Guidance for the Development of Site Engineering and Environmental Plan ("SEEP Guide") (collectively, the "Settlement Proposal").¹⁷ DPS, DAM, Waterloo, and the Applicant executed the Settlement Proposal (the "Signatory Parties"). DEC also signed, but with exceptions to several conditions.¹⁸ On April 16, 2021, DPS, DEC, and DAM filed direct testimony and exhibits.¹⁹ Trelina filed rebuttal testimony and exhibits on May 19, 2021.²⁰

After testimony was submitted, and based upon additional negotiations with DEC, on July 21, 2021, Trelina circulated to the parties a Supplemental Settlement Proposal (the "Supplemental Settlement") addressing issues that had been raised by DEC. The Supplement Settlement was executed by the Applicant and filed with the Secretary on July 23, 2021.²¹

The Supplemental Settlement adds Certificate Conditions 122 (g) and (h) requiring the filing of a Wetland Mitigation Plan and the filing of a final plan if there will be any changes to the Project layout from the layout approved by the Siting Board. The Supplemental Settlement also revises Certificate Conditions 100 and 103(b) to confirm the Applicant will comply with the substantive provisions of 6 NYCRR Part 182 as implemented in the Certificate Conditions (collectively, the "Supplemental Certificate Conditions").²² No party filed any objections to the Supplemental Settlement.

¹⁷ The SEEP Guide, including SEEP Guide Appendix 3, is attached to this Order as Appendix B. See Hearing Exhs. 194-198.

¹⁸ Hearing Exhs. 199-203.

¹⁹ See Hearing Exhs. 204-216.

²⁰ See Hearing Exhs. 217-221.

²¹ Hearing Exhs. 223-225.

²² Id.

No party identified any material issues of fact requiring cross-examination. Accordingly, the Examiners issued a procedural ruling on July 6, 2021, dispensing with an evidentiary hearing and establishing a briefing schedule.²³ Initial briefs were filed July 29, 2021, and rebuttal briefs were filed September 2, 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 Public Involvement Program ("PIP") plan no less than 150 days before the submission of a Preliminary

²³ Case 19-F-0366, Ruling Adopting Briefing Schedule (issued July 6, 2021).

Scoping Statement ("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 its PIP Plan on May 13, 2019. Department staff reviewed that plan and provided recommendations on June 12, 2019. The PIP Plan included an extensive list of local stakeholders, which was developed by the Applicant. That list included affected federal, State, and local agencies; school districts and municipalities within the facility and study areas; host and adjacent landowners; State representatives; emergency responders; utilities; public interest groups; area residents; airports and heliports; and other stakeholders. The list was used by Trelina to consult with affected agencies, inform the public of Project developments, and to foster public involvement.

The testimony of the DPS Staff Panel in Support of Settlement (SPSS) described the numerous opportunities provided for public participation. DPS Staff testified about the various means by which the Applicant communicated with members of the public within the affected communities. The Applicant used mailings, e-mails, open house meetings, newspaper postings, in-person conversations, document repositories, and the Project website. The Applicant also communicated and provided information at various stakeholder meetings, including Town Board meetings.

The Siting Board also performed numerous public involvement activities. The Department maintains lists of parties to the case and of individuals and organizations that request to be informed of Project filings. Persons and entities on these lists are given notice of filings, rulings, Project milestones, and Project activities, including comment periods, procedural conferences, technical conferences, and public statement hearings.

Approximately 100 public comments have been received regarding the Project, via various means, including via the virtual public statement hearings. Comments have been both in support of, and in opposition to, the Project. Those in support cited local economic benefits such as employment and apprenticeship opportunities; increased revenues for local governmental entities from taxes or payments in lieu of taxes (PILOT) agreements; revenues for participating landowners to benefit the local family farms; avoidance of additional commercial or housing development; and the ability to return participating lands to agricultural use after decommissioning. Supporters also stated that the Project will improve the electric grid and will provide long-term environmental benefits.

Opponents expressed concerns that Project documentation was voluminous, complex, and difficult for lay persons to review and understand. They objected to redactions in Project documents, alleged a lack of transparency on the Applicant's part and a lack of outreach due to the COVID-19 pandemic. Opponents also argued that the Article 10 process is unduly burdensome, citing both the procedures for appointing *ad hoc* Siting Board Members and requirements for intervenor funding. Opponents also charged that little or no information has been made available about community host agreements and PILOT agreements with local municipalities. Others opposed the Project based on general concerns about property value impacts, wildlife impacts, agricultural impacts, and the potential for environmental contamination.

III. REQUIRED STATUTORY FINDINGS UNDER PSL §168

A. Article 10 Standards

Pursuant to PSL §168(2), the Siting Board must make express findings regarding the nature of probable environmental impacts, including cumulative impacts, resulting from the construction and operation of a proposed facility. These include impacts to (a) ecology, air, ground and surface water, wildlife, and habitat; (b) public health and safety; (c) cultural, historic, and recreational resources, including visual, aesthetic, and scenic values; and (d) transportation, communication, utilities, and other infrastructure.²⁴

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

²⁴ PSL §168(2) (a) – (d) .

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.²⁵

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.²⁶ In issuing a certificate, the Siting Board may impose any terms and conditions it deems necessary and the Department of Public Service or the Commission "shall monitor, enforce and administer compliance with any terms and conditions" set forth in the Siting Board's Certificate and Order.²⁷

The applicant in an Article 10 proceeding has the burden to prove that, based on the evidentiary record, all findings and determinations required by PSL §168 can be made by the Siting Board.²⁸ When factual matters are involved, the applicant must sustain that burden by a preponderance of the evidence, unless a higher standard has been established by statute or regulation.²⁹

²⁵ PSL §168(3)(a)-(e).

²⁶ PSL §168(4)(a)-(g).

²⁷ PSL §168(5).

²⁸ 16 NYCRR §1000.12(b).

²⁹ 16 NYCRR §1000.12(c).

B. Beneficial Addition to Electric Generation Capacity

The Siting Board must determine that the Project is a beneficial addition to the electric generation capacity of the State.³⁰ The Siting Board considers, *inter alia*, a project's consistency "with the energy policies and long-range energy 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"),³¹ the 2020 amendment to the SEP,³² the Clean Energy Standard ("CES") adopted by the New York Public Service Commission ("PSC"), the Climate Leadership and Community Protection Act ("Climate Act"),³³ the Order Adopting Modifications to the Clean Energy Standard (incorporating the goals of the Climate Act into the CES),³⁴ and other State and regional policies.

Trelina 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

³⁰ PSL §168(3)(a).

³¹ 2015 New York State Energy Plan, New York State Energy Planning Board (June 25, 2015) ("SEP"), available at <https://energyplan.ny.gov/-/media/nysenergyplan/2015-state-energy-plan.pdf>.

³² 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").

³³ Climate Leadership and Community Protection Act, 2019 N.Y. Sess. Laws Ch. 106 (McKinney).

³⁴ Case 15-E-0302, supra, Order Adopting Modifications to the Clean Energy Standard (issued Oct. 15, 2020) ("Modified CES Order").

annual basis to the wholesale electric market, administered by the New York Independent System Operator ("NYISO"), of which NYSERDA will purchase from Trelina the Renewable Energy Credits ("RECs") associated with these required energy deliveries. As explained below, the Project is following the steps laid out in the Climate Act, SEP, and the CES to help achieve the State's energy and GHG reduction goals.

Consistency with the State Energy Plan

Renewable resources are vital to New York's energy future, "providing resilient power, reducing fuel cost volatility, and lowering [greenhouse gas ("GHG")] emissions."³⁵ 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 2030.³⁶ Large-scale renewables ("LSR") help power New York's economy and will serve as the backbone to the State's power grid.³⁷ LSRs offer immediate benefits, including "economic development and jobs for communities across the State, greater stability in customer bills, [and] cleaner air"³⁸

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.³⁹ The Commission stated that "[t]he chief focus of the CES initiative is on building new renewable resource power generation facilities" and

³⁵ SEP, p. 69.

³⁶ Exh. 30, p. 1 (citing SEP, p. 112).

³⁷ SEP, p. 70.

³⁸ Exh. 30, p. 1 (quoting SEP, p. 71).

³⁹ 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 August 1, 2016), pp. 93-95 ("CES Order").

reducing “total emissions of air pollutants resulting from fossil fuel combustion.”⁴⁰ The CES provides for procurement of environmental attributes from LSRs.⁴¹ 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.⁴² 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 2040.⁴³

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.”⁴⁴

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

⁴⁰ Exh. 30, p. 1 (citing CES Order, pp. 3, 78).

⁴¹ See Exh. 30, p. 2; CES Order, p. 16.

⁴² Governor Cuomo Announces Green New Deal Included in 2019 Executive Budget, Andrew M. Cuomo (January 17, 2019), <https://www.governor.ny.gov/news/governor-cuomo-announces-green-new-deal-included-2019-executive-budget>.

⁴³ Exh. 30 at 2; Climate Act §4 (amending PSL §66-p (2)); SEP Climate Act Amendment.

⁴⁴ Modified CES Order, p. 14.

interfere with, attainment of the statewide [GHG] emission limits.”⁴⁵

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 Project is expected to reduce annual emissions of CO₂ by approximately 50,522 tons, SO₂ by 15 tons, and NO_x by 23 tons.⁴⁶ DPS Staff agreed with the Applicant’s estimates of the State’s energy market emission reductions.⁴⁷ DPS Staff also recommends that we find that the Project would provide benefits consistent with the State’s policies regarding energy generation and more specifically, renewable energy generation, and would also help the State meet its regional greenhouse gas emissions goals.⁴⁸ No party has disputed these conclusions.

Effect on Fuel Diversity and Zonal Energy Prices

The Project will be a beneficial addition to the State’s electric generation capacity because the Project will improve fuel diversity in the State, support the modernization of grid infrastructure, and reduce the potential for

⁴⁵ 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).

⁴⁶ Exh. 28, Table 8-1.

⁴⁷ DPS Staff Panel in Support of Settlement (“DPS SPSS”) Testimony, pp. 33, 37.

⁴⁸ DPS SPSS Testimony, p. 34.

overdependence on natural gas.⁴⁹ The SEP recognized this dependency as a concern because the State faces severe weather patterns that cause price volatility.⁵⁰ The Project increases fuel diversity by increasing the number of renewables—solar generation facilities in the State’s supply mix.⁵¹ The Project is expected to reduce annual average zonal prices.⁵² No party filed testimony or introduced any other evidence disputing these conclusions. DPS has recommended that we find that the Project will result in a beneficial addition of electric generation capacity in the State.⁵³ Based on the above, we find that the Project will be a beneficial addition to the State’s electric generation capacity.

C. Public Interest Standard

Before issuing a certificate, we also must determine that construction and operation of the Project will serve the public interest.⁵⁴ For the reasons discussed below, 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.

⁴⁹ 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”).

⁵⁰ SEP, p. 26.

⁵¹ Exh. 30, p. 3.

⁵² Exh. 28, p. 2.

⁵³ DPS SPSS Testimony, p. 32.

⁵⁴ PSL §168(3)(b).

1. Air Quality and Greenhouse Gas Emissions Reductions

Unlike fossil fuel generation plants, solar facilities generate electricity directly from sunlight and without emitting air pollutants. Therefore, the Project will not generate air emissions and does not require any federal, State or local air emissions permits. The Project is expected to displace air emissions from conventional power plants. The Applicant's analysis shows that, on an annual basis, the Project is expected to displace as much as 66,983 tons of carbon dioxide (CO₂), 121.9 tons of nitrogen oxide (NO_x), and 0.02 tons of sulfur dioxide (SO₂) from conventional power plants on an annual basis.⁵⁵

2. Economic and Local Benefits

Article 10 and its regulations require an estimate of direct and secondary employment for the Project.⁵⁶ The Applicant's study found that Project construction would create approximately 83.7 direct, fulltime equivalent ("FTE") positions, including onsite labor, electrician, equipment operator, construction manager, and foreperson jobs.⁵⁷ Projections for direct local expenditures during Project development and construction were approximately \$16 million, with construction payroll being the highest at approximately \$12.6 million.⁵⁸ The payroll estimate includes wages and salaries, employer-paid insurance costs, paid leave, and payroll taxes.⁵⁹ Approximately 60% to 90% of the total payroll is expected to be paid to workers in the region.⁶⁰

⁵⁵ Hearing Exh. 37 (Application Exh. 17).

⁵⁶ 16 NYCRR §1001.27.

⁵⁷ Exh. 47, p. 6, table 27-2.

⁵⁸ Exh. 47, p. 10, table 27-6, p. 8, table 27-4.

⁵⁹ Exh. 47, p. 8.

⁶⁰ Id.

The estimated payroll associated with the creation of new FTE jobs during Project operation is approximately \$225,859 per year.⁶¹ Just over two FTE jobs are expected to be filled each year over the thirty-year service life of the Project.⁶² During the operation of the Project, the Applicant expects to spend approximately \$485,059 in total direct annual expenditures.⁶³ Trelina expects that expenditures for materials and equipment costs will be spent locally.⁶⁴ These benefits will inure to the Town and region without imposing fiscal costs because workers and their families do not typically relocate for construction jobs.⁶⁵ The Town has formally approved a Host Community Agreement ("HCA") with the Applicant and anticipated execution of the HCA is imminent.⁶⁶ The Applicant anticipates entering into a PILOT agreement with the Seneca County Industrial Development Agency ("IDA").⁶⁷ These agreements are anticipated to provide approximately \$10.7 million in additional benefits to the Town, Seneca County, and local school districts.⁶⁸

DPS Staff agrees that Project construction and operation will result in direct, local jobs and wages, and that the Applicant's estimates of direct jobs and wages from Project construction and operation in the Seneca County area were reasonable.⁶⁹ DPS Staff recommends that we find that

⁶¹ Exh. 47, p. 14, table 27-10.

⁶² Exh. 47, p. 14, table 27-9.

⁶³ Exh. 47, p. 14, table 27-10.

⁶⁴ Id.

⁶⁵ Exh. 47, p. 18.

⁶⁶ Trelina Initial Brief, pp. 11-12.

⁶⁷ Id.

⁶⁸ Exh. 47, p. 19, table 27-13.

⁶⁹ DPS SPSS Testimony, p. 39.

construction of the Project is in the public interest.⁷⁰ Based on this record, we find that the Project will serve the public interest.

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

1. Ecology

PSL §168(2) (a) expressly requires the Siting Board to make explicit findings regarding the potential environmental impact of a project on ecology. To grant a certificate, the Siting Board must determine that the adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable, and that the facility is designed to operate in compliance with applicable State environmental law.⁷¹

Part 1001 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 minimize and mitigate those impacts. In addition, Part 1001 specifically requires 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 impact to agricultural resources (16 NYCRR §1001.22[q]).

Trelina provided information regarding the potential environmental impacts of the Project on ecology in its Application Exhibit 22 (Terrestrial Ecology and Wetlands) and

⁷⁰ DPS SPSS Testimony, p. 37.

⁷¹ PSL §168(3) (c) and (e).

Exhibit 23 (Water Resources and Aquatic Ecology), and in its Invasive Species Management Control Plan.⁷² Trelina provided additional information regarding potential impacts to agriculture resources in its Application Exhibit 4 (Land Use).⁷³ The Project area consists of 1,067 acres with 418 acres used for facility components (Facility) within a fenced area of 418 acres. Approximately 474.1 acres of total limits of disturbance are proposed with 325.6 acres of disturbance occurring in land classified as prime farmland. Those 325.6 acres constitute approximately 4.9% of all prime farmland within the Town of Waterloo and 0.3% of the prime farmland and farmland of Statewide importance within Seneca County. Of the 325.6 acres, only 10.05 acres will be permanently disturbed after decommissioning. The remaining 315.6 acres will be restored after decommissioning and be available to return to agricultural use.⁷⁴ According to the New York State Office of Real Property Services (NYSORPS) classification codes, approximately 65,653 acres of agricultural land is located within Seneca County with approximately 110,692 acres of land mapped as agricultural district within the County, including 5,142 acres in the Town of Waterloo.⁷⁵

The Project area is largely comprised of agricultural land such as cultivated crops, grassland, pasture, and hay.⁷⁶ Active agriculture represents approximately 63.2% of the Project

⁷² Hearing Exh. 42, Application Exh. 22; Hearing Exh. 43, Application Exh. 23; Hearing Exh. 123, Application Appendix 22-7.

⁷³ Hearing Exh. 24, Application Exh. 4.

⁷⁴ Hearing Exh. 24, Application Exh. 4, pp. 1-3, 40, 47-48, 51; Trelina Letter in Lieu of Reply Brief, pp. 1-3.

⁷⁵ Hearing Exh. 24, Application Exh. 4, pp. 3, 39.

⁷⁶ Hearing Exh. 24, Application Exh. 4, pp. 3, 39; Hearing Exh. 42, Application Exh. 22, pp. 4, 120-121.

area, while forestland represents approximately 25.3%. The Project area also includes approximately 6.7% of successional shrubland, 2.6% of open water, 1.6% of disturbed developed land, and 0.6% of successional old field.⁷⁷

Construction and operation of the Facility will result in impacts to plant communities. Approximately 345.52 acres of plant communities will be disturbed by construction and operation of the Project or approximately 32.4% of the Project area. Impacts include approximately 8.98 acres of temporary disturbance to forestland, approximately 54.99 acres of temporary impacts to agricultural land, and the conversion of 22.99 acres of forestland and 372.49 acres of agricultural land for the life of the project.⁷⁸

a. Avoidance and Mitigation of Impacts to Agricultural Resource

Active agricultural land in the form of hay fields, pastureland and cultivated crops comprise approximately 675 acres or approximately 63% of the Project area. Construction of the Facility would result in temporary disturbance of up to 54.99 acres of agricultural land. Trelina estimates that about 397.6 acres of agricultural land would be used within the fenced area, and then restored following decommissioning of the Facility.⁷⁹

A total of 325.6 acres within the Project's limits of disturbance are considered prime farmland. Of the 325.6 acres, 10 acres of permanent soil disturbance following decommissioning is proposed.⁸⁰ Prime farmland contains soils classified as

⁷⁷ Hearing Exh. 42, Application Exh. 22, pp. 2-4.

⁷⁸ Hearing Exh. 42, Application Exh. 22, pp. 9-11.

⁷⁹ Hearing Exh. 42, Application Exh. 22, pp. 4, 9, 11.

⁸⁰ Hearing Exh. 24, Application Exh. 4, pp. 1, 3, 40, 47, 48, 51; Trelina Letter in Lieu of Reply Brief, pp. 1-3.

groups 1-4 under DAM's NYS Agriculture Land Classification system. DAM identified lands with these soil groups as the State's most productive farmland or viable agriculture land, as defined in Agriculture and Markets Law §301.⁸¹

Temporary impacts to agricultural resources would occur primarily from clearing and grading for solar array and burying underground collection lines, clearing vegetation along the margins of access roads, and establishing staging areas.⁸² Once the Project becomes operational, areas beyond the immediate vicinity of the solar arrays that were temporarily impacted would be reseeded and restored to their original condition.⁸³

After installation of the solar arrays, approximately 372.49 acres of agricultural land underneath and in the immediate vicinity of the solar panels would be seeded with native grasses that would require periodic mowing. Agricultural lands previously planted with row crops would be converted from that use for the useful life of the Project due to the installation of the solar arrays.⁸⁴

During the post-construction and decommissioning phases, Trelina would restore the area to substantially its pre-construction condition, thereby allowing the resumption of agricultural use if the landowners so choose.⁸⁵ Trelina estimates that permanent impacts to agricultural soils after decommissioning will occur to approximately 10 acres of this area as a result of the construction of the access roads,

⁸¹ DAM Staff Initial Brief, p. 9; Michael Saviola Direct Testimony, p. 7.

⁸² Hearing Exh. 42, Application Exh. 22, pp. 9-10, 17-18.

⁸³ Hearing Exh. 42, Application Exh. 22, pp. 8, 10.

⁸⁴ Hearing Exh. 42, Application Exh. 22, pp. 11, 12, 14, 55, 121.

⁸⁵ Hearing Exh. 42, Application Exh. 22, p. 9.

inverters, collection substation, switchyard, rip rap, culverts, and filtration basins.⁸⁶ Of that area, Trelina estimates that there will be 10 acres of permanent soil disturbance to prime farmland after decommissioning.⁸⁷

Design measures Trelina has proposed and agreed upon to avoid and minimize impacts to agricultural resources include the use of solar array technology that decreases the amount of land required to achieve its proposed 80 MW generating capacity; the use of a tracking system that employs driven posts requiring minimal ground disturbance and no concrete foundations; the co-location of access roads and collector line where feasible; and design of fences and access roads to allow for continued agricultural uses in several areas, to minimize additional impacts to adjacent agricultural fields. Trelina also agreed to avoid siting Project components in areas identified by participating landowners to permit continued agricultural use, to the extent possible.⁸⁸

Construction measures to avoid and minimize impacts to agricultural resources include the stripping, stock piling, and return of topsoil to disturbed areas, and the seeding of areas under the panels to preserve those areas for future potential agricultural use following decommissioning.⁸⁹ Post-construction measures include monitoring and remediation of agricultural

⁸⁶ Hearing Exh. 42, Application Exh. 22, pp. 17-18.

⁸⁷ Hearing Exh. 24, Application Exh. 4, pp. 3-4; Trelina Initial Brief, p. 13.

⁸⁸ Trelina Initial Brief, pp. 13-14; Hearing Exh. 24, Application Exh. 4, pp. 51-52; Hearing Exh. 42, Application Exh. 22, p. 13; Hearing Exh. 195, Certificate Conditions 46, 57(h), 93-94.

⁸⁹ Trelina Initial Brief, p. 14; Hearing Exh. 24, Application Exh. 4, p. 52; Hearing Exh. 42, Application Exh. 22, p. 9; Tr. 266.

lands impacted by the Project for at least two years following completion of initial restoration.⁹⁰

Other avoidance and mitigation measures to be employed by Trelina include adherence to the maximum extent practicable to the requirements in DAM's Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands (Revision 10/18/2019) (Solar Guidelines) relating to construction, restoration, monitoring, and decommissioning; employment of an independent, third-party Environmental Monitor trained or qualified in agricultural matters; the development and submission of an Agricultural Area Plan detailing the Applicant's plans for complying with the Solar Guidelines to the maximum extent practicable; and the commitment to consult with DAM to find acceptable alternatives when compliance with the Solar Guidelines is not practicable.⁹¹

When executing the Settlement Proposal, no signatory party, including DAM Staff, took exception to the proposed Certificate Conditions relating to agricultural resources. DAM did take exception to the facility layout without further explanation and did not propose changes to any certificate conditions.⁹² In pre-filed testimony and briefing, DPS Staff asserts that the final proposed Facility design layouts agreed to by Trelina, as well as the design, performance, and mitigation measures included in the proposed Certificate

⁹⁰ Hearing Exh. 24, Application Exh. 4, pp. 47, 51; Hearing Exh. 195, Certificate Condition 94.

⁹¹ Trelina Initial Brief, pp. 14-15; Hearing Exh. 24, Application Exh. 4, pp. 47, 51-52; Hearing Exh. 42, Application Exh. 22, p. 121; Hearing Exh. 195, Certificate Conditions 46, 57(h), 93-94.

⁹² Hearing Exhs. 195, 196, 199-203. Trelina Initial Brief, p. 16; DAM Initial Brief, p. 5 (DAM taking "exception of paragraph #1 as DAM recommends micro siting with respect to the layout").

Conditions and SEEP Guide, avoid, minimize, and mitigate to the maximum extent practicable the environmental and other adverse impacts to agricultural resources, including prime farmland.⁹³ No party other than DAM, introduced evidence or testimony disputing DPS Staff's conclusions.

Notwithstanding its execution of the Settlement Proposal without taking any other exceptions besides the reference to micro siting, DAM Staff raises several objections to the Project in pre-filed testimony and briefing. Issues raised by DAM staff include: (1) the 30-year loss of agricultural production constitutes a permanent conversion of the resources; (2) the Project is not consistent with DAM's siting policy of allowing no more than 10% of prime agricultural land to be used for siting; and (3) the environmental monitor must have a strong agricultural background. In addition, DAM recommends mitigating the impacts on agricultural lands by: (1) reducing the scope of the Project; (2) incorporating agricultural co-utilization; (3) changing the density of the panels and design of the facility to reduce its footprint; and (4) alternative siting. DAM requests the Siting Board to defer to DAM's expertise.⁹⁴

DAM Staff claims that prime farmland comprises more than 68% of the proposed limits of disturbance, and that the Project would result in the permanent conversion of more than 325 acres of agricultural lands. DAM asserts that Trelina has chosen to develop the most productive agricultural lands within the Project area, and that the Applicant has ample opportunity to use other lands in the Project area to minimize impacts to

⁹³ DPS Staff Initial Brief, pp. 17-19; DPS SPSS Direct Testimony, pp. 30, 42-43, 54-55, 88-89.

⁹⁴ DAM Staff Initial Brief, pp. 11-13.

prime farmland.⁹⁵

DAM Staff argues that farmland or lands used for agricultural production, as defined in Agriculture and Markets Law §301, should be avoided to the maximum extent practicable for uses that are not consistent with the development or improvement of agricultural lands for the production of food and other agricultural products or purposes. Citing New York Constitution, Article XIV, §4, and Agriculture and Markets Law §300, DAM Staff argues that it is the policy of the State to conserve, protect and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. DAM Staff raises the concern that many agricultural lands in the State are in jeopardy of being lost and when nonagricultural development extends into farm areas, competition for limited land resources results. DAM Staff asserts that the socio-economic vitality of agriculture in the State is essential to the economic stability of many local communities and the State as a whole.⁹⁶

DAM Staff recognizes the State's initiative with respect to development of utility scale renewable solar energy generation facilities, and states that it is prepared to support that initiative, provided facilities are sited on lands other than the State's most productive farmland. To preserve the State's most productive lands for the production of food and fiber, DAM's goal is for a project to convert no more than 10% of the agricultural lands in the Project area that contain mineral soil groups 1-4. In contrast, DAM indicates it does not object to the siting of solar electric generating facilities on

⁹⁵ DAM Staff Initial Brief, p. 9.

⁹⁶ DAM Staff Initial Brief, pp. 8-9.

lands with lesser productive soils (soil groups 5-10).⁹⁷ DAM Staff contends that the use of agricultural land for commercial solar energy generation constitutes the "permanent conversion" of farmland to a non-agricultural use.⁹⁸ Finally, DAM Staff asserts that Trelina should be required to employ a designated, qualified Environmental Monitor with agricultural knowledge, comply with DAM's Solar Guidelines, and work with the Environmental Monitor and DAM to develop acceptable alternatives if compliance is impracticable.⁹⁹

In response, Trelina refutes DAM Staff's assertions that the Project fails to avoid and minimize impacts to agriculture to the maximum extent practicable. As an initial matter, Trelina notes that DAM Staff executed the Settlement Proposal only asserting an exception to Certificate Condition 1 referenced above. Trelina argues that the Siting Board should not consider DAM's vague exception because DAM states its exception without defining, explaining, or making any specific recommendations regarding micro siting or the layout of the facility.¹⁰⁰ Furthermore, Trelina points out that the proposed Certificate Conditions provide for much of the relief DAM Staff seeks, including the employment of an Environmental Monitor with agricultural experience, and adherence to DAM's Solar Guidelines. Trelina also notes that DAM Staff did not take exception to any other Certificate Conditions designed to

⁹⁷ DAM Staff Initial Brief, p. 9.

⁹⁸ DAM Initial Brief, p. 11.

⁹⁹ DAM Staff Initial Brief, p. 12.

¹⁰⁰ Trelina Letter in Lieu of Reply Brief, p. 1.

protect agricultural lands.¹⁰¹

Trelina argues that DAM's position that the facility constitutes a permanent conversion of agricultural lands to nonagricultural use is contrary to prior Siting Board orders and that the Siting Board should reject DAM's argument to the contrary. Trelina further argues that DAM's calculations ignore the circumstance that upon decommissioning, the agricultural lands impacted by the Project would be restored to pre-construction condition, thereby allowing the resumption of agricultural uses if the landowners so choose. Trelina asserts that based on the post-construction minimization measures and post-decommissioning restoration efforts, the Project will only permanently disturb 10 acres of prime farmland, not the more than 325 acres DAM claims.¹⁰²

With respect to DAM's claims that there are no guarantees that lands impacted by the Project will return to agricultural use post-decommissioning, Trelina contends that Article 10 does not require a finding or determination that the Project will be farmed again following decommissioning. Again, Trelina points out that the Siting Board previously rejected these claims and should do so again in this matter.¹⁰³

DISCUSSION

The Siting Board recognizes the importance of conserving highly productive agricultural lands in the State. However, as we have concluded in several recent Article 10

¹⁰¹ Trelina Initial Brief, pp. 14-17; Hearing Exh. 24, Application Exh. 4, pp. 47, 51-52; Hearing Exh. 42, Application Exh. 22, p. 121; Hearing Exh. 195, Certificate Conditions 46, 57(h), 93-94.

¹⁰² Trelina Initial Brief, p. 13; Trelina Letter in Lieu of Reply Brief, p. 2-3.

¹⁰³ Trelina Letter in Lieu of Reply Brief, p. 3.

matters,¹⁰⁴ PSL §168(3)(c) and associated regulations provide the Siting Board with the standard of review to apply in evaluating the impacts to agricultural resources that may result from the construction and operation of the Project. Under these provisions, the Applicant must show that impacts to relevant agricultural resources would be "minimized or avoided to the maximum extent practicable," and offer "mitigation measures to minimize the impact to [such] resources."¹⁰⁵

Applying Article 10's standards here, we conclude that Trelina has carried its burden of demonstrating that the Project's impacts to agricultural resources have been avoided or minimized to the maximum extent practicable. We recognize that during the operational life of the Project, agricultural lands used for Project components will be converted to a non-agricultural use. We disagree with DAM Staff, however, that the Project would result in the permanent conversion of all those lands. We agree with Trelina that its use of a solar array tracking system that does not require concrete foundations, together with the proposed post-construction mitigation and post-decommissioning restoration measures would result in minimal permanent impacts to agricultural resources. We conclude the record supports that finding that about 10 acres of prime farmland will be permanently impacted after decommissioning. We have previously found, and do so again here, that DAM's speculation regarding whether landowners will resume agricultural use of restored lands does not warrant the conclusion that the impacted lands would be permanently

¹⁰⁴ Case 17-F-0182, Application of Mohawk Solar LLC - Solar Electric Generation Siting, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued November 13, 2020), pp. 38-39; East Point Order, p. 31.

¹⁰⁵ PSL §168(3)(c); 16 NYCRR §1001.22(q).

converted, notwithstanding decommissioning and restoration.¹⁰⁶

With respect to the temporary impacts to agricultural resources from Project construction and operation, the proposed Certificate Conditions require, among other things, the employment of an Environmental Monitor with agricultural qualifications and adherence to DAM's Solar Guidelines for the construction, post-construction, and decommissioning phases of the Project. Based on these Certificate Conditions, which we adopt, we conclude that the Project's impacts to agricultural resources have been avoided and minimized to the maximum extent practicable.

b. Impacts to Other Ecological Resources

With respect to impacts to area terrestrial ecology other than agricultural resources, the Siting Board must determine that any adverse impacts to area terrestrial ecology resulting from the construction and operation of the facility will be minimized or avoided to the maximum extent practicable.¹⁰⁷ The Applicant's land mapping identified approximately 269 acres, or 25.3 percent, of forested land covers within the Project area.¹⁰⁸ The Application estimates that 0.54 acres of forested land will be permanently impacted, and 22.99 acres of forest will be converted due to Project construction and post-construction maintenance as successional old-field or shrubland communities for the life of the Project.¹⁰⁹ In addition, Project construction would result in temporary disturbances to 8.98 acres of forestland, 0.17 acres of shrubland, 0.43 acres of successional old-field and 0.47

¹⁰⁶ East Point Order, p. 32.

¹⁰⁷ PSL §168(3)(c).

¹⁰⁸ Hearing Exh. 42, Application Exh. 22, pp. 3-4.

¹⁰⁹ Hearing Exh. 42, Application Exh. 22, pp. 10-11.

acres of developed land. Once the Project becomes operational, these areas would return to their preexisting condition. The siting of Facility components would permanently disturb approximately 0.11 acres of successional shrubland communities, and 0.38 acres of developed land communities. No impact to open water vegetation communities is anticipated.¹¹⁰

The Application also acknowledges that approximately 622 acres of potential grassland habitat, primarily composed of pasture and hayfields, is located within the Project area; but asserts the grassland was unlikely to provide suitable habitat for grassland bird species observed due to the condition of the grassland and frequent disturbances from active agricultural activities. The Application also asserts that following the construction disturbances for the Project, revegetation efforts may provide more favorable conditions than current land uses for many species reliant upon grassland habitat.¹¹¹

According to the Application, measures undertaken by Trelina to avoid or minimize plant community impacts include site planning to avoid unnecessary impacts to grasslands, interior forest, shrublands, wetlands and open water habitats. As a result, impacts to these vegetated communities will be marginal or wholly avoided. In addition, Project components were sited to confine disturbances to the smallest area possible and work areas have been adjusted to utilize open fields whenever possible. Access roads and collector lines have been co-located to avoid and minimize impacts to plant communities and solar panels have been proposed in areas already disturbed by agriculture. A Stormwater Pollution Prevention Plan (SWPPP) will be implemented to protect adjacent undisturbed vegetation

¹¹⁰ Hearing Exh. 42, Application Exh. 22, pp. 10-11.

¹¹¹ Hearing Exh. 42, Application Exh. 22, pp. 14, 27.

and other ecological resources. The Application also asserts that avoidance, minimization, and mitigation of impacts to vegetative communities will also occur through compliance with the on-site environmental monitor's guidance, maintenance of work sites, employment of best management practices during construction, operation, and maintenance, and by demarcation and avoiding areas highly susceptible to adverse disturbances to prevent access by construction equipment and any other disturbance activity.¹¹²

No parties dispute the effectiveness of the Application's avoidance and minimization measures. In addition, the agreed-upon proposed Certificate Conditions and SEEP Guide include provisions related to clearing trees and vegetative cover, the SWPPP and environmental monitor. Pursuant to proposed Certificate Condition 92, the Certificate Holder is required to limit tree and vegetation clearing to the minimum necessary for Facility construction.¹¹³

Based on the record and the agreed-upon proposed Certificate Conditions and SEEP Guide, we conclude that the impacts to terrestrial ecology that are expected to occur are minimal and that the Project's impacts to plant and forest ecology have been minimized or avoided to the maximum extent practicable.

c. 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

¹¹² Hearing Exh. 42, Application Exh. 22, pp. 13-14.

¹¹³ Hearing Exh. 195, Certificate Conditions 35, 47, 66, 80, 86, 92-93, 104, 108-109, 121, 126, 130; Hearing Exh. 196, SEEP Guide, Section A, Item 3; Section B, Item 8.

actively eliminated at project sites regulated by the State.¹¹⁴

Trelina's 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.¹¹⁵ DEC Staff has noted its acceptance of the ISMCP.¹¹⁶

The parties have agreed to proposed Certificate Conditions 76 (final ISMCP to be submitted as a compliance filing before construction, post-construction invasive species monitoring and reporting, and construction controls for identification, inspection, treatment, removal, sanitation and restoration), 77 (remedial plans if controls were not effective), 109 (prohibition of the use of haybales for erosion and sediment controls), 122 (monitoring of restored areas in freshwater wetlands and adjacent areas for invasive species after restoration), and 126 (site clearing and timber removal controls, training and reporting) to further manage and control invasive species.¹¹⁷ No party disputes the effectiveness of these conditions and controls.

Based on the record, proposed Certificate Conditions 76, 77, 109, 122, and 126 and the ISMCP, we determine that the Project complies with ECL Article 9 and impacts related to invasive species have been minimized or avoided to the maximum extent practicable.

¹¹⁴ ECL §§9-1701, 9-1709(2)(b)(iv).

¹¹⁵ Hearing Exh. 42, Application Exh. 22, pp. 119-120; Hearing Exh. 123, Application Appendix 22-7.

¹¹⁶ DEC Staff Initial Brief, p. 9; DEC Wetlands and Streams Panel Direct Testimony, pp. 21-22.

¹¹⁷ Hearing Exh. 195, Certificate Conditions 76, 77, 109, 122, 126; Hearing Exh. 123, Application Appendix 22-7.

2. Air Quality

a) Mitigation of Construction-Related Emissions

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 operation of a facility on air quality. 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 on air quality will be minimized or avoided to the maximum extent practicable, and that the facility is designed to operate in compliance with applicable State air pollution control laws and regulations.

During construction, the Facility may result in minor, temporary adverse air impacts associated with vehicle emissions, fugitive dust from earthmoving activities and travel on unpaved roads, and emissions from diesel generators. To minimize localized air impacts, the Applicant would require contractors to adhere to best management practices, including prohibiting unnecessary idling of equipment and controlling fugitive dust emissions.¹¹⁸

As part of its Compliance Filings, Trelina will submit a Dust Control Plan to minimize dust resulting from construction.¹¹⁹ In addition, Trelina will ensure that functioning mufflers are maintained on all transportation and construction machinery.¹²⁰

As noted by DPS Staff, the Facility does not require

¹¹⁸ Hearing Exh. 37, Application Exh. 17, p. 5; Hearing Exh. 22, Application Exh. 2, pp. 15, 19.

¹¹⁹ Hearing Exh. 196, SEEP Guide, Section B, Item 5(a); Trelina Initial Brief, pp. 19-20.

¹²⁰ Hearing Exh. 195, Certificate Condition 82(b); Trelina Initial Brief, p. 20.

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.¹²¹

b) Expected Emissions Reductions During Operations

After construction, the Facility would generate electricity without combusting fuel or releasing pollutants into the atmosphere.¹²² According to the Applicant, the Facility would have an overall positive impact on air quality and would contribute to meeting New York's climate change and renewable energy goals.¹²³ The Application provided estimates of the CO₂, NO_x and SO₂ emissions from fossil fuel-fired power plants that the proposed Facility would displace annually from 2023 to 2050.¹²⁴

No party raised concerns related to potential impacts to air quality. Based upon the record and the proposed Certificate Conditions and SEEP Guide negotiated by the parties, we conclude that the Facility's potential impacts to air quality have been 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. Ground and Surface Water Mitigation Measures

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

¹²¹ DPS Staff Initial Brief, p. 20.

¹²² Hearing Exh. 37, Application Exh. 17, pp. 5-6.

¹²³ Hearing Exh. 37, Application Exh. 17, pp. 6-8; Trelina Initial Brief, pp. 20-21.

¹²⁴ Hearing Exh. 37, Application Exh. 17, pp. 6-7.

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.

a. Groundwater and Wells

The Project area does not overlay any primary or sole-source aquifers, although it does overlay a DEC listed principal aquifer and USGS listed principal aquifer. According to the New York State Department of Health, two public groundwater wells are located approximately 1,200 feet from the Project area, serving approximately 100 people and 50 people, respectively. A third public groundwater well is located approximately 3,975 feet from the Project and across the Seneca River, and serves approximately 50 people.¹²⁵ Residences in the Project area depend on groundwater wells for their water supply and residents report the wells range from approximately 8 to 200 feet deep.¹²⁶

Treline stated that no permanent impacts to groundwater quality or quantity are anticipated to result from the Project, and that any potential minor and temporary adverse impacts to the local water table during the construction phase of the Project can be avoided and mitigated using best management practices, including measures in the proposed SWPPP. Treline also stated that temporary impacts to groundwater could potentially occur through the introduction of pollutants from inadvertent discharges of petroleum or other chemicals used

¹²⁵ Hearing Exh. 43, Application Exh. 23, pp. 5-6, 14.

¹²⁶ Hearing Exh. 43, Application Exh. 23, pp. 8-9.

during the construction, operation, or maintenance phases of the Project. Impacts to groundwater, however, are not anticipated due to the implementation of avoidance, minimization, and mitigation measures.¹²⁷ No party disputed this.

The parties have agreed to proposed Certificate Conditions 22 (notification to landowners before construction commences), 47 (filing of Stormwater Pollution Prevention Plan before construction), 78 (filing of Spill Prevention, Containment and Control Plan as compliance filing), and 90 (procedures for responding to any petroleum-impacted soils during construction). Condition 97 provides prohibitions on pier and post driving activities as well as blasting within specified setbacks from any known, existing, and active potable water supply well and establishes protocols for pre- and post-construction water potability testing for potentially affected wells on non-participating parcels within specified distances of collection lines or access roads, pier or post installations, horizontal directional drilling operations, and blasting operations. Pursuant to proposed Certificate Condition 97, the Certificate Holder is required to cause a new well to be constructed if pre- and post-construction water quality tests demonstrate specified impacts to water quality resulting from Project construction activities.¹²⁸ Certificate Conditions 22, 47, 78, 90, and 97 have not been objected to by any party in this proceeding.

Based on the record, and the proposed Certificate Conditions and SEEP Guide negotiated by the parties, we conclude that impacts to groundwater and wells will be minimized or

¹²⁷ Hearing Exh. 43, Application Exh. 23, pp. 7-8.

¹²⁸ Hearing Exh. 195, Certificate Conditions 22, 47, 78, 90, and 97; Hearing Exh. 196, SEEP Guide, Section A, Item 5(b); SEEP Guide, Section B, Item 13.

avoided to the maximum extent practicable, and that all State water quality standards for groundwater will be met.

b. Freshwater Wetlands and Streams

i. Freshwater Wetlands

The public policy of the State of New York is to preserve, protect, and conserve freshwater wetlands and the benefits they provide, to prevent the despoliation and destruction of freshwater wetlands, and to regulate use and development of such wetlands to secure the natural benefits of freshwater wetlands, consistent with the general welfare and beneficial economic, social, and agricultural development of the State.¹²⁹ 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.¹³⁰ The standards for issuance of a freshwater wetlands permit are outlined at 6 NYCRR §663.5. The Siting Board must determine whether the Facility's construction and operation would otherwise conform with the requirements of ECL Article 24 and 6 NYCRR Part 663 (Freshwater Wetlands Permit Requirements) by complying with the permit issuance standards set forth at 6 NYCRR §663.5.

Trelina's Application identified State-regulated wetland within the Project area that are part of four DEC mapped freshwater wetlands (Wetlands W-JJB-1, W-JJB-12, W-NWJ-1, and W-NWJ-4) and four unmapped wetlands (Wetlands W-JJB-4, W-NNB-17, W-JJB-18, and W-NWJ-29). These wetlands are Class II wetlands except mapped Wetland W-JJB-1, which is a Class I wetland.¹³¹

¹²⁹ DEC Wetlands and Stream Panel Direct Testimony, pp. 5-6.

¹³⁰ See 6 NYCRR §663.2(b).

¹³¹ DEC Wetlands and Stream Panel Direct Testimony, pp. 14-15.

Trelina also identifies permanent impacts to regulated adjacent areas of 4.77 acres for panel arrays, permanent access roads, and tree clearing as well as installation of an inverter pad and over 10,000 feet of fencing.¹³² Temporary impacts to adjacent areas total 0.02 acres for parking and approximately 660 feet of horizontal directional drilling.¹³³ No other impacts to jurisdictional wetlands are expected from the construction or operation of the Project.

DEC staff took exception to the proposed Certificate Conditions, in part, because the conditions did not provide for mitigation of impacts to regulated wetlands and adjacent areas. DEC Staff testified that the proposed Certificate Conditions were inadequate to protect the wetlands and adjacent areas from the listed impacts. DEC staff determined that "the Applicant may demonstrate compliance with Article 24 and Part 663 by: (1) adequately demonstrating that impacts to protected wetlands and their adjacent areas have been avoided and/or minimized, or by further reconfiguration of Project components; and (2) by providing a Wetland Mitigation Plan for any remaining impacts to protected wetlands and their adjacent areas." DEC staff further testified that Trelina could meet the applicable ECL Article 24 standards so long as DEC's proposed certificate condition regarding mitigation of any unavoidable impacts to wetlands and adjacent areas was included in the Siting Board's certificate.¹³⁴

As a result of negotiations, Trelina and DEC executed a Supplemental Settlement Proposal in which Trelina agreed to prepare and submit a wetland mitigation plan for DEC and DPS

¹³² Hearing Exh. 217, Applicant Exh. TR-1, Attachment A.

¹³³ Id.

¹³⁴ DEC Wetlands and Stream Panel Direct Testimony, pp. 17-18, 22; Hearing Exh. 216, NYSDEC-HW-4, DEC Proposed Condition Edits.

review. The supplemental settlement resolves the wetlands issues raised by DEC and amends, in part, Certificate Condition 122.¹³⁵

Several proposed Certificate Conditions also address wetlands protection and the minimization and mitigation of impacts. Certificate Condition 122 sets forth measures to be taken when a wetland or adjacent area is temporarily disturbed during construction, while other conditions provide for minimizing impacts from cable installation, spills, debris removal, as well as prohibitions on certain activities within a wetland or adjacent area.¹³⁶

Based on the agreed-upon proposed Certificate Conditions for the Project, as amended by the Supplemental Settlement Agreement, and SEEP Guide provisions, DEC staff agrees that Trelina has met its statutory and regulatory burdens under ECL Article 24 and Part 633 and avoided and minimized the Project's impacts to State-regulated wetlands and their adjacent areas to the maximum extent practicable. DPS Staff agreed that the Certificate Conditions and SEEP Guide support a finding that wetland impacts have been minimized or avoided to the maximum extent practicable.¹³⁷

Based on the record, and the proposed Certificate Conditions, as amended by the Supplemental Settlement Agreement, and SEEP Guide negotiated by the parties, we conclude that the Project is designed to operate in compliance with all applicable State freshwater wetland protection laws and regulations, and

¹³⁵ Hearing Exh. 223, Supplemental Settlement Proposal; Trelina Initial Brief, pp. 27-28; DEC Initial Brief, pp. 11-12.

¹³⁶ Hearing Exh. 195, Certificate Conditions 70, 71, 78, 79, 86(c), 106, 108-127, 131, 132, 137, 139 and 140.

¹³⁷ DEC Staff Initial Brief, pp. 11-12; DPS Staff Initial Brief, p. 25.

that the adverse impacts to delineated wetlands and adjacent areas have been minimized or avoided to the maximum extent practicable.

ii. Streams

ECL Article 15 and DEC's regulations at 6 NYCRR Part 608 establish the State's environmental laws regarding the disturbance of protected streams. Pursuant to ECL Article 15, State approval is required for disturbances of streams classified as C(T) or higher in the DEC's stream classification system.¹³⁸ In addition, Trelina must comply with State water pollution control law by obtaining coverage under DEC's General SPDES Permit for Stormwater Discharges from Construction Activity (GP-0-20-001) (General Permit), which requires, among other things, preparation of a SWPPP.¹³⁹ The Project also requires a water quality certification (WQC) pursuant to Section 401 of the federal Clean Water Act and, accordingly, Trelina must demonstrate compliance with State water quality standards provided at 6 NYCRR §608.9. Finally, the adverse impacts to streams and surface waters from the construction and operation of the Project must be minimized or avoided to the maximum extent practicable.¹⁴⁰

The Application identifies 7 streams and 8 ponds within the Project area. One of the streams is a Class C stream (named a "Minor Tributary to the Upper Seneca River"). Based on the application, there will be no impacts to these streams. DEC

¹³⁸ ECL §15-0501; 6 NYCRR §608.2.

¹³⁹ Effective date January 29, 2020; see 6 NYCRR §750-1.21(b)(2). The General Permit is issued pursuant to the DEC's authority under ECL Article 17, Titles 7 and 8, and Article 70. The General Permit was issued pursuant to the federal Clean Water Act, and DEC remains the permit-issuing authority for the General Permit for Article 10 projects. See PSL §172(1).

¹⁴⁰ PSL §168(3)(c).

Staff testified that the Project will comply with the requirements of ECL Article 15, the State water quality program pursuant to section 401 of the Clean Water Act, and 6 NYCRR Parts 608, 701, 702, 703, 704, and 750 as long as the agreed-upon Certificate Conditions and SEEP Guide are included in any Certificate issued by the Siting Board.¹⁴¹

DPS Staff notes that impacts to protected streams have been avoided or minimized because there are no State-protected streams within the Project area that will be crossed or otherwise affected by construction.¹⁴²

Based upon the record and the agreed-upon proposed Certificate Conditions and SEEP Guide provisions related to streams and surface waters, which we adopt, we conclude that the Project will comply with all State law and regulations governing streams and surface waters, and that impacts to those waters from Project construction and operation have been minimized or avoided to the maximum extent practicable.

iii. Section 401 Water Quality Certification

As noted above, a Section 401 Water Quality Certification (WQC) is required for the Project. The Application acknowledges that Treline will comply with Section 401 of the federal Clean Water Act.¹⁴³ DEC Staff testified that the agreed-upon proposed Certificate Conditions and SEEP Guide will ensure that Applicant complies with the State water quality program pursuant to section 401 of the Clean Water Act.¹⁴⁴

¹⁴¹ DEC Wetlands and Stream Panel Direct Testimony, pp. 20, 22. DEC Staff Initial Brief, pp. 12-13; Hearing Exh. 195, Certificate Conditions 71, 73-75, 79, 106, 110-112, 115, 118, 128-134, 137; Hearing Exh. 196, SEEP Guide, Section A, Items 1, 2, 5; SEEP Guide Section B, Item 17.

¹⁴² DPS Staff Initial Brief, p. 25.

¹⁴³ Hearing Exh. 52, Application Exh. 32, pp. 2, 4.

¹⁴⁴ DEC Wetlands and Stream Panel Direct Testimony, p. 22.

Pursuant to proposed Certificate Condition 12, agreed to by the parties, the Certificate Holder is required to file a request for a Clean Water Act Section 401 Water Quality Certification with the Secretary to the Siting Board before the commencement of construction of the Facility.¹⁴⁵ Based on the record and agreed-upon proposed Certificate Condition, we conclude that the Project will comply with State water quality standards. Trelina's WQC application will be reviewed pursuant to 16 NYCRR §1000.8.

E. Wildlife and Habitat Mitigation Measures

1. Endangered or Threatened Species

As noted above, 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 applicable State environmental law protecting wildlife.¹⁴⁶ The State environmental law protecting wildlife applicable to the Project is the State Endangered Species Act (ECL §11-0535 [ECL Article 11]) and its implementing regulations at 6 NYCRR Part 182.

Pursuant to ECL Article 11 and Part 182, where an applicant proposes to engage in any activity that is "likely to result in the take or taking of any species listed as endangered or threatened," the applicant must satisfy the requirements to obtain an incidental take permit in accordance with 6 NYCRR

¹⁴⁵ Hearing Exh. 195, Certificate Condition 12.

¹⁴⁶ PSL §168(3)(c), (e).

§182.11. A "take" or "taking" is broadly defined under 6 NYCRR §182.2(x) to include not only the "killing," or "capturing," of any species listed as endangered or threatened, but also "all lesser acts such as disturbing, harrying or worrying." "Lesser acts" are defined to include any "adverse modification of habitat" of any species listed as endangered or threatened.¹⁴⁷ The "adverse modification of habitat" includes any alteration of the "occupied habitat" of any listed species that, as determined by DEC, is likely to negatively affect one or more essential behaviors of such species.¹⁴⁸

In Article 10 proceedings, incidental take permits are issued in the form of Certificate Conditions and Compliance Filings. An applicant must first avoid all impacts to listed species to the maximum extent practicable. If an applicant can demonstrate, however, that full avoidance of the take of the listed species at issue is impracticable, the applicant must take measures to minimize to the maximum extent practicable any take of the species. The applicant must also prepare a net conservation benefit plan (NCBP) containing mitigation measures that will result in a net conservation benefit to the species.¹⁴⁹

The parties agree that the Project, as proposed, is not expected to result in an adverse impact to any listed

¹⁴⁷ 6 NYCRR §182.2(1).

¹⁴⁸ 6 NYCRR §182.2(b), (o). "Essential behaviors" are behaviors exhibited by a threatened or endangered species that are a part of its normal or traditional life cycle and that are essential to its survival and perpetuation. Essential behavior includes behaviors associated with breeding, hibernation, reproduction, feeding, sheltering, migration and overwintering. 6 NYCRR §182.2(f).

¹⁴⁹ 6 NYCRR §182.11.

species.¹⁵⁰ According to the Application and DEC, there is an active bald eagle (*Haliaeetus leucocephalus*) nest sited within the Project area.¹⁵¹ In addition, northern harrier (*Circus hudsonius*) was observed within the Project area on a few occasions as were several species listed as species of greatest conservation need. Consequently, there is a potential for an adverse impact to those listed species from construction, operation, restoration, or maintenance of the Project if the listed species are utilizing the Project area in some capacity now, and if they engage in nesting or roosting activities, or the Project area otherwise becomes occupied habitat. Trelina has worked with DEC Staff to ensure avoidance of the active bald eagle nest. The parties agree that proposed Certificate Conditions 45, and 98-105, as amended by the Supplemental Settlement Agreement, are protective of the bald eagles as well as other listed species and intended to prevent a take should a listed species enter or make use of the Project area, and would avoid or minimize impacts to listed species to the maximum extent practicable.¹⁵²

The agreed-upon Proposed Certificate Conditions require: the Environmental Monitor for the Project to be trained to identify and properly report threatened and endangered species during construction of the Project; the reporting of nests, roosts, roosting or breeding behavior observed during construction and operation as well as area posting and

¹⁵⁰ DPS Staff Initial Brief, pp. 22-23; DEC Initial Brief, p. 8; DEC Bald Eagle and Threatened and Endangered Species Panel Direct Testimony (DEC T&E Species Panel Direct), pp. 8, 10, 12-13; Trelina Initial Brief, pp. 30-31.

¹⁵¹ DEC T&E Species Panel Direct, p. 9; Hearing Exh. 42, Application Exh. 22, pp. 23, 25, 63.

¹⁵² DPS Staff Initial Brief, pp. 22-23; DEC Staff Initial Brief, p. 8; Trelina Initial Brief, p. 30.

avoidance; the reporting of dead, injured or damaged federal and State listed species discovered during the life of the Project; the maintenance of records and the reporting of all observations of New York State listed species and the restoration of disturbed habitat during the construction, restoration, maintenance and operation of the Project; the reporting, posting and avoidance of northern long-eared bat (*Myotis septentrionalis*) (NLEB) maternity roost trees discovered during the life of the Project; a prohibition on tree cutting of NLEB maternity roost trees and trees in proximity thereto; and post construction avian monitoring. The proposed Certificate Conditions are further supported by the agreed-upon proposed SEEP Guide.¹⁵³

Based upon the record and the agreed-upon Proposed Certificate Conditions, as amended by the Supplemental Settlement Agreement, and SEEP Guide provisions related to threatened and endangered species, which we adopt, we conclude that the Project will comply with all State law and regulations governing threatened and endangered species, and that impacts to threatened and endangered species from Project construction, restoration, maintenance and operation have been minimized or avoided to the maximum extent practicable.

a) Wildlife Other Than Threatened and Endangered Species and Habitat Other Than Occupied Habitat

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 and habitat. Before granting an Article 10 certificate, the Board must determine that any adverse environmental effects of

¹⁵³ Hearing Exh. 195, Certificate Conditions 45, 86, 98-105; Hearing Exh. 196, SEEP Guide, Section A, Item 10 and Section B, Items 8, 16.

the construction and operation of the facility on wildlife and habitat will be minimized or avoided to the maximum extent practicable, and that the facility is designed to operate in compliance with applicable State law protecting wildlife, namely as noted above, the State Endangered Species Act (ECL §11-0535) and its implementing regulations at 6 NYCRR Part 182.¹⁵⁴

As described in the Application, the Project has been sited to avoid or minimize impacts to terrestrial ecology to the maximum extent practicable. Significant impacts to representative plant communities and wildlife resources within the Project Area are not expected to result from Project construction or operation. Approximately 9.72 acres of wildlife habitat of the 1,067-acre Project area, will be permanently lost due to the placement of Facility components. Of the 9.72 acres lost, 9.07 acres are located in active agricultural areas, which provide limited wildlife habitat due to regular human interference and agricultural practices.¹⁵⁵

No significant natural communities or habitats of special concern are located in the Project area. Impacts to plant communities from construction and operation of the Facility include vegetation clearing and disturbance from construction, permanent loss of vegetated habitats by conversion to built facilities, and maintenance of vegetation underneath the solar panel arrays. Measures proposed by Trelina to avoid or minimize plant community impacts include site planning to avoid unnecessary impacts to grasslands, interior forest, wetlands, shrubland, and young successional forests, siting components to confine disturbances to the smallest area possible and adjusting work areas to utilize open fields whenever

¹⁵⁴ PSL §168(3)(c), (e).

¹⁵⁵ Hearing Exh. 42, Application Exh. 22, pp. 1, 13, 20, 53-54, 66, 87, 119.

possible, co-locating access roads and collector lines to avoid and minimize impacts to plant communities, and siting solar panels in areas already disturbed by agriculture. Trelina asserts that these measures would ensure that Facility construction and operation does not adversely impact plant communities and habitat.¹⁵⁶

With respect to impacts to wildlife generally, Trelina indicates that construction-related impacts to wildlife will be limited to incidental injury or mortality due to construction activities, habitat disturbance or loss and displacement associated with clearing and earth-moving activities, and displacement of wildlife due to noise and human activities.¹⁵⁷ Trelina asserts that construction related impacts will not have significant adverse impacts on local populations of resident or migratory wildlife species. After construction, the perimeter fencing for the proposed Facility will enclose 397.6 acres of land, but the fenced areas have been configured to allow space for wildlife crossings between forested and wetland habitats. Multiple forested corridors will allow continued wildlife travel. Larger game species, such as white-tailed deer, will be inhibited by the perimeter fencing and will need to search for new foraging habitat in the vicinity of the Project.¹⁵⁸

Trelina notes that once construction is complete, operation-related impacts, or impacts that can occur to vegetation, wildlife, and wildlife habitat while the solar facility is functioning, include direct habitat loss, habitat degradation through forest fragmentation, disturbances due to solar array operation, and specific mortality as a result of

¹⁵⁶ Hearing Exh. 42, Application Exh. 22, pp. 1, 53-55.

¹⁵⁷ Hearing Exh. 42, Application Exh. 22, pp. 52-54, 86-87.

¹⁵⁸ Hearing Exh. 42, Application Exh. 22, pp. 14-15, 54, 62-63.

solar array collisions.¹⁵⁹ Trelina asserts that temporary, permanent, and conversion impacts from habitat loss or conversion, fragmentation, and disturbance or displacement are not expected to significantly affect wildlife populations. Furthermore, as discussed above, Trelina asserts that the active agriculture practices currently present support a limited wildlife habitat value, and revegetation following construction may improve habitat conditions for grassland species.¹⁶⁰

No parties dispute Trelina's assertions regarding impacts to wildlife and wildlife habitat in general. Accordingly, based upon the record and the agreed-upon Certificate Conditions, as amended by the Supplemental Settlement Agreement, related to wildlife and habitat, which we adopt, we conclude that adverse impacts to wildlife and wildlife habitat have otherwise been minimized or avoided to the maximum extent practicable.

2. Public Health, Safety and Security

a) Noise and Vibration

There are no disputed issues concerning noise or vibration. Trelina performed a detailed analysis of potential sound impacts associated with Project construction and operation.¹⁶¹ Modeling included conservative predictions of sound impacts from all Project components, including all proposed inverters and the substation operating simultaneously at their maximum capacities.¹⁶² Sound modeling was performed at 1,188 discrete receptors and the worst-case sound levels for the Project are at or below the sound limits agreed to in the

¹⁵⁹ Hearing Exh. 42, Application Exh. 22, pp. 1, 10, 20, 60-61.

¹⁶⁰ Hearing Exh. 42, Application Exh. 22, pp. 61, 66, 91-93, 97, 101, 106, 110-114.

¹⁶¹ Exh. 39.

¹⁶² Exh. 39, p. 1.

Certificate Conditions of 45 dBA for non-participating receptors and 50 dBA for participating receptors at all modeled locations.¹⁶³ DPS Staff agrees that potential adverse environmental noise impacts from the Project have been avoided or minimized by the Project design, SEEP Guide, Noise Complaint Resolution Protocol ("NCRP"), and Certificate Conditions 50, 55, 81-83, 88, and 89(b).¹⁶⁴

The parties stipulated to other Certificate Conditions that contain noise limits for non-participating residences, non-participating lands, and participating residences.¹⁶⁵ Project noise must not exceed 35 dBA from substation transformers outside any permanent or seasonal non-participating residence, and must not exceed 45 dBA from other daytime operational sound sources associated with the Project (such as inverters and medium-voltage transformers) outside at any non-participating residences.¹⁶⁶ Sound levels at receptors will be subject to a 5 dBA penalty if sound emissions are found to contain a prominent discrete tone at any non-participating residence, whether through modeling, calculation, or pre-construction field testing.¹⁶⁷

The Project shall not exceed 55 dBA across any portion of non-participating property, except for portions delineated as wetlands and utility rights-of-way.¹⁶⁸ Compliance must be demonstrated with modeled sound contours and discrete sound

¹⁶³ Exh. 39 at 25; Exh. 195, Certificate Condition 81(b).

¹⁶⁴ DPS SPSS Testimony, pp. 48-52. The NCRP is attached as **Appendix C** to this Order.

¹⁶⁵ Exh. 195, Certificate Condition 81(b).

¹⁶⁶ Certificate Condition 81(b)(i)-(ii).

¹⁶⁷ Certificate Condition 81(b)(i)-(ii).

¹⁶⁸ Certificate Condition 81(b)(iii).

levels at worst-case locations.¹⁶⁹ The Certificate Conditions also include provisions for avoiding or minimizing Project construction noise, including detailed provisions in the NCRP regarding filing, documenting, handling, reporting, and resolving noise complaints.¹⁷⁰

Based on the estimated sound impacts from the Project's 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 should not be required, as has previously been required for wind generating facilities under Article 10.¹⁷¹ 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.¹⁷²

Certificate Condition 55 will require the Applicant to perform the modeling and calculations by following the provisions included in the section entitled "Sound" in the proposed SEEP Guide. The Applicant will follow the NCRP to investigate noise complaints during both construction and operation, perform noise measurements, and reduce sound levels or provide mitigation, if necessary.¹⁷³ Therefore, DPS Staff recommends that the Siting Board adopt proposed Certificate Conditions 50, 55, 81 through 83, 88, and 89(b), the SEEP Guide protocols on noise, and the NCRP. Provided that these terms are

¹⁶⁹ Certificate Condition 81(b)(iii).

¹⁷⁰ Certificate Condition 50.

¹⁷¹ DPS SPSS Testimony, p. 51.

¹⁷² Certificate Condition 81(a) and (b)).

¹⁷³ Certificate Condition 50; DPS SPSS Testimony, pp. 51-52.

adopted by the Siting Board, DPS Staff has determined that the adverse environmental noise effects from operation of the Facility will be minimized or avoided to the maximum extent practicable.¹⁷⁴

We conclude that noise impacts related to the construction and operation of the Facility will be avoided or minimized to the maximum extent practicable.¹⁷⁵

b) Construction and Operation

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.¹⁷⁶

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

Article 10 requires that we make findings regarding cultural, historic, and recreational resources, including aesthetic and scenic values and any significant, adverse impacts that the Project may create.¹⁷⁷ The impact of construction and operation of the Facility on cultural, historic, and recreational resources is addressed in Application Exhibit 20 and Application Appendices 20-1 and 20-2 (Parts 1-3).

In accord with recommendations provided by the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) - State Historic Preservation Office (SHPO), Certificate

¹⁷⁴ DPS SPSS Testimony, pp. 48-52.

¹⁷⁵ PSL §168(2)(c) and (3)(c).

¹⁷⁶ PSL §168(2)(b), (3)(c).

¹⁷⁷ PSL §168(2)(c).

Condition §§ 80(a)-(f), along with Section B.15 of the SEEP Guide, include provisions to avoid, minimize, or mitigate potential impacts to cultural and historic resources.¹⁷⁸ Certificate Condition 80 will require the Certificate Holder to develop detailed cultural resources protection measures and submit such measure in a Compliance Filing prior to commencement of Project construction. Certificate Condition 80 also requires the Certificate holder to develop plans for avoiding impacts to archeological sites and cemeteries identified within the Facility Site and prohibits construction within areas that have not yet been evaluated for the presence of historic and archaeological resources. After consultation with the DPS and the SHPO, if avoidance of archeological sites is not feasible, the Certificate holder must develop and submit a Cultural Resources Mitigation and Offset Plan.

In addition, if unanticipated archaeological finds are discovered, the Certificate Holder must prepare and submit a Final Unanticipated Discovery Plan, which has been reviewed and approved by the SHPO, describing the procedures that must be followed in light of any such discovery. These terms and conditions were not disputed by any parties to this proceeding and are consistent with prior orders issued by the Siting Board pursuant to PSL Article 10.

The record includes documentation from the SHPO stating that Project activities in the vicinity of four "Native American Pre-Contact" sites will not cause adverse impacts to archeological sites.¹⁷⁹ The SHPO has also concluded that impacts to buildings and historic viewsheds will be mitigated through the development and implementation of a historic preservation

¹⁷⁸ DPS SPSS Testimony, pp. 68-69.

¹⁷⁹ DPS SPSS Testimony, pp. 63-64, Exh. SPSS-1.

mitigation plan. That plan will establish specific historic preservation projects, and/or funding to offset significant visual impacts associated with the Project.¹⁸⁰ Given these considerations, and subject to the Siting Board's adoption of proposed Certificate Condition 80 and relevant SEEP Guide provisions, DPS Staff's position is that the Applicant has committed to avoiding impacts to cultural and historic resources to the maximum extent practicable and that impacts on such resources will be otherwise minimized or mitigated to the extent practicable.¹⁸¹

Based on the above, we find that that the Applicant has avoided, minimized, and mitigated impacts to archaeological, cultural and historic resources to the maximum extent practicable.¹⁸²

4. Visual Impacts

The Applicant's study and evaluation of the visual impacts of the Project are discussed in Exhibit 24 to the Application and related Appendices, and in the Supplement to the Application.¹⁸³ The Applicant prepared a Visual Impact Assessment ("VIA") which includes findings and conclusions regarding visual impacts. The Applicant also performed an inventory of visual resources within the Project area, assessed Project visibility within the Project site and surrounding areas, and specifically evaluated Project visibility from identified visual receptor locations. Probable visual impacts during both construction and operation of the Project were

¹⁸⁰ DPS SPSS Testimony, pp. 66-67, Exh. SPSS-3.

¹⁸¹ DPS SPSS Testimony, pp. 68-69.

¹⁸² PSL §168(3)(c).

¹⁸³ Application Appendices 24-1 and 24-2; Application Supplement.

evaluated, both generally and relative to specific visual receptors.

Based on its review of the Applicant's examination of visual impacts, DPS Staff has concluded that the Project, as proposed in the Application and as modified pursuant to requirements in the proposed Certificate Conditions, would avoid, minimize, or reasonably offset the potential for the Project to result in significant adverse impacts on visual resources.

The Application and supporting documents provide the Applicant's analysis of the expected effects of visual mitigation measures, including landscape screening measures. The VIA also examines operational visual impacts, based on preliminary exterior lighting plans for substation and switchyard sites, and evaluates the potential for glint and glare impacts from reflected sunlight off solar panel collector surfaces. DPS Staff concluded these analyses indicate the Applicant has made reasonable efforts to identify potential impacts. DPS Staff also has concluded that the Applicant's proposed visual impacts mitigation measures, if implemented in accordance with the requirements under the recommended Certificate Conditions, will ensure that the Project's potential impacts will be avoided, minimized and mitigated to the extent practicable.¹⁸⁴ For further support, DPS Staff also points to provisions of the SEEP Guide relating to visual screening plantings, exterior lighting design, vegetation protections and landscape planning.¹⁸⁵ DPS Staff testified that these

¹⁸⁴ DPS Staff cites Condition 61 (requiring plans to minimize offsite lighting effects); Certificate Condition 66 (visual mitigation); Certificate Condition 80 (Cultural Resources measures); and Certificate Condition 92 (minimizing vegetation clearing).

¹⁸⁵ SEEP Guide, Sections 1.e; 1.o; 3.h; 13.a-b; and 14.a.

Certificate conditions and SEEP Guide measures should be adopted because they will help mitigate Facility visibility from nearby residential and publicly accessible Locations.¹⁸⁶

a. Glare Impacts

Potential impacts due to solar glare from solar PV collection panels was evaluated by the Applicant in its Glint and Glare Analysis.¹⁸⁷ That analysis follows the Sandia National Laboratories Solar Glare Hazard Analysis Tool ("SGHAT") methodology.¹⁸⁸ At present, there are no generally applicable quantitative standards for limiting exposure to solar glare from solar energy generation facilities. The Applicant's Glint and Glare Analysis states that the scientific literature suggests that doubling the annual 30-hour shadow flicker standard could be used as a benchmark in this context.¹⁸⁹ Accordingly, for purposes of its study and analysis, the Applicant adopted a standard of 60 hours per year.¹⁹⁰ DPS Staff does not challenge this 60-hour standard for evaluating glare impacts.

These parties, however, disagree on whether Trelina should be required to provide mitigation, such as landscape screening, in response to glare complaints. DPS Staff asserts that the Applicant should be required to employ the complaint resolution process under proposed Certificate Condition 66(g), and provide glare impacts mitigation in response to complaints

¹⁸⁶ DPS SPSS Testimony, pp. 56-59.

¹⁸⁷ Application Appendix 24-2.

¹⁸⁸ Application Appendix 24-2.

¹⁸⁹ The 60-hour standard for shadow flicker exposure has been adopted by the Siting Board in cases involving wind turbines being sited under PSL Article 10.

¹⁹⁰ Application Appendix 24-2 (citing Pager Power, January 2017).

involving glare exceeding 30 hours annually.¹⁹¹ To support this position, DPS Staff relies on the Siting Board's decision in the High River case.¹⁹²

The Applicant opposes Staff's position, arguing no glare mitigation is needed because the Project's single-axis tracking solar arrays will not cause any significant solar glare.¹⁹³ Therefore, the Applicant argues, there is no need for the Siting board to consider glare mitigation measures.

The Applicant also argues that, if we reach this issue, we should reject Staff's position because Staff never challenged Trelina's 60-hour annual standard for assessing the impacts of solar glare. Trelina also argues the High River decision does not support Staff's position because that decision is distinguishable. In that case, Trelina argues, High River's visual impacts assessment ("VIA") identified households predicted to experience between 30 and 60 hours annually. The High River VIA also identified screening mitigation measures for such households. Trelina argues that, because the Applicant in High River agreed to provide glare mitigation for households experiencing solar glare of greater than 30 hours annually, that decision does not support the proposition that the Siting Board can compel such mitigation measures.¹⁹⁴ Trelina contends that,

¹⁹¹ DPS Staff Initial Brief, p. 16 (citing Staff DPSS Testimony, pp. 60-61).

¹⁹² Case 17-F-0597, Application of High River 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 Located in the Town of Florida, Montgomery County, Order Granting Certificate of Environmental Compatibility and Public Need, With Conditions (issued March 11, 2021), pp. 82-86.

¹⁹³ Trelina Reply Letter in Lieu of Brief, pp. 3-4.

¹⁹⁴ Trelina Reply, p. 5 ("DPS Staff is apparently equating the voluntary actions taken by the applicant in High River, in

because it only proposes mitigation of glare having a total duration of more than 60 hours annually, and because DPS Staff did not challenge that 60-hour standard, the record does not support Staff's position. Therefore, according to Trelina, we should not require mitigation of solar glare having a duration of less than 60 hours annually.¹⁹⁵

DISCUSSION

We choose not to require Trelina to provide mitigation in response to solar glare in excess of 30 hours annually. Because Trelina proposes using solar panels that will track the sun's movement, the record does not indicate solar glare impacts will be significant enough to require mitigation. Moreover, DPS Staff did not challenge Trelina's 60-hour annual standard. Nor did Staff introduce any evidence that solar glare exceeding 30 hours annually will have impacts that require mitigation to meet the standards under Article 10.

As a result, we need not consider or decide whether the law would allow us to require the Applicant in this case to mitigate glare impacts in cases involving solar glare in excess of 30 hours annually.

We 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 construction and operation of the Project will be avoided or minimized to the

response to concerns from a local opposition group, with requirements imposed by the Siting Board").

¹⁹⁵ Case 17-F-0597, supra, DPS Staff Reply Brief (filed December 1, 2020), p. 5 (DPS Staff did not challenge High River's 60 hour annual glare limit and noting that High River had proposed landscape screening for non-participating residences predicted to experience solar glare for more than 30 hours annually).

maximum extent practicable.¹⁹⁶

5. Impacts on Infrastructure-PSL §168(2)(d) and 168(3)(c)

PSL §168(2)(d) requires the Siting Board to make findings regarding the nature of probable environmental impacts of the construction and operation of a facility including impacts on transportation, communication, utilities, and other infrastructure. PSL §168(3)(c) requires a determination that the adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable.

a. Transportation

The regulations at 16 NYCRR §1001.25 require 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.

In the Application, Trelina evaluated the pre-construction characteristics of roads in the vicinity of the Project Area, including traffic volumes and accident data, transit facilities and school bus routes, emergency service approach and departure routes, load bearing structural rating information, and urbanized areas traffic volume.¹⁹⁷ Trelina then estimated the increased traffic attributable to the construction and operation of the Project, including the number, frequency, and timing of vehicle trips; the approach and departure routes for trucks carrying water, fuels, or chemicals; cut and fill activity; and construction worker and employee approach and departure routes.¹⁹⁸ Based on this review, most traffic impacts

¹⁹⁶ PSL §168(2)(c) and (3)(c).

¹⁹⁷ See Exh. 45.

¹⁹⁸ Id., pp. 10-16.

will be short-term and primarily due to the temporary influx of personnel and equipment during Project construction.¹⁹⁹

The results of the evaluation indicate that all roadways will operate at approximately the same levels of service within the Project Area at the peak hour of the day during construction.²⁰⁰ Construction-related vehicles will have little impact on these roadways due to minimal existing demand.²⁰¹ There will be minimal impacts to the traveling public during the peak construction period and virtually no impact to the traveling public afterwards.²⁰² No new traffic control devices, capacity improvements, or roadway upgrades are required to accommodate the construction of the Project.²⁰³

The Applicant will coordinate with local school districts to avoid impacts and delays to bus routes throughout the construction process.²⁰⁴ Local school districts will be advised in advance of any road closures so that alternatives routes can be developed.²⁰⁵ Overall impacts to the local school district busing program will be minimal and no mitigation beyond ongoing coordination will be needed.²⁰⁶

The Applicant will coordinate with local emergency service providers throughout the construction process so that service providers are aware of any sporadic road closures that may impact their routing decisions.²⁰⁷ Service providers will

¹⁹⁹ Id., p. 16.

²⁰⁰ Id., pp. 21-23.

²⁰¹ Id., p. 23.

²⁰² Id., p. 24.

²⁰³ Id.

²⁰⁴ Id., p. 26.

²⁰⁵ Id., p. 23.

²⁰⁶ Id., pp. 23-24.

²⁰⁷ Id., p. 24.

also be kept informed of expected site work and the anticipated number of workers so that emergency response can be planned in advance.²⁰⁸ It is expected that overall impacts to the local emergency service providers will be minimal, and no other measures beyond ongoing coordination are needed.²⁰⁹

The Applicant will obtain all necessary roadway permits from the New York State Department of Transportation and Seneca County.²¹⁰ A Traffic Control Plan will be provided in a Compliance Filing prior to construction, and will specify the local, county, and State roads to be used as delivery routes by construction and transportation vehicles.²¹¹ All necessary issued transportation permits will be filed with the Secretary prior to construction.²¹²

As described in the Application, Trelina will take the steps to minimize transportation-related impacts. Prior to construction, a survey of the delivery routes will be carried out by appropriately qualified engineers to assess and document current existing road conditions.²¹³ Any extraordinary damage or over-run caused by Trelina vehicles during the construction period will be repaired, thereby restoring affected roads to a condition equal to or better than the roads documented by the pre-construction survey.²¹⁴ Roads will also be maintained in good working order during construction. Trelina will establish a road use reparation fund or purchase a reparation bond as

²⁰⁸ Id.

²⁰⁹ Id.

²¹⁰ Id., p. 25; Exh. 195, Certificate Condition 40.

²¹¹ Exh. 195, Certificate Condition 63; Exh. 196, SEEP Guide, Section 7(c).

²¹² Certificate Condition 36.

²¹³ Exh. 45, p. 25.

²¹⁴ Id.

financial assurance that the roads damaged by the Project's construction will be repaired.²¹⁵

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.

b. Communications

The Article 10 regulations, codified at 16 NYCRR §1001.26, require all applications to include analyses and a discussion of potential impacts to communication systems. This information is included in Application Exhibit 26, which details the Applicant's review of potential impacts on multiple forms of communications technology.²¹⁶ The Project is not anticipated to interfere with existing communications systems.²¹⁷ The Project will lack tall structures and exposed moving parts. In addition, the photovoltaic arrays emit only a weak EMF in the same low frequency as household electric appliances.²¹⁸ Accordingly, it is very unlikely the Project will affect any communication system.

Specifically, the Applicant reviewed Federal Communications Commission license data and other appropriate databases to evaluate TV, radio, cellular, and microwave radio communications, as well as Doppler radar. The Applicant also consulted with the Seneca County Emergency Management Office, the Seneca County Sheriff's department, and the New York State Division of Homeland Security & Emergency Services to inform these agencies about the Project and assess any concerns regarding potential impacts to emergency services or emergency

²¹⁵ Id., pp. 25-26.

²¹⁶ 16 NYCRR §1001.26.

²¹⁷ Exh. 46 (Application Exh. 26), p. 1.

²¹⁸ Id.

communications systems.²¹⁹ No concerns or impacts have been identified. If a significant adverse effect to communications systems is discovered post-construction, it will be resolved through the Project's complaint resolution process.²²⁰ No party introduced any scientific or factual evidence contradicting these conclusions.

c. Related Utilities

The Article 10 regulations require every application to address conformance with Public Service Commission requirements and plans in order to avoid interference with existing utility systems.²²¹ Six public utilities provide service within a 2-mile radius of the Project Area.²²² Trelina located utility and fiber optic lines, both aboveground and underground, within and around the Project Area.²²³ No fiber optic facilities were identified within two miles of the Project Area.

Prior to commencement of construction, Trelina and/or its contractor will contact Dig Safely New York and request a mark out of all existing utilities.²²⁴ Where complete avoidance of underground utilities is not possible, Trelina will use directional boring instead of trenching, and existing utilities will be crossed at 90-degree angles.²²⁵

²¹⁹ Id., p. 1.

²²⁰ Id., p. 14; Exh. 195, Certificate Condition 51.

²²¹ 16 NYCRR §1001.12; Hearing Exh. 3.

²²² Exh. 46, pp. 15-16 (Spectrum; ViaSat, Inc.; Hughes Network Systems, LLC; NYsys Wireless LLC; Verizon Communications Inc.; and VSAT Systems, LLC).

²²³ Id., p. 17.

²²⁴ Id., p. 17-18.

²²⁵ Certificate Condition 96 requires coordination with Buckeye Partners, L.P. when installing Project components within pipeline easements. Exh. 195.

The parties have agreed to Certificate Conditions to further safeguard utility infrastructure. Certificate Conditions 18, 19, 35, and 36 ensure communication with local utilities, and will help ensure protection of local utility infrastructure during Project construction.²²⁶ The Applicant will incorporate into all applicable compliance filings utility system protection measures, utility notification and coordination plans for work performed in close proximity to other utility transmission and distribution facilities, and complaint resolution procedures.²²⁷ The Applicant will work with NYSEG to ensure the Project has power system relay protection and appropriate communications capabilities.²²⁸ The Applicant will comply with applicable Northeast Power Coordinating ("NPCC") criteria and shall be responsible for the costs to verify that the relay protection system is in compliance with applicable NPCC, NYISO, New York State Reliability Council, and NYSEG criteria.²²⁹

Based on the record in this proceeding, 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.²³⁰

6. Decommissioning, Site Restoration, 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

²²⁶ Exh. 195.

²²⁷ Exh. 195, Certificate Condition 18.

²²⁸ Exh. 195, Certificate Condition 19.

²²⁹ Exh. 195, Certificate Condition 19.

²³⁰ PSL §168(2)(d).

funding mechanism for decommissioning and site restoration and set forth a schedule for decommissioning and site restoration.²³¹ Trelina's Exhibit 29 to the Application, and Application Appendix 29-1, address these requirements. DPS Staff has concluded that the Applicant has fulfilled these regulatory requirements.²³² Proposed Certificate Condition 57 includes detailed specifications for decommissioning and site restoration, including requirements for the Certificate Holder's provision of financial assurance, including terms regarding the submission of estimates and financial agreements. As a result of settlement negotiations, the Applicant agreed to these terms.

Certificate Condition 57 requires the Certificate Holder to file with the Secretary a final "Decommissioning Plan" and that filing must include an estimate of the costs of decommissioning and site restoration, based on the final design of the Project. Where appropriate, the Applicant must restore agricultural lands according to the New York State Department of Agriculture and Markets Guidelines for Solar Energy Projects - Construction mitigation for Agricultural Lands (Rev. Oct. 18, 2019).²³³

Certificate Condition 57 requires the Certificate Holder to provide financial assurance in the form of a letter of credit to be held by the Town of Waterloo. The letter of credit must be based on the final overall decommissioning and site restoration estimate, excluding offsets for project salvage value. Updates reflecting inflation must be submitted to the Secretary after one year of operation and every fifth year

²³¹ 16 NYCRR §1001.29.

²³² DPS Staff Initial Brief, p. 32.

²³³ Certificate Condition 57(h). See Certificate Condition 51(g).

thereafter.²³⁴ Certificate Condition 57 requires the Certificate to submit to the Secretary 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 of the final decommissioning and site restoration estimate amount.

These requirements are generally consistent with the requirements which we have imposed in prior Article 10 cases involving wind generation facilities.²³⁵ We will adopt the requirements for Project decommissioning and site restoration which are set forth in the Application and in the proposed Certificate Conditions. Provided that the Certificate Holder complies with these terms and conditions in the Application and the Certificate Conditions, we find and determine that the Project will avoid or minimize any potential significant adverse environmental effects of decommissioning to the maximum extent practicable, pursuant to PSL §168(3).²³⁶

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

An Article 10 application must include "an evaluation of significant and adverse disproportionate environmental impacts of the proposed facility, if any, resulting from its construction and operation" on environmental justice (EJ) areas,

²³⁴ Certificate Condition 57(b)).

²³⁵ Case 14-F-0490, Cassadaga Wind; Case 16-F-0062, Eight Point Wind; Case 15-F-0122, Baron Wind; Case 16-F-0328, Number Three Wind; Case 16-F-0559, Bluestone Wind; Case 16-F-0205, Canisteo Wind; Case 17-F-0282, Alle-Catt Wind; and Case 16-F-0267, Deer River Wind.

²³⁶ As discussed elsewhere in this order, we grant the Applicant's requested waiver of local laws that would otherwise apply to the decommissioning and site restoration of the Facility.

in accordance with 6 NYCRR Part 487.²³⁷ Environmental justice or EJ is defined as the "fair treatment and meaningful involvement of all people regardless of race, color, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."²³⁸ An environmental justice area or EJ area is defined as "a minority or low-income community that may bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies."²³⁹

In its Application, Trelina reviewed two census block groups located within the Project area in Census Tract 9506. Within the impact study area, Trelina also reviewed two census block groups in Census Tract 9507 in Seneca County, as well as one census block group in each of Census Tracts 504, 515 and 517 in Ontario County, for a total of seven census block groups. On review of current data from the U.S. Census Bureau's American Community Survey for six of the census block groups, the proposed Project will not be located in a potential EJ area. The impact study area includes a potential EJ area in Ontario County identified as Tract 517, Block 2, with a minority population of 64 percent and 23.9 percent of residents below the poverty level.²⁴⁰

Trelina's Application notes that the potential EJ area is located 0.23 miles from the Project area boundaries, but states there will be no significant adverse impacts to any

²³⁷ PSL §164(1)(f); 16 NYCRR §1001.28.

²³⁸ 6 NYCRR §487.3(k).

²³⁹ 6 NYCRR §487.3(1).

²⁴⁰ Hearing Exh. 48, Application Exh. 28, pp. 1-3.

community adjacent to the project and certainly not the potential EJ area, due to predicted project traffic, noise, or visibility. Trelina also states that "the Project will not result in significant and adverse disproportionate environmental impacts on any environmental Justice areas because: (a) there will be no air emissions during operation; (b) any vehicle/equipment emissions during construction and operation will not be significant and adverse and will not disproportionally affect any Potential Environmental Justice areas; and, (c) there will be no significant, adverse traffic, noise, or visual impacts caused by the Project. Therefore, the full Environmental Justice Analysis provided by 6 NYCRR §487.6 is not required."²⁴¹

Based on its review of the Application, DPS Staff states that the construction and operation of the Facility is not expected to have any environmental justice impacts.²⁴² No party disputed this.

Contrary to Trelina's analysis of the requirements of 6 NYCRR Part 487, we previously held that "[i]f an EJ area is present within the impact study area, the applicant must undertake a full EJ analysis that complies with the requirements of 6 NYCRR §487.6. Section 487.6 provides the general requirements and procedures for completing an EJ analysis, including pre-application requirements to ensure early and meaningful public involvement; required contents of the

²⁴¹ Hearing Exh. 48, Application Exh. 28, pp. 2-3.

²⁴² DPS Staff Initial Brief, pp. 34-35.

preliminary scoping statement; and required contents of an application.”²⁴³

Notwithstanding Trelina’s failure to strictly comply with the requirements of 6 NYCRR Part 487, we find DPS Staff’s conclusions are supported by the record. We conclude that the Project will not have any significant and adverse disproportionate environmental impacts on environmental justice areas.

F. 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 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.²⁴⁴ 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.”²⁴⁵

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

²⁴³ Case 17-F-0282, Application of Alle-Catt Wind Energy LLC - Wind Electric Generation Siting, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued June 2, 2020) at 55-56.

²⁴⁴ PSL §172(1); 16 NYCRR §1001.31(a).

²⁴⁵ PSL §168(3)(e); 16 NYCRR §1001.31(d).

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.”²⁴⁶ 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.”²⁴⁷

1. Compliance with State Laws

No party alleges noncompliance with State laws. We conclude that the Project, if constructed and operated in 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 State and local laws.²⁴⁸ 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 needs of or costs to ratepayers.²⁴⁹

The Project will comply with all applicable substantive provisions of State and local law except for three substantive requirements of the Town’s local laws and

²⁴⁶ PSL §168(3)(e).

²⁴⁷ 16 NYCRR §1001.31(e).

²⁴⁸ PSL §168(3)(e), 16 NYCRR §1001.31.

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

regulations.²⁵⁰ Pursuant to PSL §168(3)(e) and 16 NYCRR §1001.31(e), Trelina has requested that we waive compliance with these three local substantive laws on the ground that these local laws are unreasonably burdensome and would prevent the construction of the Project.²⁵¹

The three local laws at issue are (1) a local law prohibiting solar panels from exceeding ten feet, when oriented at maximum tilt;²⁵² (2) a local law requiring a solar facility be decommissioned if it ceases to operate or generate electricity for a period of 6 months, and further requiring that such a facility be completely dismantled and removed, and the site fully restored, within 30 days of the commencement of decommissioning;²⁵³ and (3) a local law requiring a 20-year bond, to be renewed, after fifteen years, for an additional twenty years.²⁵⁴

Exhibit 31 to the Application sets forth a detailed analysis of these local laws and demonstrates that the requested waivers are justified. With respect to the 10-foot height limitation, Trelina proposes to potentially install tracker solar panel racking systems that will reach a maximum height of 13 feet at full tilt for relatively short periods during daylight hours.²⁵⁵ Most of the time, these panels will be less than ten feet high. Importantly, such panels are more efficient because they follow the sun as it passes through the sky. By employing such a "dual portrait" solar panel presentation, the Applicant will be able to reduce the overall area that would

²⁵⁰ Application Exh. 31, pp. 19-26.

²⁵¹ Id.

²⁵² Waterloo Zoning Law §134.6.B(4)(b).

²⁵³ Waterloo Zoning Law §134.6.B(3)(h)[1].

²⁵⁴ Waterloo Zoning Law §134.6.B(3)(h)[4].

²⁵⁵ Application Exh. 31, pp. 21-22.

otherwise be needed to meet the Project's design capacity of 79.5-80 MW. On balance, we find that the ten-foot height limit is a technological limitation that would prevent the use of such a tracking solar panel system, would reduce the efficiency of the system, and would potentially increase the land impacts of the Project. Given this, we find that requiring compliance with this local law would be unreasonably burdensome.

The Town's solar law potentially requires the Project to be decommissioned if it ceases to operate or generate electricity for a period of 6 months. The law also potentially requires that the Project be completely dismantled, removed, and the site restored within 30 days of the start of decommissioning.

As set forth in Exhibit 29 to the Application, decommissioning is anticipated to take approximately five months to complete.²⁵⁶ This includes 2 weeks for site mobilization and preparation, 6 to 12 weeks for disassembly of the solar arrays and associated infrastructure, 4 weeks following disassembly to remove and reclaim the access roads, and 2 weeks to remove and reclaim the Project laydown area and complete demobilization for the Project site. Based on this record, decommissioning and site restoration will take considerably more time than the 30 days specified under the Town's local law. The timeline specified in the Application is necessary to restore the Project site to substantially its pre-existing condition and to protect soils so that the landowners may return to farming operations in the future. As such, it is not technologically possible or feasible to comply with the Town's 30-day decommissioning and site restoration requirement.²⁵⁷

²⁵⁶ Exh. 49, Application Exh. 29, p. 5.

²⁵⁷ Exh. 49, Application Exh. 29, pp. 1, 3; Exh. 51, Application Exh. 31, p. 22.

DPS Staff agrees that the Town's decommissioning requirements should be waived. A 30-day deadline is much shorter than what has been required in other Article 10 cases. For example, Department of Public Service Staff and other parties have previously agreed that 12 months is an appropriate period of time for decommissioning a project.²⁵⁸

Finally, with respect to the Town's requirements relating to financial assurances for decommissioning and site restoration, as part of Certificate Condition 57, Trelina will provide, when it files its final Decommissioning Plan, financial assurance in the form of a letter of credit to be held by, and for the benefit of, the Town of Waterloo.²⁵⁹ The Decommissioning Plan must include an estimate based on final Project design. Certificate Condition 57 prohibits the inclusion of salvage value of Project components as decommissioning cost offsets in this estimate.²⁶⁰ These terms and conditions for the provision of financial assurance for decommissioning and site restoration are reasonable and generally consistent with past decisions of the Siting Board.

We note that DPS Staff testified that the waivers requested by Trelina are justified by the record in this case, and that DPS Staff supports Trelina's waiver requests.²⁶¹ Moreover, no party has offered any evidence rebutting Trelina's case with respect to the basis for these requested waivers of Town law. Nor has any party offered any evidence indicating that the requested waivers would be unlawful or otherwise unjustified. Accordingly, we find that Trelina had met its

²⁵⁸ Case 17-F-0597, supra; Case 17-F-0559, supra.

²⁵⁹ Exh. 195, Certificate Condition 57.

²⁶⁰ Id., Certificate Condition 57(b).

²⁶¹ DPS SPSS Testimony, pp. 69-70.

burden of showing that requiring compliance with the Town laws would be unduly burdensome, and we will grant the waivers Trelina has requested.

IV. CONCLUSION

Based on the record before us, the arguments of the parties, and all applicable laws and policies, we grant the Certificate of Environmental Compatibility and Public Need to the Applicant, subject to the Certificate Conditions attached to this Order as Appendix A.

The Board on Electric Generation Siting and the Environment orders:

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

2. Subject to the conditions set forth in this Order and appended to it, a Certificate of Environmental Compatibility and Public Need is granted, pursuant to Article 10 of the Public Service Law, to Trelina Solar Energy Center, LLC, for the construction and operation of a solar generating facility with a capacity of up to 80 megawatts, consisting of utility-scale arrays of photovoltaic solar generating panels located on private land, either leased or purchased from the landowners, and associated facility components to be located in the Town of Waterloo, New York, and connecting to the existing, and adjacent, "Border City-Station 122" 115 kV transmission line owned by the New York State Electric and Gas Corporation, provided that Trelina 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, Trelina 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, Trelina 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 Trelina 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

APPENDIX A

CERTIFICATE CONDITIONS

PROPOSED
Trelina Solar Energy Center
Certificate Conditions
April 14, 2021

I. Project Authorization

1. The Certificate Holder is authorized to construct and operate the Facility (or the Project), as described in the Application by Trelina Solar 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 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 or utility, to seek a determination of any such unreasonable or unreasonably delayed, unreasonably conditioned or unreasonably withheld, action or determination. The permitting agency, 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. Commencement of construction is defined as the beginning of unlimited and continuous site clearing, site preparation (except installation of temporary erosion and sedimentation control measures) and grading activity, and construction of the Facility 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 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 16 NYCRR 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; (b) Commencement of Civil Construction; and (c) Commencement of Operations.
9. Facility construction is authorized for an approximately 79.5 to 80-megawatt (MW) solar energy center (including commercial-scale solar arrays, access roads, inverters, fencing, buried electric collection lines, and electrical interconnection facilities) in the Town of Waterloo, Seneca County, New York. The Project also includes a collection substation and interconnection facilities on land within the Project Area that will tap into New York State Electric and Gas Corporation's (NYSEG) existing Border City – Station 122 115 kV transmission line. The proposed interconnection facilities will include a 115kV switchyard to be transferred to NYSEG 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. 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 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. 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 any 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 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 four substantive requirements of the Town of Waterloo Land Use Code & Zoning Law below. These four 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.

- i. No part of the large-scale solar energy systems shall exceed ten feet in height when oriented at maximum tilt (§134.6.B(4)(b)).
 - ii. In the event that the owner or lessee of any large-scale solar energy system ceases for a period of six (6) months to use or operate the said system or in the event the said system fails to generate electrical energy, as supported by metered use thereof, for a period of six (6) months, then in either event such by the owner or lessee. If the owner or lessee does not voluntarily dismantle the facility and remove the same from the site upon the occurrence of either event, the Code Enforcement Officer may recommend to the Town Board that the Town Board declare the system abandoned based on either or both events and the Town Board, upon receiving the recommendation of the Code Enforcement Officer and holding a hearing on due notice to the property owner and operator of the facility, may declare the system abandoned and order the dismantling and removal of the system by the owner and/or operator or, after the passing of 30 days from the date the Planning Board declares the facility abandoned, by Town staff or by a third party on contract with the Town. Failure to dismantle and remove a facility and restore the site to its natural state within 30 days after said facility has been declared abandoned by the Planning Board upon recommendation of the Code Enforcement Officer will result in forfeiture or the filing of a claim against the performance surety bond posted by said owner or lessee of said facility, as provided in § 134.6(1)(h)(4) herein (§134.6.B(3)(h)[1]).
 - iii. A 20-year bond will be required for all large-scale solar energy systems, which will require renewal after fifteen (15) years, for an additional twenty (20) years (§134.6.B(3)(h)[4]).
 - iv. The Siting Board has also determined that a waiver is not needed from §134.6.B(4)(c), requiring a large-scale solar energy system that is ground mounted not exceed 50% of the lot on which it is installed, because the local law has been interpreted in accordance with the Certificate Holder's interpretation in Exhibit 31 of the Application and/or the law is unreasonably burdensome in the view of existing technology or consumer needs.
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 NYSEG, 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 NYSEG), the Facility will have power system relay protection and appropriate communication capabilities so that operation of the NYSEG 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 NYSEG, 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 NYSEG 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, 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, if required, with DPS Staff 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 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, Chief of the Energy Project Management Bureau, 625 Broadway, Albany, NY 12233-1750 and the Regional Permit Administrator for Region 8, 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 NYSEG 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 Waterloo and Seneca County officials and emergency personnel;
 - d. Publish notices in the Finger Lakes Times, The Seneca County Area Shopper and the Finger Lakes Pennysaver in Seneca Falls for dissemination;
 - e. Provide notice for display in public places, which will include, but is not limited to, the Town of Waterloo Town Hall, Waterloo Library and Historical Society, the Waterloo Post Office, 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. Protected status may be sought for some or all of these documents.
29. A copy of the Interconnection Agreement between NYISO, NYSEG, 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 NYSEG and file such information with the Secretary.
30. All Facilities Studies issued by NYSEG and the NYISO and any updated facilities agreements will be filed with the Secretary throughout the life of the Facility.
31. Any System Reliability Impact Study (SRIS) required as part of a future Facility modification or upgrade, performed in accordance with the NYISO Open Access Transmission Tariff (OATT) approved by the Federal Energy Regulatory Commission, and all appendices thereto, reflecting the interconnection of the modified Facility will be filed with the Secretary. Protected status may be sought for these documents

32. The following information shall be filed as an Information Report prior to construction:

Details and specifications of the selected solar panel modules, tracking system(s) (and associated motors), and inverters (including cut sheets (including length, width, height, and material), 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), and inverters; 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. 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.
34. 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

35. 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 substantive provisions of any applicable local electrical, plumbing, or building code. Said certification shall be filed as an Informational Report with the Board.
36. At least 10 days before a distinct construction activity commences, prior to using a route to haul equipment or materials requiring a 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: 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 Permit. Copies of any road use agreements or crossing agreements with utility companies will be provided as an Information Report. Drawings, descriptions,

details, mapping and safety and protective requirements for proposed facilities to be co-located with and/or crossing existing utilities will be provided as a supplement to any crossing agreements with utility companies.

37. 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.
38. 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

39. 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 115-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 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.
40. 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

41. 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 to DPS and NYSDEC. Drawings will include final locations of all Project Components, final grading, elevation plan of switchyard and collection substation, and a profile of the final collection 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, 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.
42. 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.
43. The Certificate Holder shall file annually with the Secretary, the Town of Waterloo, and Seneca County an updated copy (if modifications have occurred) of its emergency procedures and list of emergency contacts and with documentation of any modifications.

Environmental

44. Prior to the initiation of any horizontal directional drilling (HDD) 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.
45. 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, 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 98 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 Waterloo Supervisor will also be notified within that timeframe. The notification shall include contact information and procedures for filing a blasting operations related complaint.
46. 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.
47. 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.
48. 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.
49. 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.

Complaint Resolution

50. The Certificate Holder shall handle all noise complaints by following the appended Noise Complaint Resolution Plan (Appendix B, hereto), the Project Complaint Resolution Plan, and the following Certificate Conditions.
51. 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 Waterloo. Upon request by DPS or the Supervisor for the Town of Waterloo, Certificate Holder will send the complaint log via email within seven business days to DPS Staff and the Town of Waterloo.
52. 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 Waterloo.

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

53. 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 Board, or the Commission after the 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.
54. 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 Trelina Solar Energy 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.
55. Final computer noise modeling and tonal evaluation shall be conducted in accordance with the specifications in the SEEP Guide.
56. 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 as a Compliance Filing.
57. 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 as Exhibit 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 Waterloo. 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 work with DPS Staff and the Town of Waterloo on an acceptable form of a letter of credit. 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 Waterloo 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 life of the solar modules (panels);
- 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 Waterloo, 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. the method of ensuring that funds will be available for decommissioning and restoration as provided in the Plan;
- d. the method that the decommissioning estimate will be kept current;
- e. the manner in which the Project will be decommissioned and the site restored;
- f. 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 148; and

- g. 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.
- h. 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

- 58. 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 Waterloo, the NYS Division of Homeland Security and Emergency Services, Seneca County Emergency Management Office, 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 and emergency procedures for operation must be submitted prior the commencement of commercial operation.
- 59. The Final Site Security Plan for Facility Operations will be submitted. Copies of the final plan shall be provided to the DPS Staff, NYS Division of Homeland Security and Emergency Services, Seneca 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. 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.
- 60. A Final Health and Safety Plan shall be submitted 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.

61. A detailed Facility Exterior Lighting Plan shall be filed in the 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

62. The Certificate Holder will file a final Route Evaluation Study as a Compliance Filing. The final Route Evaluation Study will include mapping for final transportation routes for Project Component deliveries.
63. 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. The Traffic Control Plan(s) will include any road use agreements.

Plans, Profiles, and Detail Drawings

64. Maps, site plans and profile figures, and construction details for the Facility to be constructed shall be submitted as a Compliance Filing. Shapefile data shall be provided to DPS and NYSDEC Staff for the locations of solar panels, low-medium transformers and inverters, collection substation, 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. 13-foot maximum height of the solar array;
 - b. 200-foot minimum setback from the right-of-way line of a road;
 - c. 100-foot minimum setback from all side and rear property;
 - d. 300-foot minimum setback from any residential structure located on another parcel.
65. Maps showing the locations for construction trailers/offices and location of access to public roads will be submitted as a Compliance Filing.
66. The final Facility design should incorporate the visual mitigation described in Exhibit 11 and depicted in the Preliminary Landscape Plan included as 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. There is the possibility of existing agricultural practices to resume in agricultural fields adjacent to arrays, such as the planting of row crops, where plantings such as corn could provide screening during a portion of the year.

- e. 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.
 - f. 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.
 - g. Mitigation plantings to address complaints of residents regarding glare from solar panels shall be installed and maintained in accordance with these specifications.
67. 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 design plans in the Compliance Filing. A breakdown of the number of feet per installation shall be included as a legend (including installation distances for single, double, triple, etc.).
68. Final details of any potential overhead collection lines, and any single and multiple-circuit overhead 115 kV electric line layouts shall be submitted in the Compliance Filing, as applicable. Each 115 kV layout and Project circuit layout (single, double, triple, etc.) shall include, if applicable, the following drawings:
- 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.
69. For the final design and details of single and multiple electric circuit underground collection lines to be submitted in the Compliance Filing, each Project circuit layout (single, double, triple, etc.) shall include a cross-section and clearing widths needed for accommodating circuit installations.

70. 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. Changes to an approved compliance filing involving the crossing of State-protected wetlands and streams shall be permitted following consultation with the DPS Staff representative, Environmental Monitor, and NYSDEC, which authorization shall not be unreasonably delayed, unreasonably withheld, or unreasonably conditioned. Such changes must be consistent with federal and State regulations and will be subject to filing a notification of change with the Secretary within 48 hours after the agreement to make the change in installation method.
71. Final wetland 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. 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

72. A Timber Salvage Plan shall be filed in the Compliance Filing.
73. No stream crossings are proposed. If it is later determined that a stream crossing is required, then prior to installation of any temporary and permanent 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 wetland ID and the delineated 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 area and flow calculations; and
 - e. A description of the dry crossing methods that will be used to install the crossing.
74. 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.
75. Plans for the creation, modification or improvement of any permanent access road stream crossing 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.
76. 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.

77. 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.
78. 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 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.
79. 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 or wetland, when and where practical. 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.
80. 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. 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 December 8, 2020, 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 the farm complex at 2645 Serven Road and the Pierson Farm at 403 Packwood Road, both located in the Town of Waterloo, 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.

Noise and Vibration

- 81. 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, 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 Local Laws on noise (if any) and the following sound goals for residences and boundary lines existing as of the date of the order as noted:
 - (i) 35 dBA L_{eq} -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 L_{eq} -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 L_{eq} -1-hour.
 - (iii) 55 dBA L_{eq} -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 L_{eq} -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 81(b)(i) and 81(b)(ii) (e.g., tracking systems, motors, emergency generators), that exceed the design goals specified in Certificate Conditions 81(b)(i) during the nighttime; 81(b)(ii) during the daytime; or 81(b)(iii) and 81(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 81(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.
82. 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).
83. 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

84. At least 60 days prior to the start 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.
85. 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.
86. 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 Certification Conditions 102(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.
87. 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, NYSDEC, and NYSEG. The Certificate Holder may elect to combine the previously described meeting with the listed parties and NYSEG or conduct a separate meeting with NYSEG at least 14 days before the commencement of construction activities affecting facilities owned or to be owned by NYSEG. 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, the NYSDEC, and NYSEG for corrections or comments, and thereafter the Certificate Holder shall issue the finalized meeting minutes to all attendees;
 - 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.
- 88. 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 (i.e., 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.
- 89. 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.

90. 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. 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. Performance of any site clean-up, including containment or remediation of any existing contamination, to cap, plug, remove or otherwise contain any existing wells or pipelines that it might discover is subject to all applicable laws. EPC Contractor Project Supervisor agrees to notify the affected landowner, the NYSDEC Chief of the Energy Project Management Bureau and NYSDEC Region 8 Regional Engineer 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 Engineer, and NYSDEC Division of Environmental Permits, Chief of the Energy Project Management Bureau, subject to the requirements of this Certificate.
91. 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

92. Tree and vegetation clearing shall be limited to the minimum necessary for Facility construction. SEEP documents shall indicate limits of tree and vegetation clearing, and also specify vegetation protection measures to avoid disturbance of vegetated areas necessary for visual screening.
93. 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.
94. Post-construction monitoring and remediation 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.
95. 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.
96. Prior to the commencement of construction, the Certificate Holder shall file with the Secretary as an Information Report the agreement between itself and Buckeye Partners, L.P. demonstrating that Buckeye Partners, L.P. has granted the Certificate Holder permission to install facilities within pipeline easements.
97. 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 98-105 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 98-105 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.

- 98. 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.

99. 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.
100. 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.

101. 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.

102. During construction, restoration, maintenance, and operation of the Facility, the Certificate Holder shall maintain a record of all observations of New York State threatened or endangered (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.
103. 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.
104. 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.
105. 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

106. 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 as well as any conditions and regulatory requirements issued under the Section 401 Water Quality Certification and 6 NYCRR Part 608 in consultation with 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.
107. The Certificate Holder shall submit a Notice of Intent to Commence Construction to the Region 8 Regional Permit Administrator, NYSDEC Region 8 Headquarters, 6274 East Avon-Lima Rd, Avon, NY 14414; the NYSDEC Chief of the Energy Project Management Bureau, Division of Environmental Permits, 625 Broadway, Albany; DPS; and the Town of Waterloo 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.
108. 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.
109. 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.

110. 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.
111. Fuel or other chemical storage tanks shall be contained and located at all times in an area more than 300 feet landward of any regulated wetland, 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.
112. 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.
113. 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 Waterloo 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.
114. If inadvertent drilling fluid surface returns occur in wetlands or streams, the NYSDEC's Division of Environmental Permits, Chief of the Energy Project Management Bureau 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.
115. All equipment used within bed or banks of streams or in regulated wetlands and 100-foot adjacent areas must be inspected daily for leaks of petroleum, other fluids, or contaminants; equipment may only enter a stream channel if found to be free of any leakage. 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.

116. 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.
117. 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 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.
118. 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.
119. 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.
120. 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.
121. 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.
122. All State-regulated freshwater wetlands, and associated NYSDEC regulated 100-foot adjacent areas, as applicable, 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 76 and 77.
- 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. Without the Certificate Holder waiving or limiting its rights in this proceeding or any other as to the extent of the ECL's jurisdiction over Wetlands W-JJB-4, W-JJB-13, W-JJB-17, W-JJB-18, and W-NWJ-29, the Project construction shall avoid these wetlands. Impacts to some of these wetlands' adjacent areas (the portions which are currently regularly disturbed by agricultural activities) are proposed and outlined in the SEEP Guide along with proposed restoration plans (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-JJB-4, W-JJB-12, W-JJB-13, W-JJB17, W-JJB-18, and W-NWJ29, as detailed in Section B.17.d.v of the SEEP. 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 standards of the Plan, the Certificate Holder shall develop a Wetland Mitigation Remedial Plan in consultation with DPS and DEC staffs, wherein restoration measures 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 regulated wetlands, 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.
- 123. 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 the 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.
 - 124. 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.
 - 125. Permanent alteration of wetland hydrology is prohibited.
 - 126. 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 and the Emerald Ash Borer 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 regional forester;
 - 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.
127. 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 Regional Permit Administrator, DPS, and the Town of Waterloo 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.
128. 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.

129. 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.
130. 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.
131. 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 Regional Permit Administrator 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 wetlands, 100-foot adjacent areas, and streams, the Certificate Holder will maintain close monitoring 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 an 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 Regional Permit Administrator and DPS Staff within 2 hours or as soon as practicable considering internet and cell phone coverage in the area.

132. No stream crossings are proposed. If, based on the results of the "Site-Specific Constructability Assessment," described in Certificate Condition 74 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 Regional Permit Administrator, 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.
133. 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 76 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.

134. 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.
135. 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.
136. 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.
137. 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 stream or wetland (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.
138. Any work in State-protected 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-protected 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.

139. 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.
140. 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. The final road surface shall be covered with gravel in the area of the wetland crossing. 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

141. The Certificate Holder shall operate the Facility in accordance with the Interconnection Agreement, approved tariffs and applicable rules and protocols of NYSEG, NYISO, NYSRC, NPCC, NERC, and successor organizations.
142. The Certificate Holder shall operate the Facility in full compliance with the applicable reliability criteria of NYSEG, 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 notice to the Board, or the Commission after the Board’s jurisdiction has ceased, by filing with the Secretary and NYSEG with a copy of the NYISO notice.
143. 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 NYSEG, or its successor, in order to maintain the reliability of the transmission system.

144. 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.
145. The Certificate Holder shall work with NYSEG 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 NYSEG 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 NYSEG acceptance.
146. If NYSEG 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 NYSEG 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.
147. 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.

148. 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 NYSEG 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 NYSEG 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.
149. In the event of a fire or other catastrophic event involving the solar panels and its 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.

APPENDIX B

**GUIDANCE FOR THE DEVELOPMENT OF
SITE ENGINEERING AND ENVIRONMENTAL PLAN**

TRELINA SOLAR ENERGY CENTER PROPOSED SEEP GUIDE CASE 19-F-0366

APPENDIX A

**GUIDANCE FOR THE DEVELOPMENT OF SITE ENGINEERING AND ENVIRONMENTAL PLAN
FOR THE CONSTRUCTION OF THE TRELINA SOLAR ENERGY CENTER PROJECT**

The proposed Trelina Solar 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 Trelina Solar 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 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, 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 Site Engineering and Environmental Plan (SEEP) 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 Trelina Solar Energy Center.

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, 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. Plan and Profile Details

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 showing:

- a. A copy of the American Land Title Association (ALTA) survey showing locations of existing utility infrastructure.
- b. Details and specifications of the selected commercial-scale solar array and inverter model(s) (including a specification sheet).
- c. Foundation drawings including plan, elevation, and section details for each foundation type proposed; the foundation type at the collection substation and switchyard location shall be specified on site plans; and applicable criteria regarding foundation design shall be listed and described in the drawings and details.
- d. Details showing limits of clearing, temporary and permanent grading, and laydown space required for solar panel installation; SWPPP details should be indicated.
- e. Details showing 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.

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.

- f. 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.
- g. The locations or descriptions of locations for concrete chute washout and any other cleaning activities (e.g., equipment cleaning for control of invasive species).
- h. General concrete testing procedures including a plan outlining monitoring and testing of concrete procedures including a list of all standards that the Certificate Holder will comply with related to mixing and pouring concrete and associated reference to specific standards of the American Concrete Institute (ACI), International Building Code (IBC), and any other authorities.

Linear Project Components:

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 should be included in final site plan and profile drawings or 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 elevation 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.
- 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

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.

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.
- g. Discuss the types of access roads or paths that will be used including consideration of:
 - i. Temporary installations (e.g., corduroy, mat, fill, earthen road, geotextile underlayment, gravel surface, etc.);
 - ii. Permanent installations (e.g., cut and fill earthen road, geotextile underlayment, gravel surface, paved surface, etc.); and
 - iii. Use of existing roads, driveways, farm lanes, etc.
- 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.)).
- 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.
- 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. 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.
- 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:
- 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.
- 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 plan³ - 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

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

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 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
- 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 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.

3. Vegetation Clearing and Disposal Methods

Identify on the plan and profile drawings:

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

5. Streams and Other Waterbodies

- 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

- a. All Federal and State regulated wetlands and State regulated 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 (i.e., for state jurisdictional wetlands).
- b. Indicate the community type (e.g., emergent, scrub-shrub, forested), location, and identification code(s) of any federal or state regulated wetland within or adjoining the Facility and its components, as determined by site investigation and delineation.
- c. Identify crossing methods and buffer/impact limits for all wetlands on plan drawings.
- d. Prior to initiating construction activities, the perimeter of wetlands and associated buffers (those not to be disturbed by construction activities) 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

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.

b. Sensitive Land Uses and Resources:

- i. Identify and indicate the location of known sensitive land uses and resources that may be affected by construction or maintenance of the Facility or by construction-related traffic (e.g., hospitals, emergency services, sanctuaries, schools, and residential areas).

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

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

d. Recreational Areas:

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

8. Access Roads, Lay-down Areas and Workpads

- a. Where access is required for continued agricultural activities, ensure sufficient access for farm operators (crossings or turn-offs) for the site-specific agricultural equipment and/or livestock.

9. Noise Sensitive Sites

- a. Show the locations of 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.

10. Ecologically and Environmentally Sensitive Areas

- a. 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”).
- b. 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.

11. Invasive Species

- a. 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. The need for an “Invasive Species Remedial Plan” as described in the Certificate Conditions will be determined in consultation with DEC.

12. Vegetation Controls and Herbicides

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

13. Visual Mitigation Landscaping and Buffers

- a. 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.
- b. 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 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;
- c. 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, and electric interconnection facilities to be installed during construction.

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

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

environmental protection provisions specified by the Certificate.

- b. Specify responsibilities for personnel monitoring all construction activities, such as clearing, sensitive resource protection, site compliance, change notices, etc.
- c. Include a statement that the Certificate Holder has made compliance with the SEEP an obligation of its contractors and has provided a copy to those employees and contractors engaged in demolition, clearing, construction and restoration.
- d. Describe the procedures to “stop work” in the event of a Certificate violation.
- e. The company’s designated contact including 24/7 emergency phone number, for assuring overall compliance with Certificate conditions.
- f. Ensure that required safety procedures and worksite hazards are communicated to site inspectors in a documented 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. Complaint Resolution Plan

The SEEP shall include a copy of the final *Complaint Resolution Plan*, 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 Waterloo 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:

- 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, Seneca 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 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 at 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. The SEEP shall attach 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

The Certificate Holder's program for clean-up and restoration following construction will be described in the Site Restoration Plan, and will include at a minimum:

- a. The removal and restoration of any temporary roads or staging areas; the finish grading of any scarified or rutted areas; the removal of waste (e.g., excess concrete), scrap metals, surplus or extraneous materials or equipment used; and
- b. Plans, standards and a schedule for the restoration of vegetative cover, including but not limited to, specifications indicating:

- i. design standards for ground cover, including:
 - 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 seed mixes.
 - d. If subject to continued agricultural use, restoration seeding will be consistent with pre-existing crop species or as requested by landowner.

7. Transportation

- a. The SEEP shall include copies of the Road Use Agreements with any County and local municipalities. The SEEP will include copies of any crossing agreements with utility companies.
- b. The SEEP shall attach a *Route Evaluation Study* that demonstrates that the Town has been contacted or when they will be contacted. The plan shall identify weight limited bridges in the area to be avoided. The plan shall include constraints on use of heavy equipment and vehicles used for construction.
- c. The SEEP shall attach a Traffic Control Plan that identifies:
 - i. The delivery route(s) in the Town of Waterloo for oversize or over length equipment or materials and the route(s) for delivery of earthen materials and concrete.
 - ii. The plan shall describe the delivery of materials to the facilities site and shall indicate mitigation measures to manage traffic during construction and operation.
 - iii. Copies of all permits associated with the delivery of such equipment and materials shall be provided prior to using a route to haul equipment or materials requiring a permit.
 - iv. The Certificate Holder shall not permit construction vehicles or construction equipment to park or idle at public roadside locations for extended periods of time.

8. Construction Vegetation Clearing and Disposal Methods

For vegetation clearing during construction, the SEEP shall:

- a. Describe the specific methods for the type and manner of cutting and disposition or disposal

methods for cut vegetation.

- b. Indicate specifications and standards applicable to salvage, stockpiling or removal of material.
- c. Identify ownership of cleared vegetation based on landowner agreements (as applicable).
- d. 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 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.

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. Drilling operations must be suspended if the surface returns may result in a violation of water quality standards or Certificate Conditions.
- viii. Removal of released fluids from environmentally sensitive areas will take place only if the removal does not cause additional adverse impacts to the resource. Prior to the removal of fluids from environmentally sensitive areas DPS and DEC Staff will be notified and consulted.
- ix. If inadvertent drilling fluids surface returns occur in an environmentally sensitive area DPS and DEC Staff shall be notified immediately and a monitoring report 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.
- x. The plan shall establish protocols for recovery of inadvertent releases, handling and disposal.
- xi. Any drilling fluid inadvertently discharged must be removed from agricultural areas.

13. Final Blasting Plan

- a. 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. The SEEP shall attach a final Landscape and 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 Applicant's Landscape Architect. A distinct, site-specific module will be developed and implemented at each designated visual impact area.
 - ii. A construction timeline and schedule including:
 - a) Installation guidelines, 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. 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. 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. The SEEP shall include a table listing all delineated federal and State jurisdictional wetlands, streams, vernal pools and other waterbodies located within or adjacent to Project Area, along with the following information for each resource: 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 and State jurisdictional wetlands, streams⁵, 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

⁵ Delineated streams refer to the stream features identified and delineated by TRC.

anchored to prevent downstream transport during a flood.

- b) Fill may not be placed within the stream channel below bankfull elevation and placement of abutments or fill is authorized only above and outside bankfull boundaries.
 - c) Geotextile fabric must be placed below and extending onto the bank and suitable side rails built into the bridges to prevent sediment from entering the stream.
- iii. If there is an inadvertent puncturing of a hydrologic control for a wetland, then the puncture shall be immediately sealed, and no further activity shall take place until DPS and DEC Staff are notified and a remediation plan to restore the wetland and prevent future dewatering of the wetland has been approved by DPS and DEC;
- iv. Low weight to surface area equipment shall be used and/or equipment shall be placed on temporary matting as needed to minimize soil compaction and erosion;
- v. Work areas shall be isolated from flowing streams by use of sandbags, cofferdam, piping or pumping around the work area. Waters accumulated in the isolated work area shall be discharged to an upland settling basin, field or wooded area to provide for settling and filtering of solids and sediments before water is returned to the stream. Return waters shall be as clear as the flowing water upstream from the work area. Temporary dewatering structures (i.e., cofferdams, diversion pipes, etc.) and associated fill shall be completely removed, and the disturbed area shall be regraded and restored immediately following the completion of work;
- vi. All fish trapped within cofferdams shall be netted and returned, alive and unharmed, to the water outside the confines of the cofferdam, in the same stream; and
- vii. All excess materials shall be completely removed to upland areas more than 100 feet from state-regulated wetlands and streams and shall be suitably stabilized.
- viii. Logs and large branches will not be deposited into any regulated freshwater wetland or 100-foot adjacent, however, small branches that are cut in a drop and lop method or piled within wetland and adjacent areas may be left in place, in a manner that does not alter the hydrology of the wetland.
- c. Description of construction activities to facilitate utility crossings that will temporarily impact delineated federal and State jurisdictional wetlands, streams, and other waterbodies, including a site-specific assessment of constructability for all utility crossings that cannot use trenchless methods; specific plans with the alignment for each wetland crossing; the extent of clearing and ground disturbance; description of methods used to minimize soil disturbance and compaction; and adherence to the following requirements:
 - i. Excavation, installation, and backfilling must be done in one continuous operation;
 - ii. Work within wetlands should be conducted during dry conditions without standing water

- or when the ground is frozen, where practicable;
 - iii. Before trenching occurs, upland sections of the trench shall be backfilled or plugged to prevent drainage of turbid trench water from entering wetlands 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 State-regulated wetland restoration measures, including:
- i. Contours shall be restored to pre-construction conditions within 48 hours of final backfilling of the trench within wetlands and state-regulated adjacent areas;
 - ii. Immediately upon completion of grading, wetland and adjacent areas shall be seeded and/or replanted with native shrubs and herbaceous plants at pre-construction densities. Seeding with an appropriate native wetland species mix (e.g., Ernst Wetland Mix (OBL-FACW Perennial Wetland Mix, OBL Wetland Mix, Specialized Wetland Mix for Shaded OBL-FACW), or equivalent), or seeding with crop species mix consistent with existing, continued agricultural use, shall be completed to help stabilize the soils;
 - iii. State-regulated wetland restoration areas shall be monitored for a minimum of 5 years or until an 80% cover of plants with the appropriate wetland indicator status has been reestablished over all portions of the restored area. At the end of the first year of monitoring, the Certificate Holder shall replace lost wetland and/or wetland adjacent area plantings if the survival rate of the initial plantings is less than 80%; and
 - iv. If at the end of the second year of monitoring 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 include 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 mitigation but shall be restored and maintained as follows:
 - a. As indicated on the figure provided as Appendix 3, permanent impacts are proposed to the adjacent areas of wetlands W-JJB-4, W-JJB-12, W-JJB-13, W-JJB-17, W-JJB-18, and W-NWJ-29 for the installation of solar arrays, security fencing, and a permanent access road that follows the exact footprint of the presently existing Welch Road. Apart from Welch Road, the nearest Project Component (security fence) will be setback at least 25 feet from the respective wetland boundaries. All of these adjacent areas are currently actively farmed and are regularly disturbed by agricultural practices, often with no or minimal setback from the wetland for which NYSDEC has claimed jurisdiction. Following construction-related disturbance, these 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 within 15 feet of 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 maintained grass land cover will result in an improvement and will not negatively impact the wetland.
 - e. No stream crossings are currently proposed. Should a stream crossing become necessary, then a site-specific Stream Crossing Plan shall be developed 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. A description of stream restoration demonstrating adherence with the following:
 - i. The restored stream channel shall be equal in width, depth, gradient, length and character as the pre-existing stream channel and tie in smoothly to 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 and state-regulated wetlands. The Wetlands Mitigation Plan shall:
 - i. Describe all activities that will occur within State and federal wetlands.
 - ii. For each State-regulated wetland or associated adjacent areas, indicate the type of activity (e.g., construction, filling, grading, vegetation clearing, and excavation) and summarize how the activity is consistent with the weighing standards set forth in 6 NYCRR 663.5(e) and (f).
 - iii. Describe how impacts to wetlands, adjacent areas, associated drainage patterns and

wetland functions will be avoided, and how impacts will be minimized.

- iv. Describe the precautions or measures to be taken to protect all other wetlands (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.

18. Invasive Species Control Plan

- a. 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. 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" x34") in 1:12,000 scale shall be submitted to DPS Staff.
 - v. Only properties that have a signed contract with the Certificate Holder prior to the date of filing shall be identified as "participating."
 - vi. GIS files used for the final computer noise modeling, including noise source and receptor locations and heights, topography, final grading, boundary 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 ($A_{gr}^{8,9}$),
 - d) Attenuation due to a barrier (A_{bar}) if any¹⁰,
 - e) No miscellaneous attenuations (A_{misc}) will be included.
- iv. If no manufacturers information or 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 operation. The plan shall address specific standards, protocols, procedures and specifications including:
 - i. Vegetation management recommendations based on on-site surveys of vegetation cover types and growth habits of undesirable vegetation species;
 - ii. All proposed chemical and mechanical techniques for managing undesirable vegetation;
 - iii. Where feasible, to limit the introduction and spread of invasive species, the New York Utility Company Best Management Practices for Invasive Species Transportation Prevention (Environmental Energy Alliance of New York [Jan 2015]) will be employed;
 - iv. Herbicide use, 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;

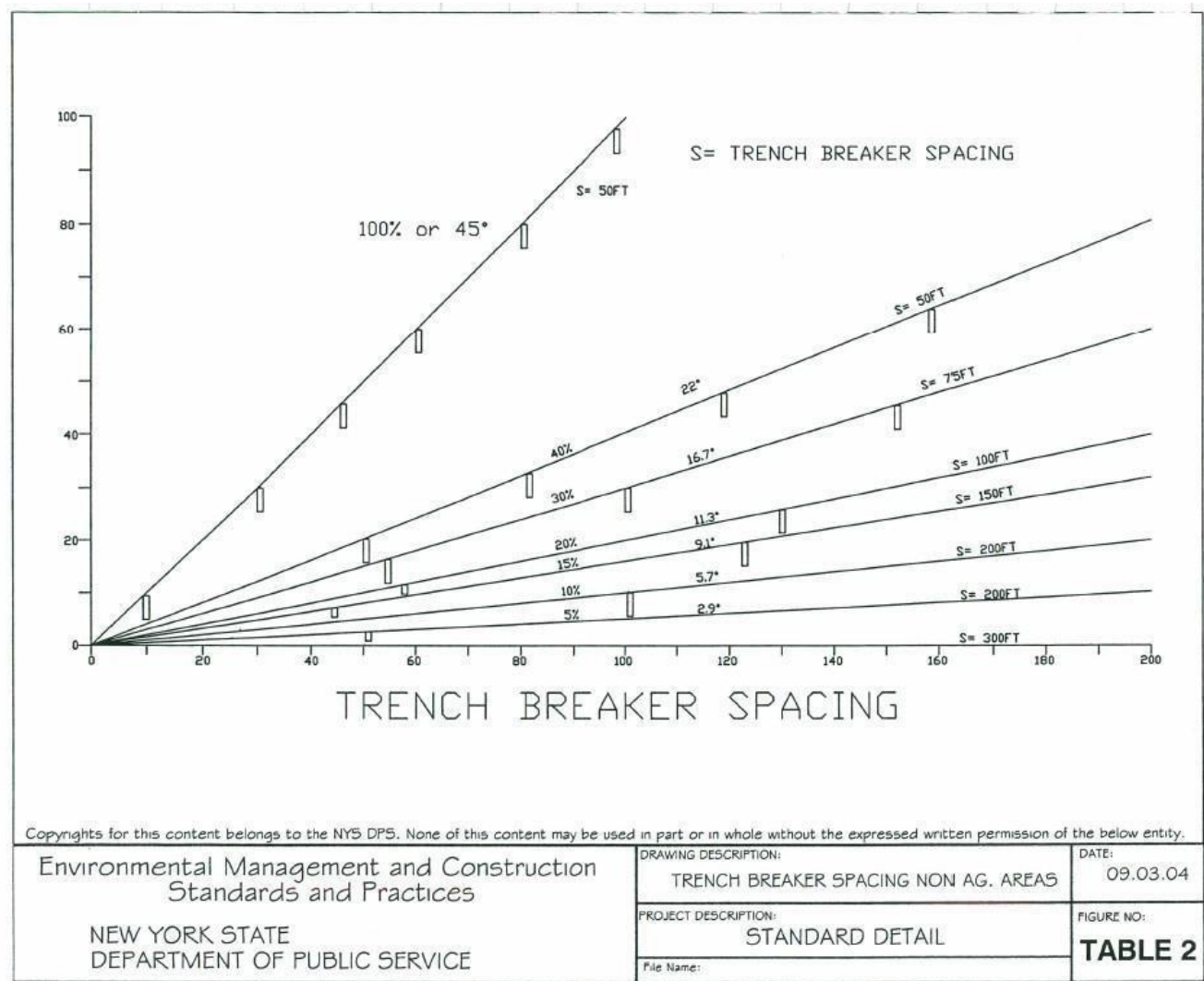
⁸ The same full-octave band attenuations as indicated in Table 3 of ANSI S12.62, can be used for the three adjacent one-third octave bands corresponding to each full-octave band.

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



Appendix 2 – Clearing and Grading Filing Framework

Clearing and Grading Filing FRAMEWORK

- 1. Site Plans:** Consistent with Certificate Conditions 64, 81, 86(c), 87(b), 108, 110, 111, 112, 132, 139 and 140. Contents:
 - a. Site plans showing laydown and staging areas for Project components (Certificate Condition 64). Prepared with GIS or CAD, with aerial background. 11x17 sheets or larger.
 - b. Access Road Plans: plan and profile drawings created with CAD. Typical cross section. Plans will show final road widths and expected grading limits during construction (Certificate Condition 87(b)).
 - c. Temporary Facility Plans: unless previously approved, site plans for the construction laydown yard showing grading limits, exterior lighting, driveways, and applicable local setbacks. Construction laydown yard plan shall also show planned areas for trailers, parking, and storage.

All site plans will be drawn at a scale of 1" =200' or smaller. All site plans will show:

- d. Pre-construction topographic contours, if Certificate Holder determines that these can be shown without obscuring other required information,
- e. Locations of known archaeological sites within 100 feet of the planned limits of disturbance (Certificate Condition 80),
- f. Locations of buried utilities based on ALTA surveys,
- g. Crossing methods for any areas where Project access roads or electric lines cross a stream or wetland (additional detail in Wetlands and Stream Package) (Certificate Conditions 132 and 140),
- h. Planned locations where new fences or gates will be installed,
- i. Agricultural classification and protection measures, or cross-reference to a map in the Agricultural Package.
- j. Location of staking and/or flagging of construction limits (Certificate Conditions 86(c) and 108) and regulated freshwater wetlands and streams (Certificate Condition 139).
- k. Notes indicating appropriate minimum setbacks from wetlands, streams and waterbodies for construction and storage equipment (Certificate Conditions 110, 111 and 112).

2. Collection Substation Filing: Contents:

- a. General arrangement (site plan),
- b. Plan and profile drawings, Site plan showing fences and driveways,
- c. Substation Lighting Plan.

3. Land Rights Filing: Items a and b(i) to be filed before starting any clearing activities in the Project Area, and item b(ii) to be filed before the commercial operation date consistent with Certificate Conditions 36 and 63. Contents:

- a. Map of survey of Project Area properties with property lines based on meets and bounds survey,
- b. Lease, host, and other agreements, or notarized memos or similar proof of an agreement for every:
 - (i) Project Area property,
 - (ii) any other property whose owner has signed a participation agreement or other type of agreement, and
 - (iii) Road use agreements where local roads will be utilized for delivery or construction vehicle transportation (Certificate Conditions 36 and 65).

4. Stormwater Filing: Consistent with Certificate Conditions 12, 47 and 109. Contents:

- a. Updated stormwater pollution prevention plan (SWPPP) (Certificate Condition 47),
- b. Grading and erosion control drawings showing final topographic lines, boundaries of delineated wetlands, areas of cut and fill, locations of temporary erosion and sedimentation (E&S) control measures, locations of permanent E&S control measures, sizes and locations of drainage structures and stormwater management features.
- c. Typical details for E&S measures, including trench breakers for construction of underground facilities perpendicular to steep slopes and specification on selection locations for concrete washouts, if applicable (Certificate Condition 109).
- d. Typical details for drainage structures and stormwater management features.
- e. A copy of completed application for a Clean Water Act Section 401 Water Quality Certification (Certificate Condition 12).

5. Wetlands and Stream Filing: Consistent with Certificate Conditions 70, 71, and 73. Contents:

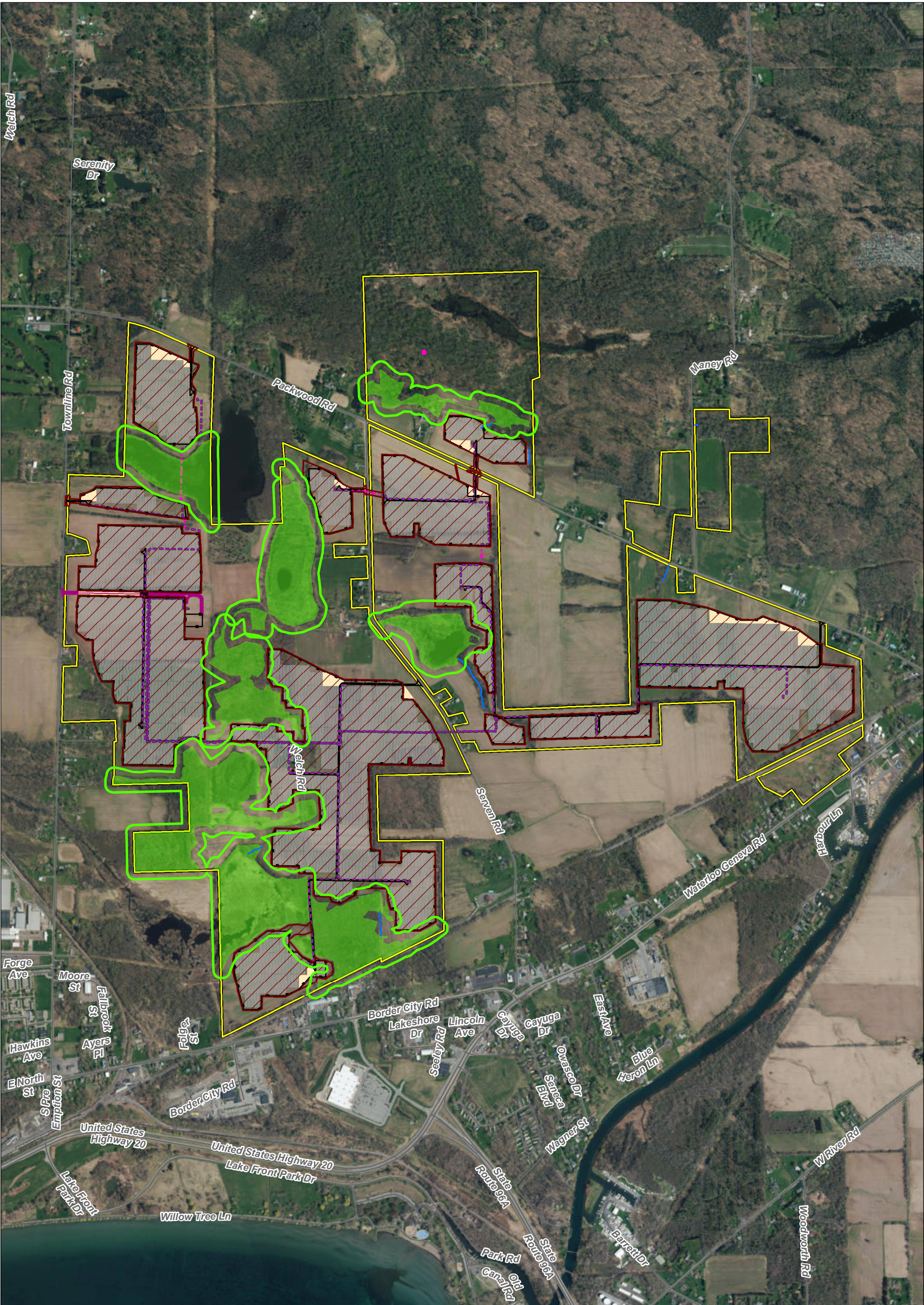
- a. Wetland and stream drawings, showing areas where roads, electric collection lines, or transmission lines cross wetlands and/or streams, shall indicate topographic contours, delineated wetlands and streams, specifying access and construction measures, crossing method (e.g., culvert or bridge; trenchless 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 (Certificate Conditions 71 and 73).
 - b. Tables listing wetland and stream impacts, with the following for each impact: area, type of wetland or stream classification, type of impact, jurisdiction (Certificate Conditions 71 and 73).
 - c. A Wetland Mitigation Plan, if necessary, for Project activities that cannot avoid and/or minimize significant adverse impacts to regulated wetlands. The Wetland Mitigation Plan shall be consistent with all Federal and State laws and regulations, specifically under §404 of the Clean Water Act and Article 24 of NYS Environmental Conservation Law.
 - d. 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 (Certificate Condition 70).
- 6. Agricultural Filing:** Before any grading in any field in active agricultural use consistent with Certificate Condition 46. Contents:
- a. Mapping of agricultural uses in the Project Area, including shading or other codes to indicate:
 - (i) fields known to be in active agricultural use,
 - (ii) areas of special agricultural operations, as applicable (sugar bush, grapes, orchards, etc.),
 - (iii) fields known to contain drain tiles, buried water lines, or other special agricultural facilities, and
 - (iv) Demonstration of consistency 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.
- 7. Setbacks and GIS Filing:** Consistent with Certificate Conditions 41(a) and 64(a)-(d). GIS files shall be submitted as confidential information for use by State agencies. Contents:

- a. Setback map, generated with GIS, and showing parcel boundaries, setback distances, parcel identification numbers, parcel participation/non-participation status, property owner or lessor names and addresses, and setbacks from Project components.
 - b. GIS shape files for solar array components, overhead collection lines (if any), access road centerlines, limits of disturbance, forest areas to be cleared (if any), Collection Substation location, concrete batch plant (if applicable), and construction laydown yard.
- 8. Clearing Filing:** Consistent with Certificate Conditions 20(a), 50, 58, 60, 72, 76, 78, 80, 84, and 86(a)-(e). Contents:
- a. Maps or site plans showing the limits of disturbance (LOD), forested areas to be cleared, forested wetlands inside the LOD, unforested wetlands inside the LOD, roost trees or other trees to be protected from clearing activities, clearing methods, planned access routes, including matting for heavy equipment where applicable, and agricultural classification and protection measures, or cross reference to map in Agricultural package. The maps or site plans will be drawn at a scale of 1" =200' and will depict the planned locations of Project infrastructure associated with the clearing for reference.
 - b. A Timber Salvage Plan (Certificate Condition 72) including descriptions of clearing and stump treatment methods to be used in forested areas and forested wetlands.
 - c. Description of planned method for vegetation disposal.
 - d. Description of methods to protect select trees, if any.
 - e. Complaint Resolution Plan, with procedures applicable to overall Project construction including responding to noise and vibration complaints (Certificate Condition 50).
 - f. Invasive Species Management Plan (ISMP), describing methods to be used to minimize the introduction and spread of invasive species (Certificate Condition 76).
 - g. Pre-construction mapping of invasive species, as required by ISMP section 4.
 - h. If temporary construction entrances are proposed, entrance details and grading, proof of plan for filing of NOI for coverage under General Stormwater Permit, a copy of the submitted SWPPP (part of the Stormwater Package), and traffic control plans.
 - i. Plans for notification(s), preconstruction meeting(s), environmental compliance and monitoring program (Certificate Conditions 86(a)-(e)), spill prevention methods to be employed by clearing contractors (Certificate Condition 78), including bulk storage if proposed, construction organizational structure, contact list, and protocol for communication between parties (Certificate Condition 20(a)) to be implemented during the

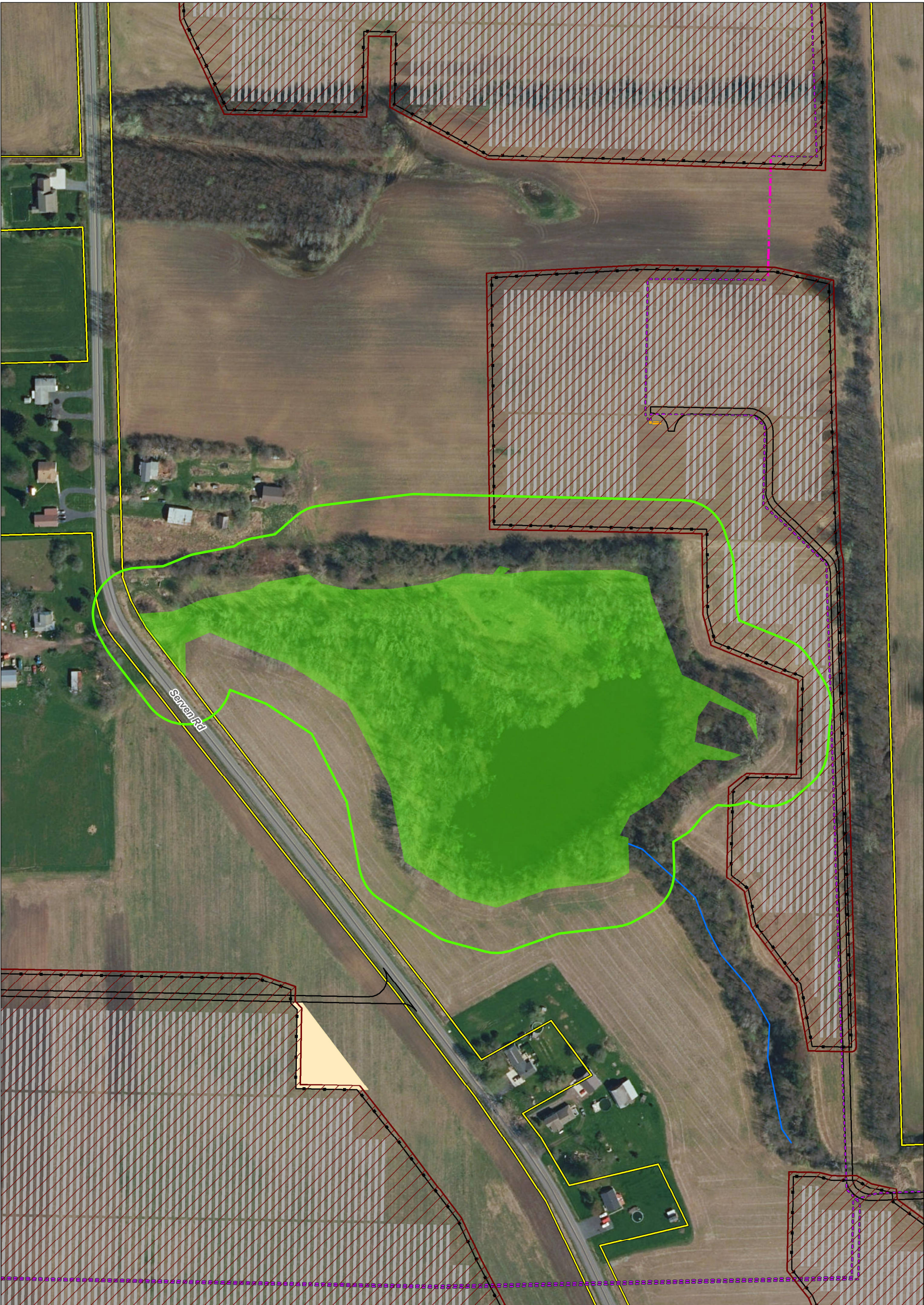
scope of work authorized by this package. These may be more limited than the full plans required as part of other packages that must be approved prior to full construction activities.

- j. If necessary, transportation permits for any oversized/overweight vehicles required for grading and/or tree clearing purposes (Certificate Condition 36).
- k. An Emergency Response Plan for Facility Construction (Certificate Condition 58).
- l. A Final Health and Safety Plan for Facility Construction (Certificate Condition 60).
- m. Cultural Resources Protection Measures including an avoidance plan and Final Unanticipated Discovery Plan (Certificate Condition 80).
- n. Confirmation that the Certificate Holder has become a member of Dig Safely New York (Certificate Condition 84).

Appendix 3 –Facility Components and NYSDEC-Claimed Wetland Boundaries
(Filed separately due to size)



<ul style="list-style-type: none">Project AreaTRC Stream BoundaryTRC Wetland BoundaryDelineated Vernal Pool100-ft Adjacent Area to NYSDEC-Claimed Wetlands*	<ul style="list-style-type: none">Limit of Disturbance (LOD)PV Panel ArrayInverterLaydown YardSubstation Access RoadAccess RoadFenceCollection LinesHDD Lines	<p>MAP LOCATION</p>	<p>NEXTERA ENERGY RESOURCES</p> <p>FACILITY COMPONENTS AND NYSDEC-CLAIMED WETLAND BOUNDARIES TRELINA SOLAR ENERGY CENTER TOWN OF WATERLOO, NY</p>
<p><small>*Per the NYSDEC's Freshwater Wetlands Determination for Trelina Solar, dated 10/14/2020</small></p> <p><small>Data: TRC 2017-2019; Westwood, 2020</small> <small>Base Map: NYS Office of Information Technology Services, GIS Program Office, 2018, Esri and its contributors</small></p>		<p>0 600 1,200 Feet</p>	<p>FIGURE 1 APRIL 2021</p> <p>Map Produced by TRC</p>



<ul style="list-style-type: none">Project AreaTRC Stream BoundaryTRC Wetland Boundary100-ft Adjacent Area to NYSDEC-Claimed Wetlands*	<ul style="list-style-type: none">Limit of Disturbance (LOD)PV Panel ArrayInverterLaydown YardAccess RoadFenceCollection LinesHDD Lines	<p>MAP LOCATION</p>	<p>NEXTERA ENERGY RESOURCES</p> <p>FACILITY COMPONENTS AND NYSDEC-CLAIMED WETLAND BOUNDARIES TRELINA SOLAR ENERGY CENTER TOWN OF WATERLOO, NY</p>
<p><small>*Per the NYSDEC's Freshwater Wetlands Determination for Trelina Solar, dated 10/14/2020</small></p> <p><small>Data: TRC 2017-2019; Westwood, 2020</small></p> <p><small>Base Map: NYS Office of Information Technology Services, GIS Program Office, 2018, Esri and its contributors</small></p>		<p>0 100 200 Feet</p>	<p>FIGURE 1-1 APRIL 2021</p> <p>Map Produced by TRC</p>



<p>Legend</p> <ul style="list-style-type: none"> Project Area TRC Stream Boundary TRC Wetland Boundary 100-ft Adjacent Area to NYSDEC-Claimed Wetlands*	<p>Legend</p> <ul style="list-style-type: none"> Limit of Disturbance (LOD) PV Panel Array Inverter Laydown Yard Access Road Fence Collection Lines	<p>MAP LOCATION</p>	<p>NEXTERA ENERGY RESOURCES</p> <p>FACILITY COMPONENTS AND NYSDEC-CLAIMED WETLAND BOUNDARIES TRELINA SOLAR ENERGY CENTER TOWN OF WATERLOO, NY</p>
<p><small>*Per the NYSDEC's Freshwater Wetlands Determination for Trelina Solar, dated 10/14/2020</small></p> <p><small>Data: TRC 2017-2019; Westwood, 2020</small> <small>Base Map: NYS Office of Information Technology Services, GIS Program Office, 2018, Esri and its contributors</small></p>		<p>0 125 250 Feet</p>	<p>FIGURE 1-3 APRIL 2021</p> <p>Map Produced by TRC</p>



<div><div></div>Project Area</div> <div><div></div>TRC Stream Boundary</div> <div><div></div>TRC Wetland Boundary</div> <div><div></div>Delineated Vernal Pool</div> <div><div></div>100-ft Adjacent Area to NYSDEC-Claimed Wetlands*</div>	<div><div></div>Limit of Disturbance (LOD)</div> <div><div></div>PV Panel Array</div> <div><div></div>Inverter</div> <div><div></div>Laydown Yard</div> <div><div></div>Access Road</div> <div><div></div>Fence</div> <div><div></div>Collection Lines</div> <div><div></div>HDD Lines</div>	<div>MAP LOCATION</div> <div></div>	<div><div>NEXTERA[®]ENERGY</div><div>RESOURCES</div></div> <div>FACILITY COMPONENTS AND NYSDEC-CLAIMED WETLAND BOUNDARIES TRELINA SOLAR ENERGY CENTER TOWN OF WATERLOO, NY</div> <div><div>FIGURE 1-4</div><div>APRIL 2021</div></div> <div><div>Map Produced by</div><div></div></div>
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*Per the NYSDEC's Freshwater Wetlands Determination for Trelina Solar, dated 10/14/2020

Data: TRC 2017-2019; Westwood, 2020

Base Map: NYS Office of Information Technology Services, GIS Program Office, 2018, Esri and its contributors

0100200

Feet



<p>Legend</p> <ul style="list-style-type: none">Project AreaTRC Wetland Boundary100-ft Adjacent Area to NYSDEC-Claimed Wetlands*	<p>Legend</p> <ul style="list-style-type: none">Limit of Disturbance (LOD)PV Panel ArrayInverterLaydown YardAccess RoadFenceCollection LinesHDD Lines	<p>MAP LOCATION</p>	<p>NEXTERA ENERGY RESOURCES</p> <p>FACILITY COMPONENTS AND NYSDEC-CLAIMED WETLAND BOUNDARIES TRELINA SOLAR ENERGY CENTER TOWN OF WATERLOO, NY</p>
<p><small>*Per the NYSDEC's Freshwater Wetlands Determination for Trelina Solar, dated 10/14/2020</small></p> <p><small>Data: TRC 2017-2019; Westwood, 2020</small></p> <p><small>Base Map: NYS Office of Information Technology Services, GIS Program Office, 2018, Esri and its contributors</small></p>			<p>FIGURE 1-5</p> <p>APRIL 2021</p> <p>Map Produced by TRC</p>



<p> Project Area</p> <p> TRC Wetland Boundary</p> <p> 100-ft Adjacent Area to NYSDEC-Claimed Wetlands*</p>	<p> Limit of Disturbance (LOD)</p> <p> PV Panel Array</p> <p> Inverter</p> <p> Laydown Yard</p> <p> Access Road</p> <p> Fence</p> <p> Collection Lines</p> <p> HDD Lines</p>	<p>MAP LOCATION</p>	<p></p> <p>FACILITY COMPONENTS AND NYSDEC-CLAIMED WETLAND BOUNDARIES TRELINA SOLAR ENERGY CENTER TOWN OF WATERLOO, NY</p>
<p><small>*Per the NYSDEC's Freshwater Wetlands Determination for Trelina Solar, dated 10/14/2020</small></p> <p><small>Data: TRC 2017-2019; Westwood, 2020</small></p> <p><small>Base Map: NYS Office of Information Technology Services, GIS Program Office, 2018, Esri and its contributors</small></p>		<p>0 100 200 Feet</p>	<p>FIGURE 1-6</p> <p>APRIL 2021</p> <p>Map Produced by </p>

APPENDIX C

NOISE COMPLAINT RESOLUTION PROTOCOL

APPENDIX B
TRELINA SOLAR ENERGY CENTER
Noise Complaint Resolution
Protocol
Date: March 22, 2021

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 (800-405-9723), 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@trelinasolarenergycenter.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 7 business days of receipt. The Certificate Holder will communicate the receipt of complaints to emergency service providers, NY State agencies, the Town of Waterloo, 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 Waterloo, 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 Waterloo. 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 Waterloo upon request.

6. PUBLIC NOTIFICATION OF COMPLAINT PROCESS

- a. No less than two 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 Waterloo, 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 mile¹ from active construction activity, the complaint will be logged but no action will be taken.
- iii. If the Sound Complaint location is one mile¹ 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 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, NYSDPS, and, to the Town of Waterloo.
- 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

Trelina Solar Energy Center, LLC
700 Universe Blvd., FEW/JB
Juno Beach, FL 33408

Telephone: 800-405-9723
Fax: 561-304-5404
Email: info@trelinasolarenergycenter.com

APPENDIX E: COMPLAINT LOGGING FORM (for Operator)

Personnel Answering the Phone:	
Date (MM/DD/YY):	(circle) Mon. Tue. Wed. Thur. Fri. Sat. Sun.
Time of the Call:	

Complaint Information

Name of Caller:
Address of Caller:
Phone Number of Caller:
Name of Person with the Complaint:
Address of Person with the Complaint:
Phone Number of Person with the Complaint:
Time of Bothersome Activity:
Construction or Operational Sound Complaint? (circle one)
Complaint:

Construction Equipment Activity During the Time of the Complaint (if applicable):
Closest Inverter or Array to the Complaint Location:

Follow-Up Action and/or Resolution of Complaint:

Signature:	
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