

STATE OF NEW YORK
OFFICE OF RENEWABLE ENERGY SITING (ORES)

DRAFT PERMIT FOR A
MAJOR RENEWABLE ENERGY FACILITY

IN

Town of Caledonia, Livingston County
Town of Rush, Monroe County

ISSUED

TO

Horseshoe Solar Energy LLC

ORES DOCKET NO. 21-02480

February 22, 2022

1 PERMIT

The New York State Office of Renewable Energy Siting (hereafter referred to as "ORES" or the "Office") hereby issues this Permit to Horseshoe Solar Energy LLC (hereafter referred to as "Horseshoe" or "Permittee") pursuant to §94-c of the Executive Law and its implementing regulations at 19 NYCRR Parts 900-1 through 900-15. The Permittee is authorized to develop, design, construct, operate, maintain and decommission the major renewable energy facility (hereafter referred to as the "Facility" or the "Solar Facility"), described in subpart 2 of this Permit, located in the Town of Caledonia, Livingston County and the Town of Rush, Monroe County, New York.

Based upon the Office's comprehensive review of the record and as described hereinbelow, the Office finds and determines that the proposed Solar Facility, together with applicable provisions of the Uniform Standards and Conditions (USCs) (subpart 5 of Draft Permit), necessary Site Specific Conditions (subpart 6 of Draft Permit), and applicable pre-construction and post-construction compliance filings (subpart 7 of Draft Permit): complies with Executive Law §94-c and applicable provisions of the Office's regulations at 19 NYCRR Part 900; and avoids, minimizes, or mitigates, to the maximum extent practicable, potential significant adverse environmental impacts of the Facility.

1.1 Applicability; Powers of Municipalities and State Agencies and Authorities

The Solar Facility Permit issued herein is based upon the plans, specifications, reports, statements, agreements and other information submitted by or on behalf of Permittee in the application record for this Facility, which consists of the Public Service Law ("PSL") Article 10 Application (Case 18-F-0633), as supplemented by ORES Transfer Application (Docket No. 21-02480), incorporated herein by reference. This information is freely accessible on the ORES website, subject to such redactions as are required by law and/or ordered by the assigned Administrative Law Judge.

Pursuant to §94-c of the New York State Executive Law and its implementing regulations at 19 NYCRR Parts 900-1 through 900-15, the Facility shall be designed, developed, constructed, maintained, operated and decommissioned in conformity with this Permit and any terms, limitations or conditions contained herein.

Notwithstanding any other provision of law, including without limitation article eight of the Environmental Conservation Law ("ECL") and article seven of the PSL, no other state agency, department or authority, or any municipality or political subdivision or any agency thereof may, except as expressly authorized under §94-c of the New York State Executive Law and implementing regulations at 19 NYCRR Part 900, require any approval, consent, permit, certificate, contract, agreement, or other condition for the design, development, construction, operation, maintenance or decommissioning of the major renewable energy facility authorized pursuant to this Permit.

Nothing in this Permit shall exempt such Facility from compliance with applicable federal laws, rules and regulations, and Permittee remains responsible for providing copies of all federal and federally-delegated permits and approvals for construction and operation of the Facility simultaneously with other required pre-construction compliance filings hereunder.

1.2 Record of Proceeding

In addition to the Permittee information referenced above, the record of this application includes all information submitted with respect to the Article 10 Application (Case 18-F-0633), as supplemented by ORES Transfer Application (Docket No. 21-02480), by or on behalf of municipalities and local agencies, members of the public and other participants, as well as ORES and other state agencies and authorities, and is freely accessible on the ORES website, subject to such redactions as are required by law and/or ordered by the assigned Administrative Law Judge.

2 PROJECT DESCRIPTION

The Facility is a proposed photovoltaic (PV) solar energy generating project to be located in the Town of Caledonia, Livingston County and the Town of Rush, Monroe County, New York.

The Facility will include approximately 600,000 solar panels mounted on tracking racks installed on land leased from owners of private property (Facility Site). Facility components will include: the solar panels and panel racks; access roads; fencing and gates; an electricity collection system (ECS) consisting of cables connecting the panels to direct current (DC) to alternating current (AC) inverters, communication cables, and supporting electronics; a Collection Substation; an operation and maintenance (O&M) Building; and necessary electric interconnection facilities. During construction, the project will require one or more laydown yards. Power from the Facility will be delivered from the Facility's Collection Substation to a point of interconnection (POI) Switchyard for delivery into the electric transmission system operated by Niagara Mohawk Power Corporation (d/b/a National Grid) (National Grid). The POI is at National Grid's 115-kV Golah Substation. The total nameplate capacity of the Facility shall not exceed 180 megawatts (MW).

The proposed Solar Facility will directly contribute significantly to New York State's Climate Leadership and Community Protection Act (CLCPA) targets by producing 180 MW of emissions-free, low-cost, renewable solar energy to New York's energy market. The Facility will produce enough zero-emissions energy to power more than 43,000 homes in NYS. The Facility will also create job opportunities, support economic growth, and protect the public health, safety and environment by significantly reducing greenhouse gas emissions. Without limitation, the Facility will result in a reduction of over 125,335 tons of carbon dioxide (CO₂) emissions. DMM Item No. 10, Article 10 Exhibit 8 (Electric System Production Modeling) at 6.

3 PROCEDURAL BACKGROUND

1. On 07/20/2020, Permittee submitted an Application seeking a certificate of environmental compatibility and public need from the New York State Board on Electric Generation Siting and the Environment (the "Siting Board") pursuant to Article 10 of the PSL and the Siting Board's rules (16 NYCRR Part 1000, et seq.) ("Article 10 Application").

2. On 08/31/2020, the Siting Board identified deficiencies in the Article 10 Application that had to be remedied or otherwise cured before the Article 10 Application could be deemed to comply with PSL §164.

3. On 12/22/2020, 04/26/2021, 06/17/2021 and 06/28/2021 the Permittee filed Application Supplements, which included responses to the 08/31/2020 letter regarding deficiencies from the Siting Board.

4. On 06/30/2021, the Siting Board determined that the Article 10 Application together with the supplemental filings made on 12/22/2020, 04/26/2021, 06/17/2021 and 06/28/2021 complied with PSL §164.

5. On 12/23/2021, the Permittee submitted a Transfer Application to the Office pursuant to Executive Law §94-c. Such Transfer Application included the full Article 10 Application along with supplemental materials to demonstrate compliance with the uniform standards and conditions (hereinafter referred to as the "Transfer Application"). On 12/23/2021, Notice of Application Filing and Availability of Local Agency Account Funding was provided to the applicable municipalities, political subdivisions or agencies thereof in which the Facility is proposed to be located, pursuant to Executive Law §94-c. The Transfer Application was deemed complete upon filing pursuant to Executive Law §94-c(4)(f)(i).

6. On 02/22/2022, the Office published this Draft Permit on its website for public comment.

7. On 02/22/2022, the Office issued a combined notice of availability of draft permit conditions, notice of the public comment period and public comment hearing, and notice of the issues determination procedures (the "Combined Notice"), including instructions for filing a petition for party status.

4 REQUIRED FINDINGS

Executive Law §94-c(5)(e) provides that a final Siting Permit may only be issued if the Office makes a finding that the proposed

Facility, together with any applicable Uniform Standards and Conditions, Site Specific Conditions, and compliance filings set forth in the Draft Permit would comply with applicable laws and regulations. In making this determination, the Office may elect not to apply, in whole or in part, any local law or ordinance which would otherwise be applicable if it makes a finding that, as applied to the proposed Facility, it is unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the proposed Facility.

In compliance with Executive Law §94-c(5)(e), the Office has considered, without limitation, the proposed Facility's contribution of up to 180 MW toward New York State's Climate Leadership and Community Protection Act targets, and the environmental benefits of producing enough zero-emissions energy to power more than 43,000 homes in New York State and reduce carbon dioxide (CO₂) emissions in the State by at least 125,335 tons.

The Permittee has requested that the Office elect not to apply the following provisions of local law. The Office hereby determines not to apply, in whole or in part, the following local law provisions, which when applied to the proposed Facility, are unreasonably burdensome in view of the Climate Leadership and Community Protection Act targets and the environmental benefits of the proposed Facility. In making the determinations herein, the Office has balanced the proposed Facility's competing impacts to multiple resources, and considered the Permittee's proposed measures to avoid, minimize or mitigate those impacts to the maximum extent practicable, while ensuring protection of the environment and consideration pertinent social, economic and environmental factors.

Except for the provisions of local law indicated below, the Office finds that the Facility, as proposed and permitted herein, shall comply with the substantive provisions of the applicable local laws as identified in the Transfer Application.

a. TOWN OF CALEDONIA TOWN CODE

i. Height of Solar Facilities

The Permittee requested partial relief from § 106-9(C)(2) of the Caledonia Town Code (Local Law No. 2 of 2021) (Caledonia Town Code), which provides:

The height of the solar-related equipment shall not exceed 17 feet. Height is measured from the lowest adjacent grade to the highest point of the structure, including any attachments (such as a lightning-protection device).

Based upon the specific facts in this case, the Office respectfully elects to grant partial relief from the height restriction in § 106-9(C)(2) of the Caledonia Town Code, subject to the Permittee's proposed solar array system complying with an overall height limit of seventeen (17) feet, measured from the highest grade below each solar panel to its maximum potential height in compliance with the requirements in 19 NYCRR § 900-2.6(e). The Office further respectfully determines that the limitation on the height of any proposed lightning protection system or other essential safety equipment for the proposed solar array system shall comply with the height limitation in 19 NYCRR § 900-2.6(e). See also subpart 6(a)(2) and (b) of this Draft Permit.

ii. Solar Facility Land Coverage Limitations

The Permittee requested relief from the lot coverage limitations in §§ 106-9(C)(5) and 106-9(C)(15) of the Caledonia Town Code, which provide:

(5) Agricultural resources. Any solar energy systems located on parcels containing designated farmland shall be located on no more than 50% of the designated farmland present on the parcel. If contiguous participating properties containing solar energy systems are present, the collective parcels may be treated as one parcel for the purposes of the designated farmland location requirement of this subsection;

and

(15) Surface area. The total surface area of all solar energy equipment shall not exceed 80% of the total parcel area.

Based upon the specific facts in this case, the Office respectfully elects not to apply the 50% designated farmland coverage limitation and the 80% surface area limitation for solar facility equipment in §§ 106-9(C)(5) and 106-9(C)(15) of the Caledonia Town Code, respectively (see also subpart 6(f) of this Draft Permit).

iii. Solar Facility Setbacks

The Permittee requested relief from the setback restrictions in § 106-9(C)(1)(a) of the Caledonia Town Code, which provides:

(a) Except as otherwise approved by the Planning Board pursuant to this Subsection C(1), all solar energy systems shall comply with the following setback requirements. Such minimum setbacks for a solar energy system shall be measured from the fencing surrounding the solar energy system that is nearest to the relevant property line, building or highway rights-of-way. Landscape buffers for screening may be placed in the setback area.

[1] A minimum side and rear setback of 750 feet from a nonparticipating residence or commercial building as measured from the side and rear walls of the building.

[2] Two hundred fifty feet from the property lines of a nonparticipating property containing a nonparticipating residence.

[3] One hundred fifty feet from the property lines of a nonparticipating property that does not contain a nonparticipating residence.

[4] Two hundred feet from the right-of-way line of a Town road.

[5] Two hundred fifty feet from the right-of-way line of a county road.

[6] Two hundred fifty feet from the right-of-way line of a state road or highway.

Based upon the specific facts in this case, the Office respectfully elects not to apply the setbacks in §106-9(C)(1)(a) of the Caledonia Town Code; provided, however, that the Office's determination is expressly conditioned upon the Permittee's compliance with the following:

- A. the two hundred fifty (250) foot setback along the right-of-way line of Route 5 (§106-9(C)(1)(a)[6]);
- B. the two hundred fifty (250) foot setback along the right-of-way line of West River Road (§106-9(C)(1)(a)[5]); and
- C. the seven hundred fifty (750) foot setback from the side and rear of any existing non-participating residences on Route 5 (§106-9(C)(1)(a)[1]).

The Office further respectfully determines that with the exception of the foregoing, the setbacks at 19 NYCRR §900-2.6(d) and Table 2 shall be applicable. Additionally, the Office respectfully clarifies that in all instances, fencing, collection lines, access roads, and landscaping in the Town of Caledonia may occur within the applicable setback area(s), in compliance with 19 NYCRR §900-2.6(d). See also subpart 6(a)(3) of this Draft Permit.

iv. Solar Facility Landscaping/Screening Requirements

The Permittee requested partial relief from the vegetative screening requirements in § 106-9(C)(3) of the Caledonia Town Code, which provides:

The screening and landscaping plan should demonstrate that the landscaped buffer will provide year-round screening so that to the maximum extent practicable the solar energy equipment is not visible from roadways and adjacent nonparticipating properties. The vegetation plantings shall be planted within 25 feet of the fencing surrounding the perimeter of the solar energy system. In lieu of plantings, berms or existing vegetation may be used to satisfy all or a portion of the required landscaped screening. If the buffer utilizes vegetative planting, the plantings shall consist of noninvasive evergreen trees or bushes, the deer and weather resistant plant species presented in Appendix A, or other noninvasive species as otherwise recommended by the landscape architect, planted no more than eight feet apart and at least four feet tall at time of planting. The buffer shall obtain a height of at least 10 feet within five growing seasons. Invasive species that shall not be planted as part of the landscape buffer, include, but are not limited to, winter

creeper, garden loosestrife, Chinese silver grass, yellow flag iris, bamboo, Norway maple, Japanese barberry, sweet autumn clematis, burning bush and siebold's viburnum, or other invasive species as identified by the NYSDEC or the NY Invasive Species Clearinghouse at Cornell University. The vegetation management plan shall ensure that any landscaping and trees that die off will be replaced by the following growing season with the approved plantings from the screening and landscape plan.

Based upon the specific facts of this case, the Office partially approves the requested relief, and respectfully determines that the Permittee shall comply with the requirements set forth in 19 NYCRR §900-2.9 and the standard to avoid, minimize and mitigate potential significant adverse visual impact(s) of the proposed Facility to the maximum extent practicable. With the exception of the foregoing, the substantive provisions in § 106-9(C)(3) of the Caledonia Town Code shall remain applicable. See also subpart 6(b) of this Draft Permit.

b. TOWN OF RUSH ZONING LAW

i. Height of Solar Facilities

The Permittee requested relief from the height requirements in § 120-74(H)(5) of the Town of Rush Zoning Law (Local Law No. 4 of 2019) (Rush Zoning Law), which provides:

Height. Tier 3 Solar Energy Systems shall be no more than 12 feet in height.

Based upon the specific facts in this case, the Office respectfully elects not to apply the height restriction in § 120-74(H)(5) of the Town of Rush Zoning Law, subject to the Permittee's proposed solar array system complying with an overall height limit of seventeen (17) feet, measured from the highest grade below each solar panel to its maximum potential height in compliance with the requirements set forth in 19 NYCRR § 900-2.6(e). The Office further respectfully determines that the limitation on the height of any proposed lightning protection system or other essential safety equipment for the proposed solar array system shall comply with

the height limitation in 19 NYCRR § 900-2.6(e). See also subpart 6(a)(2) and (b) of this Draft Permit.

ii. Solar Facility Minimum and Maximum Acreage Requirements

The Permittee requested relief from § 120-74(H)(3) of the Rush Zoning Law, which provides:

Acreage Limitations Tier 3 Solar Energy System.

- (i) Tier 3 Solar Energy Systems shall not collectively occupy no more than [sic] a total of 150 acres in the Town of Rush; and
- (ii) there is a minimum of 20 acres and a maximum of 50 acres for a single Tier 3 Solar Energy System.

Based upon the specific facts in this case, the Office respectfully elects not to apply § 120-74(H)(3) of the Rush Zoning Law.

iii. Solar Facility Locational and Setback Restrictions

The Permittee requested relief from the locational and setback restrictions in § 120-74(H)(4) of the Rush Zoning Law, which provides:

Location. Tier 3 Solar Energy Systems may not be located in or within 1,000 feet of R-20, R-MH, RR-5 or R-TH zoning districts in the Town of Rush. Except in a Solar Energy Systems Overlay District created by the Town Board pursuant to this Section, Tier 3 Solar Energy Systems are prohibited as a principal or accessory use in all underlying zoning districts in the Town. Notwithstanding the foregoing, any principal or accessory use permitted in the underlying zoning district shall also be permitted in the Solar Energy Systems Overlay District. Tier 3 Solar Energy Systems shall not be located within the following areas of potential sensitivity: (i) one hundred year flood hazard zones considered an AE Zone on the FEMA Flood Maps; and (ii) properties included on the New York State or National Register of Historic Places, or otherwise identified as, historic and/or culturally significant resources by the New York State Historic

Preservation Office. Significant archeological resources shall be protected and preserved. Any mitigation measures proposed as part of the development of a Tier 3 Solar Energy System shall be undertaken in consultation with the New York State Historic Preservation Office or other similar historic preservation authority.

Based upon the specific facts in this case, the Office respectfully elects not to apply § 120-74(H) (4) of the Rush Zoning Law.

iv. Solar Facility 200 Foot General Setback Requirement

The Permittee requested partial relief from § 120-74(H) (6) of the Rush Zoning Law, which provides:

Setback. Tier 3 Solar Energy Systems shall adhere to the setback requirements of 200' from all property lines.

The Office notes that the Permittee's request is limited to the proposed interconnection equipment (which includes the buried electrical collection system) and Interconnection Line (which by definition cross property lines and cannot always comply with a two hundred (200) foot property line setback), and the Collection Substation, POI Switchyard and O&M Building (which will collect renewable energy generated at the Facility for delivery into the electric transmission system operated by National Grid at National Grid's adjacent 115-kV Golah Substation). The Office further notes that § 120-74(H) (6) of the Rush Zoning Law shall remain applicable to the Permittee's proposed solar panels, racks and inverters.

Based upon the specific facts in this case, the Office respectfully grants partial relief from the two hundred (200) foot setback requirement from all property lines in § 120-74(H) (6) of the Rush Zoning Law to the following, which shall comply with 19 NYCRR §§ 900-2.6(d), (e) and Table 2:

- A. the Permittee's proposed interconnection equipment (including without limitation all cabling and equipment comprising the electrical collection system);
- B. the Interconnection Line servicing the Collection Substation and the POI Switchyard; and

C. the parcel hosting the Collection Substation, POI Switchyard and O&M Building.

The Office further respectfully clarifies that in all instances, fencing, collection lines, access roads, and landscaping in the Town of Rush may occur within the applicable setback area(s), in compliance with 19 NYCRR §900-2.6(d). See also subpart 6(a)(3) of this Draft Permit.

v. Solar Facility Land Coverage Limitations

The Permittee requested partial relief from § 120-74(H)(8) of the Rush Zoning Law, which provides:

Lot Coverage. A Tier 3 Solar Energy System shall not exceed fifty percent (50%) of the lot on which it is installed. The surface area covered by Solar Panels shall be included in the total lot coverage.

The Office notes that the Permittee's request is limited to the extent necessary to accommodate the proposed Collection Substation and O&M Building. The Office further notes that § 120-74(H)(8) of the Rush Zoning Law shall remain applicable to the Permittee's proposed solar panels, racks and inverters located in the Town of Rush.

Based upon the specific facts in this case, the Office respectfully elects to grant partial relief from the lot coverage limitations in § 120-74(H)(8) of the Rush Zoning Law to the parcel(s) that will host the proposed Collection Substation and the proposed O&M Building. See also subpart 6(a)(4) of this Draft Permit.

vi. Solar Facility Landscaping/Screening Requirements

The Permittee requested relief from § 120-74(H)(10) of the Town of Rush Zoning Law, which provides:

A landscape buffer shall be provided around the Tier 3 Solar Energy System to provide screening from adjacent properties. The Tier 3 Solar Energy System shall be completely screened from any adjacent property. To accomplish this screening,

existing vegetation shall be utilized to the fullest extent practicable and/or at least 2 rows of native evergreen trees or other landscaping acceptable to the Planning Board which is capable of forming a continuous hedge at least 14 feet in height at planting shall be required and maintained. A two-year warranty shall be provided for any screening installed as part of the Tier 3 Solar Energy System. The minimum screening requirement may be waived if the Planning Board determines that some other suitable vegetation or feature already exists to achieve complete screening.

Based upon the specific facts in this case, the Office respectfully elects not to apply the provisions of § 120-74(H)(10) of the Town of Rush Zoning Law in its entirety. The Office further respectfully determines that the Permittee shall comply with the requirements set forth in 19 NYCRR §900-2.9 and the standard to avoid, minimize and mitigate potential significant adverse visual impact(s) of the proposed Facility to the maximum extent practicable. See also subpart 6(b) of this Draft Permit.

vii. Solar Facility Undergrounding Requirements

The Permittee requested partial relief from § 120-74(H)(13) of the Town of Rush Zoning Law, which provides:

All on-site utility and transmission lines shall, to the extent feasible, be placed underground.

The Office notes that the Permittee's request is limited to the proposed Interconnection Line, which will be constructed above ground at a length of approximately two hundred fifty (250) feet to deliver the renewable energy generated by the Facility from the Collection Substation and POI Switchyard to the electric transmission system operated by National Grid at National Grid's adjacent 115-kV Golah Substation.

Based upon the specific facts in this case, the Office respectfully elects to grant partial relief from the provisions of § 120-74(H)(13) of the Town of Rush Zoning Law for the Interconnection Line between the Collection Substation and POI Switchyard and the Golah Substation, running above ground at a length of approximately

two hundred fifty (250) feet (see also subpart 6(a)(4) of this Draft Permit).

5 UNIFORM STANDARDS AND CONDITIONS (19 NYCRR Subpart 900-6)

The Permittee shall comply with the following Uniform Standards and Conditions (USCs) during construction and operation of the Facility over the life of this Permit. Certain USCs are not applicable, as noted below, due to the fact that the Facility has been designed to comply with the USC and/or avoid impacts to a particular resource, the resource is not present at this Facility, or the specific technology proposed renders the USC inapplicable.

I. Facility Authorization

- (a) *Compliance*. The Permittee shall implement any impact avoidance, minimization and/or mitigation measures identified in the exhibits, compliance filings and/or contained in a specific plan required under 19 NYCRR Part 900, as approved by the Office. If there is any discrepancy between an exhibit or compliance filing and a permit condition, the Permittee shall comply with the permit condition and notify the Office immediately for resolution.
- (b) *Property Rights*. Issuance of a siting permit does not convey any rights or interests in public or private property. The Permittee shall be responsible for obtaining all real property, rights-of-way (ROW), access rights and other interests or licenses in real property required for the construction and operation of the facility.
- (c) *Eminent Domain*. Issuance of a siting permit to a Permittee that is an entity in the nature of a merchant generator and not in the nature of a fully regulated public utility company with an obligation to serve customers does not constitute a finding of public need for any particular parcel of land such that a condemner would be entitled to an exemption from the provisions of Article 2 of the New York State Eminent Domain Procedure Law ("EDPL") pursuant to Section 206 of the EDPL.
- (d) *Other Permits and Approvals*. Prior to the Permittee's

commencement of construction, the Permittee shall be responsible for obtaining all necessary federal and federally-delegated permits and any other approvals that may be required for the facility and which the Office is not empowered to provide or has expressly authorized. In addition, the Office expressly authorizes:

- (1) The Public Service Commission (PSC) to require approvals, consents, permits, other conditions for the construction or operation of the facility under PSL Sections 68, 69, 70, and Article VII, as applicable, with the understanding that the PSC will not duplicate any issue already addressed by the Office and will instead only act on its police power functions related to the entity as described in the body of this siting permit;
 - (2) The New York State Department of Transportation (NYSDOT) to administer permits associated with oversize/overweight vehicles and deliveries, highway work permits, and associated use and occupancy approvals as needed to construct and operate the facility; and
 - (3) The pertinent agency to implement the New York State Uniform Fire Prevention and Building Code.
- (e) *Water Quality Certification*. Prior to commencing construction, the Permittee shall request and obtain from the Office a water quality certification pursuant to Section 401 of the Clean Water Act, if required.
- (f) *Host Community Benefits*. The Permittee shall provide host community benefits, such as Payments in Lieu of Taxes (PILOTs), other payments pursuant to a host community agreement or other project(s) agreed to by the host community.
- (g) *Notice to Proceed with Construction*. The Permittee and its contractors shall not commence construction until a "Notice to Proceed with Construction" has been issued by the Office. Such Notice will be issued promptly after all applicable pre-construction compliance filings have been filed by the Permittee and approved by the Office. The Notice will not be

unreasonably withheld. The Office may issue a conditional "Notice to Proceed with Site Preparation" for the removal of trees, stumps, shrubs and vegetation from the facility site as indicated on Office-approved site clearing plans to clear the facility site for construction, as well as setting up and staging of the laydown yard(s), including bringing in equipment, prior to the submission of all pre-construction compliance filings. **(See Site Specific Condition 6(j))**

- (h) *Expiration*. The siting permit will automatically expire if the facility does not achieve commencement of commercial operation within seven (7) years from the date of issuance.
- (i) *Partial Cancellation*. If the Permittee decides not to commence construction of any portion of the facility, it shall so notify the Office promptly after making such decision. Such decisions shall not require a modification to the siting permit unless the Office determines that such change constitutes a major modification to the siting permit pursuant to 19 NYCRR §900-11.1.
- (j) *Deadline Extensions*. The Office may extend any deadlines established by the siting permit for good cause shown. Any request for an extension shall be in writing, include a justification for the extension, and be filed at least fourteen (14) business days prior to the applicable deadline.
- (k) *Office Authority*. The Permittee shall regard New York State Department of Public Service (NYSDPS) staff, authorized pursuant to PSL §66(8), as the Office's representatives in the field. In the event of any emergency resulting from the specific construction or maintenance activities that violate, or may violate, the terms of the siting permit, compliance filings or any other supplemental filings, such NYSDPS staff may issue a stop work order for that location or activity pursuant to 19 NYCRR §900-12.1.

II. Notifications

- (a) *Pre-Construction Notice Methods*. At least fourteen (14) business days prior to the Permittee's commencement of

construction date, the Permittee shall notify the public as follows:

- (1) Provide notice by mail to all persons residing within one (1) mile of a solar facility or **(NOT APPLICABLE)** within five (5) miles of a wind facility;
 - (2) Provide notice to local Town and County officials and emergency personnel;
 - (3) Publish notice by mail in the local newspapers of record for dissemination, including at least one free publication, if available (e.g., Pennysaver);
 - (4) Provide notice for display in public places, which shall include, but not be limited to, the Town Halls of the host municipalities, at least one (1) library in each host municipality, at least one (1) post office in each host municipality, the facility website, and the facility construction trailers/offices; and
 - (5) File notice with the Office for posting on the Office website.
- (b) *Proof of Notice to Office.* At least fourteen (14) business days prior to commencement of construction, the Permittee shall file with the Office an affirmation that it has provided the notifications required by subdivision (a) of this section and include a copy of the notice(s), as well as a distribution list.
- (c) *Post-Construction Notice.* Prior to the completion of construction, the Permittee shall notify the entities identified in paragraphs (a)(1)-(5) of this section with the contact name, telephone number, email and mailing address of the facility operations manager, as well as all information required in subdivision (d)(1)-(2) and (4)-(7) of this section.
- (d) *Contents of Notice.* The Permittee shall write the notice(s) required in subdivisions (a) and (c) of this section in plain language reasonably understandable to the average person and shall ensure that the notice(s) contain(s):

- (1) A map of the facility;
 - (2) A brief description of the facility;
 - (3) The construction schedule and transportation routes;
 - (4) The name, mailing address, local or toll-free telephone number, and email address of the appropriate facility contact for development, construction and operations;
 - (5) The procedure and contact information for registering a complaint;
 - (6) Contact information for the Office and the NYSDPS; and
 - (7) A list of public locations where information on the facility, construction, and the Permittee will be posted.
- (e) *Notice of Completion of Construction and Restoration.* Within fourteen (14) days of the completion of final post-construction restoration, the Permittee shall notify the NYSDPS, with a copy to the Office, that all such restoration has been completed in compliance with the siting permit and applicable compliance filings and provide an anticipated date of commencement of commercial operation of the facility.

III. General Requirements

- (a) *Local Laws.* The Permittee shall construct and operate the facility in accordance with the substantive provisions of the applicable local laws as identified in 19 NYCRR §900-2.25, except for those provisions of local laws that the Office determined to be unreasonably burdensome, as stated in the siting permit.
- (b) *Federal Requirements.* The Permittee shall construct and operate the facility in a manner that conforms to all applicable federal and federally-delegated permits identified in 19 NYCRR §900-2.26. If relevant facility plans require modifications due to conditions of federal permits, the final design drawings and all applicable compliance filings shall be revised accordingly and submitted for review and approval pursuant to 19 NYCRR §900-

11.1.

- (c) *Traffic Coordination.* The Permittee shall coordinate with State, county, and local highway agencies to respond to and apply applicable traffic control measures to any locations that may experience any traffic flow or capacity issues.

IV. Facility Construction and Maintenance

- (a) *Construction Hours.* Construction and routine maintenance activities on the facility shall be limited to 7 a.m. to 8 p.m. Monday through Saturday and 8 a.m. to 8 p.m. on Sunday and national holidays, with the exception of construction and delivery activities, which may occur during extended hours beyond this schedule on an as-needed basis.

(1) Construction work hour limits apply to facility construction, maintenance, and to construction-related activities, including maintenance and repairs of construction equipment at outdoor locations, large vehicles idling for extended periods at roadside locations, and related disturbances. This condition shall not apply to vehicles used for transporting construction or maintenance workers, small equipment, and tools used at the facility site for construction or maintenance activities.

(2) If, due to safety or continuous operation requirements, construction activities are required to occur beyond the allowable work hours, the Permittee shall notify the NYSDPS, the Office, affected landowners and the municipalities. Such notice shall be given at least twenty-four (24) hours in advance, unless such construction activities are required to address emergency situations threatening personal injury, property, or severe adverse environmental impact that arise less than twenty-four (24) hours in advance. In such cases, as much advance notice as is practical shall be provided.

- (b) *Environmental and Agricultural Monitoring.*

(1) The Permittee shall hire an independent, third-party environmental monitor to oversee compliance with

environmental commitments and siting permit requirements. The environmental monitor shall perform regular site inspections of construction work sites and, in consultation with the NYSDPS, issue regular reporting and compliance audits.

- (2) The environmental monitor shall have stop work authority over all aspects of the facility. Any stop work orders shall be limited to affected areas of the facility. Copies of the reporting and compliance audits shall be provided to the host town(s) upon request.
 - (3) The Permittee shall identify and provide qualifications and contact information for the independent, third-party environmental monitor to the NYSDPS, with a copy to the Office.
 - (4) If the environmental monitor is not qualified, the Permittee shall also retain an independent, third-party agriculture-specific environmental monitor as required in 19 NYCRR §900-6.4(s).
 - (5) The Permittee shall ensure that its environmental monitor and agricultural monitor are equipped with sufficient access to documentation, transportation, and communication equipment to effectively monitor the Permittee's contractor's compliance with the provisions of the siting permit with respect to such Permittee's facility components and to applicable sections of the Public Service Law, Executive Law, Environmental Conservation Law, and Clean Water Act Section 401 Water Quality Certification.
- (c) *Pre-Construction Meeting.* At least fourteen (14) days before the commencement of construction, the Permittee shall hold a pre-construction meeting with staff of the Office, NYSDPS, New York State Department of Environmental Conservation (NYSDEC), New York State Department of Agriculture and Marketing (NYSAGM), New York State Department of Transportation (NYSDOT), municipal supervisors/mayors and highway departments, and county highway departments. The balance of plant (BOP) construction contractor, the agricultural monitor and

environmental monitor shall be required to attend the pre-construction meeting.

- (1) An agenda, the location, and an attendee list shall be agreed upon between staff of the Office and the NYSDPS and the Permittee and distributed to the attendee list at least one (1) week prior to the meeting;
- (2) Maps showing designated travel routes, construction worker parking and access road locations and a general facility schedule shall be distributed to the attendee list at least one (1) week prior to the meeting;
- (3) The Permittee shall supply draft minutes from this meeting to the attendee list for corrections or comments, and thereafter the Permittee shall issue the finalized meeting minutes; and
- (4) If, for any reason, the BOP contractor cannot finish the construction of the facility, and one (1) or more new BOP contractors are needed, there shall be another pre-construction meeting with the same format as outlined in this section.

(d) *Construction Reporting and Inspections.* During facility construction, the Permittee shall report construction status and support inspections as follows:

- (1) Every two (2) weeks, the Permittee shall provide NYSDPS and Office staff, and the host municipalities with a report summarizing the status of construction activities, and the schedule and locations of construction activities for the next two (2) weeks.
- (2) Prior to entry onto the facility site for on-site inspections, the Permittee shall conduct a tailgate meeting to communicate required safety procedures and worksite hazards to site inspectors.
- (3) The Permittee shall accommodate reviews of any of the following during a monthly inspection and at other times as

may be determined by NYSDPS staff:

- (i) The status of compliance with siting permit conditions;
- (ii) Field reviews of the facility site;
- (iii) Actual or planned resolutions of complaints;
- (iv) Significant comments, concerns, or suggestions made by the public, municipalities, or other agencies and indicate how the Permittee has responded to the public, local governments, or other agencies; and
- (v) The status of the facility in relation to the overall schedule established prior to the commencement of construction; and
- (vi) Other items the Permittee, NYSDPS staff, or Office staff consider appropriate.

(4) After every monthly inspection, the Permittee shall provide the municipalities and agencies involved in the inspection with a written record of the results of the inspection, including resolution of issues and additional measures to be taken.

(e) *Flagging*. At least two (2) weeks before tree clearing or ground disturbing activities, the Permittee shall stake or flag the planned limits of disturbance (LOD), the boundaries of any delineated NYS-regulated wetlands, waterbodies or streams in the LOD (as identified in the delineations prepared pursuant to 19 NYCRR §§900-1.3(e) and (f)), and any known archeological sites identified in the approved Cultural Resources Avoidance, Minimization and Mitigation Plan required in 19 NYCRR §900-10.2(g) (**see Site Specific Condition 6(e)**), all on or off ROW access roads, limits of clearing and other areas needed for construction, including, but not limited to, turbine or solar array work areas, proposed infiltration areas for post-construction stormwater management, and laydown and storage areas. In addition, archeological sites shall be surrounded with construction fencing and a sign stating restricted access.

(f) *Dig Safely NY*. Prior to the commencement of construction, the Permittee shall become a member of Dig Safely New York. The Permittee shall require all contractors, excavators, and operators associated with its facilities to comply with the

requirements of the PSC's regulations regarding the protection of underground facilities at 16 NYCRR Part 753.

- (g) *Natural Gas Pipeline Cathodic Protection*. The Permittee shall contact all pipeline operators within the facility site and land owners, if necessary, on which facility components are to be located or whose property lines are within the zone of safe siting clearance, if any, and shall reach an agreement with each operator to provide that the facility's collection and interconnection systems will not damage any identified pipeline's cathodic protection system or produce damage to the pipeline, either with fault current or from a direct strike of lightning to the collection and interconnection systems, specifically addressing 16 NYCRR §255.467 (External corrosion control; electrical isolation).
- (h) *Pole Numbering*. The Permittee shall comply with all requirements of the PSC's regulations regarding identification and numbering of above ground utility poles at 16 NYCRR Part 217.
- (i) *Fencing*. All mechanical equipment, including any structure for storage of batteries, shall be enclosed by fencing of a minimum height of seven (7) feet with a self-locking gate to prevent unauthorized access.
- (j) *Air Emissions*. To minimize air emissions during construction, the Permittee shall:
- (1) Prohibit contractors from leaving generators idling when electricity is not needed and from leaving diesel engines idling when equipment is not actively being used;
 - (2) Implement dust control procedures to minimize the amount of dust generated by construction activities in a manner consistent with the Standards and Specifications for Dust Control, as outlined in the New York State Standards and Specifications for Erosion and Sediment Control (see 19 NYCRR §900-15.1(i)(1)(i));
 - (3) Use construction equipment powered by electric motors where

feasible, or by ultra-low sulfur diesel; and

(4) Dispose or reuse cleared vegetation in such a way that that minimizes greenhouse gas emissions (e.g., lumber production or composting).

(k) *Construction Noise*. To minimize noise impacts during construction, the Permittee shall:

(1) Maintain functioning mufflers on all transportation and construction machinery;

(2) Respond to noise and vibration complaints according to the complaint resolution protocol approved by the Office; and

(3) Comply with all substantive provisions of all local laws regulating construction noise unless they are waived.

(l) *Visual Mitigation*.

(1) *Wind Facilities*. The Permittee shall implement the approved Visual Impacts Minimization and Mitigation Plan required in §900-2.9 of this Part, including the following: **(NOT APPLICABLE)**

(i) Adoption of visual design features requirements; **(NOT APPLICABLE)**

(ii) Visual contrast minimization and mitigation measures; **(NOT APPLICABLE)**

(iii) Operational effects minimization measures, including shadow flicker minimization mitigation and other measures necessary to achieve a maximum of thirty (30) hours annually at any non-participating residential receptor, subject to verification using shadow prediction and operational controls at appropriate wind turbines; **(NOT APPLICABLE)**

(iv) Lighting Plan; **(NOT APPLICABLE)** and

(v) Screen Planting Plans. **(NOT APPLICABLE)**

(2) *Solar Facilities*. The Permittee shall implement the approved

Visual Impacts Minimization and Mitigation Plan as required in 19 NYCRR §900-2.9, including the following **(see Site Specific Condition 6(b))**:

- (i) Visual contrast minimization and mitigation measures **(see Site Specific Condition 6(b))**;
- (ii) Lighting Plan (see Site Specific Condition 6(d)) **(see Site Specific Condition 6(b))**;
- (iii) Solar glare mitigation requirements **(see Site Specific Condition 6(b))**; and
- (iv) Screen Planting Plans (see Site Specific Condition 6(d)) **(see Site Specific Condition 6(b))**.

(3) *Screen Planting Plans*. The Permittee shall retain a qualified landscape architect, arborist, or ecologist to inspect the screen plantings for two (2) years following installation to identify any plant material that did not survive, appears unhealthy, and/or otherwise needs to be replaced. The Permittee shall remove and replace plantings that fail in materials, workmanship or growth within two (2) years following the completion of installing the plantings. **(See Site Specific Condition 6(b))**

(m) *General Environmental Requirements*.

(1) *Limits of Disturbance (LOD)*. Construction shall not directly disturb areas outside the construction limits shown on the design drawings.

(2) *Blasting*. Blasting shall be designed and controlled to meet the limits for ground vibration set forth in United States Bureau of Mines Report of Investigation 8507 Figure B-1 (see 19 NYCRR §900- 15.1(k) (1) (i)) and air overpressure shall be under the limits set forth in the *Conclusion* Section in United States Bureau of Mines Report of Investigation 8485 (USBM RI 8507 and USBM RI 8485 (see 19 NYCRR § 900-15.1(k) (1) (ii)) to protect structures from damage. **(NOT APPLICABLE) (See Site Specific Condition 6(c))**

(3) *Karst*. Blasting operations in locations where geotechnical

investigations confirm the presence of subsurface karst features shall be limited or performed under specific procedures recommended for those locations by a geotechnical engineer licensed to practice in the State of New York. **(NOT APPLICABLE) (See Site Specific Condition 6(c))**

- (4) *E&S Materials*. Permanent erosion control fabric or netting used to stabilize soils prior to establishment of vegetative cover or other permanent measures shall be one hundred (100) percent biodegradable natural product, excluding silt fence. Use of hay for erosion control or other construction-related purposes is prohibited to minimize the risk of introduction of invasive plant species.
- (5) *Spill Kits*. All construction vehicles and equipment shall be equipped with a spill kit. All equipment shall be inspected daily for leaks of petroleum, other fluids, or contaminants; equipment may only enter a stream channel if found to be free of any leakage. Any leaks shall be stopped and cleaned up immediately. Spillage of fuels, waste oils, other petroleum products or hazardous materials shall be reported to the NYSDEC's Spill Hotline within two (2) hours, in accordance with the NYSDEC Spill Reporting and Initial Notification Requirements Technical Field Guidance (see 19 NYCRR §900-15.1(i)(1)(iii)). The Office and the NYSDEP shall also be notified of all reported spills in a timely manner.
- (6) *Construction Debris*. Any debris or excess construction materials shall be removed to a facility duly authorized to receive such material. No burying of construction debris or excess construction materials is allowed.
- (7) *Clearing Areas*. Tree and vegetation clearing shall be limited to the minimum necessary for facility *construction* and operation, and as detailed on final construction plans.
- (8) *Clearing Methods*. When conducting clearing, the Permittee shall:
- (i) Comply with the provisions of 6 NYCRR Part 192, Forest Insect and Disease Control, and ECL §9-1303 and any

quarantine orders issued thereunder;

(ii) Not create a maximum wood chip depth greater than three (3) inches, except for chip roads (if applicable), nor store or dispose wood chips in wetlands, within stream banks, delineated floodways, or active agricultural fields;

(iii) Not dispose of vegetation or slash by burning anywhere or burying within a wetland or adjacent area; and

(iv) Coordinate with landowners to salvage merchantable logs and fuel wood. Where merchantable logs and fuel wood will not be removed from the facility site during clearing activities, final construction plans shall indicate locations of stockpiles to be established for removal from site or future landowner resource recovery.

(9) *Invasive Insects*. To control the spread of invasive insects, the Permittee shall provide training for clearing and construction crews to identify the Asian Longhorn Beetle and the Emerald Ash Borer and other invasive insects of concern as a potential problem at the facility site. If these insects are found, they shall be reported to the NYSDEC as soon as practicable.

(n) *Water Supply Protection*.

(1) For wind facilities: **(NOT APPLICABLE)**

(i) No wind turbine shall be located within one hundred (100) feet of an existing, active water supply well or water supply intake. **(NOT APPLICABLE)**

(ii) Blasting shall be prohibited within five hundred (500) feet of any known existing, active water supply well or water supply intake on a non-participating property. **(NOT APPLICABLE)**

(iii) The Permittee shall engage a qualified third party to perform pre- and post- construction testing of the potability of water wells within the below specified distances of construction disturbance before commencement of construction and after completion of construction to ensure the wells are not impacted, provided the Permittee

is granted access by the property owner: **(NOT APPLICABLE)**

(a) Collection lines or access roads within one hundred (100) feet of an existing, active water supply well on a non-participating property; **(NOT APPLICABLE)**

(b) Blasting within one thousand (1,000) feet of an existing, active water supply well on a non-participating property; **(NOT APPLICABLE)** and

(c) Horizontal Directional Drilling (HDD) operations within five hundred (500) feet of an existing, active water supply well on a non-participating property. **(NOT APPLICABLE)**

(iv) Should the third-party testing, as required by subparagraph (iii) of this paragraph, conclude that the water supplied by an existing, active water supply well met federal (see 19 NYCRR §900-15.1(j)(1)(i)) and state standards for potable water (see 10 NYCRR Part 75, Appendix 75-c) prior to construction, but failed to meet such standards after construction as a result of facility activities, the Permittee shall cause a new water well to be constructed, in consultation with the property owner, at least one hundred (100) feet from collection lines and access roads, and at least five hundred (500) feet from wind turbines, as practicable given siting constraints and landowner preferences. The results of such tests and reports shall be made available to the relevant municipalities upon request. **(NOT APPLICABLE)**

(2) For solar facilities:

(i) Pier and post driving activities, except for fence and utility poles, shall be prohibited within one hundred (100) feet of any existing, active drinking water supply well; use of earth screws is permitted.

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

(iii) The Permittee shall engage a qualified third party to perform pre- and post- construction testing of the potability of water wells within the below specified distances of construction disturbance before commencement

of civil construction and after completion of construction to ensure the wells are not impacted, provided the Permittee is granted access by the property owner:

- (a) Collection lines or access roads within one hundred (100) feet of an existing, active water supply well on a non-participating property;
- (b) Blasting within one thousand (1,000) feet of an existing, active water supply well on a non-participating property;
- (c) Pier or post installations within two hundred (200) feet of an existing, active water supply well on a non-participating property; and
- (d) HDD operations within five hundred (500) feet of an existing, active water supply well on a non-participating property.

(iv) Should the third-party testing conclude that the water supplied by an existing, active water supply well met federal (see 19 NYCRR §900-15.1(j)(1)(i)) and state standards for potable water (see 10 NYCRR Part 75, Appendix 75-c) prior to construction, but failed to meet such standards post construction as a result of facility activities, the Permittee shall cause a new water well to be constructed, in consultation with the property owner, at least one hundred (100) feet from collection lines and access roads, and at least two hundred (200) feet from all other facility components. The results of such tests and reports shall be made available to the relevant municipalities upon request.

(o) *Threatened and Endangered Species.*

- (1) For facilities that would impact NYS threatened or endangered species other than NYS threatened or endangered grassland birds or their habitat, the Permittee shall implement an approved Net Conservation Benefit Plan (NCBP) that shall include the following **(see Site Specific Condition 6(g)(2))**:

- (i) A demonstration that the NCBP results in a positive benefit on each of the affected species **(see Site Specific Condition 6(g) (2))**;
 - (ii) Detailed explanation of the net conservation benefit to the species based on the actual location and type of minimization measures to be taken for each of the affected species **(see Site Specific Condition 6(g) (2))**;
 - (iii) Full source information supporting a determination as to the net conservation benefit for each of the affected species **(see Site Specific Condition 6(g) (2))**;
 - (iv) A consideration of potential minimization and mitigation measures for each of the affected species **(see Site Specific Condition 6(g) (2))**;
 - (v) A consideration of potential sites for mitigation measures for each of the affected species **(see Site Specific Condition 6(g) (2))**;
 - (vi) The identification and detailed description of the mitigation actions that will be undertaken by the Permittee to achieve a net conservation benefit to the affected species, including, if applicable, payment of a required mitigation fee into the Endangered and Threatened Species Mitigation Fund established pursuant to section 99(hh) of the New York State Finance Law **(see Site Specific Condition 6(g) (2))**; and
 - (vii) To the extent that physical mitigation will be performed, a letter or other indication of the Permittee's financial and technical capability and commitment to fund and execute such management, maintenance and monitoring for the life of the facility/term of the siting permit **(see Site Specific Condition 6(g) (2))**.
- (2) For facilities determined pursuant to the procedures set forth in §900-2.13(e) (2) to have de minimis impacts to NYS threatened or endangered grassland birds:
- (i) If an active nest is identified within the facility site prior to or during construction, and the facility results in adverse impacts to the nest or grasslands twenty-five (25) acres or more in size that were previously (during

pre-application) or newly (prior to or during construction) determined to be occupied habitat, then the Permittee shall coordinate with the NYSDPS and the Office to adjust the limits of disturbance and/or adjust the construction schedule to avoid work in the area until nesting has been completed or the Permittee shall pay into the Endangered and Threatened Species Mitigation Bank Fund the required mitigation fee commensurate with the actual acreage taken.

(3) For facilities that will have more than a de minimis impact on NYS threatened or endangered grassland birds, the Permittee shall implement the following as part of the NCBP **(see Site Specific Condition 6(g) (1))**:

(i) The Permittee shall implement environmental monitoring immediately prior to and during construction in the occupied habitat to search for NYS threatened or endangered species occurrence based on the species' seasonal windows for presence. **(See Site Specific Condition 6(g) (1))**

(ii) If active nests of the NYS threatened or endangered species are found within the occupied habitat, then the Permittee shall coordinate with the NYSDPS and the Office to adjust the limits of disturbance and/or adjust the construction schedule to avoid work in the area until nesting has been completed. **(See Site Specific Condition 6(g) (1))**

(iii) To avoid direct impacts to NYS threatened or endangered grassland bird species, the following work windows apply for all ground disturbance and construction-related activities, including restoration and equipment/component staging, storage, and transportation, within occupied habitat **(see Site Specific Condition 6(g) (1))**:

(a) In NYS threatened or endangered grassland bird occupied breeding habitat, work shall be conducted only between August 16 and April 22 **(see Site Specific Condition 6(g) (1))**;

- (b) In NYS threatened or endangered grassland bird occupied wintering habitat, work shall be conducted only between April 1 and November 14 (**see Site Specific Condition 6(g) (1)**);
- (c) In areas of the facility where both breeding and wintering occupied habitat occurs, work shall be conducted only between August 16 and November 14, and between April 1 and 22 (**see Site Specific Condition 6(g) (1)**).
- (iv) If fields within identified occupied breeding habitat are planted with row crops (e.g., corn, beans, or vegetables) in the farming season prior to the commencement of facility construction and such fields were historically used for row crops during at least one of the prior five (5) years, these fields will not be subject to the construction timing restrictions set forth in subparagraphs (iii)(a) and (c) of this paragraph (**see Site Specific Condition 6(g) (1)**).
- (v) If the Permittee has identified construction activities that must occur between November 15 and March 31 in identified NYS threatened or endangered grassland bird occupied wintering habitat, or between April 23 and August 15 in identified NYS threatened or endangered grassland bird occupied breeding habitat outside of row crop areas described above, the occupied habitat area(s) proposed for active construction shall be assessed by an on-site environmental monitor or biologist who shall conduct surveys for NYS threatened or endangered grassland bird species. The surveys shall occur weekly until construction activities have been completed in the occupied habitat area, unless otherwise agreed to by the Office. If no NYS threatened or endangered grassland bird species are detected during the survey, the area shall be considered clear for seven (7) days, when another survey shall be performed. If NYS threatened or endangered grassland bird species are detected, the Permittee shall comply with subdivision (o) (7) of this section. (**See Site Specific Condition 6(g) (1)**)
- (vi) All temporary disturbance or modification of established grassland vegetation communities that occurs as a result

of facility construction, restoration, or maintenance activities shall be restored utilizing a native herbaceous seed mix or the pre-existing grassland vegetative conditions by re-grading and re-seeding with an appropriate native seed mix after disturbance activities are completed, unless returning to agricultural production or otherwise specified by the landowner. These temporarily disturbed or modified areas include all areas within the facility site that do not have impervious cover, such as temporary roads, material and equipment staging and storage areas, and electric line rights of way. **(See Site Specific Condition 6(g) (1))**

(vii) The Permittee shall implement the avoidance and minimization measures identified in §900-2.13 of this Part and the other conditions herein to minimize potential take of the species. **(See Site Specific Condition 6(g) (1))**

(viii) To the extent that the Office has determined that the facility would result in impacts to grassland bird occupied habitat requiring mitigation, the Permittee shall pay the required mitigation fee commensurate with the actual acreage of occupied habitat taken into the Endangered and Threatened Species Mitigation Bank Fund with the sole purpose to conserve habitat of similar or higher quality or otherwise achieve a net conservation benefit to the impacted species. **(See Site Specific Condition 6(g) (1))**

(ix) If the Permittee proposes an NCBP involving Permittee-implemented grassland bird habitat conservation in lieu of payment of a mitigation fee pursuant to subparagraph (viii) of this paragraph, the required mitigation ratio shall be 0.4 acres of mitigation for every acre of occupied grassland bird breeding habitat determined to be taken and 0.2 acres of mitigation for every acre of occupied grassland bird wintering habitat determined to be taken. These mitigation requirements are based upon multiplying impacts by the ratios described above and dividing impacts by five lifecycles of habitat succession (e.g., a 30-year mitigation project term and 5-year timeframe in which unmanaged grassland would naturally succeed into scrub/shrub habitat, minus one lifecycle to

provide a net conservation benefit). **(See Site Specific Condition 6(g)(1))**

(4) For facilities that will impact NYS threatened or endangered bat species, the Permittee shall implement the following as part of the NCBP:

(i) No facility component shall be sited or located within one hundred fifty (150) feet of any known northern long-eared bat maternity roost, within five hundred (500) feet of any known Indiana bat maternity roost, or one quarter (0.25) mile of any known northern long-eared bat or Indiana bat hibernaculum.

(ii) If at any time during the life of the facility, an active NYS threatened or endangered bat species maternity colony roost tree (or structure) is discovered within the facility site, the NYSDPS and the Office shall be notified within twenty-four (24) hours of discovery (during construction) and forty-eight (48) hours of discovery (during operation), and the colony site shall be marked. A five hundred (500) foot radius around the colony shall be posted and avoided until notice to continue construction, ground clearing, grading, non-emergency maintenance or restoration activities, as applicable, at that site is granted by the NYSDPS or the Office. A re-evaluation of the potential impacts of the Project on listed bat species shall be provided to the NYSDPS and Office.

(iii) *Tree Clearing Limitations for Northern Long-eared Bats:*

(a) No tree clearing activities shall occur at any time within one hundred fifty (150) feet of any known maternity roost or one quarter (0.25) mile of any known hibernaculum.

(b) All tree clearing activities (except for hazard tree removal to protect human life or property) occurring within one and a half (1.5) miles of a maternity roost site or five (5) miles of a hibernaculum site, but not subject to clause (a) of this subparagraph, shall be conducted during the hibernation season (between November 1 and March 31) without further restrictions

unless otherwise approved by the Office. This limitation does not include trees less than or equal to four (4) inches in diameter at breast height (DBH).

(c) From April 1 to October 31, the following restrictions shall be implemented for all tree clearing activities in the facility site, unless otherwise agreed by the Office:

(1) The Permittee shall leave uncut all snag and cavity trees, as defined under the NYSDEC Program Policy ONRDLF-2 Retention on State Forests, unless their removal is necessary for protection of human life and property. This restriction pertains to trees that are greater than or equal to four (4) inches DBH. When necessary, snag or cavity trees may be removed after being cleared by an environmental monitor who shall conduct a survey for bats exiting the tree. This survey shall begin thirty (30) minutes before sunset and continue until at least one (1) hour after sunset or until it is otherwise too dark to see emerging bats. Unoccupied snag and cavity trees in the approved clearing area shall be removed within forty-eight (48) hours of observation.

(2) If any bats are observed flying from a tree, or from a tree that has been cut, tree clearing activities within distances required in clause (a) of this subparagraph, depending on the potential species present, shall be suspended and the NYSDPS and the Office shall be notified as soon as possible. The Permittee shall have an environmental monitor present on site during all tree clearing activities. If any bat activity is noted, a stop work order will immediately be issued and shall remain in place until such time as the NYSDPS and the Office have been consulted and authorize resumption of work.

(iv) *Tree Clearing Limitations for Indiana Bats.*

(a) No tree clearing activities shall occur at any time within five hundred (500) feet of any known maternity

roost or one quarter (0.25) mile of any known hibernaculum. **(NOT APPLICABLE)**

(b) All tree clearing activities (except for hazard tree removal to protect human life or property) occurring within two and a half (2.5) miles of a maternity roost site or hibernaculum site, but not subject to clause (a) of this subparagraph, shall be conducted during the hibernation season (between November 1 and March 31), without further restrictions unless otherwise approved by the Office. This limitation does not include trees less than or equal to four (4) inches in DBH or locations above three hundred (300) meters in elevation. **(NOT APPLICABLE)**

(c) From April 1 to October 31, tree clearing within two and a half (2.5) miles of a maternity roost site or hibernaculum site is limited to trees less than or equal to four (4) inches in DBH or locations above three hundred (300) meters in elevation. **(NOT APPLICABLE)**

(d) Tree clearing may not reduce forest habitat below thirty-five (35) percent of the landcover within two and a half (2.5) miles of the maternity roost site or hibernaculum site. **(NOT APPLICABLE)**

(v) To minimize impacts to bats from wind facilities, the Permittee shall comply with the following requirements: **(NOT APPLICABLE)**

(a) Curtailment is required for all wind facilities from July 1 - October 1 when wind speeds are at or below five and a half (5.5) m/s and temperatures are at or above ten (10) degrees Celsius (fifty (50) degrees Fahrenheit) from thirty (30) minutes before sunset to thirty (30) minutes after sunrise. Curtailment shall be on an individual turbine basis and shall be determined by weather conditions as measured by each individual weather station on the turbine nacelle. **(NOT APPLICABLE)**

(b) The Permittee shall submit a review of curtailment operations to the Office as part of the post-construction bat mortality monitoring requirements set forth in the NCBP or every five (5) years (or sooner

if requested by the Permittee). The review shall assess if changes in technology or knowledge of impacts to bats supports modification of the existing curtailment regime. Modifications to the existing curtailment regime that further decrease mortality may be proposed or negotiated. Any such modifications shall not be costlier than the existing curtailment regime, unless voluntarily supported by the Permittee.
(NOT APPLICABLE)

- (5) For each applicable NCBP, the Permittee shall pay the required mitigation fee into the Endangered and Threatened Species Mitigation Bank Fund commensurate with the anticipated number of individuals taken with the sole purpose to achieve a net conservation benefit to the impacted species. **(See Site Specific Condition 6(g)(1))**
- (6) To avoid and minimize impacts to bald eagles, the Permittee shall implement the following:
- (i) If, at any time during construction and operation of the facility, an active bald eagle nest or roost is identified within the facility site, the NYSDPS and the Office shall be notified within forty-eight (48) hours of discovery and prior to any disturbance of the nest or immediate area. An area one quarter (0.25) mile for nests without a visual buffer and six hundred sixty (660) feet in radius for nests with a visual buffer from the nest tree shall be posted and avoided to the maximum extent practicable until notice to continue construction at that site is granted by the NYSDPS and the Office.
 - (ii) Tree removal is not allowed:
 - (a) Within six hundred sixty (660) feet from an active nest during breeding season (January 1 - September 30);
 - (b) Within one quarter (0.25) mile from an important winter roost during the wintering period (December 1 - March 31); or
 - (c) Of overstory trees within three hundred thirty (330) feet of an active nest at any time.

(iii) Operational Impacts from Wind Facilities. If at any time during the operation of the facility a bald eagle is injured or killed due to collision with project components, the Permittee shall pay the required mitigation fee into the Endangered and Threatened Species Mitigation Bank Fund commensurate with number of eagles taken with the sole purpose to achieve a net conservation benefit to the impacted species. **(NOT APPLICABLE)**

(7) *Record All Observations of NYS Threatened or Endangered Species.* During construction and restoration of the facility and associated facilities, the Permittee shall maintain a record of all observations of NYS threatened or endangered species as follows:

(i) *Construction.* During construction, the on-site environmental monitor shall be responsible for recording all occurrences of NYS threatened or endangered species within the facility site. All occurrences shall be reported in a biweekly monitoring report submitted to the NYSDPS, with a copy to the Office, and such reports shall include the information described in subparagraph (iii) of this paragraph. If a NYS threatened or endangered bird species is demonstrating breeding behavior, it shall be reported to the NYSDPS and the Office within forty-eight (48) hours.

(ii) *Restoration.* After construction is complete, incidental observations of any NYS threatened or endangered species shall be documented and reported to the NYSDPS, with a copy to the Office, in accordance with the reporting requirements in subparagraph (iii) of this paragraph.

(iii) *Reporting Requirements.* All reports of NYS threatened or endangered species shall include the following information: species; number of individuals; age and sex of individuals (if known); observation date(s) and time(s); Global Positioning System (GPS) coordinates of each individual observed (if operation and maintenance staff do not have GPS available, the report shall include the nearest turbine number or solar panel array and cross roads location); behavior(s) observed; identification and

contact information of the observer(s); and the nature of and distance to any facility construction, maintenance or restoration activity.

(8) *Discovery of Nests or Dead or Injured NYS Threatened or Endangered Bird Species*

(i) Excluding Bald Eagles, if an active nest of a federal or NYS threatened or endangered bird species is discovered (by the Permittee's environmental monitor or other designated agents) within the facility site, the following actions shall be taken:

(a) The NYSDPS and the Office shall be notified within forty-eight (48) 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;

(b) An area at least five hundred (500) feet in radius around the active nest shall be posted and avoided until notice to continue construction, ground clearing, grading, maintenance or restoration activities are granted by the Office; and

(c) The active nest(s) or nest tree(s) shall not be approached under any circumstances unless authorized by the Office.

(ii) If any dead or injured federal or NYS threatened or endangered bird species, or eggs or nests thereof, are discovered by the Permittee's on-site environmental monitor or other designated agent at any time during the life of the facility, the Permittee shall immediately (within 24 hours) contact the NYSDEC and the United States Fish and Wildlife Service (USFWS) for federally-listed species, to arrange for recovery and transfer of the specimen(s). The NYSDPS and the Office shall also be notified. 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 discovery;
- (f) Name(s) and contact information of the person(s) involved with the incident(s) and find(s);
- (g) Weather conditions at the facility site for the previous forty-eight (48) hours;
- (h) Photographs, including scale and of sufficient quality to allow for later identification of the animal or nest; and
- (i) An explanation of how the mortality/injury/damage occurred, if known.

Electronic copies of each record, including photographs, shall be kept with the container holding the specimen(s) and given to the NYSDEC or the USFWS at the time of transfer. If the discovery is followed by a non-business day, the Permittee shall ensure all the information listed above is properly documented and stored with the specimen(s). Unless otherwise directed by the NYSDEC or the USFWS, after all information has been collected in the field, the fatality specimen(s) shall be placed in a freezer, or in a cooler on ice until transported to a freezer, until it can be retrieved by the proper authorities.

(9) The provisions of subdivision (o) of this section shall remain in effect for as long as the relevant species is listed as endangered or threatened in New York State.

(p) *Wetlands, Waterbodies, and Streams.* The Permittee shall implement the following procedures for construction within wetlands and adjacent areas subject to ECL Article 24, and waterbodies and streams regulated pursuant to ECL Article 15 (as identified in the delineations approved by the Office pursuant to 19 NYCRR §§900-1.3(e) and (f)):

(1) *Environmentally Sensitive Area (ESA) Flagging.* Prior to performing construction in an ESA, defined herein as any

NYS-regulated wetlands, waterbodies or streams and associated adjacent areas identified in the delineations approved by the Office pursuant to 19 NYCRR §§900-1.3(e) and (f), the Permittee shall mark the boundaries of the ESA with colored flagging, "protected area" signs, or erosion and sediment control measures specified by the SWPPP. As necessary to prevent access by motorized vehicles into ESAs where no construction is planned, the Permittee shall install additional markers or signs stating, "No Equipment Access."

- (2) *Equipment Maintenance and Refueling.* Equipment storage, refueling, maintenance, and repair shall be conducted and safely contained more than one hundred (100) feet from all wetlands, waterbodies, and streams and stored at the end of each workday unless moving the equipment will cause additional environmental impact. Dewatering pumps operating within one hundred (100) feet of wetlands, waterbodies, or streams may be refueled in place and shall be within a secondary containment large enough to hold the pump and accommodate refueling. All mobile equipment, excluding dewatering pumps, shall be fueled in a location at least one hundred (100) feet from wetlands, waterbodies and streams unless moving the equipment will cause additional environmental impact.
- (3) *Fuel Storage.* Fuel or other chemical storage containers shall be appropriately contained and *located* at least three hundred (300) feet from wetlands, waterbodies, and streams.
- (4) *Clean Fill.* All fill shall consist of clean soil, sand and/or gravel that is free of the following substances: asphalt, slag, fly ash, demolition debris, broken concrete, garbage, household refuse, tires, woody materials, and metal objects. Reasonable efforts shall be made to use fill materials that are visually free of invasive species based on onsite and source inspections. The introduction of materials toxic to aquatic life is expressly prohibited.
- (5) *Turbid Water.* Turbid water resulting from dewatering

operations shall not be allowed to enter any wetland, waterbody, or stream. Water resulting from dewatering operations shall be discharged directly to settling basins, filter bags, or other approved device. All necessary measures shall be implemented to prevent any substantial visible contrast due to turbidity or sedimentation downstream of the work site.

- (6) *Truck Washing.* Washing of trucks and equipment shall occur one hundred (100) feet or more from an ESA, and waste concrete and water from such activities shall be controlled to avoid it flowing into a wetland or adjacent area, waterbody or stream. If runoff from such activities flows into any wetlands and adjacent areas subject to ECL Article 24, or waterbodies and streams regulated pursuant to ECL Article 15, the NYSDEC Regional Supervisor of Natural Resources shall be contacted within two (2) hours.
- (7) *Concrete Washouts.* Concrete washouts and batch plants, or concrete from truck cleanout activity, any wash water from trucks, equipment, or tools, if done on site, shall be located and installed to minimize impacts to water resources. Locations should be at least one hundred (100) feet from any wetland, waterbody or stream, and located outside wetland adjacent areas to the maximum extent practicable. Disposal of waste concrete or wash water shall be at least one hundred (100) feet from any wetland, waterbody or stream.
- (8) *Use of Horizontal Direction Drilling.* Installation of underground collection lines across wetlands, waterbodies and streams shall be performed via HDD to the maximum extent practicable. **(See Site Specific Condition 6(h))**
- (9) *Trenching.* Open cut trenching in wetlands, waterbodies and streams shall be conducted in one continuous operation and shall not exceed the length that can be completed in one (1) day.
- (10) *Inadvertent Return Flows.* HDD under wetlands, waterbodies

and streams shall be performed in accordance with the inadvertent return flow plan required pursuant to 19 NYCRR §900-10.2(f) (5). **(See Site Specific Condition 6(h))**

(11) *Discharge Notice and Response.* The Permittee shall notify the NYSDEC, the Office and the NYSDPS within two (2) hours if there is a discharge to an area regulated under Articles 15 or 24 of the ECL resulting in a violation of New York Water Quality Standards at 6 NYCRR Part 703. The Permittee shall immediately stop work until authorized to proceed by the Office.

(q) *Wetlands.* The Permittee shall implement the following requirements for freshwater wetlands and adjacent areas subject to ECL Article 24:

(1) *Construction in Wetlands and Adjacent Areas.* All construction activities completed within wetlands and/or adjacent areas shall adhere to the following requirements:

(i) In breeding areas for NYS threatened or endangered amphibian species, construction should not occur during the peak amphibian breeding season (April 1 to June 15) unless additional measures are implemented to prevent impacts or exclude species from the workspace, such as silt fences.

(ii) Work should be conducted during dry conditions without standing water or when the ground is frozen, where practicable.

(iii) Excavation, installation, and backfilling in wetlands shall be performed in one continuous operation.

(iv) Temporary construction matting shall be used as necessary to minimize disturbance to the wetland soil profile during all construction and maintenance activities. All temporary construction matting shall be removed as soon as practicable but no later than four months following installation from the wetland and cleaned of any invasive species (seed, plant materials, insects, etc.) after construction/maintenance activities are completed and removal shall be verified with the on-

site environmental monitor after construction. Matting shall be removed by equipment stationed on a mat or areas outside the wetland or adjacent area.

- (v) In the event that construction results in an unanticipated alteration to the hydrology of a wetland (i.e., lowering), the breach shall be immediately sealed, and no further activity shall take place until the NYSDPS and the Office is notified and a remediation plan to restore the wetland and prevent future dewatering of the wetland has been approved.
- (vi) Before trenching occurs, upland sections of the trench shall be backfilled or plugged to prevent drainage of possible turbid trench water from entering the wetland.
- (vii) Trench breakers/plugs shall be used at the edges of wetlands as needed to prevent wetland draining during construction.
- (viii) In wetland areas, the topsoil shall be removed and stored separate from subsoil. The top twelve (12) inches of wetland topsoil shall be removed first and temporarily placed onto a geo-textile blanket.
- (ix) Only the excavated wetland topsoil and subsoil shall be utilized as backfill, with the exception of clean bedding material for electrical collection lines and/or conduits, provided there is no change to the pre-construction contours upon restoration; and trench-breakers are used to prevent draining the wetland.
- (x) 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.
- (xi) Trenches shall be backfilled with the wetland subsoil and the wetland topsoil shall be placed back on top. All excess materials shall be completely removed to upland areas more than one hundred (100) feet from the wetland and suitably stabilized.
- (xii) 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.

- (xiii) All disturbed soils within wetlands and adjacent areas shall be seeded with an appropriate native wetland seed mix, shrubs, live stakes, or tree planting as site conditions and design allow, as appropriate for existing land uses. Straw mulch shall be maintained until the disturbed area is permanently stabilized. Hay shall not be used for mulching of wetlands or adjacent areas.
- (xiv) In agricultural or farmed wetlands, crop covers consistent with existing agricultural uses shall be utilized in all areas of soil disturbance.
- (xv) Installation of underground collection lines in wetlands shall be performed using the following methods:
 - (a) The Permittee shall implement best management practices to minimize soil compaction;
 - (b) During excavation, all topsoil shall be stripped and segregated from subsoils. The Permittee shall consolidate trenching areas to the maximum extent practicable to minimize impacts to agricultural soils;
 - (c) All reasonable efforts shall be made to backfill open trenches within the same workday if rain is predicted and as soon as practicable otherwise; and
 - (d) All excess materials shall be completely removed from wetlands to upland areas. Excess topsoil from agricultural areas shall be spread within the immediate agricultural areas within the approved LOD, or within other nearby areas that will still be used for agricultural production.

(2) *Wetland Restoration.*

- (i) Wetland restoration shall be completed according to the approved Wetland Restoration and Mitigation Plan submitted pursuant to §900-10.2(f)(2) of this Part (**see Site Specific Condition 6(i)**).
- (ii) The Permittee shall restore disturbed areas, ruts, and rills within of NYSDEC-regulated wetlands and adjacent areas to original grades and conditions with permanent native revegetation and erosion controls appropriate for

those locations.

- (iii) Restoration of temporary impacts to NYS-regulated wetlands and adjacent areas (as delineated pursuant to §900-1.3(e) of this Part) to pre-construction contours shall be completed within forty-eight (48) hours of final backfilling of the trench/excavated areas and restored to pre-construction contours as soon as practicable.
 - (iv) Immediately upon completion of grading, and as consistent with existing land use/land cover, the area shall be seeded with an appropriate native species mix for wetlands and upland areas adjacent to wetlands, except that adjacent areas may be reseeded differently at the request of the landowner.
 - (v) The Permittee shall attain eighty (80) percent vegetative cover across all disturbed soil areas by the end of the first full growing season following construction. Overall vegetative cover in restored areas shall be monitored for a minimum of five (5) years. Post-construction monitoring shall continue until an eighty (80) percent survivorship of native woody species or eighty-five (85) percent absolute cover of native herbaceous species appropriate wetland indicator status has been reestablished over all portions of the replanted area, unless the invasive species baseline survey indicates a smaller percentage of survivorship or cover of appropriate native species exists prior to construction.
- (3) *Cut Vegetation.* Cut vegetation in wetlands, with the exception of invasive species, may be left in place (i.e., drop and lop or piled in dry or seasonally saturated portions of wetlands and adjacent areas to create wildlife brush piles).
- (4) *Access Roads Through Wetlands.* Installation of access roads through wetlands shall be performed using the following methods:
- (i) Temporary access roads shall use timber/construction matting that is completely removed after construction/maintenance activities are completed and

removal shall be verified with the NYSDPS by the on-site environmental monitor after construction, or by the facility operator after maintenance work is completed.

(ii) Permanent access roads shall use a layer of geotextile fabric and a minimum of six (6) inches of gravel shall be placed in the location of the wetland crossing after vegetation and topsoil is removed. Access roads shall be designed and constructed to adequately support the type and frequency of the anticipated vehicular traffic and include suitable culverting or other drainage infrastructure as needed to minimize the impact to wetland hydrology.

(5) *Solar Panel Support Installation.* Installation and construction techniques shall minimize the disturbance of the wetland soil profiles (e.g., the use of helical screws and driven H-pile with no backfilling for solar arrays sites in wetlands).

(6) *Tree Clearing.* Tree clearing shall be minimized to the extent practicable in wetlands and adjacent areas.

(7) *Fill Placement.* The placement of fill in wetlands shall be designed to maintain pre-construction surface water flows/conditions between remaining on- or off-site waters and to prevent draining of the wetland or permanent hydrologic alteration. This may require the use of culverts and/or other measures. Construction activity and final design shall not restrict or impede the passage of normal or expected high flows.

(8) *Concrete Use.* For activities involving the placement of concrete into regulated wetlands, watertight forms shall be used. The forms shall be dewatered prior to the placement of the concrete. The use of tremie-supplied concrete is allowed if it complies with NYS water quality standards. **(NOT APPLICABLE)**

(9) *Stormwater Setback.* Any new stormwater management infrastructure shall be located outside of the wetland and

adjacent area to the extent practicable.

(10) *Mitigation*. The Permittee shall implement the approved Wetland Restoration and Mitigation Plan submitted pursuant to 19 NYCRR §900-10.2(f)(2) **(see Site Specific Condition 6(i))**.

(r) *Work in NYS-protected waters*. The Permittee shall implement the following:

(1) *Dry Conditions*. In-stream work shall only occur in dry conditions, using appropriate water handling measures to isolate work areas and direct stream flow around the work area. Any waters accumulated in isolated work areas shall be discharged to an upland settling basin, field, or wooded area to provide for settling and filtering of solids and sediment before water is return to the stream. If measures fail to divert all flow around the work area, in-stream work shall stop until dewatering measures are functioning properly.

(2) *In-Water Work Windows*. In-stream work shall be prohibited from September 15 through May 31 in cold water fisheries and March 15 through July 15 in warm water fisheries unless the Permittee receives site specific approval from the Office.

(3) *Stream Channels*. The restored stream channel shall be equal in width, depth, gradient, length and character to the pre-existing stream channel and tie in smoothly to the profile of the stream channel upstream and downstream of the disturbance. The planform of any permanent stream shall not be changed, unless dictated by restoration or mitigation objectives. All disturbed stream banks shall be mulched within two (2) days of final grading, stabilized with one hundred (100) percent natural or biodegradable fiber matting, and seeded with an appropriate riparian seed mix.

(4) *Felled Trees in an ESA*. Trees shall not be felled into an ESA stream or its stream bank. Snags which provide shelter in streams for fish shall not be disturbed unless they cause serious obstructions, scouring or erosion.

- (5) *Culvert Repairs.* If a culvert is blocked or crushed, or otherwise damaged by construction or maintenance activities, the Permittee shall repair the culvert or replace it with alternative measures appropriate to maintaining proper drainage, embedment and aquatic connectivity.
- (6) *Access Road Crossings of Streams.* The creation, modification or improvement of any permanent road crossing of a NYS-protected waterbody shall meet the following requirements:
- (i) New culvert pipes that the Permittee is required to install shall be designed to safely pass the one (1) percent annual chance storm event;
 - (ii) Culvert pipes shall be embedded beneath the existing grade of the stream channel;
 - (iii) Width of the structure shall be a minimum of one and a quarter (1.25) times the width of the mean high-water channel, as practicable; and
 - (iv) The culvert slope shall remain consistent with the slope of the adjacent stream channel. For slopes greater than three (3) percent, an open bottom culvert shall be used.
- (7) *Overhead Lines Across NYSDEC-Protected Streams.* If construction of overhead power line crossings requires cutting of trees or shrubs within fifty (50) feet of a NYS-protected waterbody:
- (i) Cut materials shall be left on the ground; and
 - (ii) Stumps and root systems shall not be damaged to facilitate stump sprouting.
- (8) *Stream Flows.* During periods of work activity, flow immediately downstream of the work site shall equal flow immediately upstream of the work site. If measures fail to divert all flow around the work area, in-stream work shall stop until dewatering measures are functioning properly.
- (9) *No Aquatic Impediments.* In-stream work, including the installation of structures and bed material, but excluding

dewatering associated with dry trench crossings, shall not result in an impediment to aquatic organisms. All fish trapped within cofferdams shall be netted and returned, alive and unharmed, to the water outside the confines of the cofferdam, in the same stream.

(10) *Drop Height*. Any in-stream structures placed in a stream shall not create a drop height greater than six (6) inches.

(11) *Restoration and Mitigation*. The Permittee shall implement the approved Stream Restoration and Mitigation Plan submitted pursuant to 19 NYCRR §900-10.2(f)(3) (**see Site Specific Condition 6(h)**).

(s) *Agricultural Resources*.

(1) In all instances in which the applicant for a solar facility proposes to permanently or temporarily impact active agricultural lands (i.e., land in active agriculture production defined as active three (3) of the last five (5) years) within NYS Agricultural Land Classified Mineral Soil Groups 1 through 4, the Permittee shall:

(i) Construct the facility consistent with the NYSAGM "Guidelines for Solar Energy Projects-Construction Mitigation for Agricultural Lands", dated 10/18/2019 (see 19 NYCRR §900-15.1(1)(1)(i)), to the maximum extent practicable; and

(ii) Hire an independent, third-party agricultural monitor to oversee compliance with agricultural conditions and requirements, including the approved Agricultural Plan required pursuant to 19 NYCRR §900-2.16(c), the approved Remediation Plan required pursuant to 19 NYCRR §900-2.16(d) and any approved co-utilization plan prepared according to §900-2.16(e). The Office, in consultation with the NYSAGM, shall verify and approve the qualifications required to fulfill the role of the agricultural monitor have been met. If the Office, in consultation with the NYSAGM, agrees that the independent third-party monitor is qualified on agricultural issues, one monitor can act as both the general environmental

monitor as well as the agricultural-specific environmental monitor. **(See Site Specific Condition 6(f))**

(2) In all instances in which the applicant for a wind facility proposes to permanently or temporarily impact active agricultural lands (i.e., land in active agriculture production defined as active three (3) of the last five (5) years) within NYS Agricultural Land Classified Mineral Soil Groups 1 through 4, the Permittee shall: **(NOT APPLICABLE)**

(i) Construct the facility consistent with the NYSAGM "Guidelines for Agricultural Mitigation for Wind Power Projects", revised 4/19/2018 (see §900-15.1(1)(1)(ii) of this Part), to the maximum extent practicable; and **(NOT APPLICABLE)**

(ii) Hire an independent, third-party agricultural monitor to oversee compliance with agricultural conditions and requirements, including the approved Agricultural Plan required pursuant to section 900-2.16(c) of this Part and the approved Remediation Plan required pursuant to section 900-2.16(d) of this Part. The Office, in consultation with the NYSAGM, shall verify and approve the qualifications required to fulfill the role of the agricultural monitor have been met. If the Office, in consultation with the NYSAGM, agrees that the independent third-party monitor is qualified on agricultural issues, one monitor can act as both the general environmental monitor as well as the agricultural-specific environmental monitor. **(NOT APPLICABLE)**

(t) *Hazardous Materials*. The Permittee shall comply with the NYSDEC-approved Site Management Plan for the facility site, or any portion thereof, if applicable.

(u) *Cultural Resources Avoidance, Minimization and Mitigation Plan*. The Permittee shall implement the approved Cultural Resources Avoidance, Minimization and Mitigation Plan required in 19 NYCRR §900-10.2(g). **(See Site Specific Condition 6(e))**

V. Facility Operation

(a) *Noise Limits for Wind Facilities* **(NOT APPLICABLE)**

(1) Noise levels by all noise sources from the wind facility(ies) shall: **(NOT APPLICABLE)**

(i) Comply with a maximum noise limit of forty-five (45) dBA Leq (8-hour) at the outside of any non-participating residence, and fifty-five (55) dBA Leq (8-hour) at the outside of any participating residence existing as of the issuance date of the siting permit; **(NOT APPLICABLE)**

(ii) Prominent tones are defined by using the constant level differences listed under ANSI/ASA S12.9-2005/Part 4 Annex C (sounds with tonal content) (see 19 NYCRR §900-15.1(a)(1)(iii)) at the outside of any non-participating residence existing as of the issuance date of the siting permit. Should a prominent tone occur, the broadband overall (dBA) noise level at the evaluated non-participating position shall be increased by five (5) dBA for evaluation of compliance with subparagraphs (i) and (v) of this paragraph; **(NOT APPLICABLE)**

(iii) Comply with a maximum noise limit of sixty-five (65) dB Leq (1-hour) at the full octave frequency bands of sixteen (16), thirty-one and a half (31.5), and sixty-three (63) Hertz outside of any non-participating residence existing as of the issuance date of the siting permit, in accordance with Annex D of ANSI/ASA standard S12.9-2005/Part 4 Section D.2.(1) (Analysis of sounds with strong low-frequency content) (see 19 NYCRR §900-15.1(a)(1)(iii)); **(NOT APPLICABLE)**

(iv) Not produce human perceptible vibrations inside any non-participating residence existing as of the issuance date of the siting permit that exceed the limits for residential use recommended in ANSI/ASA Standard S2.71-1983 "Guide to the evaluation of human exposure to vibration in buildings" (see 19 NYCRR §900-15.1(a)(1)(i)); **(NOT APPLICABLE)**

(v) Comply with a noise limit of forty (40) dBA Leq (1-hour) at the outside of any non-participating residence existing as of the issuance date of the siting permit from the collector substation equipment; **(NOT APPLICABLE)**

and

(vi) Emergency situations are exempt from the limits specified in this subdivision. **(NOT APPLICABLE)**

(2) Post-Construction Noise Compliance and Monitoring for Wind Facilities. To evaluate compliance with noise-related conditions, the Permittee shall comply with the following requirements: **(NOT APPLICABLE)**

(i) Compliance with subparagraphs (1)(i)-(v) of this section for the facility shall be evaluated by the Permittee by implementing a sound testing compliance protocol that shall follow the provisions and procedures for post-construction noise performance evaluations approved by the Office and stated in the siting permit; **(NOT APPLICABLE)**

(ii) At least two sound compliance tests conforming to the sound testing compliance protocol shall be performed by the Permittee after the commercial operation date of the facility: one during the "leaf-off" season and one during the "leaf-on" season; **(NOT APPLICABLE)**

(iii) Within seven (7) months after the commercial operation date of the facility, the Permittee shall perform and complete the first sound compliance test and the results shall be submitted by filing a report from an independent acoustical or noise consultant, no later than eight (8) months after the commercial operation date, specifying whether or not the facility is found in compliance with all siting permit conditions on noise during the "leaf on" or "leaf off" season as applicable; **(NOT APPLICABLE)**
and

(iv) The second sound compliance test shall be performed, and results shall be submitted subject to the same provisions contained in subparagraph (iii) of this paragraph, but no later than thirteen (13) months after the commencement of commercial operation of the facility. **(NOT APPLICABLE)**

(3) *Noise Exceedances from Wind Facilities.* If the results of the first or second post-construction sound compliance test,

or any subsequent test, or any compliance or violation test, indicate that the facility does not comply with siting permit conditions on noise and vibration, the Permittee shall: **(NOT APPLICABLE)**

(i) Present minimization options to the NYSDPS, with a copy to the Office, within sixty (60) days after the filing of a non-compliance test result or the finding of a noncompliance or a violation of siting permit conditions on noise, as follows: **(NOT APPLICABLE)**

(a)Operational minimization options related to noise or vibrations caused by the wind turbines that shall be considered, including, at a minimum, modifying or reducing times or duration of turbine operation, incorporating noise reduced operations, shutting down relevant turbines, and modifying operational conditions of the turbines; **(NOT APPLICABLE)**

(b)Physical minimization options related to noise or vibration caused by the wind turbines that shall be considered, including installation of serrated edge trails on the turbine blades, replacement or maintenance of noisy components of the equipment, and any other measures as feasible and appropriate; **(NOT APPLICABLE)** and

(c)If applicable, any minimization measures related to noise from transformers (such as walls or barriers), emergency generators (such as installation of noise walls or barriers, adding or replacing enclosures or silencers to the emergency generator), or any other noise sources (such as HVAC equipment or energy storage systems), shall be considered, as well as any other mitigation measures as feasible and appropriate. **(NOT APPLICABLE)**

(ii) Upon approval from the NYSDPS and the Office, the Permittee shall implement any operational noise or vibration mitigation measures within ninety (90) days after the finding of a non-compliance or siting permit violation, as necessary to achieve compliance. **(NOT APPLICABLE)**

(iii) Upon approval from the NYSDPS and the Office, the Permittee shall implement any physical noise or vibration mitigation measures within one hundred fifty (150) days after the finding of a non-compliance or siting permit violation, as necessary to achieve compliance. **(NOT APPLICABLE)**

(iv) If the Permittee cannot meet the timelines for implementation of mitigation measures set forth in subparagraphs (ii) and (iii) of this paragraph, Permittee shall cease operation of the turbines of the facility that caused the non-compliance or siting permit violation until the operational or physical minimization measures that are presented and approved by the NYSDPS and the Office have been implemented. Once implemented, the Permittee shall not operate the facility without the mitigation measures presented and approved by the NYSDPS and the Office. **(NOT APPLICABLE)**

(v) Test, document and present results of any minimization measures and compliance with all siting permit conditions on noise, no later than ninety (90) days after the minimization measures are implemented. **(NOT APPLICABLE)**

(4) *Noise and Vibration Complaints from Wind Facilities.* The Permittee shall adhere to the following conditions regarding noise complaints: **(NOT APPLICABLE)**

(i) The Permittee is required to maintain a log of complaints received relating to noise and vibrations caused by the operation of the facility. The log shall include name and contact information of the person that lodges the complaint, name of the property owner(s), address of the residence where the complaint was originated, the date and time of the day underlying the event complained of, and a summary of the complaint. **(NOT APPLICABLE)**

(ii) The Permittee shall provide the host municipalities with a phone number, email address, and mailing address where complaints can be notified. **(NOT APPLICABLE)**

(iii) All complaints received shall be reported to the NYSDPS staff, with a copy to the Office, monthly during the first year of commercial operations and quarterly thereafter,

by filing during the first ten (10) days of each month (or the first ten (10) days of each quarter after the first year). Reports shall include copies of the complaints and, if available, a description of the probable cause (e.g., outdoor or indoor noise, tones, low frequency noise, amplitude modulation, vibrations, rumbles, rattles, etc., if known); the status of the investigation, summary of findings and whether the facility has been tested and found in compliance with applicable siting permit conditions on noise or minimization measures have been implemented. If no noise or vibration complaints are received, the Permittee shall submit a letter indicating that no complaints were received during the reporting period. **(NOT APPLICABLE)**

- (iv) Should complaints related to excessive and persistent amplitude modulation occur at any non-participating residence existing as of the issuance date of the siting permit, with measured or modeled sound levels exceeding forty (40) dBA Leq (1-hour), the Permittee shall investigate and measure amplitude modulation at the affected receptors during the time frame when the worst conditions are known, or, if not known, expected to occur. If the L90-10-minute noise levels (dBA), including any amplitude modulation and prominent tone penalties exceed a noise level of forty-five (45) dBA and amplitude modulation is in excess of a five (5) dB modulation depth at the evaluated receptor(s) for more than five (5) percent of the time during the identified time frame of evaluation (which shall not exceed eight consecutive hours), the Permittee shall continue with the investigation, identify frequency of occurrence and the conditions that may be favorable for its occurrence, and propose minimization measures to avoid or minimize the impacts. Minimization measures that avoid, minimize, resolve, or mitigate the amplitude modulation impacts shall be identified and reported by filing the identified minimization measures and implementing such measures after, and consistent with, review and approval. Compliance with this requirement shall be finally demonstrated by conducting a test that shows that the

L90-10-minute sound levels (dBA), including a five (5)-dBA penalty for amplitude modulation (if amplitude modulation depth is in excess of five (5) dB for more than five (5) percent of the time in any eight (8) consecutive hours) at that particular location and any additional prominent tone penalties, are lower than or equal to forty-five (45) dBA. For any complaints that do not exceed the limits established in the foregoing, the Permittee shall handle those complaints under the complaint resolution protocol approved by the Office. Amplitude Modulation depth will be evaluated as indicated in the document entitled "A Method for Rating Amplitude Modulation in Wind Turbine Noise", 09 August 2016, Version 1 (see 19 NYCRR §900-15.1(c)(1)(i)). **(NOT APPLICABLE)**

(v) The Permittee shall investigate all other noise and vibration complaints by following the complaint resolution protocol approved by the Office, and consistent with the limits imposed by the siting permit. **(NOT APPLICABLE)**

(5) *Facility Logs for Wind Facilities.* The Permittee is required to maintain a log of operational conditions of all the turbines with a ten (10)-minute time interval to include, at a minimum, wind velocity and wind direction at the hub heights, angular speed of the rotors, generated power, and notes indicating operational conditions that could affect the noise levels (e.g., maintenance, shutdown, etc.). A schedule and log of noise-reduced operations for individual turbines shall also be kept and updated as necessary. These records shall be maintained by the Permittee for five (5) years from occurrence. **(NOT APPLICABLE)**

(b) *Noise Standards for Solar Facilities.* The permittee shall implement the approved design as required by 19 NYCRR §900-2.8 of this part. **(See Site Specific Condition 6(d))**

(c) *Operational Compliance.* The Permittee shall operate the facility to abide by applicable rules and regulations of the PSL and 16 NYCRR with respect to matters such as enforcement,

investigation, safety and reliability. The Permittee shall abide by standard Good Utility Practice, and abide by all rules, guidelines and standards of the serving utilities, the New York Independent System Operator (NYISO), the Northeast Power Coordinating Council (NPCC), the New York State Reliability Council (NYSRC), the North American Electric Reliability Corporation (NERC) and successors. When applied to the Permittee, the term "Good Utility Practice" shall mean the standards applicable to an independent power producer connecting to the distribution or transmission facilities or system of a utility.

(d) *Annual Inspection.* The Permittee shall have an annual inspection program for its facilities. An annual inspection report shall summarize maintenance and inspection activities performed and include details of any repairs undertaken. Reports shall identify any major damage, defects or other problems, or indicate that no such damage, defect or problem was found. Reports shall be made readily available upon request by the NYSDPS or the Office.

(e) *Equipment Replacement.* Replacement of major facility components with different make, model, size, or other material modification, shall be subject to review and approval of the Office pursuant to 19 NYCRR §900-11.1.

(f) *Interconnection Changes.* Throughout the life of the facility, the Permittee shall provide a copy of the following interconnection documents to the secretary of the NYSDPS, with a copy to the Office:

(1) Any updates or revisions to the Interconnection Agreement or Facility Agreements between the Permittee, the serving utilities and NYISO; and

(2) Any System Reliability Impact Study (SRIS) required as part of a future facility modification or uprate, performed in accordance with the NYISO Open Access Transmission Tariff (OATT), available at www.nyiso.com.

(g) *Facility Transmission Interconnection Related Incidents.*

- (1) The Permittee shall contact the NYSDPS Emergency Line within one (1) hour to report any transmission related incident on its owned and operated interconnection facilities which affects the operation of the facility, or that poses a public safety concern, and shall provide notification to the Office within twenty-four (24) hours.
- (2) The Permittee shall file with the secretary of the NYSDPS a report on any such incident, upon request within seven (7) days, and provide a copy of the report to the serving utility and the Office. The report shall contain, when available, copies of applicable drawings, descriptions of the equipment involved, a description of the incident and a discussion of how future occurrences will be prevented.

(h) *Facility Malfunction*

- (1) In the event of any catastrophic incident, including but not limited to blade failure, fire, tower collapse or other catastrophic event involving the facility and its associated equipment, the Permittee shall notify the Office and the NYSDPS no later than twelve (12) hours following such an event.
- (2) In the event of a malfunction of the facility or facility components which causes a significant reduction in the capability of such facility to deliver power for an extended duration (i.e., expected to last longer than one (1) month), the Permittee shall promptly file with the NYSDPS, and provide to the serving utility and the Office, copies of all notices, filings, and other substantive written communications with the NYISO as to such reduction, any plans for making repairs to remedy the reduction, and the schedule for any such repairs.

VI. Decommissioning

- (a) The Permittee shall implement the approved Decommissioning and Site Restoration Plan as required by 19 NYCRR §900-2.24. The Permittee shall adhere to all state laws and regulations in

effect at the time of decommissioning regarding the disposal and recycling of components. **(See Site Specific Condition 6(k))**

- (b) The financial security regarding decommissioning and site restoration activities shall be in the form of a letter of credit (LOC) or other financial assurance approved by the Office, and shall be established by the Permittee to be held by each City, Town, or Village hosting facility components. The total amount of the financial security created for the Cities, Towns, or Villages shall be equal to the net decommissioning and site restoration estimate; the net decommissioning and site restoration estimate is equal to the gross decommissioning and site restoration estimate (which is the overall decommissioning and site restoration estimate plus a fifteen (15) percent contingency cost) less the total projected salvage value of facility components; reference to salvage value data shall also be included in the Decommissioning and Site Restoration Plan required at 19 NYCRR §900-2.24. If the Permittee and the host municipalities cannot come to an agreement as to the appropriate amount of financial security to be provided, the Office shall make the final determination. The financial security shall remain active until the facility is fully decommissioned. The LOC shall be irrevocable and state on its face that it is expressly held by and for the sole benefit of the specific Town, City, or Village. **(See Site Specific Condition 6(k))**

6 SITE SPECIFIC CONDITIONS

The Permittee shall comply with the following site specific conditions during construction and operation of the Facility over the life of this Permit. Specific conditions shall take precedence over other conditions of this Permit should there be a conflict.

- (a) Final Construction Plans, Profiles and Detail Drawings - Pursuant to 19 NYCRR §900-3.2(a)(2) and consistent with 19 NYCRR §900-10.2:
- (1) Final Record Set - The Permittee shall provide the Office a record set of the Final Construction Plans, Profiles and Detail Drawings, approved by the Office and including all final modifications and design

requirements required to comply with the USCs, Site Specific Conditions and other requirements set forth in this Draft Permit. The Final Construction Plans, Profiles and Detail Drawings shall include all conforming modifications and design changes that are consistent with the Office's determinations in subpart 4 of this Draft Permit.

- (2) Height of Solar Array System - In lieu of the height limitation in 19 NYCRR §900-2.6(e), the Permittee's Solar Facility (which may include single panel or double panel solar array system technology) shall comply with a height limit of seventeen (17) feet, measured from the highest natural grade below each solar panel to its maximum potential height. Additional height for any proposed lightning protection system or other essential safety equipment for the proposed solar array system is approved up to a height of twenty (20) feet, measured from the highest natural grade below each solar panel to its maximum potential height.
- (3) Solar Facility Setbacks - The Permittee shall comply with the following setbacks in lieu of the setbacks required by 19 NYCRR §900-2.6(d) and Table 2, provided that fencing, collection lines, access roads, and landscaping may occur within all setback areas:
 - (i) a minimum setback distance of two hundred fifty (250) feet from the right-of-way line of Route 5 in the Town of Caledonia, as required by §106-9(C)(1)(a)[6] of the Caledonia Town Code;
 - (ii) a minimum setback distance of two hundred fifty (250) feet from the right-of-way line of West River Road in the Town of Caledonia, as required by §106-9(C)(1)(a)[5] of the Caledonia Town Code;
 - (iii) a minimum side and rear setback distance of seven hundred fifty (750) feet from any existing non-participating residences located on Route 5 in

the Town of Caledonia, as required by §106-9(C)(1)(a)[1] of the Caledonia Town Code; and

(iv) a minimum setback of two hundred (200) feet from all property lines for any solar panels, racks and inverters in the Town of Rush, as required by § 120-74(H)(6) of the Rush Zoning Law.

(4) Substation and Interconnection Facilities - The Permittee's Final Construction Plans, Profiles and Detail Drawings shall incorporate all necessary details for the Collection Substation, POI Switchyard, O&M Building and proposed Interconnection Line between the Collection Substation and the POI Switchyard to Golah Substation, which will be constructed above ground at a length of approximately two hundred fifty (250) feet. Such drawings shall be accompanied by a summary of why undergrounding of the Interconnection Line is not feasible based upon engineering, construction or environmental constraints, and shall include details concerning the location and length of overhead installations, the height and configuration of facilities, and locations of supporting structures and infrastructure.

(5) Oil and/or Natural Gas Wells

(i) In compliance with 19 NYCRR §900-2.4(u), the Permittee's Final Plans, Profiles, and Detail Drawings shall demonstrate adherence to the following setbacks from known and existing plugged or unplugged oil and/or natural gas wells and associated infrastructure (including newly discovered wells identified during pre-construction surveys):

A. All limits of disturbance and permanent Facility components (including permanent access roads) shall maintain a minimum one hundred (100) foot setback from all known and existing oil and/or natural gas wells

and associated infrastructure, to allow sufficient entry for a well service rig and ancillary equipment to access the well, in the event that well servicing or well plugging is necessary; and

B. All limits of disturbance and permanent Facility components (including permanent access roads) shall allow for sufficient space for construction of an access road of at least thirty (30) feet in width to allow entry to known and existing oil and/or natural gas wells and associated infrastructure.

(ii) If previously unknown oil and/or natural gas wells are confirmed within the Facility Site during construction of the Facility, the Permittee shall immediately cease construction activities in the immediate area surrounding the well and shall notify and consult with the Office and NYSDEC Division of Mineral Resources, Region 8, Regional Minerals Manager, to determine what, if any, mitigation measures must be implemented.

(b) Visual Resources - Pursuant to 19 NYCRR §900-3.2(a)(2) and consistent with 19 NYCRR §900-10.2, the Permittee shall submit a final Visual Impact Assessment (VIA), Viewshed Mapping, Visual Contrast Evaluation and Visual Impacts Minimization and Mitigation Plan (VIMMP) in compliance with the requirements set forth in 19 NYCRR §§ 900-2.8(a) through (d).

(c) Blasting Prohibited - Pursuant to 19 NYCRR §900-3.2(a)(2) and consistent with 19 NYCRR §900-10.2, the Permittee shall refrain from the use of blasting.

(d) Noise and Vibration - Pursuant to 19 NYCRR §900-3.2(a)(2) and consistent with 19 NYCRR §900-10.2, the Permittee shall submit updated noise modeling for the facility in conformance with 19 NYCRR §900-2.8 including the following:

- (1) Evaluation of prominent tones as required by 19 NYCRR §§900-2.8(b)(2)(iii), (e)(1) and (e)(2).
 - (2) Computer noise modeling demonstrating that the facility, including any prominent tone penalties, comply with the design goals specified in 19 NYCRR §900-2.8(b)(2). The final noise modeling shall comply with the requirements of 19 NYCRR §§900-2.8(d)(1), (d)(3), (p)(1), (p)(2), and (p)(5).
 - (3) Sound contours from the facility as specified in 19 NYCRR §900-2.8(k).
 - (4) Sound results for receptors from the facility as indicated in 19 NYCRR §§900-2.8(l) and (q)(2).
 - (5) Any mitigation for the facility as required by Section 19 NYCRR §§900-2.8(o)(2) and (p)(3)
- (e) Cultural Resources Avoidance, Minimization, and Mitigation Plan - Pursuant to 19 NYCRR §900-3.2(a)(2) and consistent with 19 NYCRR §900-10.2(g), the Permittee shall submit a Cultural Resources Avoidance, Minimization and Mitigation Plan which shall at a minimum, include the following:
- (1) Measures for Protection of Cultural Resources - The Plan shall include site specific measures to avoid, minimize or mitigate significant adverse impacts to archaeological, historic and cultural resources to the maximum extent practicable, including without limitation: avoidance of significant soil disturbance during construction and operation of the Facility to archaeological sites; and maintaining a minimum avoidance buffer of fifty (50) feet around certain archaeological sites, as specified in correspondence from the Office of Parks, Recreation and Historic Preservation (OPRHP) and State Historic Preservation Office (SHPO) dated June 9, 2021, and supplemented by OPRHP correspondence with the Office dated February 7, 2022; and treating such areas as Environmentally

Sensitive Areas consistent with best management practices for construction and operation of the Facility and labeling these areas as such on the Permittee's Final Construction Plans, Profiles and Detail Drawings;

- (2) Archaeology Construction Monitoring Plan - An approved Archaeology Construction Monitoring Plan for the Facility Site, including without limitation the following parcels **(redacted)**: [
]
 - (3) Historic Preservation Mitigation Plan - A Historic Preservation Mitigation Plan which shall establish specific preservation/history projects and/or funding intended to offset significant visual impacts to the properties eligible for inclusion in the New York State or National Registers of Historic Places, as specified in the correspondence identified in paragraph (1) of this Site Specific Condition;
 - (4) Final Unanticipated Discovery Plan - A Final Unanticipated Discovery Plan meeting the requirements of 19 NYCRR §900-2.10(a)(5); and
 - (5) Cultural Resources Monitor - The Permittee shall hire a cultural resources monitor during the construction phase. The monitor shall be qualified under 36 CFR 61 or employed by a company or individual that meets the 36 CFR 61 qualifications.
- (f) Agricultural Resources
- (1) Submission of Final Co-Utilization Plan - Pursuant to 19 NYCRR §900-3.2(a)(2) and consistent with 19 NYCRR §900-10.2, the Permittee shall submit a final agricultural co-utilization plan based upon the plan entitled "Agricultural Integration Plan Horseshoe Solar," prepared by Agrivoltaic Solutions LLC (Appendix 22-q, DMM Item No. 5) to minimize or mitigate potential significant adverse environmental impacts to agricultural resources.

(2) Implementation of Agricultural Co-Utilization Plan - Pursuant to 19 NYCRR §900-3.2(a)(2) and consistent with 19 NYCRR §900-10.3, the Permittee shall submit a final "Agricultural Integration Plan and Sheep Pasture Rotation and Grazing Plan" at least three months prior to the commencement of construction of any agricultural integration facility or the commencement of agricultural co-utilization activities, including all applicable local permits and approvals. Each final plan shall include the following:

- (i) decommissioning requirements for associated infrastructure (water wells, water lines, fencing, barns, etc.);
- (ii) landowner agreements allowing access for sheep farmers/beekeepers (if necessary);
- (iii) prescribed grazing plan details;
- (iv) long-term farming contracts;
- (v) site plans depicting grazing operation facility components; and
- (vi) compliance with applicable NYSAGM regulations and other applicable regulations and guidance.

(g) Threatened or Endangered Species - Pursuant to 19 NYCRR §900-3.2(a)(2) and consistent with 19 NYCRR §900-10.2:

(1) Net Conservation Benefit Plan (NCBP) Required - The Permittee shall submit a NCBP in compliance with the requirements set forth in 19 NYCRR §900-6.4(o)(3) to achieve a net conservation benefit for the following **(redacted)**: [REDACTED]

[REDACTED]

- (2) Other Requirements - To the extent that the Permittee is unable to utilize Horizontal Direction Drilling (HDD) methods to the maximum extent practicable to avoid any potential significant adverse impacts to threatened or endangered species occupying waterbodies, streams or rivers within the Facility Site (see subpart 5, section IV(p)(8) of this Draft Permit and Site Specific Condition 6(h) below), the Permittee shall submit an additional NCBP in compliance with the requirements set forth in 19 NYCRR §900-6.4(o)(1) to achieve a net conservation benefit for the following threatened or endangered species (**redacted**): [REDACTED]

[REDACTED]

- (h) Water Resources and Aquatic Ecology - Pursuant to 19 NYCRR §900-3.2(a)(2) and consistent with 19 NYCRR §900-10.2:

- (1) Horizontal Direction Drilling (HDD) - To avoid, minimize or mitigate potential significant adverse impacts to the maximum extent practicable to waterbodies, streams or rivers within the Facility Site, and aquatic species occupying this habitat (including without limitation avoiding impacts to NYS threatened or endangered aquatic species), the Permittee shall use HDD methods to install collections lines and associated cabling underneath streams and rivers to the extent practicable.

- (2) Site-Specific Crossing Plan - The Permittee shall submit a Site-Specific Crossing Plan for the subsurface crossings of the Genesee River and Honeoye Creek using trenchless crossing methods. Each Site-Specific Crossing Plan must be prepared and stamped by a qualified engineer licensed to work in New York, shall meet all applicable requirements in this Draft Permit, and must be approved by the Office in consultation with NYSDEC before construction begins on the project. At a minimum, each Site-Specific Crossing Plan must include:

- (i) Detailed engineering plans with plan views and cross sections that contains the stream channel, pipe locations, pipe diameter, locations of boring pits, pullback areas, laydown areas, areas of vegetative clearing/cutting, erosion and sediment control measures, and dewatering wells (if necessary).
- (ii) Geotechnical data characterizing the soils for the entire depth profile of the crossing within the pipeline trajectory.
- (iii) A site-specific analysis of the potential for inadvertent returns or frac-outs, including but not limited to, an evaluation of soil strength to resist drilling fluid pressure, and the likelihood to maintain borehole stability.
- (iv) In addition to requirements contained in 19 NYCRR §900-10.2(f)(5), a site-specific plan to address inadvertent returns or frac-outs that occur within the stream that includes dedicated equipment and staff on site during active directional drilling to immediately collect fracking fluid released into the stream and halt additional spread. ORES must be notified within 24 hours of the release of fracking fluid.
- (v) If an inadvertent return or frac-out occurs, the Permittee must develop and submit to ORES a "Corrective Action Plan" to remove any remaining fracking fluid and restore the stream to preexisting conditions. At a minimum, the "Corrective Action Plan" shall include a description of the condition(s) requiring corrective action, methods and schedule for conducting the corrective action (s). Permittee shall implement the approved "Corrective Action Plan" immediately after receiving written approval from ORES, according to the approved schedule.

- (vi) A site-specific analysis of the appropriate depth of pipe beneath the waterbody to assure sufficient cover is provided considering vertical and horizontal movement of the stream. This analysis should consider 0.2 percent chance flow events anticipated over the life of the facility, including an appropriate design flow multiplier to account for future flows given a changing climate.

- (i) Wetland Restoration and Mitigation Plan - Pursuant to 19 NYCRR §900-3.2(a)(2) and consistent with 19 NYCRR §900-10.2(f)(2), the Permittee shall submit a Wetland Restoration and Mitigation Plan, which shall include:
 - (1) Descriptions of the impacts requiring mitigation contained in Table 1 of 19 NYCRR §900-2.15, including a table that contains acreage impacted by each activity as determined in the Permittee's Wetland and Stream Delineation Report (January 2020) (Appendix 22j, DMM Item No. 5), as amended and supplemented to comply with the provisions of this Draft Permit, and broken down by wetland classification for wetland or adjacent area similar to the Permittee's Wetland and Stream Impact Table (Appendix 22m, DMM Item No. 5 at pp. 23-24), modified to include the following additional impacts:
 - i. 2,153.4 square feet of temporary impact to wetland RLE (NYSDEC wetland "CA-5") for an access road; and
 - ii. 3,340.7 square feet of temporary impact to wetland MRH (NYSDEC wetland "RU-21") for an access road;

Each as referenced in the following table illustrating the additional impacts in total with other impacts identified as of the date of this Draft Permit:

| Total Impacts Requiring Mitigation at Horseshoe Solar | | | | |
|--|---------------------------|----------|-------------------------------|----------------------------------|
| | Class I (Wetland CA-5) | | Class II (Wetland CA-6) | Class III (Wetland RU- 21) |
| Feature/Activity | FWW | AA | AA | FWW |
| Access Roads | 2,153.4 | | | 3,340.7 |
| Power interconnections (including clearing for interconnections) | 0 | 18,050.0 | 107,504.9 | 0 |
| Security fence | 0 | 4,773.8 | | 0 |
| Square Feet Total | 2,153.4 | 22,823.8 | 107,504.9 | 3,340.7 |
| Acres Total | 0.05 | 0.52 | 2.47 | 0.08 |
| Mitigation Requirement from Table 1 in §900-2.15(g) | A(M1) | A(E) | A(E) | A(M3) |

- (2) Narrative information, applicable real property and other documentation, and plans, specifications and details for the mitigation of potential significant adverse impacts to wetlands and adjacent areas in compliance with the requirements set forth in 19 NYCRR §900-2.15(g) and other applicable provisions of this Draft Permit.
- (j) Phased Notice to Proceed - Pursuant to 19 NYCRR §900-3.2(a)(2) and consistent with 19 NYCRR §900-10.2, and in addition to the Notice to Proceed (NTP) authorization in 19 NYCRR §900-6.1(g), the Permittee may request a conditional NTP for a specific construction activity or specific phase of construction. For each such requested activity or phase, the Permittee shall have submitted to the Office a scope of work and all applicable pre-construction compliance filings listed in 19 NYCRR §900-10.2 or this Draft Permit and identified by the Office as a condition to NTP approval.

- (k) Final Decommissioning and Site Restoration Plan - Pursuant to §900-3.2(a)(2) and consistent with 19 NYCRR §900-10.2(b), the Permittee shall submit a Final Decommissioning and Site Restoration Plan for the Solar Facility, to include details concerning the total salvage value of Solar Facility components and reference to salvage value data source(s) in compliance with the requirements of 19 NYCRR §900-2.24(c).

7 COMPLIANCE REQUIREMENTS (19 NYCRR Subpart 900-10)

The Permittee shall submit the following compliance filings to the Office or NYSDPS for review and approval in accordance with 19 NYCRR §900-10.1. Certain compliance filings are not applicable, as noted below, due to the fact that the Facility has been designed to avoid impacts to a particular resource, the resource is not present at this Facility, the specific technology proposed renders the compliance filings inapplicable, or the Permittee has requested a site specific condition.

I. Pre-Construction Compliance Filings (19 NYCRR §900-10.2):

Pre-construction compliance filings required pursuant to 19 NYCRR §900-10.2 shall be submitted to the Office.

- (a) Copies of all federal and federally-delegated permits and approvals required for construction and operation of the facility.

- (b) Final Decommissioning.

- (1) Final Decommissioning and Site Restoration Plan, including a decommissioning and site restoration estimate (for site restoration and decommissioning of all proposed Facility components removed four (4) feet below grade in agricultural land and three (3) feet below grade in non-agricultural land and removal and restoration of access road locations, where appropriate) and proof that the letter(s) of credit (or other financial assurance approved by the ORES) have been obtained in the decommissioning and site restoration estimate amount, as calculated pursuant to 19 NYCRR §900-6.6(b).

(2) Letter(s) of credit (or other financial assurance approved by the ORES) and copies of agreements between the Permittee and the Towns, Cities, and Villages, establishing a right for each municipality to draw on the letters of credit dedicated to its portion of the facility shall be provided to the Office of Renewable Energy Siting after one year of facility operation and updated every fifth year thereafter specifying changes (due to inflation or other cost increases) to the structure of the letters of credit (or other financial assurance approved by the ORES).

(c) Plans, Profiles, and Detail Drawings.

(1) A statement shall be provided indicating that a professional engineer has reviewed facility details and attests to the accuracy of the final design as reflected in revised and initially filed (unaffected material) maps, site plans, profile figures, and environmental controls and construction details in accordance with 19 NYCRR §§ 900-2.6 and 900-2.17.

(2) Foundation drawings, including plan and sections details, to be used for wind turbines **(NOT APPLICABLE)** or solar facility installations; if multiple foundation designs are to be utilized for the facility, the foundation type at each location will be specified on foundation plans (listed in a table or indicated on corresponding site plans). Applicable criteria regarding foundation design and installation shall be listed and described in the drawings. Foundation drawings shall be stamped and signed by a professional engineer, licensed and registered in New York State.

(3) Copies of any agreements entered with the owners/operators of existing high-pressure gas pipelines regarding the protection of those facilities.

(d) Wind Turbine Certifications. **(NOT APPLICABLE)**

(1) A design verification, confirming that the wind turbines were designed in accordance with International Electrotechnical Commission (IEC) 61400-1:2019 (see 19 NYCRR

§900-15.1(b)(1)(i)). **(NOT APPLICABLE)**

(e) Construction Management.

- (1) A Quality Assurance and Control Plan, which shall include job titles and qualifications necessary, demonstrating how the Permittee will monitor and assure conformance of facility design, engineering and installation, including general concrete testing procedures with a plan outlining the monitoring and testing of concrete procedures in conformance with and reference to all applicable codes and standards.
- (2) A Construction Operations Plan, which shall indicate all material lay-down areas, construction preparation areas, temporary concrete batch location, major excavation and soil storage areas, and construction equipment.
- (3) A Facility Maintenance and Management Plan, which shall include plans, procedures and criteria specifically addressing the following topics:
 - (i) Inspections, maintenance, and repairs of turbines **(NOT APPLICABLE)**, solar panels, inverters, and associated equipment, including conformance with manufacturer's required maintenance schedules, safety inspections, and tower integrity; and
 - (ii) Electric collection, transmission, and interconnect line inspections, maintenance, and repairs.
- (4) A Vegetation Management Plan, which shall include, at a minimum, the following:
 - (i) Vegetation management practices for switchyard and substation yards and for transmission and interconnection facilities, including danger trees (trees that due to location and condition are a particular threat to fall on and damage electrical equipment) around transmission and interconnection facilities, specifications for clearances, inspection and treatment schedules, and environmental controls to avoid off-site effects;

- (ii) Vegetation management recommendations, based on on-site surveys of vegetation cover types and growth habits of undesirable vegetation species;
 - (iii) Planting of native vegetation, based on on-site surveys of vegetation cover types and growth habits of undesirable vegetation species;
 - (iv) Restoration of disturbed areas, ruts, and rills to original grades and conditions with permanent re-vegetation and erosion controls appropriate for those locations;
 - (v) All proposed chemical and mechanical techniques for managing undesirable vegetation. Herbicide use and limitations, specifications, and control measures shall be included;
 - (vi) Substation fence-line clearances, and overhead wire security clearance zone specifications, indicating applicable safety, reliability and operational criteria;
 - (vii) Inspection and target treatment schedules and exceptions;
 - (viii) Standards and practices for inspection of facilities easements for erosion hazard, failure of drainage facilities, hazardous conditions after storm events or other incidents;
 - (ix) Review and response procedures to avoid conflicts with future use encroachment or infrastructure development; and
 - (x) Host landowner notification procedures.
- (5) Facility Communications Plan, which shall include the Permittee's construction organizational structure, contact list, and protocol for communication between parties. The Permittee shall provide to NYSDPS staff, Office staff and the municipalities the names and contact information of all individuals responsible for facility oversight.
- (6) Environmental Monitoring Plan, including names and qualifications of companies that will serve as environmental monitors (including agricultural monitor **(see Site Specific Condition 6(f))**).
- (7) A Complaint Management Plan, which shall describe, at a

minimum, the following:

- (i) Methods for registering a complaint, which shall include a phone number, email address, mailing address, and a form to report complaints;
 - (ii) Notification to the public of the complaint procedures;
 - (iii) Process for responding to and resolving complaints in a consistent, timely, and respectful manner;
 - (iv) Logging and tracking of all complaints received and resolutions achieved, with records of the following for each complaint containing:
 - (a) The name and contact information of the person filing the complaint;
 - (b) Location and owner of the property where the complaint originated;
 - (c) Date and time of the underlying event causing the complaint;
 - (d) Description of the complaint; and
 - (e) Current status and description of measures taken to resolve complaint.
 - (v) Reporting to the Office and the NYSDPS any complaints not resolved within thirty (30) days of receipt;
 - (vi) Mediating complaints not resolved within sixty (60) days; and
 - (vii) Providing annual reports of complaint resolution tracking to the Office staff and NYSDPS staff, which shall also be filed with the Executive Director of the Office and Secretary of the NYSDPS.
- (8) A Traffic Control Plan shall be in effect during facility construction, to ensure safety and minimize potential delays to local traffic during construction, which shall describe, at a minimum, the following:
- (i) Maps and plans showing final haul routes developed in consultation with the host municipalities and NYS, County and municipal highway officials in coordination with the turbine manufacturer **(NOT APPLICABLE)**. Final haul routes shall be accurately depicted in drawings submitted with the Traffic Control Plan.
 - (ii) Copies of all necessary transportation permits from the

affected State, County, and municipal agencies for such equipment and/or materials on such route. Such permits shall include but not be limited to: Highway Work Permits to work within the ROW, permits to exceed posted weight limits, Highway Utility Permits to construct facilities within ROW, Traffic Signal Permits to work within ROW, Special Haul Permits for oversize/overweight vehicles, and Divisible Load overweight Permits.

- (iii) Copies of all necessary agreements with utility companies for raising or relocating overhead wires where necessary to accommodate the oversize/overweight delivery vehicles, if applicable.
- (iv) A copy of all road use and restoration agreements, if any, between the Permittee and landowners, municipalities, or other entities, regarding repair of local roads damaged by heavy equipment, construction or maintenance activities during construction and operation of the facility.

(f) Environmental.

- (1) Proof that the required payment was made into the Endangered and Threatened Species Mitigation Bank Fund, if required.
- (2) A copy of the Wetland Restoration and Mitigation Plan, if required (**see Site Specific Condition 6(i)**).
- (3) A copy of the Stream Restoration and Mitigation Plan, if required (**see Site Specific Condition 6(h)**).
- (4) A copy of the Invasive Species Control and Management Plan (ISCMP), prepared in compliance with 6 NYCRR Part 575, which shall include the following information:
 - (i) Baseline mapping of all invasive species within the facility area and for one hundred (100) feet beyond the facility's limit of disturbance (LOD). The baseline mapping and data shall include the relative abundance and distribution of each invasive species prior to the commencement of any construction activities;
 - (ii) Identification of specific control, removal, and

- disposal measures to be implemented for each identified and mapped invasive species/plant community during construction activities. The ISCMP shall include a detailed sequence and schedule for all mechanical and chemical control measures to be implemented during construction activities;
- (iii) A detailed monitoring plan and specific sampling protocols for each identified and mapped invasive species/plant community within the facility area and for one hundred (100) feet beyond the LOD;
 - (iv) Identification of specific control contingency measures to be implemented as part of the ISCMP for each identified and mapped invasive species for the duration of the facility adaptive management and monitoring period (i.e., 5 years, unless extended). The ISCMP shall include a detailed sequence and schedule for all contingency mechanical and chemical control measures to be implemented during the monitoring period;
 - (v) Specific contingency measures to be implemented (i.e., regrading, re-planting of native species etc.) to achieve the final site restoration criteria (i.e., eighty (80) percent survivorship of appropriate native species reestablishment over all portions of the replanted areas, unless the baseline survey indicates a smaller percentage of appropriate species exists prior to construction); and
 - (vi) Details regarding the responsible party or parties designated to implement the ISCMP and what financial assurances exist to ensure successful monitoring and ISCMP implementation.
- (5) A copy of an Inadvertent Return Flow Plan containing the following requirements (**see Site Specific Condition 6(h)**):
- (i) Erosion and sediment control shall be used at the point of HDD, so that drilling fluid shall not escape the drill site and enter NYS-regulated wetlands, waterbodies and streams (as delineated pursuant to 19 NYCRR §§ 900-1.3(e) and (f)). The disturbed area shall be restored to original grade and reseeded upon completion of HDD (**see Site Specific Condition 6(h)**);
 - (ii) Drilling fluid circulation shall be maintained to the

- extent practical **(see Site Specific Condition 6(h))**;
- (iii) If inadvertent returns occur in upland areas, the fluids shall be immediately contained and collected **(see Site Specific Condition 6(h))**; and
- (iv) If the amount of drilling fluids released is not enough to allow practical collection, the affected area shall be diluted with freshwater and allowed to dry and dissipate naturally **(see Site Specific Condition 6(h))**.
- (6) For wind facilities, a Final Geotechnical Engineering Report verifying subsurface conditions within the facility site, including the results of borings and/or test pits at each turbine location. **(NOT APPLICABLE)**
- (g) A copy of a Cultural Resources Avoidance, Minimization and Mitigation Plan, providing **(see Site Specific Condition 6(e))**:
- (1) A demonstration that impacts of construction and operation of the facilities on cultural resources (including archeological sites and any stone landscape features, and historic resources) will be avoided or minimized to the extent practicable by selection the proposed facility's location, design and/or implementation of identified mitigation measures **(see Site Specific Condition 6(e))**.
- (2) A Cultural Resources Mitigation and Offset Plan, either as adopted by federal permitting agency in subsequent National Historic Preservation Act (NHPA) Section 106 review, or as required by the Office, in consultation with New York State Historic Preservation Office (SHPO) in the event that the NHPA Section 106 review does not require that the mitigation plan be implemented. Proof of mitigation funding awards for offset facility implementation to be provided within two (2) years of the start of construction of the facility shall be included **(see Site Specific Condition 6(e))**.
- (h) Real Property Rights.
- (1) A copy of all necessary titles to or leasehold interests in the facility, including ingress and egress access to public streets, and such deeds, easements, leases, licenses, or

other real property rights or privileges as are necessary for all interconnections for the facility.

(2) Map of survey of facility site properties with property lines based on metes and bounds survey.

(3) Notarized memos or similar proof of agreement for any participating property whose owner has signed a participation agreement or other type of agreement addressing potential facility impacts (e.g., noise, shadow flicker, setback, etc.).

(i) A copy of any Interconnection Agreement(s) (IA).

(j) Documentation of all host community benefits to be provided by the Permittee.

II. Post-Construction Compliance Filings (19 NYCRR §900-10.3):

Post-construction compliance filings required pursuant to 19 NYCRR §900-10.3 shall be submitted to the NYSDPS.

(a) Any updated information regarding the design, safety and testing for the wind turbines **(NOT APPLICABLE)**, solar panel, inverters, substation, transformer, and battery storage equipment **(NOT APPLICABLE)** to be installed during construction as well as information regarding the design, safety, and testing for any equipment installed during facility operation as a replacement of failed or outdated equipment shall be filed within fourteen (14) days of completion of all final post-construction restoration.

(b) As-built plans in both hard and electronic copies shall be filed within nine (9) months of the commencement of commercial operations of the facility and shall include the following:

(1) GIS shapefiles showing all components of the facility (wind turbine locations **(NOT APPLICABLE)**, solar panel array locations, electrical collection system, substation, buildings, access roads, met towers **(NOT APPLICABLE)**, point

of interconnection, etc.);

(2) Collection circuit layout map; and

(3) Details for all facility component crossings of, and co-located installations of facility components with, existing pipelines: showing cover, separation distances, any protection measures installed, and locations of such crossings and

(4) co-located installations.