Supplement to the Application for a Permit Pursuant to § 94-c of the New York State Executive Law for Construction of a Major Solar Electrical Generating Facility

Riverside Solar Project

Towns of Lyme and Brownville, Jefferson County, New York

Matter No. 21-00752

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In response to the Notice of Incomplete Application Letter received December 17, 2021 from the Executive Director of the New York State Board Office of Renewable Energy Siting (ORES) regarding the Application submitted by Riverside Solar, LLC (Applicant) pursuant to § 94-c of the New York State Executive Law for Construction of a Major Solar Electrical Generating Facility for the Riverside Solar Project (the Project), supplemental information is provided below and attached. The organization of this document (hereafter referred to as the "Supplement to the Application") is consistent with the December 17, 2021 letter and presents each comment followed by the Applicant's response to the comment.

General Requirements of the Application

1. 19 NYCRR §900-1.3(a) requires that the Applicant consult with local agencies and provide "[p}roof of pre-application meeting(s) conducted no less than 60 days before application filing." Please supplement Exhibit 2 to include this information.

Response: The Applicant updated Exhibit 2 to include a list of attendees to the local agency meeting held on February 26, 2021. The updated Exhibit is included herein as Attachment A. The PowerPoint presentation given at the local agency meeting is also included as a new appendix (Appendix 2-6) to Exhibit 2, and is included herein as Attachment B.

2. 19 NYCRR §900-1.3(a)(1)-(a)(8) requires that the Applicant provide a description of the proposed facility, a map of the proposed facility site and other information. The Applicant provided a brief statement in Exhibit 2 about the content of the Local Agency Consultation meeting but did not include all required information. Please supplement Exhibit 2 to include the required summaries, descriptions and figures provided to local agencies.

Response: The Applicant has revised Exhibit 2 to include the PowerPoint presentation given at the local agency meeting (see Attachment A herein). Additional correspondence or outreach to agencies was documented in the Meeting Log (included as Appendix 2-5 of Exhibit 2).

3. 19 NYCRR §900-1.3(b) requires that the Applicant meet with community members prior to filing an application and "[p]rovide notice of the meeting no sooner than thirty (30) days and no later than fourteen (14) days prior to the meeting in accordance with the publication requirements of section 900-1.6(c) of this Part." Please provide proof of notification regarding the community meeting held on March 2, 2021.

Response: Notification of the virtual community meeting was provided in the following publications:

- Watertown Daily Times; Friday 2/12/21 and Tuesday 2/16/21
- Thousand Island Sun; Wednesday 2/10/21 and Wednesday 2/17/21
- Jefferson County Pennysaver; Friday 2/12/21 and Friday 2/19/21

Postcards were mailed to landowners within the Facility Site and those within one mile of the Facility Site notifying them of the virtual community meeting, and the meeting was listed on the Riverside website two weeks before taking place. The Applicant also provided the mailer to those on the original Article 10 Service List. Two postcards were sent in advance of the meeting; the second one gave more specific project location info, per feedback received from a community member on the first postcard. The affidavits of service regarding the notification of the community meeting held on March 2, 2021 are included herein as Attachment C.

4. 19 NYCRR §900-1.3(c) requires that the application include "[c]opies of transcripts (if any), presentation materials, and a summary of questions raised and responses provided during the pre-application meeting(s)." In addition, if the "[applicant is unable to secure a meeting with a municipality, the application shall contain a detailed explanation of all of applicant's best efforts and reasonable attempts to secure such meeting, including, but not limited to, all written communications between the applicant and the municipality." The applicant provided the required materials and Q&A summary for the community meeting, but not for the meeting with the local agencies. Please provide the required information for the local agency meeting on February 26, 2021, and confirm that all local agencies were in attendance.

Response: A meeting with the local agencies was held via Zoom on February 26, 2021. A list of attendees is provided above in response to Deficiency #1. The Applicant answered questions from the attendees throughout the presentation and following the presentation. The presentation materials from the local agency meeting are included herein as Attachment B. As questions were addressed during the presentation, no official Question and Answer (Q&A) document was prepared or circulated following the meeting. As shown in the PIP Meeting Log, the Applicant continued outreach and correspondence with local agencies (including the Towns of Brownville and Lyme and Jefferson County) and no outstanding concerns have been posed to date.

5. 19 NYCRR §900-1.3(d) requires that the application include "[c]opies of transcripts (if any), presentation materials, and a summary of questions raised and responses provided during the pre-application meeting(s)." The applicant provided the required Q&A summary for the community meeting, but not for the meeting with the local agencies. Please provide the required Q&A and other information for the local agency meeting on February 26, 2021 (or other applicable date), and confirm that all local agencies were in attendance.

Response: As described above, a formal Q&A was not prepared as part of the local agency meeting as questions were addressed during the meeting in a conversational manner. The PowerPoint slides presented at the local agency meeting are included as Attachment B and Exhibit 2 has been updated to include the list of attendees.

6. 19 NYCRR §900-1.4(a)(4)(i)-(vi) requires the creation of a website that includes a description of "…[t]he proposed facility, its location, and the range of potential environmental and health impacts of the construction and operation of the facility;" a map of the proposed facility site; a statement detailing when and where the application may be examined; information on the availability of the local agency account funds; an explanation of how and where persons can file a request to receive notices concerning the proposed facility; and information as to how to access relevant documents on the ORES website. Please revise the content of the website to include the required information (e.g. maps, impacts, request notices, potential impacts of the project) with links in a more prominent location to ensure the information is easily accessible to the public.

Response: The Applicant has revised the Facility's website to include a map of the proposed Facility, request notices, a discussion of impacts and potential impacts of the project, and more prominent links. The website is available at the following link: https://www.aes.com/riverside-solar-project. Links have been adjusted to be more visible and easily located.

7. 19 NYCRR §900-2.1(e) requires that "[i]f the same information is required for more than one exhibit, it may be supplied in a single exhibit and cross-referenced in the other exhibit(s) where it is also required." When addressing the comments set forth herein, the Office respectfully requests that additional cross-references to other Exhibits and Appendices be included in the updated Application materials.

Response: The Applicant has provided additional cross-references in the supplemental material included herein, as well as in Exhibits and Appendices that have been updated in response to the deficiencies herein.

Exhibit 3 – Location of Facilities and Surrounding Land Use

1. Exhibit 3, page 41 states that "[t]here will be a total forested habitat loss of 82 acres." Please confirm that related facility site parcels are not currently enrolled in the 480a Forest Tax Law Program.

Response: The Applicant has conducted outreach with landowners and determined that none of the related Facility Site parcels are currently enrolled in the 480a Forest Tax Law Program.

2. 19 NYCRR §900-2.4(a) requires the use of the "[l]atest or recent edition USGS maps (1:24,000 topographic edition, utilizing GIS mapping to the extent available)". Please revise Figure 3-1 using the appropriate 1:24,000 scale.

Response: A Revised Figure 3-1 at a scale of 1:24,000 is included herein as Attachment D.

3. 19 NYCRR §900-2.4(a)(2) requires "[t]he proposed location of any off-site utility interconnections, including all electric transmission lines, communications lines, stormwater drainage lines… servicing the site of the facility." Page 2 of Exhibit 3 states that the Facility will have no need for stormwater drainage lines. However, Figure 3-1 depicts stormwater drainage lines in multiple locations within the Facility Site. Please clarify and confirm whether the stormwater drainage lines depicted on Figure 3-1 are proposed or existing.

Response: As stated in the Exhibit, the Facility will not require stormwater drainage lines. Figure 3-1 has been revised to remove the erroneous stormwater drainage lines and is included herein as Attachment D.

4. 19 NYCRR §900-2.4(e) requires "[a] map of any existing overhead and underground major facilities for electric, gas or telecommunications transmission within the study area and a summary of any consultations with owners of major facilities for electric, gas or telecommunications that may be impacted by the facility (crossing existing utilities or otherwise)." The narrative in Exhibit 3 states that Figure 3-3 shows major electric, gas, water, and fiber optic lines, however, the legend for Figure 3-3 only includes electric and

fiber optic lines. Please add the gas/water lines to the figure or confirm that there are none within the facility site.

Response: There are no gas lines within the Facility Site; therefore, none are visible on Figure 3-3. Water lines have been added to Figure 3-3. The legend has been updated and the Revised Figure 3-3 is included herein as Attachment E.

5. 19 NYCRR §900-2.4(k) requires "[m]aps showing recreational and other land uses within the study area that might be affected by the sight or sound of the construction or operation of the facility, interconnections and related facilities…" The map in Appendix 8-1, Figure 3 does not depict recreational resources. Please revise the map to include the snowmobile trail that traverses through the facility site, and cross-country ski trails which were only described in the narrative.

Response: The location of the snowmobile trail was included on Figure 3 of Appendix 8-1; however, Figure 2 has been updated to make the snowmobile trail more visible (Attachment F: Revised VIA). The Applicant understands that the Facility Site is occasionally used for cross-country skiing; however, the boundaries of a cross-country skiing trail have not been established on the Site and are, therefore, not available.

Exhibit 4 – Real Property

1. Figure 4-1 depicts portions of "landowner-imposed development restriction areas". Please describe the restrictions imposed and how the Facility is designed to comply with the restriction.

Response: The Applicant has indicated portions of landowner-imposed development restriction areas to indicate portions of participating parcels which the landowner has requested not be used for the siting of Facility components. These areas remained within the boundaries of the Facility Site to accurately reflect parcel boundaries and identify limitations placed upon the Applicant during siting of Facility components. Some specific considerations resulting in landowner-imposed development restriction areas include the following by parcel:

- Parcel ID 62.00-2-13.22 (Sheets 1 and 2 of Figure 4-1): Two areas were avoided due to the presence of ponds and wet features. Avoiding these features still allowed a large, contiguous portion of available land for siting of Facility components. Additionally, one area consisting of a home with outbuildings was also avoided.

- Parcel ID 62.00-1-62.1 (Sheet 3 of Figure 4-1): An area along Weaver Road was avoided for the siting of Facility components by the landowner as it encompasses a home and associated buildings.
- Parcel ID 62.00-1-63 (Sheet 3 of Figure 4-1): Early discussions with the landowner on this parcel resulted in an area on the northern area of the parcel being avoided due the presence of a residence, and areas along either side of Weaver Road being avoided due to siting concerns early in the process. While these areas may have been considered for development, the Applicant currently does not have lease options for these portions of the parcel and was able to successfully site the Facility on the land currently under option.
- Parcel ID 62.00-1-7.31 (Sheet 4 of Figure 4-1): The northern portions of this parcel are bisected by Morris Tract Road and have landowner-imposed development restrictions applied. Based on early siting considerations, the presence of a home and associated structures on either side of Morris Tract Road, as well as the existing stream, did not make these areas ideal for siting Facility components. Use of these areas would have required increased impacts via crossings of existing features (e.g., roadway and stream). These impacts have been avoided by not siting Facility components in these areas.

Exhibit 5 – Design Drawings

1. 19 NYCRR §900-2.6(f)(1)(i)(c) and (f)(s)(iii) requires that general site plan drawings and typical details include information for any proposed splice vaults at solar facilities. Section (2)(iii) in Exhibit 5 states that splice vaults are provided, however, details indicate that splicing will be achieved though sectionized enclosures. Please update Exhibit 5 to describe splicing methods and proposed splicing structures shown on drawing PV-C.12.03; and provide approximate locations of sectionizing enclosures on updated site plans.

Response: Typical underground infrastructure/collection system details have been provided, including single and multiple circuit layouts with dimensions of proposed depth, trench width, level of cover, separation requirements between circuits, clearing width limits for construction and operation of the facility, LOD, required permanent ROW and a description of the cable installation process. Sheets PV-C.12.01 and PV-C.12.02 of Appendix 5-1 include details on the collection system and installation information.

Splicing will be carried out through the use of direct buried splices. Splicing locations will be determined during construction and will occur as needed, based on conductor spool length availability. The preferred splicing method will consist in the use of Cold Shrink splices. At each splicing location there will also be detectable warning tape and a marker ball so the splice can be easily found and identified. For situations in which multiple MV cables meet Sectionalizing Enclosures will be installed instead of splicing. There is only one instance in which a Sectionalizing Enclosure is required on this project, and it can be seen on sheet PV-C.01.06. Typical details of any proposed Splices and Sectionalizing Enclosures have been provided, including dimensions, level of cover, and required trench width and depth. They can be found on sheet PV-C.12.03 of Appendix 5-1. A revised sheet PV-C.12.03 has been included herein as Attachment G.

Exhibit 6 – Public Health, Safety, and Security

1. 19 NYCRR §900-2.7(c)(4) requires that the Safety Response Plan at Appendix 6-1 include "[c]ommunity notification procedures by contingency." Please update section 4.0 of Appendix 6-1 to include community notification procedures, including municipal officials and landowners, by contingency.

Response: As indicated in Section 4.2 of Appendix 6-1, AES personnel and subcontractors working at the Facility Site will assess any developing emergency situation and contact appropriate Facility personnel and/or local emergency services for assistance, based on the significance of the emergency. If the emergency requires external emergency responders to arrive on the Site, the initial responder must coordinate the response. For emergencies of a significant nature, such as a fire or medical emergency, the initial responder shall call 911.

The contingencies covered by the Safety Response Plan will not require notification to municipal officials or landowners but will be covered by communications with local emergency responders via 911, and dissemination of information among local responding agencies would be managed by those agencies and 911 operators in accordance with their established protocols.

Additionally, the contingencies which may require local emergency notification (Fire Emergency, Physical Threat, Security Breach or Crime, Environmental Accident or Spill, Injuries and/or Serious Health Conditions) already include language regarding contacting external emergency responders. Therefore, the Applicant has not made any updates to section 4.0 the Safety Response Plan.

The proposed Facility does not create safety concerns of a magnitude that would necessitate a community evacuation. However, in the event that the community needs to be notified of an emergency situation that is specific to the Facility and/or has the potential to affect the public (e.g., fires, hazardous material spills or releases, and certain physical security threats), the Facility personnel will notify local officials and emergency responders, as appropriate and as already indicated in Section 4.2 of Appendix 6-1.

2. 19 NYCRR §900-2.7(c)(7) requires that the Safety Response Plan at Appendix 6-1 include a statement that "[t]raining drills with emergency responders will be conducted at least once per year." Section 5 of the plan indicates that training will take place annually, but Section 3.3 states that training for state and local emergency response will only occur periodically over the life of the facility. Please clarify that training will occur on an annual basis.

Response: The Safety Response Plan (Appendix 6-1 of the Application) has been updated to clarify that training will occur on an annual basis. The Revised Safety Response Plan is included herein as Attachment H.

Exhibit 7 – Noise and Vibration

1. Please provide all noise and vibration modeling data as well as manufacturers cut-sheets for low-voltage transformers (LVTs) and tracking motors. Please update the modeling to include the LVTs and the DuraTrack tracking system identified in Appendix 2-2 and update any associated tables.

Response: Manufacturers sound level data for the low-voltage transformers (LVTs) was included in Appendix 7-7 of Exhibit 7. Page three of Appendix 7-7 indicates the LVTs have a sound power level of 66 dBA. The LVTs are co-located with the central inverters, which were modeled using a sound power level of 92 dBA. The difference in sound power levels between the inverters and LVTs is 26 dBA. A mathematical property of decibels is that if one source of sound is at least 10 dB louder than another source, then the total sound level is simply the sound level of the higher source. Therefore, if the sound power levels of the inverters and LVTs were added together, the result would be the same value that was already modeled (92 dBA). For this reason, the LVTs are a negligible sound source and they have not been included in acoustic modeling of the Project.

Similar to the LVTs, the small electric tracking motors are also negligible sources of sound. Manufacturers sound level data for the tracking motors are not available; however, based on Epsilon's experience, the sound power levels of tracking motors for solar arrays are typically in the range of 65 to 70 dBA. Additionally, according to the racking manufacturer applications engineer, the tracking motors for the Facility will only operate for approximately 19 minutes per day. This operational time is spread out throughout the entire day (i.e., the motors only cycle for a few seconds at a time). The sound level limits presented in 94-c Application applicable to operational sound from the Facility are based on an 8-hour Leq. Nineteen minutes represents 3.96% of an 8-hour time period. A 3.96% usage factor results in a 14 dBA correction based on the following equation:

10 x LOG (0.0375) = -14.

Therefore, based on a 70 dBA sound power level, the total corrected 8-hour Leq sound power level of a tracking motor accounting for their small amount of operational time is approximately 56 dBA. (70 dBA – 14 dBA = 56 dBA). The shortest distance from a non-participating receptor to a project component is 450 feet (137 meters). Based on the corrected sound power level and this distance, the 8-hour Leq of a tracking motor would be approximately 2 dBA at the closest receptor. For these reasons, the tracking motors are a negligible sound source and they have not been included in the acoustic modeling of the Facility.

2. 19 NYCRR §900-2.8(j)(1) requires that "[t]he model shall use the ANSI/ASA S12.62-2012/ISO 9613-2:1996 (MOD) … or the ISO-9613-2:1996 propagation standard … for the main phases of construction, and from activities at any proposed batch plant area/laydown area." Exhibit 7, Section 7(j) (page 11) states that "[f]uture construction noise modeling was performed for the main phases of construction and from activities at the proposed batch plant/laydown area…" Noise modeling for the batch plant was not performed. Please assess the impact of construction noise from the batch plant, if any.

Response: Construction of the Facility will not include a batch plant. The reference to a batch plant was erroneously included in the Exhibit 7 document, therefore noise modeling for a batch plant was not performed.

3. 19 NYCRR §900-2.8(j)(2) requires that "[t]he model shall include, at a minimum, all noise sources and construction sites that may operate simultaneously to meet the proposed construction schedule for the most critical timeframes of each phase." Please evaluate the cumulative effect of all construction activities and sites that will need to occur or operate simultaneously across the entire Project site to meet the proposed construction schedules and report the results, especially for road construction, trenching, inverter installation and piling.

Response: The construction noise modeling that was performed for Exhibit 7 analyzed the sound level impacts from construction at the closest locations to a receptor (home) and assumed several pieces of construction equipment were operating simultaneously at those closest locations for each of the five phases (site preparation and grading, trenching and road construction, HDD, equipment installation, and commissioning). This analysis meets the requirements of 19 NYCRR § 900-2.8(j)(2).

However, to address the above comment, the "Worst Case Total, All Phases" sound level has been calculated for the ten closest receptors. These values are presented in the last column of Tables 7-7 and 7-8 in Attachment I. These values represent the worst-case construction sound levels from all pieces of equipment assuming all phases of construction are occurring simultaneously at the closest locations to a receptor. These results overstate expected real-world results, because under actual construction conditions, not all pieces of equipment will be operating at the same exact time, and the highest sound levels from every piece of equipment will not tend to occur at the same time as was assumed in the modeling. At all other areas of construction, sound levels due to construction will be lower, as those locations are further from receptors.

To account for the possible cumulative effect of all construction activities, additional modeling scenarios were performed assuming simultaneous construction activity at ten sites throughout the Facility Site. In addition, a sound contour figure of the loudest phase assuming cumulative activity (trenching and road construction) has been created. Tabular results at receptors for each phase of cumulative construction activity and the sound contour figure are presented in Attachment J (Table 7-11 and Figure 7-j.2). These results overstate expected real-world results, because under actual construction conditions, not all pieces of equipment will be operating at the same exact time, and the highest sound levels from every piece of equipment will not tend to occur at the same time as was assumed in the modeling.

4. 19 NYCRR §900-2.8(q)(2)(ii) requires that "[t]itles shall identify whether the tabular or graphical information correspond to the "unmitigated" or "mitigated" results, if any mitigation measures are evaluated, and "cumulative" or "non-cumulative" for cumulative noise assessments." Please revise the titles in Tables 7-4, 7-5, 7-7, and 7-8, Appendix 7-4, and Appendix 7-5 and specify if the data provided in the tables applies to mitigated or unmitigated results.

Response: Exhibit 7 did not present results using "unmitigated" or "mitigated" labeling because no mitigation was required to achieve compliance with the noise limits; therefore, all results are unmitigated. To more clearly identify the results, the titles and descriptions of Tables 7-4, 7-5, 7-7, and 7-8, Appendix 7-4, and Appendix 7-5 have been revised and are provided in Attachment I.

Exhibit 8 – Visual Impacts

1. 19 NYCRR §900-2.9(a) requires that the Applicant's VIA include a cumulative visual impact analysis. Please supplement the discussion at Exhibit 8 and the VIA at Appendix 8-1 to include separate discussion of how the proposed Facility is sited to avoid, minimize or mitigate potential cumulative visual impact(s) to the surrounding community, including discussion of other renewable energy facilities, potential VSRs and other resources.

Response: The Applicant has updated Exhibit 8 and the Visual Impact Assessment (VIA; Appendix 8-1) to include a discussion of potential cumulative visual impacts for the Facility in relation to other renewable energy facilities found within the VSA, potential VSRs, and other resources, as well as a discussion of avoidance, minimization, and mitigation for cumulative impacts, as applicable. The Revised VIA is included herein as Attachment F. A Revised Exhibit 8 has been included herein as Attachment K.

2. 19 NYCRR §900-2.9(a) requires that the Applicant's VIA include a Visual Impacts Minimization and Mitigation Plan. Please supplement the VIA (Appendix 8-A) and Visual Impacts Minimization and Mitigation Plan (Appendix 8-B) by discussing the Applicant's evaluation of architectural design, visual offsets, relocation or rearranging of facility components, reduction of facility component profiles, alternative technologies, lighting options for work areas and safety requirements.

Response: The Visual Impacts Minimization and Mitigation Plan has been updated in Exhibit 8 and the VIA to satisfy the request to include additional items, as applicable. Please refer to Attachment F: Revised VIA and Attachment K. Revised Exhibit 8.

3. 19 NYCRR §900-2.9(a)(4) requires the Applicant to simulate "[t]he appearance of the facility upon completion, including building/structure size, architectural design, facade colors and texture, and site lighting." The simulations provided show solar arrays, but do not show buildings. Please revise accordingly.

Response: The Facility will not have an operations and maintenance (O&M) building. The sole building being proposed is the control building located within the footprint of the substation, to be sited approximately 1,480 feet west of Case Road which is one of the closest year-round publicly available locations from which the building may be visible. This light gray steel building, with associated lighting is identified in Appendix 8-1, Attachment 4, and Exhibit 5. The Revised VIA is included herein as Attachment F.

4. 19 NYCRR §900-2.9(b)(1) requires "[a] line of sight profile shall also be done for resources of statewide concern located within the VIA study area." A line of sight (LOS) profile is only provided for the Chaumont Village Historic District and Lower Case Road. Please provide LOS profiles for identified VSRs outside of the Chaumont Historic District and reference all VSRs in Table 4 – Visual Impact Rating Results.

Response: The Inventory of Aesthetic Resources within the Two-Mile Visual Study Area includes 7 aesthetic resources with potential visibility of the Facility each of these resources includes simulations or line of sight profiles in the Application as described below:

- NYS Route 12E / Great Lakes Seaway Trail (State resource)
    - 3 simulations completed. One LOS (Chaumont Historic District).
- G. Spence Donaldson Memorial Field (Local resource)
    - One simulation completed.
- Snowmobile Trail (State resource)
    - One LOS (Case Road)
- Village of Chaumont (Local resource)

  - One LOS (Chaumont Historic District) has been completed, which is from within the Village. In addition, one simulation from Route 12E was completed adjacent to the eastern municipal boundary.
- Lyme Rod and Gun Club (Local resource)
  - One simulation was completed in proximity from the resource (County Route 125).
- Morris Tract Road (Local resource)
  - Two simulations have been completed from this roadway.
- County Route 125 (Local resource)
  - One simulation has been completed from this resource (near Rod and Gun Club).

Only two of the above resources, NYS Route 12E/Great Lakes Seaway and the Snowmobile Trail (Trail C5J) are resources of statewide concern,[1] the other 5 resources are local resources. The Application includes photographic simulations for each of these local resources with potential visibility, as listed. The Application also includes LOS profiles (VIA-Appendix 8-1 Attachment 5) from both Case Road (LOS 1) and Chaumont Historic District (LOS 2). Both these LOS profiles contain the resources of statewide concern. LOS 1 - Case Road, includes the snowmobile trail and LOS - 2 Chaumont Historic District includes NYS Route 12E/Great Lakes Scenic Trail. However, the profiles have been updated to highlight these two resources of statewide concern.

In addition, the Applicant has produced a third LOS profile from the snowmobile trail which is included in the Revised VIA herein.

The photographic simulations and updated LOS profiles fully evaluate the visual and aesthetic impacts of the Facility. The purpose of conducting a line of site analyses is to demonstrate how landscape setting affects visibility and assist in confirming visibility or lack thereof, along a specific site line between two identified points. However, this is also accomplished in the VIA through viewshed analysis and simulations, which is a more comprehensive analysis than using line of sight profiles.

[1] As the 94-c regulations do not define what is to be considered a resource of Statewide concern, the NYSDEC DEP-00-2/Assessing and Mitigating Visual and Aesthetic Impacts (December 13, 2019) may be used as a guideline. Simply, these are to be State owned/designated land, such as a State Park, with aesthetic value, and they are officially designated through State law and are publicly accessible.

Line of sight profiles or simulations can then be used to determine if resources may actually have impeded views or views, or how much of the Facility is visible. Resources with visibility do not need LOS and simulations prepared, as simulations have a wider field of view and show a true correlation between the project and landscape. Therefore, resources with potential visibility of the Facility do not need both a LOS profile and a simulation to determine the extent of visibility of the Facility and requiring both simulations and LOS profiles would be duplicative and costly for no added benefit.

5. The composite viewshed maps at VIA-Appendix 8-1 Attachment 2 (Maps) presents three figures (Landscape Similarity Zones, Overview of Aesthetic Resources and PV Panel Viewshed, and Potential Visibility and Aesthetic Resources for Solar Panels).
    a. To facilitate review, please display Landscape similarity zones (Figure 1) on an aerial photo or topographic map for geographic reference.
    b. Please include photo/simulation locations on Figures 2 and 3 (Overview of Aesthetic Resources and PV Panel Viewshed and Potential Visibility and Aesthetic Resources for Solar Panels)

Response: The maps in the VIA Appendix 8-1 (Attachment 2) have been revised accordingly. Please refer to Attachment F: Revised VIA.

6. 19 NYCRR §900-2.9(c)(1) requires that "[p]hotographic simulations of the facility shall be prepared from the representative viewpoints to demonstrate the post-construction appearance of the facility. Where vegetation screening is relied on for facility mitigation, leaf-off and leaf-on simulation shall be provided."
    a. Agricultural crops are generally not a suitable form of mitigation. Application Exhibit 8, Appendix 8-1, Section 9.2.1.9. (Viewpoint 42: County Route 125) states "[t]he panels will not be visible from this vantage point once the crop within the agricultural field is established and has an opportunity to grow." Crop rotation is a common practice year to year so a field planted in corn may be replanted in soybeans or hay another year. Also, the growing season for most crops is April through November, and it is usually late in June to July that corn reaches its full height, so there is no mitigation quality from an agricultural crop during winter months when screening is needed most. Please describe how visibility of panels from Viewpoint 42 will be mitigated for all seasons.

Response: It is stated in Appendix 8-1, page 39, crops do have some screening value as they mature, and as identified in the comment screening value is crop dependent. Further discussion of visibility and mitigation, including year-round mitigation through the use of evergreen plant material, may be found on page 40 of the VIA. Edits to the description within the VIA, as necessary, will be undertaken. Please refer to Attachment F: Revised VIA.

b. Viewpoint No. 49 in the simulations provided in Application Appendix 8-1 is not created using leaf-off conditions. Consequently, both the leaf-off and leaf-on simulations for Viewpoint No. 49 represent existing leaf-on conditions. Please provide representative photographs during leaf-off conditions for all simulations.

Response: As stated in 19 NYCRR §900-2.9(c)(1), "Where vegetation screening is relied on for facility mitigation, leaf-off and leaf-on simulation shall be provided." Viewpoint 49 is not relying on vegetative screening provided by existing on-site plants, therefore leaf-off photos would not be required. In addition, this specific location was requested by the Town during a May 2021 site visit. However, the Applicant has agreed to satisfy this request. Please refer to Attachment F: Revised VIA. No other leaf-on photographs were used.

7. 19 NYCRR §900-2.9(d)(8) requires "[p]lanting Plans which shall include the facility substation; energy storage structures; and the POI Switchyard; and for components of solar generating facilities as appropriate to facility setting." Plant material selected for mitigation plantings must be adaptable to site conditions and resistant to herbivorous grazing. Thuja Occidentalis and Abies Balsamea will need to be closely monitored as the Cornell Cooperative Extension highlights these species as being frequently and heavily damaged by deer. Please describe the proposed plan for establishing mature growth of such species to provide the mitigation depicted in the simulations for the life of the project.

Response: The planting plan was developed to address requirements set for the in the local zoning ordinances and based on conversations with the Town of Lyme where it was requested that adequate plantings be considered to mitigate views. In developing a suitable plan, tree type, tree species, and plant height requirements and/or objectives needed to be considered in order to select appropriate plant material.

The plants being proposed were chosen as they would satisfy local requirements and concerns to mitigate views. In screening views, evergreen trees will be the primary material as they would provide a backdrop with appropriate opaque visual mitigation. Ornamental trees and shrubs will

help soften the use of the evergreens and enhance the screening of the Facility by creating a more naturalized pollinator-friendly planting scheme.

As noted above, the selection of plants include *Abies balsamea* (Balsam Fir) and *Thuja occidentalis* (Northern White Cedar). These are being proposed for several reasons, including:

1. A primary reason these species were selected was based on availability. It is understood that many solar projects, of varying sizes, are being proposed/developed in upstate New York; requiring native/indigenous plant material including evergreen tree species as they provide the most effective year-round screening. Expected availability of plant material is an important consideration.
2. In selecting the appropriate species for this Facility, several considerations are factored into the final choice. These included but were not limited to: size/height at maturity, growth rates, ease of maintenance, quantity, appropriate dig times, location, access to the project site from a suitable nursery, and whether the species is native/indigenous to the region.
3. In consideration of the above factors, options in suitable plant materials are limited. For instance, an available evergreen tree typically must reach a minimum height of 10-15 feet to screen the solar array but, at the same time it also needs to stay as compact as possible in order to avoid shading of the Facility in the future as the trees mature. Additionally, a suitable evergreen tree needs to maintain fullness at the base/bottom of the tree to mitigate views through the lifespan of the project. Some evergreens (such pine species) tend to limb up as they mature, allowing views into the project site thus requiring additional maintenance efforts and costs.

In considering the above requirements, the Northern White Cedar and Balsam Fir are readily available at most wholesale nurseries and/or tree farms in upstate New York, in quantities more than likely sufficient to satisfy the needs of screening the Facility from unwanted views - in a timely manner with minimum annual maintenance requirements. It is also important to have suitable sizes, as larger plant material is being proposed for this Facility. As specified, install heights are 5 to 6 feet with root balls that are balled and burlapped (B&B), rather than smaller containerized plantings. This is an effort to better ensure plant survivability rates at planting. In selecting these plant species, an attempt to avoid creating monoculture type planting schemes was achieved. These evergreens are complementary in size (with appropriate annual maintenance measures), fullness, and availability in quantity to that of the other native evergreen tree species selected and

proposed for the Facility (White Spruce and Eastern Red Cedar) which will allow for a planting scheme that includes more than one or two types of evergreens.

Planting larger evergreens should ensure that individual trees can tolerate some deer browsing, if it occurs. “Deer resistant” can be interpreted different ways depending upon the circumstance. It is often argued that there is no plant that is completely “deer resistant” as deer will eat anything if they are hungry enough, especially in times when deer populations are high and/or their typical food source becomes scarce. Deer have been known to eat a variety of vegetation that was thought to be deer resistant, including plants and other types of vegetation that they have not touched in prior years. So, caution must be taken when using the phrase “deer resistant”. Additionally, it is generally understood that no plant is completely resistant to any insect or animal predator and in some instances, such as the case with deer; “deer resistant” plants typically suggest a plant that they occasionally browse but will typically avoid when other food sources are available. Ironically, if the plants are browsed on occasions, it can actually be beneficial as it encourages and promotes new growth thereby creating fuller, more compact and dense plants which would assist in the mitigation of views. There are, however, plant species that deer tend to avoid or do not typically prefer such as spruce, juniper/cedar and serviceberry-type species, and a concerted effort to utilize and incorporate these plant species into the Landscaping Plan has been made to further promote and benefit wildlife habit and pollinator species. Furthermore, the planting scheme proposes that the evergreen plantings are to be planted adjacent to the proposed fencing and will have “deer resistant” ornamental trees and pollinator friendly shrubs planted in front of them, thus limiting deer access to the evergreen trees.

Having shrub and “deer resistant” plant species in the front of the evergreens in conjunction with various other prescriptions, recommendations, and guidelines provided in the General Landscape and Seeding Notes will be beneficial in the survivability of the plants. In addition, suggested annual maintenance includes pruning methods that conform to the Tree Care Industry Association (thus promoting healthy desirable branching and growth habits), monitoring of plant material, procurement of healthy, well-established, and hardy plantings, and plant replacement guidelines.

In order to ensure that BMPs are followed, 19 NYCRR §900-6.4(l)(3) of the regulations requires that the applicant “retain a qualified landscape architect, arborist, or ecologist to inspect the screen planting for two (2) years following installation. 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." This oversight will assist in part, ensuring that the plants develop as appropriate, and as illustrated.

8. 19 NYCRR §900-2.9(d)(9)(iii)(b) requires "…[f]ull cutoff fixtures, with no drop-down optical elements (that can spread illumination and create glare) for permanent exterior lighting…" The VIA at section 10.0, Lighting, cross-references the Lighting Plan at Exhibit 5, Appendix 5-1. Please update the Lighting Plan at Sheet HV-P.13.01 to provide the manufacturer's cut sheets and details for all proposed lighting fixtures.

Response: The Lighting Plan (Sheet HV-P.13.01) has been updated (lights were added [e.g., at gates] and revised notes and select symbology [e.g., floodlight symbols], and added a Footcandle chart listing Average, Max., and Min. footcandles) as included herein as Attachment L and as part of the Revised VIA (Attachment F). The Applicant has attached manufacturer's cut sheets and details for the proposed lighting fixtures as Attachment M (new Appendix 5-2 to Exhibit 5), herein. The Applicant will use the lighting as described and shown on the cut sheets, or similar, for the Facility.

Exhibit 9 – Cultural Resources

1. Please appropriately supplement the application to include the State Historic Preservation Office (SHPO) No Adverse Effect letter with conditions dated November 19, 2021. A confidential filing in compliance with 19 NYCRR §900-1.4(a)(6) is authorized to the extent required by applicable federal or state law. Please update the Office on the plan for addressing (or please address directly) any required modifications to other application exhibits (if any) that are required as a result of the combined determinations of the OPRHP/SHPO.

Response: Appendix 9-2 has been revised to include the No Adverse Effect Letter (with conditions) dated November 19, 2021, included herein as Attachment N. The Exhibit text has also been updated. Exhibit 2 has also been updated to reflect the receipt of the No Adverse Effect Letter.

2. 19 NYCRR §900-2.10(a)(5) requires an Unanticipated Discovery Plan. Please revise the Unanticipated Discovery Plan to include the following notification requirement: Permittee will promptly notify ORES Staff indicating details of any such discovery of possible archaeological or human remains.

Response: The Unanticipated Discovery Plan (Section 5 of Exhibit 9) has been updated as requested. A Revised Exhibit 9 is included herein as Attachment O.

Exhibit 11 – Terrestrial Ecology

1. 19 NYCRR §900-2.12(b) requires "[a]n analysis of the temporary and permanent impact of the construction and operation of the facility and the interconnections on the vegetation identified…" The impact estimates in the narrative differ from the totals listed in Table 11-2. For example, 11(b) Impacts to Forest Land identifies 127.47 acres of proposed clearing, however, the estimate from Table 11-2 'Vegetation Type Construction and Operation Impacts' identifies 59.76 acres of proposed clearing. Please review and update these calculations and address any potential revisions or clarifications to the figures reported.

Response: The narrative of Section 11(b) of Exhibit 11 has been revised to reflect the impact estimate for tree clearing within forested land provided in Table 11-2, as opposed to the impact estimate for total tree clearing within the LOD previously provided. A Revised Exhibit 11 has been included herein as Attachment P. Figure 11-1 has been updated to include proposed clearing for forested and scrub-shrub communities throughout the Facility Site. A Revised Figure 11-1 has been included herein as Attachment Q.

2. 19 NYCRR §900-2.12(d) requires "[a] list of the species of mammals, birds, amphibians, terrestrial invertebrates, and reptiles that are likely to occur based on ecological communities present at, and bird and bat migration routes through, the facility, supplemented as necessary by site surveys, site observations and publicly available sources." The Applicant has provided lists of species in the following: Appendix 12-1: Wildlife Site Characterization Report; Table 11-3. Wildlife Species Likely to Occur and/or Observed in Vegetative Community Types; and 11(d) Wildlife Species Likely to Occur in Ecological Communities Onsite. Please provide a single consolidated list of species likely to occur in the Facility site.

Response: A consolidated list of species likely to occur within the Facility Site has been included herein as Attachment R.

Exhibit 12 – NYS Threatened and Endangered Species

1. 19 NYCRR §900-2.13(f) requires "...[a] copy of a Net Conservation Benefit Plan prepared in compliance with section 900-6.4(o)…" Please update the NCBP provided at Exhibit 12, Appendix 12-5 to correspond to the ORES take estimate provided in Exhibit 12, Appendix 12-4.

Response: Section 2.4 Estimated Take of Occupied Habitat, and Table 1 Estimated Take of Occupied Habitat of the NCBP has been revised to correspond to ORES take estimate. The Revised NCBP has been included herein as Attachment S.

Exhibit 13 – Water Resources and Aquatic Ecology

1. 19 NYCRR §900-2.14(b)(1) requires "[a] map or series of maps showing delineated boundaries of all federal, state, and locally regulated surface waters present on the facility site and within one hundred (100) feet of areas to be disturbed by construction..." Delineated surface waters are shown in figures provided in the delineation report (Appendix 14-1) but they are not shown on Figure 13-3. Please revise accordingly.

Response: Figure 13-3 has been revised to indicate the locations of delineated surface waters within the Facility Site and within 100 feet of areas to be disturbed by construction and is included herein as Attachment T.

2. 19 NYCRR §900-2.14(b)(5) requires "…[a] demonstration of avoidance and minimization of impacts to such NYS protected waters by siting all components more than fifty (50) feet from any delineated NYS protected waterbody." Page 8 of Water Resources and Aquatic Ecology, 13(b) Surface Water, (2) Surface Water Delineation Survey, states, "...[n]one of the waterbodies onsite are protected waterbodies." Please revise section 13(b)2 to reflect to reflect the previous jurisdictional determination that Horse Creek (S-NSD-1) is a navigable, NYS protected water. Please also supplement Exhibit 13 to include discussion of the feasibility of reconfiguring Project components to account for a 50-foot buffer from NYS protected waters. If minor project reconfiguration that will avoid the 50-foot buffer along Horse Creek (S-NSD-1) is not practicable, please thoroughly explain all efforts taken to avoid and minimize impacts as required under 19 NYCRR §900-2.14(b)(6)(i-vii).

Response: Per Attachment A of the Jurisdictional Determination (JD) received from ORES on June 1, 2021 (and included as Appendix 14-3 of the Application), Horse Creek is a navigable water. The Applicant understands that per §900-2.14(b)(5), Horse Creek is considered to be protected by the State due to the fact that it is a navigable waterbody. The Applicant has updated Figure 13-3 (Attachment T, herein) and the following Sheets of Appendix 5-1 (Design Drawings) of the Application to reflect the application of a 50-foot buffer around Horse Creek:

- PV-C.00.01 (Existing Conditions & Clearing Plan);
- PV-C.01.01 (Site Plan); and
- PV-C.04.01 (Grading, Drainage, and Erosion Control Plan).

The updated Design Drawings are included herein as Attachment U. As shown on the Site Plan, the Applicant was able to avoid the placement of solar panels, inverters, and other Facility components, as well as grading, within 50 feet of Horse Creek. Impacts within 50 feet of Horse Creek are limited to a small portion of the fence line (275.8 square feet; 0.006 acre) and minor tree clearing to reduce shading of the arrays. The Applicant will primarily utilize selective tree clearing in the adjacent area of Horse Creek; however, tree clearing of an area immediately outside of the fence line in the adjacent area of Horse Creek will be required to allow safe access to the fence and Facility. Tree clearing in the adjacent area of Horse Creek will be limited to 973 square feet (0.022 acre) and selective tree clearing will occur on 1,625.8 square feet; 0.037 acre). Tree clearing will not occur closer than 28 feet to the waterbody.

The Applicant put significant consideration into avoidance of impacts to natural resources, including waterbodies, during siting of the Facility and was able to avoid any direct impacts to waterbodies. Due to the required placement of panels to avoid and minimize direct impacts to wetland and waterbody resources, as well as account for required safety measures and accessibility of the panels, inverters, and other Facility components within the Facility Site, the Applicant minimized impacts to the buffer of Horse Creek to the maximum extent practicable.

Rows of panels have been sited and spaced to maximize contiguous use of the Facility Site and limit the amount of fragmentation of existing habitats and cover types on-site, as well as limit areas which must be impacted by construction of the Facility. The group of panels adjacent to the Horse Creek 50-foot buffer (as shown on Revised Figure 13-3) has been sited to utilize previously disturbed land to the maximum extent practicable. If the Applicant avoided all impacts to the 50-foot buffer of Horse Creek, the resulting changes would affect not only that portion of the Facility Site, but would require increased impacts in other locations. For example, reducing

the shading in that area would require multiple rows of panels, which are currently located outside of the buffer, to be relocated to elsewhere on the Facility Site. As upland portions of the Site have been utilized to the maximum extent practicable, this would likely result in impacts to a wetland and/or wetland buffer area, or need for additional siting locations, which could result in increased fragmentation and cover type loss at the Facility Site. Additionally, tree clearing would likely still need to occur, as portions of the Facility Site which do not require clearing for placement of Facility components or shading have been utilized.

The Applicant understands the importance of setbacks to protected and navigable waterbodies, and therefore worked diligently to ensure that the impacts remained as minimal as possible and as far away from the resource itself as possible. As stated above, there are no impacts proposed with 28 feet of the boundary of Horse Creek; which still allows for a significant buffer to remain in place between the Facility and the waterbody. In addition, with the implementation of the Stormwater Pollution Prevention Plan (SWPPP), Best Management Practices (BMPs), and other requirements under the Section 94-c USCs, no impacts will occur to the waterbody itself and impacts to the 50-foot buffer are limited. A Revised Exhibit 13 has been included herein as Attachment V.

Exhibit 14 – Wetlands

1. 19 NYCRR §900-2.15(a) requires "[a] map or series of maps showing jurisdictional boundaries of all federal, state and locally regulated wetlands and adjacent areas present on the facility site and within one hundred (100) feet of areas to be disturbed by construction…"

    a. Please revise all mapping of state-jurisdictional wetlands in Figure 14-1 to include the 100-foot adjacent areas, and label each area as a "State-Regulated Adjacent Area." When completing this revision, please ensure that state, federal and local jurisdictional boundaries are discernable and consider the use of symbology instead of labels to present wetlands and their respective individual and/or coincident jurisdiction.

Response: The Applicant has included a Revised Figure 14-1 herein as Attachment W which includes the 100-foot adjacent areas on State-Regulated wetlands and has labeled them appropriately. Additionally, the Applicant has included symbology to present wetlands and their jurisdiction as requested.

b. Please provide an updated polygon shapefile for the outer perimeter of PV array areas labeled, “PV Module Areas” so the total acreage, including interstitial space, may be quantified. In addition, please provide polygon shapefiles that depict the following activities or project components: on-site substations; grubbing; undisturbed herbaceous vegetation clearing; and the limits of vegetation maintenance that will occur within and outside of fenced areas.

Response: The Applicant has provided, under separate cover, an updated polygon shapefile showing the outer perimeter of PV array areas as requested. Additionally, polygon shapefiles have been updated to depict the activities and Facility components requested above.

c. Please confirm the total acreage of impacted State-regulated wetlands in Table 14-2 and clarify any inconsistencies between Exhibit 14, section 14(f) and elsewhere on this metric. For example, while the application shapefiles and Table 14-2 (ORES Wetland Impacts) describe approximately .797 acres of total impacts to State-regulated wetland W-BF-5, section 14(f) omits Applicant-defined “temporary” impacts and states that only 0.027 acres of New York State wetland W-BF-5 will be permanently impacted. Please revise the discussion of all proposed impacts to NYS-regulated wetlands to reflect the total area of all proposed impacts, without temporal classifications (i.e., ‘temporary’ or ‘permanent’). Please also incorporate any additional impacts identified in the project component shapefiles requested above. Please ensure that discussions, tables, figures, and shapefile data relating to total area impacts to NYS-regulated wetlands are consistent.

Response: The Exhibit discussion and Tables 14-1, 14-2, and 14-3 have been revised to remove mention of “temporary” and “permanent” in regard to impacts, and only lists/mentions total impacts. However, as outlined in the Application, only 0.027 acres of wetland will be impacted permanently. The Revised Exhibit, reflecting updated discussions, tables, and figures, is included herein as Attachment X. Additionally, shapefile data has been updated to reflect the modifications.

d. Please confirm the total acreage of impacted State-regulated adjacent areas in Table 14-1 and clarify any inconsistencies between Exhibit 14, section 14(f) and elsewhere on this metric. For example, section 14(f) indicates that only 3.547 acres of impacts are anticipated to state-regulated adjacent areas. However, per application shapefiles and

Table 14-1 (Impacts to ORES Regulated Adjacent Areas), total impacts of 26.845 acres to adjacent areas are indicated. Additional adjacent areas may need to be accounted for per the updated shapefile data requested under 19 NYCRR §900-2.15(a), Comment 1 above. Please revise the estimates of all proposed impacts to state-regulated adjacent areas to reflect the total area of impact. Please ensure that all quantification and discussion, tables, figures, and shapefile data relating to adjacent area impacts are consistent.

Response: The total acreage of impacted State-regulated adjacent areas has been confirmed. Exhibit discussion and Tables 14-1, 14-2, and 14-3 have been updated to remove mention of "temporary" and "permanent" regarding impacts, and only lists/mentions total impacts. Total impacts to all wetlands regardless of jurisdictional status is 3.647 acres. Total impact to State-regulated adjacent areas is 26.845 acres, and total impacts to State-jurisdictional wetlands is limited to 0.797-acre.

2. 19 NYCRR §900-2.15(d) requires "[a]n analysis of all off-site wetlands within one hundred (100) feet beyond the limit of disturbance that may be hydrologically or ecologically influenced by development of the facility and the wetlands identified on the map required by subdivision (a) of this section, observed in the field where accessible to determine their general characteristics and relationship, if any, to delineated wetlands."

    a. Please supplement Exhibit 14 to include additional analysis in compliance with 19 NYCRR §900-2.15(d), of the general characteristics of off-site wetlands and their relationship to delineated wetlands and reference to other application exhibits (if any). Exhibit 14, section 14(d), identifies twelve approximated offsite wetlands, one of which appears to have a hydrological connection to State jurisdictional wetlands.

Response: Off-site wetlands have been labeled on Figure 14-1. These wetlands are extensions of delineated wetland or are hydrologically connected to delineated wetlands and exhibit the same characteristics and functions and values as the delineated wetlands. One approximated wetland, A-10, is shown outside the Facility Site, but within 100-feet of areas to be disturbed by construction. This off-site wetland is hydrologically connected to delineated wetlands W-NSD-7 and W-NSD-9 which were deemed NYS-jurisdictional per the ORES Wetland JD received on June 1, 2021.

3. 19 NYCRR § 900-2.15(e) requires "…[a] demonstration of avoidance of impacts to such wetlands and their one hundred (100)-foot adjacent areas by siting all components more than one hundred (100) feet from any delineated NYS wetlands." 19 NYCRR §900-2.15(f) further requires that if the Applicant cannot avoid impacts to all wetlands and adjacent areas, that an explanation be provided of all efforts made by the Applicant to minimize the impact(s) to wetlands and adjacent areas identified in wetlands surveys.

   a. Please supplement the narrative at Exhibit 14, sections 14(e) and 14(f), to include additional detail demonstrating the Applicant's efforts to avoid and/or minimize impacts to all wetlands and adjacent areas identified in the Applicant's wetlands surveys (see also the Office's jurisdictional determination at Appendix 14-3). While the Office understands the conclusion the Applicant seeks to convey, specific examples with citations to other exhibits or plans are required to support the Applicant's efforts to avoid (or minimize impact to) these potential impacts.

      i. 19 NYCRR § 900-2.15(f)(1) requires the Applicant to address "...[w]hy the facility design and siting cannot avoid NYS wetlands and adjacent areas, as applicable." Where Facility components and construction activities cannot be located outside of state-jurisdictional wetlands and adjacent areas, please provide additional detail demonstrating why these impacts cannot be avoided (e.g., discussion of wetland W-BF-5 in section 14(f)).

      ii. 19 NYCRR § 900-2.15(f)(2) requires the Applicant to address "[h]ow the facility design has minimized proposed impacts to NYS wetlands and adjacent areas, as applicable." Please provide site-specific discussion of minimization efforts taken in the siting of project components and construction activities in relation to impacted wetlands and adjacent areas (e.g., minimization efforts in the development of narrow wetland crossings and utilization of existing crossings).

      iii. Please provide additional information on how the facility design and siting will maximize and/or improve the function and values provided by the remaining adjacent areas surrounding NYS wetlands, in compliance with 19 NYCRR § 900-2.15(f)(4). For example, applying a native seed planting mix post-construction can be viewed as a mitigative effort to account for impacts (rather than an effort to improve or maximize the functions and values of an adjacent area), and tree clearing is proposed in forested adjacent areas.

Response: Placement of the access road in wetland W-BF-5 is necessary to place Facility components in the agricultural field north of the wetland. It was designed in the narrowest point of the wetland to minimize impacts. According to 19 NYCRR §900-2.15(g), the proposed Facility components sited within State-regulated adjacent areas are considered to be "Allowable" as the NYS-jurisdictional wetland being impacted is classified as "Class III, IV, or Unmapped > 12.4 acres". Facility components sited within State-regulated adjacent areas are primarily limited to solar panels, security fencing, inverters, access roads, and laydown yards. Selective tree clearing is also proposed which will not cause ground disturbance. The historical agricultural use has limited the functions and values of the wetlands and adjacent areas through the use of herbicides, monocultural crop plantings, plowing, and harvesting. Native and naturalized seed mixes used will increase wildlife habitat and only be subject to management (mowing) once or twice per year. This will also improve the ecological richness and vegetative cover density leading to an increase in the various functions and values associated with impacted State-regulated adjacent areas.

4. 19 NYCRR §900-2.15(g) requires that the Applicant provide a Wetland Restoration and Mitigation Plan as a pre-construction compliance filing pursuant to 19 NYCRR §900-10.2(f)(2). The Applicant will be revising the information pertaining to impacted wetlands and adjacent areas as noted above, including without limitation ensuring that all data sources and discussions relating to jurisdictional wetlands and adjacent area impacts are accurate and consistent throughout the application. The Class and Activity for each wetland/adjacent area will dictate the required mitigation ratio as indicated in Table 1 of 19 NYCRR §900-2.15. Please ensure that any proposed Wetland Restoration and Mitigation Plan complies with the comments set forth herein and below, and the parameters set forth in 19 NYCRR §§900-2.15(g)(2)(i),(ii),(iii), and (iv).

    a. Consistent with the comment above, please ensure that the proposed Wetland Restoration and Mitigation Plan reports the total area of all proposed impacts to State-regulated wetlands and adjacent areas, without temporal classifications (i.e., 'temporary' or 'permanent'). Please also include:

        i. A description 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, broken down by wetland classification for each wetland or adjacent area.

ii. A description of the applicable mitigation ratios for each activity required in Table 1 of 19 NYCRR §900-2.15 and the proposed acreage of mitigation, broken down by creation, restoration, and enhancement.

b. To the extent an Applicant-responsible wetland mitigation and/or adjacent area mitigation project is proposed, please include:

i. A description of the proposed or potential mitigation site(s), including a location map and a demonstration that each site is: subject to NYSDEC jurisdiction under ECL Article 24, within the same HUC 8 sub-basin as the impacts, and contiguous with an existing NYS-regulated wetland or within 50 meters of an existing NYS-regulated wetland.

ii. A description of the current condition of the proposed or potential mitigation site(s), including the extent of existing wetlands, distance to NYS mapped wetlands, vegetative characteristics, topography, and soil conditions.

iii. A narrative description of the proposed mitigation activities (e.g., removing existing fill in wetland, replanting adjacent area, etc.) and a conceptual description of the functional lift over existing conditions expected at the mitigation site(s).

iv. Conceptual project plans for proposed or potential mitigation site(s) that show existing features and the approximate extent of mitigation activities.

v. A conceptual plan for long term control and protection of the mitigation site(s) (e.g., easement, ownership, etc.).

Response: A draft Wetland Restoration and Mitigation Plan has been prepared and is included herein as Attachment Y. The level of detail is conceptual in stage and will be updated in accordance with § 900-10.2(f) of the 94-c regulations as part of a Final Wetland Restoration and Mitigation Plan to be submitted at a later date. The Applicant understands that there are currently no options for in-lieu fee purchase of wetland mitigation credits in the watershed where the Facility is located (Chaumont-Perch watershed (HUC 04150102)); however, this is the optimal choice for wetland mitigation. Therefore, if the purchase of wetland mitigation bank credits becomes available prior to implementation of the Final Wetland Restoration and Mitigation Plan, the Applicant will evaluate the feasibility of purchasing wetland mitigation bank credits in place of the on-site wetland mitigation plan through coordination with ORES. On-site restoration will still occur at the Facility Site in accordance with the applicable requirements of Section 94-c.

Exhibit 15 – Agricultural Resources

1. Figures and Appendices are incorrectly referenced throughout the Exhibit 15 text.
    a. 19 NYCRR §900-2.16(b)(4) requires a map within the study area showing "[l]ocations of known or suspected sub-surface drainage systems (including outlets), surface drainages…" Figure 15-2, "Location of Drainage Features within the Facility Site" clearly shows agricultural surface drainage via aerial photography but does not call out the presence of the surface drainage practice. Please revise the Figure accordingly.

Response: The Applicant has revised figure and appendix references where applicable throughout Exhibit 15 in accordance with the comment. A Revised Exhibit 15 has been provided herein as Attachment Z. Additionally, Revised Figures 15-2a and 15-2b which display the presence of existing surface drainage practices are included herein as Attachment AA. Delineated wetlands and waterbodies within the Facility Site may function as agricultural surface drainage; these features are shown in the revised Figure 15-2b.

2. 19 NYCRR §900-2.16(c)requires "[a]n Agricultural Plan, consistent with the New York State Department of Agriculture and Markets Guidelines … to the maximum extent practicable, to avoid, minimize, and mitigate agricultural impacts to active agricultural lands … within NYS Agricultural Land Classified Mineral Soil Groups 1 through 4."
    a. Exhibit 15, section (a)(8) states that "[o]f the 299 acres of soil within the Facility Site that are classified in MSG 1-4, 14.84 acres will be temporarily impacted, 92.32 acres will be permanently impacted, and 192.11 acres will be converted to solar generation rather than agricultural use for the life of the project." Please express the total impacts to MSG 1-4 within the Limits of Disturbance (LOD) in table form, utilizing data on MSG 1-4 within Towns of Lyme and Brownville, within Jefferson County, and within the State of New York. Please also provide additional information on how the Applicant has avoided, minimized or mitigated siting impacts (most notably on MSG 1-4). For example, Exhibit 15, section (a)(7) recites that the Applicant has worked with landowners to site Facility components on the 628 acres of LOD, to minimize impacts and allow for continued agricultural operations in compatible areas of the larger 1,168-acre Facility Site. Table 15-2 indicates the selection of lands not in active agricultural use, and Figure 11.1 illustrates landowner-imposed restrictions. Please provide additional information on the

factors leading to the avoidance, minimization or mitigation of potential impacts to agricultural resources.

Response: As previously stated, a Revised Exhibit 15 has been provided herein as Attachment Z. Section (a)(8) of Exhibit 15 has been revised to include the requested information and data table. Section (a)(7) of Exhibit 15 has been revised to provide additional information on the factors leading to the avoidance, minimization, or mitigation of potential impacts to agricultural resources.

3. 19 NYCRR §900-2.16(d) requires "[a] remediation plan to address inadvertent damages to surface or sub-surface drainage, including: (1) "[a] demonstration of the likelihood of impacts to surface or subsurface drainage and how the interruption of drainage may impact farmland within and outside of the facility site." Please provide supplemental information which adequately details how the interruption of drainage may impact farmland within and outside of the Facility.

Response: As previously mentioned in the Application, impacts to surface and sub-surface drainage features are not anticipated and therefore impacts to farmland are not anticipated as a result of interrupted drainage. During construction the Applicant will utilize a Stormwater Pollution Prevention Plan (SWPPP) which will outline best management practices (BMPs) for construction of the Facility in order to maintain existing drainage patterns throughout the Facility and surrounding areas. The Facility has been sited in order to minimize disruption to existing drainage features and avoid downstream impacts. Additionally, as previously stated in the Application, the Applicant has agreed to construct and operate the Facility in accordance with the NYSAGM Guidelines which specify the following practices in relation to the maintenance of drainage patterns and features.

Construction requirements set forth in the NYSAGM Guidelines specify the following:

- The surface of access roads located outside of the generation facility's security fence and constructed through agricultural fields shall be level with the adjacent field surface. If a level road design is not feasible, all access roads should be constructed to allow a farm crossing (for specific equipment and livestock) and to restore/ maintain original surface drainage patterns.
- Install culverts and/or waterbars to maintain or improve site specific natural drainage patterns.

- When buried utilities alter the natural stratification of soil horizons and natural soil drainage patterns, rectify the effects with measures such as subsurface intercept drain lines. Consult the local Soil and Water Conservation District concerning the type of intercept drain lines to install to prevent surface seeps and the seasonally prolonged saturation of the conductor installation zone and adjacent areas. Install and/or repair all drain lines according to Natural Resources Conservation Service conservation practice standards and specifications. Drain tile must meet or exceed the AASHTO M-252 specifications. Repair of subsurface drains tiles should be consistent with the NYSDAM's details for "Repair of Severed Tile Line" found in the pipeline drawing A-5 (http://www.agriculture.ny.gov/ap/agservices/Pipeline-Drawings.pdf)

Post-construction requirements set forth in the NYSAGM Guidelines specify the following:

- Regrade all access roads outside of the security fencing (as determined necessary by the EM), to allow for farm equipment crossing and restore original surface drainage patterns, or other drainage pattern incorporated into the design.
- Repair all surface or subsurface drainage structures damaged during construction as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design. Correct any surface or subsurface drainage problems resulting from construction of the solar energy project with the appropriate mitigation as determined by the Environmental Monitor, Soil and Water Conservation District and the Landowner.

This information has been included in Attachment Z, Revised Exhibit 15.

Exhibit 16 – Effect of Transportation

1. 19 NYCRR §900-2.17 (b)(4) requires "[a] review of available load bearing and structural rating information for expected facility traffic routes (existing culverts to be traversed by construction vehicles shall also be considered in the analyses)." There is one bridge replacement planned (NY-12E Bridge - BIN 101020) in the Town of Lyme, one existing culvert (BIN C730157) with a NYSDOT rating of 2 (requires replacement) and two existing culverts (730084 & 730132) with NYSDOT ratings of 3 (significant repairs could be required) along the proposed construction/delivery routes. Please describe any consultations with the structure owners and evaluate whether any alternative routes to avoid the bridge and

culverts exist. Please explain appropriate measures the Applicant will take if these features are to be traversed for delivery purposes and/or during Project construction.

Response: Prior to construction of the Facility, discussions and coordination will be held with the NYSDOT regarding the bridge replacement. As stated, two-way traffic will be maintained so any construction workers utilizing this route, which are to be a limited amount (10% or less), would be able to continue on this route. Construction vehicles are not projected to use this route and thus would not likely be impacted.

Discussions will also be held with the NYSDOT regarding the noted culverts. The culvert C730157 that is listed as needing replacement is on an Interstate, so it is currently handling truck traffic. Based on outreach performed by the Applicant, expected replacement is scheduled for 2023. Any re-construction of the culvert would likely be performed with the maintenance of travel in both directions during construction. If re-construction is to occur on the two culverts along NY-12E, it is also likely that traffic will be maintained in both directions. Otherwise, the NYSDOT will establish appropriate detours. If detours are required, they will likely involve NY-180. Exhibit 16 has been updated to reflect this information and is included herein as Attachment AB.

Exhibit 17 – Consistency with Energy Planning Objectives

1. Please update Exhibit 17 to include an estimate of the environmental benefits of the proposed Facility in terms of the approximate offset (in tons) of C02 emissions per year.

Response: The Project is anticipated to positively impact both the environment and the local economy by reducing carbon dioxide emissions by an estimated 133,000 metric tons each year – the equivalent of taking approximately 28,000 cars off the road. Exhibit 17 has been revised to include this estimate of the environmental benefits of the proposed Facility in terms of the approximate offset (in tons) of C02 emissions per year, and has been included herein as Attachment AC.

Exhibit 18 – Socioeconomic Effects

1. 19 NYCRR §900-2.19(b) requires, among other things, "…[a]n estimate of annual direct non-payroll expenditures likely to be made in the host municipality(ies) (materials, services, rentals, and similar categories) during the period of construction." Exhibit 18 presents the

annual non-payroll expenditures likely to be made during the construction period in Table 18-4 but does not adequately address which portion of those expenditures will be made specifically within the host municipality(ies). Please revise accordingly.

Response: An initial review of landscaping and site preparation businesses has identified potential opportunities for the Applicant to use suppliers in the Towns. It is premature though to select specific vendors in advance of the Facility's permitting and commencement of construction. The Applicant has, however, provided an upper bound of the site preparation and landscaping expenditures that may occur in the Towns during the Project's construction. Some or all of these expenditures, however, may be made in neighboring towns or elsewhere in the region if the businesses in the Towns lack appropriate resources, availability, or are otherwise ill-suited to the requirements of the Project. Exhibit 18 has been revised accordingly and is included herein as Attachment AD.

2. 19 NYCRR §900-2.19(c) requires, among other things, "…[a]n estimate of other expenditures likely to be made in the host municipality(ies) during a typical year of operation." Exhibit 18 presents the annual non-payroll expenditures likely to be made during the operational phase of the Facility in Table 18-6 but does not adequately address which portion of those expenditures will be made specifically within the host municipality(ies). Please revise accordingly.

Response: An initial review of landscaping and automotive maintenance businesses has identified potential opportunities for the Applicant to use suppliers in the Towns of Lyme and Brownville and neighboring communities. It is premature though to select specific vendors in advance of the Facility's permitting and commencement of construction. The Applicant has, however, provided an upper bound of the landscaping and vehicle maintenance expenditures that may occur annually in the Towns. Some or all of these expenditures, however, may be made in neighboring towns or elsewhere in the region if the businesses in the Towns lack appropriate resources, availability, or are otherwise ill-suited to the requirements of the Project. Exhibit 18 has been revised accordingly and is attached.

3. 19 NYCRR §900-2.19(i) requires "[a]n analysis of whether all contingency plans to be implemented in response to the occurrence of a fire emergency or a hazardous substance incident can be fulfilled by existing local emergency response capacity, and in that regard identifying any specific equipment or training deficiencies in local emergency response

capacity (this analysis to be made after consultation with the affected local emergency response organizations)." Section (i) of Exhibit 18 indicates that the Applicant has not yet shared its Safety Response Plan (SRP) with the relevant emergency response teams. Please consult with the appropriate emergency response teams to assess whether they can fulfill the requirements of the SRP with the equipment and training they currently possess. Please describe if additional training or equipment would be needed in order to meet the requirements of the SRP and provide proof of consultation.

Response: In early 2020, the Applicant met with first responders, as outlined in Appendix 2-5, to discuss the Project and to identify any specific equipment or training deficiencies in local emergency response capacity. These meetings included:

- Meeting with the Chief of the Chaumont Volunteer Fire Department on February 14, 2020.
- Meeting with member of the Director's staff of Jefferson County EMS on February 19, 2020
- Left a voicemail introducing the Project and mailed information to the Chief of the Three Mile Bay Fire Department.

Additionally, the Applicant met with local Town and County officials as presented in Appendix 2.5. First responders were also invited to the February 26, 2021 pre-Application meeting. As noted in Exhibit 18, "Based on the consultations to date, the fire departments and other first responders have not identified any additional equipment, training, or capacity that would be needed to respond to emergencies at the Facility either during the construction or operation of the Facility." Exhibit 18 has been revised to include additional information on the meetings with first responders and is attached.

Exhibit 19 – Environmental Justice

1. 19 NYCRR §900-2.20(a) requires, "[a]n identification and evaluation of significant and adverse disproportionate environmental impacts of the facility on an Environmental Justice (EJ) area..." Exhibit 19, section 19(a) identifies that there are four Census Tracts in the Study Area, but only three are identified in Table 19-1; the information for Census Tract 604, Block Group 3 is missing. Figure 19-1 shows the Facility and Impact Study Area (ISA) within a Potential Environmental Justice Area (PEJA) while the text says it is not. Please address the discrepancies and reconcile Exhibit 19 as appropriate.

Response: The text of Exhibit 19 has been revised to include data on each of the four Census block groups in the Study Area. None of Census block groups are Potential Environmental Justice Areas (PEJAs). Figure 19-1 has been corrected. The revised Exhibit 19 and Figure 19-1 are included herein as Attachment AE and Attachment AF, respectively.

Exhibit 23 – Site Restoration and Decommissioning

1. 19 NYCRR §900-2.24(c) require "[a] gross and net decommissioning and site restoration estimate, the latter including projected salvage value (including reference to the salvage value data source), with line items (and associated dollar amounts) for decommissioning of all 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, based on the facility layout."

    a. Attachment A of Appendix 23-1 includes cited salvage values of component material that appear to be the national average estimates; however, research indicates that projected salvage value in New York State is lower than the estimated national salvage values (for example: aluminum). In addition to the national salvage value estimates of material, please provide associated salvage values pertaining to New York State and update the net decommissioning cost reflecting the updated salvage values.

Response: The footnotes have been updated to add the city/state of the salvage companies. The Applicant received salvage values from a local salvage yard (Empire Recycling, Utica, NY) for "Extruded Aluminum" which is higher quality. The large quantity can be segregated onsite to prevent contamination with lower quality mixed aluminum.

    b. Attachment A of Appendix 23-1 includes a line item regarding salvage value for PV module trim; however, there is no associated labor cost listed in the attachment. Please provide costs associated with removing the trim from the panels, and adjust all values including the gross and net decommissioning cost.

Response: The Applicant has confirmed that the PV module trim will not be removed prior to recycling; therefore, the reference to labor associated with removing the PV module trim has been removed from the gross and net decommissioning estimate.

c. Attachment A includes reference to 8 footnotes; however, the notes legend only provides definition of 6 footnotes. Please clarify and/or provide the 2 missing footnotes.

Response: The two footnotes noted in the comment were inadvertently hidden and are now shown on the table in Attachment AG.

Exhibit 24 – Local Laws and Ordinances

1. 19 NYCRR §900-2.25(a) requires "[a] list of all local ordinances, laws, resolutions, regulations, standards and other requirements applicable to the construction or operation of the facility, which includes interconnection electric transmission lines, that are of a substantive nature, together with a statement that the location of the facility as proposed conforms to all such local substantive requirements, except any that the applicant requests that the Office elect not to apply. Copies of zoning, flood plain and similar maps, tables and/or documents shall be included in the exhibit when such are referenced in such local substantive requirements." Please supplement Exhibit 24 and revise Table 24-1 to indicate whether the proposed Facility, as currently designed, conforms with the following substantive local requirements in the Towns of Brownville and Lyme:

   a. Town of Brownville Solar Code Subsections 17, 18, and 19 (related to Decommissioning); and
   b. Town of Lyme Solar Code Subsections E1, E2, E3 and F (all parts of subsection).

   Please also provide the Town of Brownville Zoning Map.

Response: Exhibit 24 has been updated to include all subparts of the Town of Lyme Solar Code Subsections E1 and F, and is included herein as Attachment AH.

As to the other local requirements listed above: Town of Brownville Solar Code Subsections 17, 18, and 19 (related to Decommissioning) and Town of Lyme Solar Code Subsections E2 (a.- h.) and E3 (k, l, and m) these subsections were not included in Exhibit 24 as these subsections are either procedural and therefore supplanted by Section 94-c or do not include substantive standards applicable to the Facility.

Regardless, to the extent such provisions are applicable to the Facility the Applicant has complied with these provisions by supplying this information as part of the 94-c Application as demonstrated in the below table.

Table 1. Demonstration of Facility Compliance to Local Provisions

Local Procedural Requirement	Facility Compliance through 94-c
Town of Lyme Local Laws	
Town of Lyme Local Law #4 of 2019 Amending the Zoning Ordinance to Regulate Solar Energy Systems	
E. 2. Application requirements for Large-Scale Solar Energy Systems. The following items are required as well as those required in Section 515.	
a. If the property of the proposed project is to be leased, legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements, shall be submitted.	Information regarding real property rights is provided in Exhibit 4. Pursuant to §900-10.2(h) prior to the start of construction the Applicant will submit: (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.).
b. Plans showing the layout of the Solar Energy System signed by a Professional Engineer or Registered Architect shall be required.	Plans showing the layout of the Facility are provided as Appendix 5-1. These plans are stamped by a licensed professional engineer. Pursuant to §900-10.2(c) prior to the start of construction the Applicant will submit: (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 sections 900-2.6 and 900-2.17 of this Part.

Local Procedural Requirement	Facility Compliance through 94-c
c. The equipment specification sheets shall be documented and submitted for all photovoltaic panels, significant components, mounting systems, and inverters that are to be installed.	Equipment Specifications Sheets were provided as Part of Exhibit 5 as Appendix 5-2 and 5-3. Appendix 5-1 also includes the length, width, height, material of construction, color and finish of all structures and fixed equipment as part of the Facility.
d. Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.	Exhibit 21 provides information related to Facility maintenance and management. Pursuant to §900-10.2(e)(3) and (e)(4) prior to the start of construction the Applicant will submit a Facility Maintenance and Management Plan and Vegetation Management Plan.
e. A Glare Hazard Analysis is required to determine potential glint and glare impacts to pilots operating in or around Watertown International Airport and Wheeler-Sack Army Airfield.	A Glint and Glare Analysis was included as part of Exhibit 8 as Appendix 8-2 and addressed potential for glint and glare at Watertown International Airport. The Wheeler-Sack Army Airfield is located within Fort Drum. All correspondence from Fort Drum is included in Appendix 6-3.
f. Fort Drum. The applicant shall notify Fort Drum Plans, Analysis, and Integration Office as soon as possible to determine potential impacts on Fort Drum airfield and training activities. The applicant must provide the Town with copies of all correspondence from Fort Drum.	Exhibit 16 outlines the Applicant's consultation with Fort Drum. All correspondence from Fort Drum is included in Appendix 6-3.
g. Watertown International Airport. The applicant shall notify the Airport Manager as soon as possible to determine potential impacts on the airport. The applicant must provide the Town with copies of all correspondence from the airport.	Exhibit 16 outlines the Applicant's consultation with the FAA regarding the Facility's proximity to Watertown International Airport. All correspondence from the FAA is included in Appendix 6-3.
h. Decommissioning Plan. To ensure the proper removal of Large-Scale Solar Energy Systems, a Decommissioning Plan shall be submitted as part of the application. Compliance with this plan shall be made a condition of the issuance of a Special use permit under this Section. The Decommissioning Plan must specify that after the Large-Scale Solar Energy System can no longer be used, the applicant or any subsequent owner shall remove it. The plan shall demonstrate how the removal of all	Information regarding decommissioning is provided in Exhibit 23 and Appendix 23-1.

Local Procedural Requirement	Facility Compliance through 94-c
infrastructure and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected timeline for execution. A cost estimate detailing the projected cost of executing the Decommissioning Plan shall be prepared by a Professional Engineer or Contractor. Cost estimations shall take into account inflation. Removal of Large Scale Solar Energy Systems must be completed in accordance with the Decommissioning Plan. If the Large-Scale Solar Energy System is not decommissioned after being considered abandoned, the municipality may remove the system and restore the property and make a claim against the bond to cover these costs to the municipality.	
E. 3 k. Safety. The owner/operator shall provide evidence that a copy of the site plan application has been submitted to the Fire Chief of the appropriate fire department. All means of shutting down the photovoltaic solar energy system shall be clearly marked on the site plan and building permit applications.	The Applicant met with the Town of Lyme Code Enforcement Officer (CEO) and members of the Fire Department on September 29, 2021, to review site plans. The Town reviewed the site plans and agreed that potential health, safety and fire risks were adequately addressed by the proposed Facility Design.
E. 3. l. Any application under the Section shall meet any substantive provisions contained in the Special Use Permit requirements listed in Article V, Sections 505-530, of the Town of Lyme Zoning Ordinance that, in the judgment of the Planning Board, are applicable to the system being proposed. If any of the Special Use Permit requirements are not applicable, the Planning Board may waive those requirements.	There are no substantive provisions in Article V, Sections 505-530 applicable to the Facility.
E. 3. m. The Planning Board may impose conditions on its approval of any Special Use Permit under this Section in order to enforce the standards referred to in this Section or in order to discharge its obligations under the State Environmental Quality Review Act (SEQRA).	There are no procedural or substantive provisions in this section which are applicable to a facility proceeding under 94-c.

Local Procedural Requirement	Facility Compliance through 94-c
Town of Brownville	
17. Notice of decommissioning. (1) The applicant shall also submit to the Town Board (with a copy to the Planning Board) a letter of intent committing the owner, and its successors-in-interest, to notify the Code Officer within 30 days of the discontinuance of the use of the solar system. This letter of intent shall be filed with the Office of Planning and Development prior to the issuance of a building permit. (2) Should the solar system be nonoperational for a continuous period of six months or greater, the owner shall submit a letter to the Office of Planning and Development indicating when it is expected to resume operations or whether the decommissioning of the site, in accordance with the decommissioning and removal plan, shall commence. If the owner plans to continue operations, it shall have up to six months more to begin operations. A further six-month extension may be granted by the Planning Board for good cause shown. If operations do not commence within said six months or any extended period, decommissioning of the site, in accordance with the decommissioning and removal plan, shall immediately commence.	Information regarding decommissioning is provided in Exhibit 23 and Appendix 23-1. The 94-c Permit conditions and decommissioning obligations will be required of any owner or successor-in-interest. The decommissioning plan states, “[w]ritten notice will be provided to the Towns and adjacent property holders no less than 30 days prior to commencement of decommissioning activity.” Should the Facility cease electric generation activities for a period of 12 consecutive months, decommissioning shall commence, unless the following occurs during the 12-month period: • Repair, restoration, or improvement of a Facility component that affects electricity generation and that the repair, restoration, or improvement activity is diligently being pursued by the Applicant, or • A Force Majeure event occurs. Force Majeure events include, but are not limited to, causes or events beyond the reasonable control of, and without the fault or negligence of the party claiming Force Majeure, including acts of God; sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; sabotage; terrorism; war; riots; explosion; blockades; and insurrection.
18. Decommissioning and removal plan. (1) The applicant shall submit a decommissioning and removal plan (DRP) to the Planning Board. The decommissioning and removal plan shall include specific plans on how the owner plans to remove the obsolete or unused solar panel arrays and accessory structures and return the property to a state acceptable to the Planning Board within a specific time period after the cessation of operations. This plan shall be approved by the Planning Board and prior to the granting of the special use permit.	Information regarding decommissioning is provided in Exhibit 23 and Appendix 23-1.

Local Procedural Requirement	Facility Compliance through 94-c
(2) Failure to conform to the decommissioning and removal plan in the time period provided shall be a violation of this section and the cost to complete the plan shall be placed as a lien on the property owner's tax bill.	
19. Reclamation bond. A reclamation bond, for a term and in an amount to be determined during special use permit review, shall be filed with the Town Clerk to cover the costs of reclamation of the site. The amount shall be commensurate with the decommissioning and removal plan submitted by the applicant.	Financial assurance will be provided by the Applicant in the form of a letter of credit (LOC) or other financial assurance approved by The Office of Renewable Energy Siting (ORES) (e.g. surety bond or performance bond) to cover the estimate of decommissioning and restoration activities (plus a fifteen percent contingency cost) less the total projected salvage value of Facility Components. This financial assurance will be approved by ORES, and established by the Applicant to be held by the Towns of Lyme and Brownville.

2. Pursuant to 19 NYCRR §900-2.24(c), the Applicant requests that the Office "elect to not strictly apply" the Town of Lyme decommissioning requirements for security in the amount of 100% of the costs of removal without a salvage value reduction, and a 3% annual escalator (Town of Lyme Solar Law § E(2)(i)) (Exhibit 24 at p. 8). Please clarify the scope of the Applicant's request (i.e., whether the Applicant requesting the Office to elect not to apply Solar Law § E(2)(i) in whole or in part) and provide an analysis demonstrating the financial and other burdens to Applicant if the Town of Lyme's requirements were applicable, instead of the Office's net decommissioning and site restoration estimate detailed at 19 NYCRR §§ 900-2.24 and 900-6.6 and if applicable to Applicant's request, the Office's 5-year cost adjustment requirement at 19 NYCRR §900-10.2(b)(2).

Response: The Applicant is requesting that the Office elect not to apply Solar Law § E(2)(i) in part. The Applicant's decommissioning estimate assumes a fifteen (15) percent contingency, 3% annual cost increase from decommissioning, a 1% annual cost increase from salvage value, and per Section 900-10.2(b)(2) the Applicant understands that the financial assurance shall be updated after one year of facility operation and updated every fifth year thereafter.

The Applicant is only requesting that the Office waive the requirement to include salvage value as part of the Decommissioning Estimate. As outlined in Exhibit 24, requiring a 100% estimate would cause the decommissioning estimate to overestimate costs, causing additional costs to the Facility in the form of the financial security which creates a financial disincentive with little to no actual benefit to the community. Appendix 23-1 of the Application includes a calculation of the salvage value and the gross and net decommissioning costs. Over the life of the Facility these additional costs amount to almost $300,000 which would be an additional financial burden on the Facility with no additional benefit to the community as outlined in Exhibit 24(c).

Exhibit 25 – Other Permits and Approvals

1. 19 NYCRR §900-2.26(a) requires "[a] list of any Federal or federally-delegated, or federal or state recognized Indian Nation, permit, consent, approval or license that will be required for the construction or operation of the facility, which shall specify the date on which an application for any such approval was made or the estimated date on which it will be made." Please provide a cross-reference to Exhibit 9 for information regarding SHPO consultation as well as appropriate cross-references where required permitting is discussed. Please discuss NYSDOT, FAA, or use of the Notice Criteria Tool in Exhibit 25 or reference to any other exhibits where this information might be discussed.

Response: As outlined in Exhibit 16, the Applicant submitted the FAA form 7460-1 Notice of Proposed Construction or Alteration on July 28, 2021 for the proposed solar facility to the administrator of the FAA in accordance with 14 Code of Federal Regulations (CFR), Part 77. The Applicant received a letter of determination of no hazard to air navigation on August 16, 2021 which was included in Appendix 6-3. Exhibit 25 has been updated to reflect the FAA consultation, and is included herein as Attachment AI.

Exhibit 25 is related to Federal or federally-delegated permits, consents, approvals or licenses that will be required for construction or operation of the Facility. NYSDOT permits are not Federal or federally-delegated. Exhibit 16 includes a discussion of NYSDOT permits which may be required and which will be obtained prior to the use of NYSDOT roadways as required by NYSDOT. As stated on page 30 of Exhibit 16, the Applicant is requesting NYSDOT retain authority to issue any required NYSDOT highway work/use/hauling permits.

The Applicant has also updated Appendix 25-1 of the Application to reflect updated consultations to date since the time of the filing of the Application, including:

- A copy of the PJD received from the USACE on October 22, 2021 (Attachment AJ); and
- A copy of the No Effect Determination received from the SHPO on November 19, 2021 (Attachment N).

Accordingly, the Applicant intends to file for a Nationwide Permit (NWP) and Water Quality Certification (WQC) in Quarter 4 of 2022 (Q4 2022). Exhibit 25 has been revised to reflect these updates.