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VIA <http://ores.ny.commentinput.com/>

December 7, 2020

Houtan Moaveni
Executive Deputy Director
Office of Renewable Energy Siting
99 Washington Avenue
Albany, New York 12231-0001

**RE: COMMENTS ON THE DRAFT UNIFORM STANDARDS AND CONDITIONS CHAPTER XVIII
TITLE 19 (SUBPARTS 900-6)**

Dear Deputy Director Moaveni:

The Zoghlin Group, PLLC represents the Concerned Citizens for Rural Preservation ("CCRP"). We write today to submit written comments on the draft Office Renewable Energy Siting ("ORES") regulations, Chapter XVIII Title 19, Subparts 900-6 (the "Draft Regulations"), on behalf of our client.

Enclosed please find three appendices containing CCRP's and/or its members' commentary:

- **Appendix 1** is a Joint Comment document raising general concerns about the proposed Draft Regulations. The comment is signed by, and submitted at the direction of, more than 40 municipalities, public officials and interest groups. The comment contains two parts, each with unique signatures.
- **Appendix 2** is a comment drafted by our law firm on behalf of CCRP, setting forth both general and specific commentary on the Draft Uniform Standards and Conditions on a section by section basis.

- **Appendix 3** includes additional commentary on the Draft Regulations provided by specific members of CCRP.

In addition to the enclosed commentary, CCRP notes that, in drafting these rules, it appears ORES failed to consult with intervenor attorneys or municipal advocates. ORES appears to have instead relied solely upon input from NYSEDA, renewable energy developers, and professional advocacy organizations. The lack of input from attorneys with intervenor and/or municipal experience in Article 10 proceedings is evident in the proposed rules, as the rules generally advance applicant economic interests to the detriment of local siting considerations. The principal purpose of the proposed rules appears to be to incentivize utility scale development through maximization of project profitability. The rules can only be viewed as the result of agency capture by the renewable energy industry and their advocates. The rules fail to account for all pertinent social, economic and environmental factors in the proposed siting process, as required by Article 94-c.

The rules also fail to recognize or address the enormous damage that renewable energy siting proceedings can do to local communities. This damage goes far beyond the environmental impacts of projects, but cuts to the core of communities by turning neighbor against neighbor, and poisoning local politics and discourse for years to come. By framing all concern over renewable energy as "NIMBY" (i.e., selfish) opposition that should be minimized and ignored, ORES, industry and certain environmental lobbyists seek to shield themselves from the reality that the harm to local communities is real. ORES could do far more to address the local conflict it will create, while also appropriately prioritizing corporate interests and the state's renewable energy goals. But under the proposed rules, the public is effectively excluded from the siting process, and meaningful municipal participation in the siting process is inhibited. Without substantial modification, ORES's proposal will only further sow the seeds of discord and rural intolerance to large scale renewables.

To meet the legislative intent stated in Article 94-c (1), and to help promote civil discourse in communities subject to siting proceedings, a more open, transparent, inclusive, and fair siting process is required. One such process already exists in Article 10 of the public service law, which although imperfect, is a model of fairness and justice ORES should embrace. ORES can do so without compromising its main mission, to expedite appropriate siting, by adopting the revisions proposed in this document. A complete rethink of the proposed ORES rules is essential to providing any hope that bridges of understanding and tolerance can be built between warring factions in local communities. CCRP therefore implores ORES to reverse course and restart its drafting process, this time allowing for input from outside the Albany

bubble inhabited by NYSERDA, and renewable energy developers and their advocates. A fair rulemaking process requires nothing less.

In addition to the comments contained in this document, and the attached three appendices, CCRP adopts the all comments submitted by, or on behalf of, Save Ontario Shores, Inc.

Sincerely,

/s Benjamin E. Wisniewski

Benjamin E. Wisniewski, Esq.

Benjamin@zoglaw.com

cc: Concerned Citizens for Rural Preservation

**JOINT PUBLIC COMMENT ON THE NEW YORK STATE OFFICE OF RENEWABLE
ENERGY DRAFT REGULATIONS CHAPTER XVIII TITLE 19 (SUBPARTS 900-1 –
900-5; 900-7 – 900-14)**

Document prepared for joint submission by:

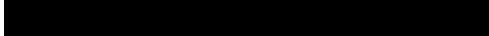

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Dated: November 11, 2020
Rochester, New York

I. Introduction

This Joint Public Comment provides consolidated public comment on the Draft ORES regulations necessary to implement Section 94-c of the New York State Executive Law. The comments address the proposed Office of Renewable Energy Siting draft regulations, Chapter XVIII Title 19 (Subparts 900-1 – 900-5; 900-7 – 900-14) (the “Draft Regulations”). The comments are submitted to the Office of Renewable Energy Siting by following officials, interest groups, and municipalities, as indicated by the signatures at the end of this document:

- A. Concerned Citizens for Rural Preservation
- B. Save Ontario Shores, Inc.
- C. Broome County Concerned Residents
- D. Town of Copake, New York
- E. Guilford Coalition of Non-Participating Residents
- F. Concerned Citizens for the Cassadaga Wind Project
- G. Ginger Schroder, Esq., Cattaraugus County Legislator, Legislative District 3
- H. Town of Farmersville, New York
- I. Prattsburg Preservation Alliance Inc.
- J. Town of Yates, New York
- K. Town of Rush, New York
- L. [REDACTED]
- M. Rural Preservation and Net Conservation Benefit Coalition
- N. Freedom United
- O. Town of Malone, New York
- P. Lake Hiram Club

- Q. Farmersville Citizens United
- R. Tug Hill Alliance for Rural Preservation
- S. Residents United to Save Our Hometown
- T. Clear Skies Above Barre, Inc.
- U. Town of Moriah, New York
- V. Town of Ashford, New York
- W. Town of Ischua, New York
- X. Town of Solon, New York
- Y. Sensible Solar for Rural New York
- Z. Sardinia Rural Preservation Society
- AA. Town of Somerset, New York
- BB. Town of Cambria, New York
- CC. Town of Ripley, New York
- DD. Town of Byron, New York
- EE. 
- FF. 
- GG. Citizens for Maintaining Our Rural Environment Inc.
- HH. Rebecca J. Wydysh, Chairman, Niagara County Legislature
- II. John Syracuse, Vice-Chairman, Niagara County Legislature
- JJ. Richard Updegrove, County Manager, Niagara County Legislature
- KK. Town of Wilson, New York

II. Specific Comments on Proposed Regulations

The signatories to this document provide the following comments to the Office of Renewable Energy Siting as if they were their own:

Comment 1: Inadequate Review of Environmental Impacts

The Draft Regulations do not allow for meaningful identification, assessment, or mitigation of the negative environmental impacts of individual renewable energy projects.

Comment 2: Improper Reliance on Secrecy to Avoid Public Scrutiny

The Draft Regulations do not allow for meaningful public participation in the renewable energy siting process and fail to provide open and transparent access to project details, applications, case documents, or docket lists.

Comment 3: Violation of Home Rule Principles

The Draft Regulations violate Article IX of the New York State Constitution and effectively strip local governments of legislative, zoning, and police powers.

Comment 4: Elevation of Private Corporate Interest over Public Interest

The Draft Regulations improperly elevate project economics and profitability over local siting concerns.

**JOINT PUBLIC COMMENT ON THE NEW YORK STATE OFFICE OF RENEWABLE
ENERGY DRAFT REGULATIONS CHAPTER XVIII TITLE 19 (SUBPARTS 900-1 –
900-5; 900-7 – 900-14) – Part 2**

Document prepared for joint submission by:

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Dated: December 2, 2020
Rochester, New York

I. Introduction

This Joint Public Comment provides consolidated public comment on the Draft ORES regulations necessary to implement Section 94-c of the New York State Executive Law. The comments address the proposed Office of Renewable Energy Siting draft regulations, Chapter XVIII Title 19 (Subparts 900-1 – 900-5; 900-7 – 900-14) (the “Draft Regulations”). The comments are submitted to the Office of Renewable Energy Siting by following officials, interest groups, and municipalities, as indicated by the signatures at the end of this document:

- A. Cambria Opposition to Industrial Solar, Inc.
- B. River Residents Against Turbines
- C. [REDACTED]
- D. Byron Association Against Solar, Inc.
- E. Town of Hopkinton, New York
- F. Town of Ancram, New York
- G. Jefferson County Land Preservation Alliance
- H. [REDACTED]
- I. Town of Willing, New York
- J. Town of Milan, New York

II. Specific Comments on Proposed Regulations

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Comment 1: Inadequate Review of Environmental Impacts

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The Draft Regulations do not allow for meaningful public participation in the renewable energy siting process and fail to provide open and transparent access to project details, applications, case documents, or docket lists.

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The Draft Regulations violate Article IX of the New York State Constitution and effectively strip local governments of legislative, zoning, and police powers.

Comment 4: Elevation of Private Corporate Interest over Public Interest

The Draft Regulations improperly elevate project economics and profitability over local siting concerns.

III. Signatories to Joint Public Comment

We, the undersigned, hereby agree with the foregoing comments and direct the Concerned Citizens for Rural Preservation, through their legal counsel the Zoghlin Group, PLLC, to submit these comments to the Office of Renewable Energy Siting:

**CONCERNED CITIZENS FOR RURAL PRESERVATION’S COMPREHENSIVE
PUBLIC COMMENT ON THE NEW YORK STATE OFFICE OF RENEWABLE
ENERGY DRAFT REGULATIONS CHAPTER XVIII TITLE 19 (SUBPART 900-6)**

Document prepared by:
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Dated: December 7, 2020
Rochester, New York

I. Introduction

This Comprehensive Public Comment provides comments on the Draft ORES regulations necessary to implement Section 94-c of the New York State Executive Law. The comments address the proposed Office of Renewable Energy Siting draft regulations, Chapter XVIII Title 19 (Subpart 900-4) (the “Draft Uniform Standards and Conditions”). The comments are submitted to the Office of Renewable Energy Siting on behalf of the Concerned Citizens for Rural Preservation.

In addition to the comments contained in this document, and the Joint Comments, the CCRP adopts any and all comments submitted by Save Ontario Shores, Inc., or its attorney Gary Abraham.

II. General Comments on Proposed Regulations

a. General Comment 1: Inadequate Review of Environmental Impacts

The Draft Uniform Standards and Conditions do not allow for meaningful identification, assessment, or mitigation of the negative environmental impacts of individual renewable energy projects.

b. General Comment 2: Improper Reliance on Secrecy to Avoid Public Scrutiny

The Draft Uniform Standards and Conditions do not allow for meaningful public participation in the renewable energy siting process, and fail to provide open and transparent access to project details, applications, case documents, or docket lists.

c. General Comment 3: Violation of Home Rule Principles

The Draft Uniform Standards and Conditions violate Article IX of the New York State Constitution and effectively strip local governments of legislative, zoning, and police powers.

d. General Comment 4: Elevation of Private Corporate Interest over Public Interest

The Draft Uniform Standards and Conditions improperly elevate project economics and profitability over local siting concerns.

III. Comments on Specific Proposed Regulations

a. §900-6.1 Facility Authorization

i. Proposed Rule **§900-6.1(d)(1)**, in its entirety.

1. Comment: This rule is vague and fails to specify what would constitute duplicate issue for purposes of review by other bodies.

2. Proposed Revision: **§900-6.1(d)(1)** should be revised as follows:

The PSC to require approvals, consents, permits, other conditions for the construction or operation of the facility under PSL Sections 68, 69, 70, and Article VII, as applicable, ~~with the understanding that the PSC will not duplicate any issue already addressed by the Office and will instead only act on its police power functions related to the entity as described in the body of this siting permit;~~

ii. Proposed Rule **§900-6.1(f) Host Community Benefits.**

1. Comment: PILOT agreements are not host community benefits.

2. Proposed Revision: **§900-6.1(f)** should be revised as follows:

The permittee shall provide host community benefits, such as ~~Payments in Lieu of Taxes (PILOTs),~~ other payments pursuant to a

host community agreement or other project(s) agreed to by the host community.

iii. Proposed Rule **§900-6.1(g) Notice to Proceed with Constriction.**

1. Comment: The current standard under the Article 10 Regulations does not allow the piecemeal approach proposed here. *See*, 16 NYCRR 1002.2(b): “The applicant may not commence construction of all or any portion of the facility or interconnections for which the Board has required approval of a compliance filing as a condition precedent to such construction until the applicant has submitted the required compliance filing for that portion of the facility and received approval of it by the Board, or by the Commission after the Board’s jurisdiction has ceased.”

2. Proposed Revision: **§900-6.1(g)** should be revised as follows:

The permittee and its contractors shall not commence construction until a “Notice to Proceed with Construction” has been issued by the Office. Such Notice will be issued promptly after all applicable pre-construction compliance filings have been filed by the permittee and approved by the Office. ~~The Notice will not be unreasonably withheld. The Office may issue a conditional “Notice to Proceed with Site Preparation” for the removal of trees, stumps, shrubs and vegetation from the facility site as indicated on Office approved site clearing plans to clear the facility site for construction, as well as setting up and staging of the laydown yard(s), including bringing in~~

~~equipment, prior to the submission of all pre-construction compliance and informational filings.~~

iv. Proposed Rule **§900-6.1(h) Expiration**

1. Comment: The proposed timeline is inappropriately long and not in concert with what is currently being agreed upon by applicants, parties and agencies under Article 10. For Example:

- a. Alle-Catt Certificate Condition 9: This Certificate will automatically expire in five years from the date of issuance of this Certificate (the "Expiration Date") unless the Certificate Holder has completed construction and commenced commercial operation of the Facility prior to said Expiration Date.
- b. Number Three Wind Condition 9: This Certificate will automatically expire in five years from the date of issuance of this Certificate (the "Expiration Date") unless the Certificate Holder has completed construction and commenced commercial operation of the Facility prior to said Expiration Date.

The term of a permit has nothing to do with expediting siting review. The Legislature did not authorize ORES to make substantive standards developed under PSL Article 10 more lax when mandating ORES to streamline procedural rules.

2. Proposed Revision: **§900-6.1(h)** should be revised as follows:

The siting permit will automatically expire if the facility does not achieve commencement of commercial operation within ~~seven (7)~~ [five (5)] years from the date of issuance.

v. Proposed Rule **§900-6.1(i) Partial Cancellation.**

1. Comment: The Certificate should be revised to reflect the facility that is actually constructed and provide a deadline by which the certificate holder must notify the Office of such decision to not

commence construction of any portion of the facility. For example, CWE Condition 6 states: “If the Certificate Holder decides not to commence construction of any portion of the Project (not including turbine deletions as a result of final facility design as long as turbine deletions do not result in substantial rerouting of proposed Facility components including access roads, interconnection and collection lines), it shall so notify the Secretary to the Siting Board (Secretary) in writing within 30 days of making such decision and shall serve a copy of such notice upon all parties in the same manner and at the same time as it files with the Secretary.” Further, Certificate conditions requiring submission of as-built plans have been required in several Article 10 cases, including certificate condition 41 of the Alle-Catt Certificate.

2. Proposed Revision **§900-6.1(i)** should be revised as follows:

[1] If the permittee decides not to commence construction of any portion of the facility, it shall so notify the Office ~~promptly~~ [in writing within thirty (30) days] after making such decision [and shall serve a copy of such notice upon all parties in the same manner and at the same time as it files with the Office]. Such decisions shall ~~not~~ require a modification to the siting permit ~~unless the Office determines that such change constitutes a major modification to the siting permit pursuant to section 900-11.1 of this Part.~~

[2 As-Built Plans in both hard and electronic copies shall be filed within six months of the commencement of commercial operation of the Facility and shall include the following:

- a) GIS shapefiles showing all components of the Project (wind turbine locations, electrical collection system, transmission lines, substation, buildings, access roads, met towers, POI, etc.);
- b) Collection circuit layout map; and
- c) As-Built Plans and details for all Project component crossings of, and co-located installations of Project components with, existing pipelines: showing cover, separation distances, any protection measures installed, and locations of such crossings and co-located installations.]

vi. Proposed Rule **§900-6.1(j) Deadline Extensions.**

1. **Comment:** This rule does not provide any opportunity for public comment on the request for extension as currently required under PSL 161.

2. Proposed Revision: **§900-6.1(j)** should be revised as follows:

The Office may extend any deadlines established by the siting permit for good cause shown [provided that no party to the proceeding opposes such request for extensions or amendments within thirty days of the filing of such request]. Any request for an extension shall be in writing, include a justification for the

extension, and be filed at least fourteen (14) business days prior to the applicable deadline.

b. §900-6.2 Notifications

i. Proposed Rule §900-6.2(a) Pre-Construction Notice Methods.

1. Comment: the proposed regulation does not provide for sufficient notice.

2. Proposed Revision: §900-6.2(a) should be revised as follows:

(a) Pre-Construction Notice Methods. At least fourteen (14) business days prior to the permittee's commencement of construction date, the permittee shall notify the public as follows:

(1) Provide notice by mail to host landowners, and to adjacent landowners [and persons who reside on such property (if different from the landowner)] within one (1) mile of a solar facility and five (5) miles of a wind facility;

(2) Provide notice to local Town and County officials and emergency personnel;

(3) Publish notice by mail in the local newspapers [of largest circulation] ~~of record~~ for dissemination, including at least one free publication, if available (e.g., Pennysaver);

(4) Provide notice for display in public places, which shall include, but not be limited to, the Town Halls of the host municipalities, at least one (1) library in each host municipality, at least one (1) post

office in each host municipality, the facility website, and the facility construction trailers/offices; and

(5) File notice with the Office for posting on the Office website.

ii. **Proposed Rule §900-6.2(c) Post-Construction Notice**

1. **Comments:** the proposed regulation should provide a date certain for compliance.

2. Proposed Revision: **§900-6.2(c)** should be revised as follows:

[30 days p]rior to the completion of construction, the permittee shall notify the entities identified in paragraphs (a)(1)-(5) of this section with the contact name, telephone number, email and mailing address of the facility operations manager, as well as all information required in subdivision (d) of this section

iii. **Proposed Rule §900-6.2(d) Contents of Notice**

1. **Comments:** the proposed regulation should be revised to provide at least as much information as currently required by Article 10 certificate conditions. ORES does not need to diminish an application's information requirement in order to expedite siting.

2. Proposed Revision: **§900-6.2(d)** should be revised as follows:

The permittee shall write the notice(s) required in subdivisions (a) and (c) of this section in plain language reasonably understandable to the average person and shall ensure that the notice(s) contain(s):

(1) A map of the facility;

(2) A brief description of the facility;

- (3) The construction schedule and transportation routes;
- (4) The name, mailing address, local or toll-free telephone number, and email address of [the Project Development Manager, Construction Manager and] the appropriate facility contact for development, construction and operations;
- (5) The procedure and contact information for registering a complaint; (6) Contact information for the Office and the NYSDPS; and
- (7) A list of public locations where information on the facility, construction, and the permittee will be posted.

iv. **Proposed Rule §900-6.2(e) Notice of Completion of Construction and Restoration**

1. Comments: By eliminating the filing requirement in most certificate conditions in Article 10 proceedings the regulations effectively eliminate notice to interested parties who would otherwise receive notifications via the DMM website.

2. Proposed Revision: §900-6.2(e) should be revised as follows:

Within fourteen (14) days of the completion of final post-construction restoration, the permittee shall [file a written notice with the Office and] notify the NYSDPS, ~~with a copy to the Office,~~ that[:] all such restoration has been completed in compliance with the siting permit and [all] applicable compliance filings[:] and

provide an anticipated date of commencement of commercial operation of the facility.

c. §900-6.3 General Requirements

i. Proposed Rule §900-6.3(a) Local Laws

i. Comments: comments on 900-2.25 are incorporated by reference. The Draft Regulations violate Article IX of the New York State Constitution and effectively strip local governments of legislative, zoning, and police powers. The Rules fail to precisely state under what circumstances ORES can execute its waiver power. Although Article 94-c identifies inconsistency with state energy policy as the basis for waiving local laws, the regulations do not elaborate on how inconsistency can be shown. Instead, the regulations rely on the technical standard required under Siting Board Regulations, which relate to whether a project is unduly burdensome in light of existing technology or the needs of the rate payers. It is unclear what findings and determinations ORES is required to make as prerequisite to waiver. Without a clear standard for waiver or any internal limitations on the waiver power, ORES will be tempted to waive local laws indiscriminately and in a way wholly inconsistent with local powers granted directly by the state constitution. Neither ORES, nor the legislature for that matter, has the power to preempt local laws on a case by case basis.

ii. Proposed revision: this regulation should be stricken and all substantive local laws should be applied to any given project.

d. §900-6.4 Facility Construction and Maintenance

i. Proposed Rule §900-6.4(a) Construction Hours

1. Comments: The construction hours proposed are not consistent with the hours commonly set forth in certificate conditions under Article 10 including Alle Catt Wind and Canisteo Wind. In both of those projects, construction hours were limited to 7:00 AM – 7:00 PM Monday through Saturday. Extending these hours further has nothing to do with expediting siting review of projects.

2. Proposed Revision: §900-6.4(a) should be revised as follows:

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

ii. Proposed Rule §900-6.4(b) Environmental and Agricultural Monitoring

1. Comments: The proposed regulation eliminates the requirement common under Article 10 permits that the permit holder consult with the local municipality on the selection of environmental and agricultural monitors and doesn't specify to whom reports must be provided. For example, in Canisteo Wind, certificate condition 78 states: "The Certificate Holder shall establish funding for an

independent, third-party environmental monitor and an independent third-party agricultural monitor to oversee compliance with environmental permit requirements. The Certificate Holder will solicit input from the designated representative of the Towns with respect to the selection of the Environmental Monitor. When soliciting input from the DPS Staff and the Towns, the Certificate Holder shall identify one or more candidates and provide qualifications and contact information for the Environmental Monitor. The monitors shall inspect construction sites and issues regular reports to the Certificate Holder, DPS, DEC, and NYSDAM. If the New York State Department of Agriculture and Markets (NYSDAM) agrees that the independent third-party monitor is qualified on agricultural issues, one monitor can act as both environmental and agricultural monitor.”

2. Proposed Revision: **§900-6.4(b)** should be revised as follows:

Environmental and Agricultural Monitoring.

(1) The permittee shall hire an independent, third-party environmental monitor to oversee compliance with environmental commitments and siting permit requirements. [The Certificate Holder will solicit input from the designated representative of the Towns with respect to the selection of the Environmental Monitor. When soliciting input from the DPS Staff and the Towns, the Certificate Holder shall identify one or more candidates and provide

qualifications and contact information for the Environmental Monitor. The Certificate Holder will solicit input from the designated representative of the Towns with respect to the selection of the Environmental Monitor. When soliciting input from the DPS Staff and the Towns, the Certificate Holder shall identify one or more candidates and provide qualifications and contact information for the Environmental Monitor.] The environmental monitor shall perform regular site inspections of construction work sites and, in consultation with the NYSDPS, issue regular reporting and compliance audits.

(2) The environmental monitor shall have stop work authority over all aspects of the facility. Any stop work orders shall be limited to affected areas of the facility. Copies of the reporting and compliance audits shall be provided to the host town(s) [within 30 days]~~upon~~ request.

(3) The permittee shall identify and provide qualifications and contact information for the independent, third-party environmental monitor to the NYSDPS, with a copy to the Office.

(4) If the environmental monitor is not qualified, the permittee shall also retain an independent, third-party agriculture-specific environmental monitor as required in section 900-6.4(s) of this Part.

(5) The permittee shall ensure that its environmental monitor and agricultural monitor are equipped with sufficient access to

documentation, transportation, and communication equipment to effectively monitor the permittee's contractor's compliance with the provisions of the siting permit with respect to such permittee's facility components and to applicable sections of the Public Service Law, Executive Law, Environmental Conservation Law, and Clean Water Act Section 401 Water Quality Certification.

iii. **Proposed Rule §900-6.4(d) Construction Reporting and Inspections**

1. **Comments:** The proposed rule does not provide for review of all complaints during monthly inspections as is currently required in Article 10 certificate conditions.

2. Proposed Revision: **§900-6.4(d)** should be revised as follows:

(d) Construction Reporting and Inspections. During facility construction, the permittee shall report construction status and support inspections as follows: (1) Every two (2) weeks, the permittee shall provide NYSDPS and Office staff, and the host municipalities with a report summarizing the status of construction activities, and the schedule and locations of construction activities for the next two (2) weeks.

(2) Prior to entry onto the facility site for on-site inspections, the permittee shall conduct a tailgate meeting to communicate required safety procedures and worksite hazards to site inspectors.

(3) The permittee shall accommodate reviews of any of the following during a monthly inspection and at other times as may be determined by NYSDPS staff:

(i) The status of compliance with siting permit conditions;

(ii) Field reviews of the facility site;

(iii) [Review of all complaints received, and their] actual or planned resolutions of complaints;

(iv) Significant comments, concerns, or suggestions made by the public, municipalities, or other agencies and indicate how the permittee has responded to the public, local governments, or other agencies; and

(v) The status of the facility in relation to the overall schedule established prior to the commencement of construction; and

(vi) Other items the permittee, NYSDPS staff, or Office staff consider appropriate.

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

iv. Proposed Rule §900-6.4(e) Flagging

1. **Comments:** Flagging should be required outside the limits of disturbance as currently required in Article 10 Certificate Conditions.
2. Proposed Revision: **§900-6.4(e)** should be revised as follows:
3. Flagging. At least two (2) weeks before tree clearing or ground disturbing activities, the permittee shall stake or flag the planned limits of disturbance (LOD), the boundaries of any delineated NYS-regulated wetlands, waterbodies or streams in [or within 100 feet of] the LOD (as identified in the delineations prepared pursuant to sections 900-1.3(e) and (f) of this Part), and any known archeological sites identified in the approved Cultural Resources Avoidance, Minimization and Mitigation Plan required in section 900-10.2(g) of this Part [in or within 100 feet of the LOD], all on or off ROW access roads, limits of clearing and other areas needed for construction, including, but not limited to, turbine or solar array work areas, proposed infiltration areas for post-construction stormwater management, and laydown and storage areas. In addition, archeological sites shall be surrounded with construction fencing and a sign stating restricted access.

v. **Proposed Rule §900-6.4(g) Natural Gas Pipeline Cathodic Protection**

1. **Comments:** copies of agreements should be filed with the Office as is currently required under Article 10 certificate conditions to assure safety of on-site workers and/or persons on adjacent properties.

2. Proposed Revision: §900-6.4(g) should be revised as follows:

Natural Gas Pipeline Cathodic Protection. The permittee shall contact all pipeline operators within the facility site and land owners, if necessary, on which facility components are to be located or whose property lines are within the zone of safe siting clearance, if any, and shall reach an agreement with each operator to provide that the facility's collection and interconnection systems will not damage any identified pipeline's cathodic protection system or produce damage to the pipeline, either with fault current or from a direct strike of lightning to the collection and interconnection systems, specifically addressing 16 NYCRR Section 255.467 (External corrosion control; electrical isolation). [Copies of all agreements entered into with the operators regarding protection of these systems shall be filed with the Office within 30 days of commercial operation.]

vi. **Proposed Rule §900-6.4(k) Construction Noise**

1. **Comments:** there is no separate process for modeling or evaluation of construction noise. Accordingly, local laws concerning noise must be adhered to as is common in Article 10 certificate conditions.
2. Proposed Revision: §900-6.4(g) should be revised as follows:
Construction Noise. To minimize noise impacts during construction, the permittee shall:

- (1) Maintain functioning mufflers on all transportation and construction machinery;
- (2) Respond to noise and vibration complaints according to the complaint resolution protocol approved by the Office; and
- (3) Comply with ~~all substantive provisions of~~ all local laws regulating construction noise ~~unless they are waived~~.

vii. **Proposed Rule §900-6.4(l) Visual Mitigation**

1. **Comments:** comments on 900-2.9 are incorporated by reference.

2. Proposed Revision: **§900-6.4(l)** should be revised as follows:

(l) Visual Mitigation.

(1) Wind Facilities. The permittee shall implement the approved Visual Impact Minimization and Mitigation Plan required in section 900-2.9 of this Part, including the following:

(i) Adoption of visual design features requirements;

(ii) Visual contrast minimization and mitigation measures;

(iii) Operational effects minimization measures, including shadow flicker minimization mitigation and other measures necessary to achieve a maximum of thirty (30) hours annually [and 30 minutes daily] at any non-participating residential receptor, subject to verification using shadow prediction and operational controls at appropriate wind turbines;

(iv) Lighting Plan; and

(v) Screen Planting Plans.

(2) Solar Facilities. The permittee shall implement the approved Visual Minimization and Mitigation Plan as required in section 900-2.9 of this Part, including the following:

- (i) Visual contrast minimization and mitigation measures;
- (ii) Lighting Plan;
- (iii) Solar glare mitigation requirements; and
- (iv) Screen Planting Plans.

(3) Screen Planting Plans. The permittee shall retain a qualified landscape architect, arborist, or ecologist to inspect the screen plantings for ~~two (2)~~ [five (5)] years following installation to identify any plant material that did not survive, appears unhealthy, and/or otherwise needs to be replaced. The permittee shall remove and replace plantings that fail in materials, workmanship or growth within ~~two (2)~~ [five (5)] years following the completion of installing the plantings.

viii. **Proposed Rule §900-6.4(n) Water Supply Protection**

1. **Comments:** the proposed regulations are less protective of human health than those currently contained in Article 10 Certificate Conditions. For example, condition 42 in the Alle Catt case requires consent from participating property owners to blast within 500 feet of an active well, and requires a 1,000 foot setback from wind turbines.
2. Proposed Revision: **§900-6.4(n)** should be revised as follows:

(n) Water Supply Protection.

(1) For wind facilities:

(i) No wind turbine shall be located within one hundred (100) feet of an existing, active water supply well or water supply intake.

(ii) Blasting shall be prohibited within five hundred (500) feet of any known existing, active water supply well or water supply intake on a non-participating property. [Blasting may be performed within 500 feet of an existing, active water supply well on a participating parcel if prior written approval is provided to the Permittee by the property owner.]

(iii) The permittee shall engage a qualified third party to perform pre- and postconstruction testing of the potability of water wells within the below specified distances of construction disturbance before commencement of construction and after completion of construction to ensure the wells are not impacted, provided the permittee is granted access by the property owner:

(a) Collection lines or access roads within one hundred (100) feet of an existing, active water supply well on a non-participating property;

(b) Blasting [or any turbines] within one thousand (1,000) feet of an existing, active water supply well on a non-participating property;
and

(c) Horizontal Directional Drilling (HDD) operations within five hundred (500) feet of an existing, active water supply well on a non-participating property.

(iv) Should the third-party testing, as required by subparagraph (iii) of this paragraph, conclude that the water supplied by an existing, active water supply well met federal (see section 900-15.1(k)(1)(i) of this Part) and state (see section 900-15.1(j)(1)(i) of this Part) standards for potable water prior to construction, but failed to meet such standards after construction as a result of facility activities, the permittee shall cause a new water well to be constructed, in consultation with the property owner, at least one hundred (100) feet from collection lines and access roads, and at least ~~five hundred (500)~~ [one thousand (1,000)] feet from wind turbines, ~~as practicable given siting constraints and landowner preferences~~. The results of such tests and reports shall be made available to the relevant municipalities [within 60 days] ~~upon request~~.

(2) For solar facilities:

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

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

performed within 500 feet of an existing, active water supply well on a participating parcel if prior written approval is provided to the Permittee by the property owner.]

(iii) The permittee shall engage a qualified third party to perform pre- and postconstruction testing of the potability of water wells within the below specified distances of construction disturbance before commencement of civil construction and after completion of construction to ensure the wells are not impacted, provided the permittee is granted access by the property owner:

(a) Collection lines or access roads within one hundred (100) feet of an existing, active water supply well on a non-participating property;

(b) Blasting [or any turbines] within one thousand (1,000) feet of an existing, active water supply well on a non-participating property;

(c) Pier or post installations within two hundred (200) feet of an existing, active water supply well on a non-participating property;
and

(d) HDD operations within five hundred (500) feet of an existing, active water supply well on a non-participating property.

(iv) Should the third-party testing conclude that the water supplied by an existing, active water supply well met federal (see section 900-15.1(k)(1)(i) of this Part) and state (see section 900-15.1(j)(1)(i) of this Part) standards for potable water prior to construction, but failed

to meet such standards post construction as a result of facility activities, the permittee shall cause a new water well to be constructed, in consultation with the property owner, at least one hundred (100) feet from collection lines and access roads, and at least ~~two~~ [five] hundred (~~2~~[5]00) feet from all other facility components. The results of such tests and reports shall be made available to the relevant municipalities [within 60 days]~~—upon request.~~

ix. **Proposed Rule §900-6.4(o) Threatened and Endangered Species**

1. **Comments:** the proposed regulations are less protective of threatened and endangered species and make only limited special provisions for certain species. The regulations eliminate protections for species of special concern. The regulations inappropriately paint with a broad brush what should be a species-specific issue.
2. Proposed Revision: **§900-6.4(o)** should, at a minimum, be revised as follows:

Threatened and Endangered Species.

- (1) For facilities that would impact NYS threatened or endangered species other than NYS threatened or endangered grassland birds or their habitat, the permittee shall implement an approved Net Conservation Benefit Plan (NCBP) that shall include the following:
 - (i) A demonstration that the NCBP results in a positive benefit on each of the affected species;

(ii) Detailed explanation of the net conservation benefit to the species based on the actual location and type of minimization measures to be taken for each of the affected species;

(iii) Full source information supporting a determination as to the net conservation benefit for each of the affected species;

(iv) ~~A consideration of potential~~ minimization and mitigation measures for each of the affected species;

(v) ~~A consideration~~ [Identification] of potential sites for mitigation measures for each of the affected species;

(vi) The identification and detailed description of the mitigation actions that will be undertaken by the permittee to achieve a net conservation benefit to the affected species, including, if applicable, payment of a required mitigation fee into the Endangered and Threatened Species Mitigation Fund established pursuant to section 99(hh) of the New York State Finance Law; and

(vii) To the extent that physical mitigation will be performed, a letter or other indication of the permittee's financial and technical capability and commitment to fund and execute such management, maintenance and monitoring for the life of the facility/term of the siting permit.

~~(2) For facilities that would have de minimis impacts to NYS threatened or endangered grassland birds [as defined by NYSDEC]:~~

~~(i) If an active nest is identified within the facility site and the facility results in adverse impacts to grasslands twenty-five (25) acres or more in size that were determined to be occupied habitat, the permittee shall coordinate with the NYSDPS[, NYSDEC] and the Office to adjust the limits of disturbance and/or adjust the construction schedule to avoid work in the area until nesting has been completed or the permittee shall pay into the Endangered and Threatened Species Mitigation Bank Fund the required mitigation fee commensurate with the actual acreage taken.~~

(3) For facilities that will have [an] ~~more than a de minimis~~ impact on NYS threatened or endangered grassland birds, the permittee shall implement the following as part of the NCBP:

(i) The permittee shall implement environmental monitoring immediately prior to and during construction in the occupied habitat to search for NYS threatened or endangered species occurrence based on the species' seasonal windows for presence.

(ii) If active nests of the NYS threatened or endangered species are found within the occupied habitat, [the regional DEC Natural Resource Supervisor and DPS Staff will be notified within 24 hours of discovery, and the nest or roost site will be marked. An area 500 feet (660 feet for northern harrier, short-eared owl, upland sandpiper, or Henslow's sparrow) in radius around the nest or roost will be posted and avoided to the maximum extent practicable until

notice to continue construction, ground clearing, grading, maintenance or restoration activities, as applicable, at that site is granted by DPS Staff, in consultation with the regional DEC Natural Resource Supervisor.] [T]hen the permittee shall coordinate with the NYSDPS[, NYSDEC] and the Office to adjust the limits of disturbance and/or adjust the construction schedule to avoid work in the area until nesting has been completed.

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

(a) In NYS threatened or endangered grassland bird occupied breeding habitat, work shall be conducted only between August 16 and April 22;

(b) In NYS threatened or endangered grassland bird occupied wintering habitat, work shall be conducted only between April 1 and November 14;

(c) In areas of the facility where both breeding and wintering occupied habitat occurs, work shall be conducted only between August 16 and November 14, and between April 1 and 22.

~~(iv) If fields within identified occupied breeding habitat are planted with row crops (e.g., corn, beans, or vegetables) in the farming~~

~~season prior to the commencement of facility construction and such fields were historically used for row crops during at least one of the prior five (5) years, these fields will not be subject to the construction timing restrictions set forth in subparagraphs (iii)(a) and (c) of this paragraph.~~

(v) If the permittee has identified construction activities that must occur between November 15 and March 31 in identified NYS threatened or endangered grassland bird occupied wintering habitat, or between April 23 and August 15 in identified NYS threatened or endangered grassland bird occupied breeding habitat ~~outside of row crop areas described above~~, the occupied habitat area(s) proposed for active construction shall be assessed by an on-site environmental monitor or biologist who shall conduct surveys for NYS threatened or endangered grassland bird species. The surveys shall occur weekly until construction activities have been completed in the occupied habitat area, unless otherwise agreed to by the Office. If no NYS threatened or endangered grassland bird species are detected during the survey, the area shall be considered clear for seven (7) days, when another survey shall be performed. If NYS threatened or endangered grassland bird species are detected, the permittee shall comply with subdivision (o)(7) of this section.

(vi) All temporary disturbance or modification of established grassland vegetation communities that occurs as a result of facility

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

(vi) The permittee shall implement the avoidance and minimization measures identified in section 900-2.13 of this Part and the other conditions herein to minimize potential take of the species.

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

(~~ix~~[viii]) If the permittee proposes a NCBP involving permittee-implemented grassland bird habitat conservation in lieu of payment of a mitigation fee pursuant to subparagraph (viii) of this paragraph, the required mitigation ratio shall be [equivalent to the acreage of

occupied grassland bird breeding or wintering habitat determined to be taken.]~~0.4 acres of mitigation for every acre of occupied grassland bird breeding habitat determined to be taken and 0.2 acres of mitigation for every acre of occupied grassland bird wintering habitat determined to be taken.~~

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

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

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

re-evaluation of the potential impacts of the Project on listed bat species shall be provided to the NYSDPS and Office.

(iii) Tree Clearing Limitations for Northern Long-eared Bats (a) No tree clearing activities shall occur at any time within one hundred fifty (150) feet of any known maternity roost or one quarter (0.25) mile of any known hibernaculum.

(b) All tree clearing activities (except for hazard tree removal to protect human life or property) occurring within one and a half (1.5) miles of a maternity roost site or five (5) miles of a hibernaculum site, but not subject to clause (a) of this subparagraph, shall be conducted during the hibernation season (between November 1 and March 31) without further restrictions unless otherwise approved by the Office. This limitation does not include trees less than or equal to ~~four (4)~~ three (3) inches in diameter at breast height (DBH). (c) From April 1 to October 31, the following restrictions shall be implemented for all tree clearing activities in the facility site, unless otherwise agreed by the Office: (1) The permittee shall leave uncut all snag and cavity trees, as defined under the NYSDEC Program Policy ONRDLF-2 Retention on State Forests, unless their removal is necessary for protection of human life and property. This restriction pertains to trees that are greater than or equal to ~~four (4)~~ three (3) inches DBH. When necessary, snag or cavity trees may be removed after being cleared by an environmental monitor who shall

conduct a survey for bats exiting the tree. This survey shall begin thirty (30) minutes before sunset and continue until at least one (1) hour after sunset or until it is otherwise too dark to see emerging bats. Unoccupied snag and cavity trees in the approved clearing area shall be removed within forty-eight (48) hours of observation.

(2) If any bats are observed flying from a tree, or from a tree that has been cut, tree clearing activities within distances required in clause (a) of this subparagraph, depending on the potential species present, shall be suspended and the NYSDPS[, NYSDEC] and the Office shall be notified as soon as possible [but not more than 24-hours after discovery]. The permittee shall have an environmental monitor present on site during all tree clearing activities. If any bat activity is noted, a stop work order will immediately be issued and shall remain in place until such time as the NYSDPS and the Office have been consulted and authorize resumption of work.

(iv) Tree Clearing Limitations for Indiana Bats.

(a) No tree clearing activities shall occur at any time within five hundred (500) feet of any known maternity roost or one quarter (0.25) mile of any known hibernaculum.

(b) All tree clearing activities (except for hazard tree removal to protect human life or property) occurring within two and a half (2.5) miles of a maternity roost site or hibernaculum site, but not subject to clause (a) of this subparagraph, shall be conducted during the

hibernation season (between November 1 and March 31), without further restrictions unless otherwise approved by the Office. This limitation does not include trees less than or equal to ~~four (4)~~ three (3) inches in DBH or locations above three hundred (300) meters in elevation.

(c) From April 1 to October 31, tree clearing within two and a half (2.5) miles of a maternity roost site or hibernaculum site is limited to trees less than or equal to ~~four (4)~~ three (3) inches in DBH or locations above three hundred (300) meters in elevation.

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

(v) To minimize impacts to bats from wind facilities, the permittee shall comply with the following requirements:

(a) Curtailment is required for all wind facilities from July 1 – October 1 when wind speeds are at or below five and a half (5.5) m/s and temperatures are at or above ten (10) degrees Celsius (fifty (50) degrees Fahrenheit) from thirty (30) minutes before sunset to thirty (30) minutes after sunrise. Curtailment shall be on an individual turbine basis and shall be determined by weather conditions as measured by each individual weather station on the turbine nacelle.

(b) The permittee shall submit a review of curtailment operations to the Office as part of the post-construction bat mortality monitoring requirements set forth in the NCBP or every five (5) years (or sooner if requested by the permittee). The review shall assess if changes in technology or knowledge of impacts to bats supports modification of the existing curtailment regime. Modifications to the existing curtailment regime that further decrease mortality may be proposed or negotiated. Any such modifications shall not be costlier than the existing curtailment regime, unless voluntarily supported by the permittee.

(5) For each applicable NCBP, the permittee shall pay the required mitigation fee into the Endangered and Threatened Species Mitigation Bank Fund commensurate with the anticipated number of individuals taken with the sole purpose to achieve a net conservation benefit to the impacted species.

(6) To avoid and minimize impacts to bald eagles), the permittee shall implement the following:

(i) If, at any time during construction and operation of the facility, an active bald eagle nest or roost is identified within the facility site, the NYSDPS[, NYSDEC] and the Office shall be notified within forty-eight (48) hours of discovery and prior to any disturbance of the nest or immediate area. An area one quarter (0.25) mile for nests without a visual buffer and six hundred sixty (660) feet in radius for

nests with a visual buffer from the nest tree shall be posted and avoided to the maximum extent practicable until notice to continue construction at that site is granted by the NYSDPS and the Office.

(ii) Tree removal is not allowed:

(a) Within six hundred sixty (660) feet from an active nest during breeding season (January 1 – September 30);

(b) Within one quarter (0.25) mile from [a nest] ~~an important winter roost~~ during the wintering period (December 1 – March 31); or

(c) Of overstory trees within three hundred thirty (330) feet of an active nest at any time.

(iii) Operational Impacts from Wind Facilities. If at any time during the operation of the facility a bald eagle is injured or killed due to collision with project components, the permittee shall pay the required mitigation fee into the Endangered and Threatened Species Mitigation Bank Fund commensurate with number of eagles taken with the sole purpose to achieve a net conservation benefit to the impacted species. (7) Record All Observations of NYS Threatened or Endangered Species. During construction and restoration of the facility and associated facilities, the permittee shall maintain a record of all observations of NYS threatened or endangered species as follows:

(i) Construction. During construction, the on-site environmental monitor shall be responsible for recording all occurrences of NYS

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

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

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

(8) Discovery of Nests or Dead or Injured NYS Threatened or Endangered ~~Bird~~ Species [and species of special concern]

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

(a) The NYSDPS and the Office shall be notified within forty-eight (48) hours of discovery and prior to any further disturbance around

the nest, roost, or area where the species were seen exhibiting any breeding or roosting behavior;

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

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

(ii) If any dead or injured federal or NYS threatened or ~~bird~~ species [or species of special concern], or eggs or nests thereof, are discovered by the permittee's on-site environmental monitor or other designated agent at any time during the life of the facility, the permittee shall immediately (within 24 hours) contact the NYSDEC and the United States Fish and Wildlife Service (USFWS) for federally-listed species, to arrange for recovery and transfer of the specimen(s). The NYSDPS and the Office shall also be notified. The following information pertaining to the find shall be recorded: (a) Species; (b) Age and sex of the individual(s), if known; (c) Date of discovery of the animal or nest; (d) Condition of the carcass, or state of the nest or live animal; (e) GPS coordinates of the location(s) of discovery; (f) Name(s) and contact information of the person(s) involved with the incident(s) and find(s); (g) Weather conditions at the facility site for the previous forty-eight (48) hours; (h) Photographs, including scale and of sufficient quality to allow for later identification of the animal or nest; and (i) An explanation of how the mortality/injury/damage occurred, if known. Electronic copies of each record, including photographs, shall be kept with the container holding the specimen(s) and given to the NYSDEC or the USFWS at the time of transfer. If the discovery is followed by a non-business day, the permittee shall ensure all the information listed above is properly documented and stored with the specimen(s). Unless otherwise directed by the NYSDEC or the USFWS, after all information has been collected in the field, the fatality specimen(s) shall be placed in a freezer, or in a cooler on ice until transported to a freezer, until it can be retrieved by the proper authorities.

(9) The provisions of this subdivision (o) of this section shall remain in effect for as long as the relevant species is listed as

endangered or threatened [or is a species of special concern] in New York State.

x. **Proposed Rule §900-6.4(p) Wetlands, Waterbodies and Streams**

1. **Comments:** the proposed regulations are less protective of wetlands waterbodies and streams than is currently required in Article 10 certificate conditions

2. Proposed Revision: **§900-6.4(p)** should be revised as follows:

Wetlands, Waterbodies, and Streams. The permittee shall implement the following procedures for construction within wetlands and adjacent areas subject to ECL Article 24, and waterbodies and streams regulated pursuant to ECL Article 15 (as identified in the delineations approved by the Office pursuant to sections 900-1.3(e) and (f) of this Part):

(1) Environmentally Sensitive Area (ESA) Flagging. Prior to performing construction in an ESA, defined herein any NYS-regulated wetlands, waterbodies or streams and associated adjacent areas identified in the delineations approved by the Office pursuant to sections 900-1.3(e) and (f) of this Part, the permittee shall mark the boundaries of the ESA with colored flagging, “protected area” signs, or erosion and sediment control measures specified by the SWPPP. As necessary to prevent access by motorized vehicles into ESAs where no construction is planned, the permittee shall install additional markers or signs stating, “No Equipment Access.”

(2) Equipment Maintenance and Refueling. Equipment storage, refueling, maintenance, and repair shall be conducted and safely contained more than one hundred (100) feet from all wetlands, waterbodies, and streams and stored at the end of each workday unless moving the equipment will cause additional environmental impact. Dewatering pumps operating within one hundred (100) feet of wetlands, waterbodies, or streams may be refueled in place and shall be within a secondary containment large enough to hold the pump and accommodate refueling. All mobile equipment, excluding dewatering pumps, shall be fueled in a location at least one hundred (100) feet from wetlands, waterbodies and streams unless moving the equipment will cause additional environmental impact.

(3) Fuel Storage. Fuel or other chemical storage containers shall be appropriately contained and located at least three hundred (300) feet from wetlands, waterbodies, and streams.

(4) Clean Fill. All fill shall consist of clean soil, sand and/or gravel that is free of the following substances: asphalt, slag, fly ash, demolition debris, broken concrete, garbage, household refuse, tires, woody materials [including tree or landscape debris, pesticides] and metal objects. Reasonable efforts shall be made to use fill materials that are visually free of invasive species based on onsite and source inspections. The introduction of materials toxic to aquatic life is expressly prohibited.

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

(6) Truck Washing. Washing of trucks and equipment shall occur one hundred (100) feet or more from an ESA, and waste concrete and water from such activities shall be controlled to avoid it flowing into a wetland or adjacent area, waterbody or stream. If runoff from such activities flows into any wetlands and adjacent areas subject to ECL Article 24, or waterbodies and streams regulated pursuant to ECL Article 15, the NYSDEC Regional Supervisor of Natural Resources shall be contacted within two (2) hours.

(7) Concrete Washouts. Concrete washouts and batch plants, or concrete from truck cleanout activity, any wash water from trucks, equipment, or tools, if done on site, shall be located and installed to minimize impacts to water resources. Locations ~~should~~ [shall] be at least one hundred (100) feet from any wetland, waterbody or stream, and located outside wetland adjacent areas to the maximum extent practicable. Disposal of waste concrete or wash water shall be at least one hundred (100) feet from any wetland, waterbody or stream.

(8) Use of Horizontal Direction Drilling. Installation of underground collection lines across wetlands, waterbodies and streams shall be performed via HDD to the maximum extent practicable.

(9) Trenching. Open cut trenching in wetlands, waterbodies and streams shall be conducted in one continuous operation and shall not exceed the length that can be completed in one (1) day.

(10) Inadvertent Return Flows. HDD under wetlands, waterbodies and streams shall be performed in accordance with the inadvertent return flow plan required pursuant to section 900-10.2(f)(5) of this Part.

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

e. **§900-6.5 Facility Operation**

i. **Proposed Rule §900-6.5(a) Noise Limits for Wind Facilities**

1. **Comments:** CCRP advocates for a uniform noise limit for participating and non-participating residents as there is no proof that becoming a participating resident would alter adverse health impacts. Further, as has been advocated by multiple parties in Article 10 proceedings, To reduce noise levels at non-participating

receptors and to reduce the risk of negative health impacts on the public, the wind facilities must be designed to comply with the conditional recommendations of the WHO-2018 report related to wind turbine noise exposure. Noise levels of 38 dB LAeq outdoor 24h, and 42 dB LAmax night outside, would achieve this. At worst, with respect to the latter alternative, extending the LAeq level to 40 dB might be also be considered reasonably protective. There must also be specific conditions and consideration of health impacts to specific individuals who are at a heightened risk for a negative health impact. The cumulative noise impact of wind facilities in any given area must also be considered.

2. Proposed Revision: **§900-6.5(a)** should be revised as follows:

Noise Limits for Wind Facilities

(1) Noise levels by all noise sources from wind facilities shall:

- (i) Comply with a maximum noise limit ~~of forty-five (45) dBA Leq (8-hour) at the outside of any non-participating residence, and fifty-five (55) dBA Leq (8-hour) at the outside of any participating~~ [of 38 dB LAeq outdoor 24h, and 42 dB LAmax night outside at the outside of any] residence existing as of the issuance date of the siting permit;
- (ii) Not produce any audible prominent tones, as defined by using the constant level differences listed under ANSI S12.9 2005/Part 4Annex C (sounds with tonal content) (see section 900-15.1(a)(1)(iii) of this Part) at the outside of any non-participating

residence existing as of the issuance date of the siting permit. Should a prominent tone occur, the broadband overall (dBA) noise level at the evaluated non-participating position shall be increased by five (5) dBA for evaluation of compliance with subparagraphs (i) and (v) of this paragraph;

(iii) Comply with a maximum noise limit of sixty-five (65) dB Leq (1-hour) at the full octave frequency bands of sixteen (16), thirty-one and a half (31.5), and sixty-three (63) Hertz outside of any non-participating residence existing as of the issuance date of the siting permit, in accordance with Annex D of ANSI standard S12.9-2005/Part 4 Section D.2.(1) (Analysis of sounds with strong low-frequency content) (see section 900-15.1(a)(1)(iii) of this Part);

(iv) Not produce human perceptible vibrations inside any ~~non~~-participating residence existing as of the issuance date of the siting permit that exceed the limits for residential use recommended in ANSI/ASA Standard S2.71-1983 (R August 6, 2012) "Guide to the evaluation of human exposure to vibration in buildings" (see section 900-15.1(a)(1)(i) of this Part);

(v) Comply with a noise limit of forty (40) dBA Leq (1-hour) at the outside of any nonparticipating residence existing as of the issuance date of the siting permit from the collector substation equipment; and

(vi) Emergency situations are exempt from the limits specified in this subdivision.

(2) Post-Construction Noise Compliance and Monitoring for Wind Facilities. To evaluate compliance with noise-related conditions, the permittee shall comply with the following requirements:

(i) Compliance with subparagraphs (1)(i)-(v) of this section for the facility shall be evaluated by the permittee by implementing a sound testing compliance protocol that shall follow the provisions and procedures for post-construction noise performance evaluations approved by the Office and stated in the siting permit;

(ii) At least two sound compliance tests conforming to the sound testing compliance protocol shall be performed by the permittee after the commercial operation date of the facility: one during the "leaf-off" season and one during the "leaf-on" season, except a demonstrated high wind shear condition may substitute for the "leaf-off" condition;

(iii) Within seven (7) months after the commercial operation date of the facility, the permittee shall perform and complete the first sound compliance test and the results shall be submitted by filing a report from an independent acoustical or noise consultant, no later than eight (8) months after the commercial operation date, specifying whether or not the facility is found in compliance with all siting

permit conditions on noise during the “leaf on” or “leaf off” season as applicable; and

(iv) The second sound compliance test shall be performed, and results shall be submitted subject to the same provisions contained in subparagraph (iii) of this paragraph, but no later than thirteen (13) months after the commencement of commercial operation of the facility.

(3) Noise Exceedances from Wind Facilities. If the results of the first or second post-construction sound compliance test, or any subsequent test, or any compliance or violation test, indicate that the facility does not comply with siting permit conditions on noise and vibration, the permittee shall:

(i) Present minimization options to the NYSDPS, with a copy to the Office, within sixty (60) days after the filing of a non-compliance test result or the finding of a noncompliance or a violation of siting permit conditions on noise, as follows:

(a) Operational minimization options related to noise or vibrations caused by the wind turbines that shall be considered, including, at a minimum, modifying or reducing times or duration of turbine operation, incorporating noise reduced operations, shutting down relevant turbines, and modifying operational conditions of the turbines;

(b) Physical minimization options related to noise or vibration caused by the wind turbines that shall be considered, including installation of serrated edge trails on the turbine blades, replacement or maintenance of noisy components of the equipment, and any other measures as feasible and appropriate; and

(c) If applicable, any minimization measures related to noise from transformers (such as walls or barriers), emergency generators (such as installation of noise walls or barriers, adding or replacing enclosures or silencers to the emergency generator), or any other noise sources (such as HVAC equipment or energy storage systems), shall be considered, as well as any other mitigation measures as feasible and appropriate.

(ii) Upon approval from the NYSDPS and the Office, the permittee shall implement any operational noise or vibration mitigation measures within ninety (90) days after the finding of a non-compliance or siting permit violation, as necessary to achieve compliance.

(iii) Upon approval from the NYSDPS and the Office, the permittee shall implement any physical noise or vibration mitigation measures within [ninety (90)] ~~one hundred fifty (150)~~ days after the finding of a non-compliance or siting permit violation, as necessary to achieve compliance.

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

(v) Test, document and present results of any minimization measures and compliance with all siting permit conditions on noise, no later than ninety (90) days after the minimization measures are implemented.

(4) Noise and Vibration Complaints from Wind Facilities. The permittee shall adhere to the following conditions regarding noise complaints:

(i) The permittee is required to maintain a log of complaints received relating to noise and vibrations caused by the operation of the facility. The log shall include name and contact information of the person that lodges the complaint, name of the property owner(s), address of the residence where the complaint was originated, the date and time of the day underlying the event complained of, and a summary of the complaint.

(ii) The permittee shall provide the host municipalities with a phone number, email address, and mailing address where complaints can be notified[, along with a form to report complaints designed according to te details in subsection (i) of this condition].

(iii) All complaints received shall be reported to the NYSDPS staff, with a copy to the Office, monthly during [construction and] the first year of commercial operations and quarterly thereafter, by filing during the first ten (10) days of each month (or the first ten (10) days of each quarter after the first year [of commercial operations]). Reports shall include copies of the complaints and, if available, a description of the probable cause (e.g., outdoor or indoor noise, tones, low frequency noise, amplitude modulation, vibrations, rumbles, rattles, etc., if known); the status of the investigation, summary of findings and whether the facility has been tested and found in compliance with applicable siting permit conditions on noise or minimization measures have been implemented. If no noise or vibration complaints are received, the permittee shall submit a letter indicating that no complaints were received during the reporting period.

(iv) Should complaints related to excessive and persistent amplitude modulation occur at any non-participating residence existing as of the issuance date of the siting permit, with measured or modeled sound levels exceeding forty (40) dBA Leq (1-hour), the permittee

shall investigate and measure amplitude modulation at the affected receptors during the time frame when the worst conditions are known, or, if not known, expected to occur. If the L90-10-minute noise levels (dBA), including any amplitude modulation and prominent tone penalties exceed a noise level of forty-five (45) dBA and amplitude modulation is in excess of a five (5) dB modulation depth at the evaluated receptor(s) for more than five (5) percent of the time during the identified time frame of evaluation (which shall not exceed eight consecutive hours), the permittee shall continue with the investigation, identify frequency of occurrence and the conditions that may be favorable for its occurrence, and propose minimization measures to avoid or minimize the impacts. Minimization measures that avoid, minimize, resolve, or mitigate the amplitude modulation impacts shall be identified and reported by filing the identified minimization measures and implementing such measures after, and consistent with, review and approval. Compliance with this requirement shall be finally demonstrated by conducting a test that shows that the L90-10-minute sound levels (dBA), including a five (5)-dBA penalty for amplitude modulation (if amplitude modulation depth is in excess of five (5) dB for more than five (5) percent of the time in any eight (8) consecutive hours) at that particular location and any additional prominent tone penalties, are lower than or equal to **forty-five (45) dBA**. For any

complaints that do not exceed the limits established in the foregoing, the permittee shall handle those complaints under the complaint resolution protocol approved by the Office. Amplitude Modulation depth will be evaluated as indicated in the document entitled “A method for Rating Amplitude Modulation in Wind Turbine Noise”, 09 August 2016, Version 1 (see section 900-15.1(c)(1)(i) of this Part).

(v) The permittee shall investigate all other noise and vibration complaints by following the complaint resolution protocol approved by the Office, and consistent with the limits imposed by the siting permit.

(5) Facility Logs for Wind Facilities. The permittee is required to maintain a log of operational conditions of all the turbines with a ten (10)-minute time interval to include, at a minimum, wind velocity and wind direction at the hub heights, angular speed of the rotors, generated power, and notes indicating operational conditions that could affect the noise levels (e.g., maintenance, shutdown, etc.). A schedule and log of noise-reduced operations for individual turbines shall also be kept and updated as necessary. These records shall be maintained by the permittee for five (5) years from occurrence.

ii. **Proposed Rule §900-6.5(g) Facility Transmission Interconnection
Related Incidents**

1. **Comments:** the proposed regulations are not as protective as what is currently required under Article 10 certificate conditions.

2. Proposed Revision: **§900-6.3(g)** should be revised as follows:

Facility Transmission Interconnection Related Incidents.

(1) The permittee shall contact the NYSDPS Emergency Line within one (1) hour to report any transmission related incident on its owned and operated interconnection facilities which affects the operation of the facility, or that poses a public safety concern, and shall provide notification to the Office within twenty-four (24) hours.

(2) The permittee shall file with the secretary of the NYSDPS a report on any such incident, ~~upon request~~ within seven (7) days, and provide a copy of the report to the serving utility and the Office. The report shall contain, when available, copies of applicable drawings, descriptions of the equipment involved, a description of the incident and a discussion of how future occurrences will be prevented.

[(3) the permittee shall work cooperatively with the serving utility, NYISO, NYSRC, NERC and the NPCC to prevent any future occurrences.]

iii. **Proposed Rule §900-6.5(h) Facility Malfunction**

1. **Comments:** the proposed regulations are not as protective as what is currently required under Article 10 certificate conditions.

2. Proposed Revision: **§900-6.5(h)** should be revised as follows:

Facility Malfunction

(1) In the event of any catastrophic incident, including but not limited to blade failure, fire, tower collapse or other catastrophic event involving the facility and its associated equipment, the permittee shall notify the Office and the NYSDPS no later than twelve (12) hours following such an event.

(2) In the event of a malfunction of the facility or facility components which causes a significant reduction in the capability of such facility to deliver ~~power for an extended duration (i.e., expected to last longer than one (1) month)~~, the permittee shall promptly file with the NYSDPS, and provide to the serving utility and the Office, copies of all notices, filings, and other substantive written communications with the NYISO as to such reduction, any plans for making repairs to remedy the reduction, and the schedule for any such repairs.

[(3) The permittee shall provide monthly reports to the Office, NYSDPS and serving utility on the progress of any repairs.

(4) If such equipment failure is not completely repaired within nine months of its occurrence, the permittee shall provide a detailed report to the Office and NYSDPS, setting forth the progress on the repairs and indicating whether the repairs will be completed within one year of the date of failure. Wind turbines and/or solar arrays shall be decommissioned if they are non-operational for a period of one year and a day. However, if the permittee is expecting delays

due to a part manufacturer or complications regarding the repair of non-operational turbine(s) or solar array(s), it shall petition the Office for an extended amount of time if it is expected that certain turbine(s) or array(s) will not be in operation for more than one year and a day. The petition shall include an explanation of the circumstance and an estimation of the amount of time it will take to repair the turbine(s) or array(s) and shall demonstrate why the repairs should continue to be pursued.

(5) In the event of a blade failure, fire or other catastrophic event involving a wind turbine and its associated equipment, the DPS Chief of Bulk Systems and the municipalities shall be notified no later than 12 hours following such an event.

(6) The permittee shall have an inspection program for the facility components. Reports shall be filed annually with the Office and NYSDPS identifying any major damage, defects or any other problems with the facility components, or indicating that no such damage, defect or problem was found. The annual report shall summarize maintenance and inspection activities performed and include any photographs of the area in question, and the any major repairs undertaken.]

f. §900-6.6 Decommissioning

i. Proposed Rule §900-6.6(b)

1. **Comments:** comments on 900-2.24 are incorporated herein by reference. Salvage value is not appropriate for inclusion in a site restoration estimate and has been excluded from consideration in Article 10 certificate conditions.

2. Proposed Revision: **§900-6.6(b)** should be revised as follows:

The financial security regarding decommissioning and site restoration activities shall be in the form of a letter of credit (LOC) ~~or other financial assurance approved by the Office~~, and shall be established by the permittee to be held by each City, Town, or Village hosting facility components. The total amount of the financial security created for the Cities, Towns, or Villages shall be equal to the net decommissioning and site restoration estimate [(no offset for projected salvage value is permitted in the calculation of the estimate)]; the net decommissioning and site restoration estimate is equal to the gross decommissioning and site restoration estimate (which is the overall decommissioning and site restoration estimate plus a fifteen (15) percent contingency cost) less the total projected salvage value of facility components; reference to salvage value data shall also be included in the Decommissioning and Site Restoration Plan required at 900-2.24 of this Part. If the permittee and the host municipalities cannot come to an agreement as to the appropriate amount of financial security to be provided, the Office shall make the final determination. The financial security shall remain active

until the facility is fully decommissioned. The LOC shall be irrevocable and state on its face that it is expressly held by and for the sole benefit of the specific Town, City, or Village.

**CONCERNED CITIZENS FOR RURAL PRESERVATION’S MEMBER COMMENTS
ON THE NEW YORK STATE OFFICE OF RENEWABLE ENERGY DRAFT
REGULATIONS CHAPTER XVIII TITLE 19 (SUBPART 900-6)**

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I. Introduction

This Additional Public Comment provides comments drafted by members of the Concerned Citizens for Rural Preservation (CCRP) on the Draft ORES regulations necessary to implement Section 94-c of the New York State Executive Law. The comments address the proposed Office of Renewable Energy Siting draft regulations, Chapter XVIII Title 19 (Subpart 900-6) (the "Draft Regulations"). The comments are submitted to the Office of Renewable Energy Siting by the Concerned Citizens for Rural Preservation. The comments represent further commentary and questions submitted by members of the Concerned Citizens for Rural Preservation and are intended to supplement all other comments filed by the group. These comments have been drafted by member Lucia Dailey.

Members of CCRP have numerous questions, concerns and objections to the draft regulations, which they request be submitted, recorded, and answered before any are enacted:

II. Specific Comments, Questions, and Concerns Related to Draft Regulations

900-6.1(b) Facility Authorization, Property Rights.

The draft regulation states that "the permittee shall be responsible for obtaining all real property, rights-of-way (ROW), access rights and other interests or licenses in real property required for the construction and operation of the facility." Shouldn't the applicant, and then the permittee, be required to make these public, within 30 days, not conceal them, delay their recording, or enter them in public records other than in the county where the project is proposed? All these tactics have been employed, in NYS, by developers attempting to prevent public awareness of information about project location, leases, and conflicts of interests of leaseholders.

900-6.1 (c) Eminent Domain

What does this draft regulation actually say? Would a "merchant generator that IS in the nature of a fully regulated public utility company with an obligation to serve customers" be entitled to such an exemption from New York State Eminent Domain Procedure Law by issuance of a siting permit?

900-6.1(d) Other Permits and Approvals

(2) Shouldn't the developer/permittee/contractor be required to hire a third party traffic monitor to ensure that NYSDOT permits and safety rules are strictly followed? In rural areas, a lack of local and county law enforcement, NYS Troopers, and the many other duties of local, county, and state highway departments do not ensure the safety of residents or the adherence to permits.

900-6.1 (g) Notice to Proceed with Construction.

Why should the Office issue a "Notice to Proceed with Site Preparation" "prior to the submission of all pre-construction compliance and informational filings"? Much environmental damage and disturbance to the site and adjacent areas could occur if activities begin before all the ground rules are set.

900-6.1 (h) Expiration.

Why would the Office allow a permit to be valid for this long? If the permittee waits that long, the conditions in the area under which the permit was issued would/could be very different, and, how could it be considered meeting a public need if they waited that long?

900-6.2 Notifications.

(a)(1) Pre-construction Notice Methods- Shouldn't the Office require the permittee to notify the public at least 14 days prior to the commencement of Site Preparation, since that is when the activity actually starts, and that is when the disruption to the area will begin?

900-6.3 General Requirements

(a) Where does the Office get the authority to determine local laws to be "unreasonably burdensome"? And to whom are they "unreasonably burdensome", certainly not to the citizens of the municipality that enacted them, but to foreign or domestic entities, who, most often, are not residents or landowners in the area?

(c) As noted earlier, why shouldn't the permittee be responsible for hiring and paying for the traffic control that their project and facility necessitates?

900-6.4 Facility Construction and Maintenance

(a) Construction hours- Would employees of the Office be willing to move to, and live in the facility area, and experience construction traffic, noise, disturbance, and blasting for 13 hours a day, 6 days a week, and 12 hours a day on Sunday, with (1) additional hours for transporting construction or maintenance workers, small equipment and tools used at the facility site for construction or maintenance activities?

(2) If, due to safety or continuous operation requirements, construction activities are required to occur beyond the allowable work hours, shouldn't the permittee be required to receive

authorization, rather than just notifying the NYSDPS, the Office, the municipalities, and notify affected landowners?

(b)(1) Shouldn't the permittee be required to hire, in addition to an independent, third party environmental monitor, an independent, third party traffic monitor, to oversee compliance with environmental commitments and siting permit requirements?

(c) Pre-Construction Meeting(1) Shouldn't the agenda and location of this meeting, be agreed upon between the staff of the Office, the NYSDPS, the permittee, AND the attendees, before any distribution to the attendee list? Who died and made the Office of Renewable Energy Siting the supreme leader of the Empire State?

(2) Shouldn't the maps of the designated travel routes, construction worker parking, access road locations and general facility schedule also include information on the number of allowed daily trips permitted by the NYSDOT?

(d)Construction Reporting and Inspections

(3)(iv) Who will decide which "comments, concerns, or suggestions made by the public, municipalities, or other agencies" are "significant"? Shouldn't all be recorded and reported to NYSDPS, because something that seems minor to the permittee, may be important at a later date? Wouldn't failure to report some of these, be an advantage to the permittee, and disadvantage to residents, who are the ones being disturbed, or in the worst case, endangered? In fact, isn't putting the permittee in the position of fielding complaints, giving them this unfair control over the residents? Why doesn't NYSDPS have a toll free line for confidential complaints

and reports of possible violations at these projects, just as NYSDEC has for poachers and polluters, and Department of Social Services for child abuse?

(e) Flagging. Shouldn't flagging also demarcate the limits of clearing for transport of components to the facility?

(j)(4) Shouldn't "Dispose or reuse cleared vegetation in such way that minimizes greenhouse gas emissions (e.g. lumber production or composting)" include " and does not produce phenol seeps or other objectionable conditions" ?

(k) Construction noise: To minimize noise impacts during construction, the permittee shall:(3) Comply with all substantive provisions of all local laws regulating construction noise unless they are waived. SO, Why doesn't this state who decides what is substantive, and who decides if they are waived? Why doesn't this read, "Comply with all provisions of local laws regulating construction noise, unless local authorities provide temporary waivers"?

(l) Visual mitigation. (1) Wind facilities. The permittee shall implement the approved Visual Impact Minimization and Mitigation Planrequired in section 2.9 of this part, including the following:

(iii) Why shouldn't this read "Operational effects minimization measures, including shadow flicker minimization and other measures necessary to ELIMINATE shadow flicker at any non-participating PROPERTY"?

(m)General Environmental Requirements:

(2)Blasting. At the end of this section, shouldn't it read "to protect structures AND WATER RESOURCES from damage"?

(9) Invasive Insects. At the end of this section, shouldn't it read, "If these insects are found, they shall be reported to the ENVIRONMENTAL MONITOR IMMEDIATELY, WHO SHALL THEN report to NYSDEC"?

(n) Water Supply Protection. For this section, why are the regulations written without considering the "interconnections" in water tables and watersheds? In my own neighborhood, residents have lost their shallow wells, when adjacent property owners drilled deeper wells. In the next town east, blasting on electric company property caused adjacent wells to degrade or disappear completely. Are the permittee and the Office ready to take responsibility for for these kinds of occurrences? Doesn't only applying these distance requirements to "non-participating properties", pose risks to water resources from construction activities on "participating properties"?

(1) For wind facilities:

(i) Why shouldn't this read, "No wind turbine shall be located within 100 feet of a water supply well, water supply intake, or WATERSHED RECHARGE AREA"?

(ii) As above, shouldn't this read and have an addition at the end, "Blasting shall be prohibited within 500 feet of any known water supply well, water supply intake, OR WATERSHED RECHARGE AREA"?

(2) For solar facilities:(i) Shouldn't this read "Pier and post driving activities shall be prohibited within 100 feet of any water supply well, wetland, or watershed recharge area; use of earth screws is permit ted"?

(ii) Why shouldn't this read "Blasting shall be prohibited within 500 feet of any water supply well, water supply intake, wetland, or watershed recharge area"?

(s) Agricultural Resources. (1)(2) Why should the draft regulations specify "active" agricultural lands as only those in active agricultural production 3 of the last 5 years? Why should only those within NYS Agricultural Land Classified Mineral Soil Groups 1-4 be protected with these regulations?

When these "agricultural" lands are converted to "industrial" use, shouldn't they lose their agricultural tax treatment, because they are now producing higher value electricity, instead of lower value agricultural products? In addition, shouldn't the conversion remove those properties from "right to farm" exemptions, since they are now industrial property? Doesn't the permitting of an INDUSTRIAL solar or wind facility that permanently impacts agricultural land of any classification or forestland, create an "Environmental Justice" situation for the MANY low income, subsistence farmers and homesteaders in all parts of rural New York State?

900-6.5 (2) Post-Construction Noise Compliance and Monitoring for Wind Facilities

(i) Why shouldn't the sound testing compliance protocol be one designed and approved by a qualified acoustical expert or association, not just one that follows the inadequate provisions and procedures evaluated and approved by the Office and stated in the siting permit? Why allow the permittee to evaluate compliance, when they have a real incentive to minimize the information?

(ii) How long after the commercial operation date will the sound compliance protocol commence?

(iii) Why should the permittee be allowed to wait so long, up to 7 months, to perform the first sound compliance test? That should be shortened to 3 months, or even less, so that problems can be found and dealt with.

(iv) Similarly, why wait so long for the second sound compliance test results, making residents suffer possible violations of the noise regulations for an entire year or longer, before any actions are taken? If noise or vibration violations are reported by the public, tests should be performed within 24 hours, and if the test finds violations, the component(s) causing the problems be taken off line immediately.

900-6.5 (3) Noise Exceedances from Wind Facilities.

(i) As above, aren't the time lapses between the commercial operation date, the tests (7-8 months and 13 months), the minimization options presentation (2 months) and the remedial action implementation (3 months for operational noise or vibration, 5 months for physical noise or vibration) totally unacceptable for residents attempting to live with health problems, disruption of sleep, and the loss of use and enjoyment of their property? If a violation is found, why not require the components that are out of compliance be taken off line immediately and the minimization options be submitted to NYSDPS within 7 days? In fact, shouldn't the applicant be required to submit these types of plans with the application, and the permittee review and revise them before the construction commences? Won't all these entities have the information on the components they will be installing, their typical problems, breakdowns and repairs, and the YouTube video on how to remedy them? Shouldn't there be a proactive approach to these known problems, not a lackadaisical one?

(ii) Why shouldn't the approved operational noise or vibration mitigation measures be implemented within 30 days after the finding of a non-compliance or siting permit violation?

(iii) Why shouldn't the approved physical noise or vibration mitigation measures be implemented within 60 days after the finding of a non-compliance or siting permit violation?

900-6.5 (4)Noise and Vibration Complaints From Wind Facilities.

(i)Because the Office is permitting these facilities, and the NYSDPS is to receive the reports, doesn't it make more sense for NYSDPS to create a 24/7 toll free hotline to receive these complaints from the public? Wouldn't this assure the public that their complaint is received, and assist the responsible state offices in tracking and monitoring the company response? Would a number like 1-800-646-2929 work? (1-800-OGO-AWAY) Unfortunately, hasn't the past performance of company response to wind turbine noise been so abysmal, that pages and pages of regulation has failed to solve the problem?

(ii)Shouldn't the complaint number and information be made available to the public, in addition to the "host municipality", as it is the public that will need it, and because most small municipalities have very limited staff and hours? Besides, by only providing the information to the "host municipality" isn't the "parasite facility" foisting off some responsibility for these problems on local officials?

(iii) In light of their poor record of response, as reported by neighbors from adjoining counties, isn't permittee reporting of complaints to NYSDPS as late as 41 to 91 days after occurrence, an especially ineffective method of controlling these common problems?

(iv) Aren't there amplitude modulation limits at "participating properties"? Aren't those residents allowed an investigation if potential violations occur? Why are only complaints of "excessive

and persistent amplitude modulation" to be considered or investigated, and who decides what is "excessive and persistent"? Why shouldn't the regulations set amplitude modulation limits at the property line of non-participating properties, not just at "any non-participating residence existing as of the issue date of the siting permit", which can, according to these draft regulations, sit idle for as long as seven (7!) years? If this is adopted as written here, doesn't this basically turn a non-participating property without a residence at the time a permit is issued, into a participating property in terms of this condition? Would this qualify as a "taking" of personal property by a government agency, since the Office granting the permit has reduced the use, and probably the value, of the property in question?

900-6.5 (d) Annual Inspection.

Would the report only be available to the NYSDPS and the Office, Shouldn't it be available to the public without filing a FOIL request?

900-6.5 (e) Equipment Replacement.

If a permittee or operator intends to replace major facility components with different make(s), model(s), size(s) or other material modification, shouldn't there be a review and approval by more than the Office? Doesn't changing the allowed components of the original permit constitute a violation of its conditions, a "bait and switch"?

900-6.5 (h) Facility Malfunction.

Why do the draft rules require a contacting the NYSDPS within 1 hour to report any transmission related incident, but in terms of a "catastrophic incident" notifying "the Office and

the NYSDPS no later than 12 hours following such an event"? Why is there no requirement that local authorities and emergency responders be contacted immediately? Don't these two requirements perfectly illustrate that the only concern to the Office is the continuation of power into the grid, and not the protection of health, safety, well being or property of the residents of the "host community"?

900-6.6 Decommissioning.

(a) Why shouldn't the permittee adhere to "all state AND LOCAL laws and regulations in effect at the time of decommissioning regarding the disposal and recycling of components"?