January 30, 2025
Mr. David Jones
Town of Fenner
3151 Fenner East Road
Cazenovia, New York 13035

**Re: Professional Engineering Services**
**Cypress Creek / Oxbow Hill Solar, LLC Project**
**ORES Matter No. 23-00060**
**Town of Fenner, Madison County, New York**

Dear Mr. Jones:

C&S is in the process of conducting a technical review of the proposed Oxbow Hill Solar, LLC Project 94-c [sic][1] application in the Town of Fenner, Madison County, New York. We are reviewing the 262 application documents for completeness and appropriateness with attention to potential impacts within the Town. Per our discussion on 01/24/2025, review comments will be submitted to the Town of Fenner on a rolling basis to accommodate the expedited timeline of this review.

Under the Town of Fenner's Land Use Regulations (Local Law No. 2 of 2021), large-scale solar projects are prohibited. These comments have been prepared based on the possibility that ORES may supersede local law and authorize solar development within the Town of Fenner. As a result, all technical submissions have been reviewed for compliance with state and federal regulations. While local law requirements have been incorporated where applicable, the Town's prohibition on commercial solar development has led to reliance on state and federal regulations in cases where local provisions are absent.

The comments have been packaged per their Appendices title and are formatted as follows:
Document ID – Page Number - Comment
If there are any questions regarding the format or content of these comments, please do not hesitate to reach out.

Sincerely,

C&S Engineers, INC.

Emma Jo Aversa, P.E.
*Senior Project Engineer*



[1] Effective April 20, 2024, the Renewable Action through Project Interconnection and Deployment (RAPID) Act repealed Section 94-c and enacted Article VIII. The RAPID Act transferred ORES from the Department of State to the Department of Public Service, continuing all existing functions, powers, duties, and obligations under the former Section 94-c. With respect to ORES's regulations at 19 NYCRR part 900 (Part 900), the RAPID Act transfers Part 900 to 16 NYCRR Chapter XI, and continues Part 900 in full force and effect subject to conforming changes, such as the substitution of numbering, names, titles, citations, and other non-substantive changes. The conforming changes were filed with the Secretary of State as a new Part 1100 of Title 16 of the NYCRR and became effective July 17, 2024. As such, the original C&S Companies document refers to Section 94-c but indicates Article VIII.

# Appendix 02

## Overview and Public Involvement

206 – General – Items noted under the 2020, 2021, 2022, and 2023 outreach log within the Community Engagement Plan are not in alignment with the provided outreach logs. Applicant should review and revise as necessary.

> ***Response:*** *All stakeholder engagement is captured in Appendix 2-A (Community Engagement Plan) either in the narrative or in the outreach log and associated attachments.*

240 – General – The document identifies an outreach log including information surrounding meetings with the Town of Fenner, Madison County, and New York State stakeholder engagement are all part of Appendix 2-B however, Appendix 2-B does not include any information on stakeholder engagement. Applicant should review and revise as necessary.

> ***Response:*** *The information regarding stakeholder engagement is provided in Appendix 2-B (Local Engagement and Outreach Efforts) Part 5 of 5. Engagement with stakeholders within Madison County starts on page 38 and engagement with stakeholders within New York State starts on page 59.*

237 – General – In instances where the planting areas are limited in width, the project sponsor could explore planting on adjacent properties with appropriate permissions from property owners and waivers from the Town.

> ***Response****: Planting on adjacent properties is not required or necessary. As further detailed in Section (d) of Exhibit 8 (Visual Resources) – Revision 1, Appendix 8-B (Visual Impacts Minimization and Mitigation Plan[VIMMP]) – Revision 1 outlines various measures considered by the Applicant to avoid, minimize, and mitigate potential adverse visual impacts associated with the Facility. The primary minimization and mitigation measure proposed for the Facility is screening/landscaping. The Applicant's environmental consultant, Environmental Design & Research, D.P.C. (EDR), developed a Conceptual Landscape Mitigation Planting Plan (Attachment 1 of the VIMMP) - Revision 1 that uses six different planting schemes (modules) applied along portions of the perimeter of the Facility to screen and/or soften the appearance of the Facility from the surrounding area. Additional visual impact minimization and mitigation efforts include measures related to lighting, anti-reflective coatings to reduce glare, undergrounding of electrical collection lines, and the use of non-specular conductors. See the VIMMP for further details of the Applicant's impact minimization and mitigation program. Information on the conceptual landscape mitigation plan, lighting plan, and solar glare analysis report are provided as Attachment 1, 2, and 3 of the VIMMP, respectively.*

If complaints pertaining to glare are received by the Town of Fenner Code Enforcement Officer, the Town could consider planting, or other mitigative screening requirements, be conditional to approval.

***Response:*** *Town approval of visual mitigation plans is supplanted by Article VIII. The conclusions presented in Section 5.0 of the Solar Glare Analysis – Revision 1, provided as Attachment 3 to the VIMMP (Appendix 8-B) – Revision 1, indicate that none of the potentially sensitive receptors located within or adjacent to the Oxbow Hill Solar Project will receive glare from the Facility. Because the Facility is not anticipated to result in any glare impacts to identified receptors, no impact avoidance or mitigation measures are necessary.*

We would recommend a planting mixture of predominantly salt tolerant species to be utilized within required planted setback areas along road corridors.

***Response:*** *As detailed in Section 1.0 of the Landscape Mitigation Plan – Revision 1, provided as Attachment 1 to the VIMMP (Appendix 8-B) – Revision 1, the seven conceptual planting modules developed for the Facility intentionally mimic the character of the existing roadside vegetation, hedgerows and forest stands in an effort to visually integrate the Facility into the surrounding landscape by reducing visual contrast between the existing and proposed elements. Plant species included in the master plant list were chosen based on site reconnaissance and county-level records of native plants as available through the New York Flora Atlas, the United States Department of Agriculture (USDA) PLANTS Database, and the United States Environmental Protection Agency (US EPA)'s Ecoregions of New York descriptions. In addition, soil classification and properties data available through the USDA NRCS WebSoilSurvey application were used to ensure that species proposed are broadly appropriate for site soils. The New York State Department of Environmental Conservation (NYSDEC) 2015 Prohibited and Regulated Plant List was consulted to ensure that no invasive species were proposed. The master plant list includes a mixture of species, with varied levels of salt tolerance.*

# Appendix 03

## Location of Facilities and Surrounding Land Use

155 – General – The applicant states the project is consistent with the 2023 Town of Fenner Comprehensive Plan however, local law prohibits commercial solar development.

***Response:*** *While the existing Town law does prohibit commercial solar development, the Town's 2023 Comprehensive Plan (provided in Appendix 3-A) includes Goal 1 which states: Adopt a solar ordinance that creates a local guideline for the siting of commercial/large-scale solar facilities.*

*The Applicant provides an evaluation of the Project's consistency with the Town of Fenner's 2023 Comprehensive Plan in Section (h) of Exhibit 3 (Location of Facilities and Surrounding Land Use) – Revision 1. As further detailed Section (h) of Exhibit 3 – Revision 1, the proposed Facility would preserve farm and agricultural uses by promoting on-farm alternative business enterprises, which would provide supplemental income to local farmers through lease payments to continue agricultural production on nearby lands. These lease payments, as well as the payments in lieu of taxes (PILOT payments) provided to the Town, would support the overall rural economy (see Exhibit 18 - Revision 1 for discussion of socioeconomic effects). The Applicant is also exploring opportunities for agricultural co-utilization (see Appendix 15-C) to produce both energy and farm products within the Facility Site. Moreover, the Facility is not expected to negatively impact a significant amount of agricultural land in the Town or regionally (see Exhibit 15 – Revision 1 for a discussion of agricultural resources). Lastly, the Facility has been designed to comply with the Article VIII regulations and Uniform Standards and Conditions (USCs). The USCs ensure that potential adverse environmental impacts are avoided and minimized to the greatest extent practicable, including agricultural impacts, thus balancing the need for renewable energy facilities while protecting farmland.*

155 – General – The applicant states Verizon and Frontier did not disclose their facilities despite repeated consultation attempts. This could lead to conflicts during construction.

***Response:*** *It is correct that Verizon and Frontier did not disclose the location of their facilities. However, the locations of any known overhead and underground collection lines were captured in the Applicant's 2022 ALTA survey, which was used to inform design. The location of these overhead and underground lines are presented in Appendix 5-A (Design Drawings) – Revision 1. Further, the Siting Permit requires that the Applicant become a member of Dig Safely New York prior to construction. The Applicant will also be required to ensure that all contractors, excavators, and operators associated with the Facility comply with the requirements of the Public Service Commission's (PSC) regulations regarding the protection of underground facilities, pursuant to Title 16 of the New York Codes, Rules, and Regulations (16 NYCRR) Part 753.*

# Appendix 03

155 – General – A significant portion of the footprint of this proposed project is located within existing Agricultural lands. The Town of Fenner comprehensive plan discussed using co-utilization strategies like agrivoltaics, but the applicant does not propose any co-utilization strategies in alignment with the Comprehensive Plan.

***Response:*** *As presented in Appendix 15-C (Initial Agricultural Co-utilization Assessment), the Facility Site is being assessed for its suitability to support a range of potential co-utilization activities such as traditional row crops, hay, sheep or other grazing, the cultivation of pollinator-friendly plantings, the installation of apiaries, and livestock or livestock product. As presented in Section (b) of Appendix 15-C, after considering the specific development constraints within the Facility Site there are approximately 837 acres of remaining agricultural land potentially available for co-utilization activities. This includes 485 acres outside of the Facility fence lines which could accommodate farm products like grain and corn, as indicated in Goal 5 of the Town of Fenner's Comprehensive Plan. Further, Siting Permit Condition 5(f) requires development and implementation of an Agricultural Co-Utilization Plan, which is consistent with the Town's Comprehensive Plan to produce both energy and farm products.*

81 – General – As previously stated as part of this review, large scale solar energy systems are prohibited within the Town; the applicant should seek a use variance from the ZBA to allow the solar farm as a principal use within zoning district C. The balancing tests for the establishment of public utilities could be used as the basis for the ZBA application. These standards have recently been applied to solar systems Freepoint vs. Town of Athens ZBA.

***Response:*** *The requirement to seek a use variance is procedural and supplanted by Article VIII. The Applicant has sought a waiver of the Town's use prohibition as outlined in Exhibit 24 (Local Laws and Ordinances) - Revision 1 and Appendix 24-C (Statement of Justification for Local Law Waiver Requests) – Revision 1.*

81 – 33 – The applicant states the project will interfere with snowmobile trails. The applicant states they will work with local clubs and landowners to reroute trails. Consideration should be given to enforcement of this statement to ensure this recreational resource continues to be a Town asset.

***Response:*** *If the landowners wish to continue hosting snowmobile trails on their property, the Applicant will work with landowners to reroute the trails to accommodate continuation of the trail system. Decisions about continuing to host snowmobile trails ultimately rest with the landowners, neither the Applicant nor the Town has the authority to mandate the landowners host trails on their property.*

79, 203, & 204 - The purpose of the magnetometer survey is to identify NYSDEC-regulated wells within 500 feet of areas proposed to be disturbed on-site. Anomaly D was identified with the use of a UAV-based aeromagnetic survey to have the signature and amplitude of a possible well. Anomaly D is outside

the 100 ft limit of construction activity, but within 500 ft. Anomaly D is located at the corner of Bellinger Rd and Milestrip Rd.

It was recommended by representatives of Aletair, the aeromagnetic survey contractor, that Anomaly D be followed up with a geophysical survey. It was also recommended that the well be identified and the type determined prior to development. We suggest a follow-up of this recommendation. A photolog of Anomaly D is provided in Civil File #203.

> ***Response:*** *A geophysical survey is not required or necessary. As further detailed in Section (u)(1) of Exhibit 3 (Location of Facilities and Surrounding Land Uses) – Revision 1, the Applicant conducted a site reconnaissance visit on December 2, 2022, for the purpose of ground truthing the magnetometer survey results in the areas of Anomaly D. The site reconnaissance identified brush, trees, and large rock piles, as well as some trash and debris. No orphaned well was identified. A photolog of the site reconnaissance was provided in Appendix 3-C (Photolog Magnetometer Anomaly D). Regardless, Facility components are located more than 100 feet from Anomaly D, meeting the setback requirements of 16 NYCRR Section 1100-2.4(u)(2).*

# Appendix 04

## Real Property

154 – General – Several landowner easements are still in process. The feasibility of this project is dependent on securing these easements. The Town should verify the applicant's timeline for securing the required easements.

> ***Response:*** *Prior to construction, Siting Permit Condition 6.1(h) requires that the Applicant submit a copy of all necessary titles to, or leasehold interests in, the Facility, including ingress and egress access to public streets, and such deeds, easements, leases, licenses, or other real property rights or privileges as are necessary for all interconnections for the Facility.*

154 – General – The document states an agreement is in development for use of the collection line easement corridors. The feasibility of this project is dependent on securing these easements. The Town should verify the applicant's timeline for finalizing this agreement.

> ***Response:*** *Prior to construction, Siting Permit Condition 6.1(h) requires that the Applicant submit a copy of all necessary titles to, or leasehold interests in, the Facility, including ingress and egress access to public streets, and such deeds, easements, leases, licenses, or other real property rights or privileges as are necessary for all interconnections for the Facility.*

154 – General – The document states the final ALTA survey has not been completed and will be submitted as a pre-construction compliance filing. If there are any discrepancies in the final survey, this could lead to project delays to get this sorted out. The Town should cross-check the final survey against submitted parcel data once available to identify any discrepancies as soon as possible.

> ***Response:*** *The Applicant completed an ALTA survey for the Facility Site parcels in 2022, which was used to inform design. The results from the ALTA survey are integrated into the Design Drawings (Appendix 5-A) – Revision 1.*

# Appendix 05

# Design Drawings

General – The design drawings document the intended location and approach for the proposed development. As noted in other review documents, there are multiple components of the design which are not in compliance with the Town of Fenner's local laws including but not limited to: setbacks, fence heights, and zoning. Additionally, as documented in the review notes of Appendix 13, the stormwater design elements are not progressed or detailed enough for construction.

***Response:*** *Noted. The reasoning and statement of justification for the Applicant's local law waiver requests are presented in Exhibit 24 (Local Laws and Ordinances) – Revision 1 and Appendix 24-C (Statement of Justification for Local Law Waiver Requests) – Revision 1. For further information, see the Applicant's Response to Issues Statement, Party Status Request, Municipal Statements of Compliance and Public Comments on Draft Permit. The design drawings presented in Appendix 5-A (Design Drawings) – Revision 1 are consistent with the requirements outlined in 16 NYCRR Section 1100-2.6, providing an appropriate level of detail for permitting. The Final Plans, Profiles and Detail Drawings will be provided to the Office of Renewable Energy Siting and Electric Transmission (ORES) for review and approval prior to commencement of construction consistent with Siting Permit Condition 6.1(c).*

General – The design documents are noted to be at 60% design development. Final design information for numerous elements of the design (structural slabs, final setback dimensions, stormwater features) are not fully detailed, reducing the ability to review and confidently support the applicant's approach. The Town should consider re-reviewing the documents at a 90% or 100% completion stage.

> ***Response:*** *The Final Plans, Profiles and Detail Drawings will be provided to ORES for review and approval prior to commencement of construction consistent with Siting Permit Condition 6.1(c).*

General - The design drawings are provided at a common scale and include a layout for all facility components. The Applicant has not provided details regarding the operations and maintenance building or a permanent right-of-way. The Applicant cites the use of an existing building for operations and maintenance and the ownership of entire parcels without restriction of collection line placement.

> ***Response:*** *Correct. As discussed in Section (f)(1) of Exhibit 5 (Design Drawings) – Revision 1, details regarding the operations and maintenance building and any associated structures are not provided as the Applicant is planning to utilize an existing building within the Facility Site or within the surrounding communities. In addition, permanent rights-of-way are not provided on the design drawings as the Applicant's lease agreements largely encompass the whole parcel with no restriction on collection line placement.*

The Applicant has not provided details regarding topsoiling locations citing this to be developed later in the engineering, procurement, and construction phase. The Applicant has stated that in some locations,

landscape screening plantings encroach onto locations where post construction stormwater controls will be located.

> ***Response:*** *Correct. As discussed in Section (f)(1) of Exhibit 5 (Design Drawings) – Revision 1, topsoil stockpiling locations are not depicted in the Preliminary Design Drawings as these locations depend on how the Facility will ultimately be constructed and as such, are developed later in the process in coordination with the Engineering, Procurement, and Construction Contractor. Topsoil stockpiling locations will be provided as part of the Final Site Plans submitted as a pre-construction compliance filing consistent with 16 NYCRR Section 1100-10.2(c) requirements. However, the Preliminary Design Drawings do include details showing how soil will be stockpiled, and the erosion and sediment control measures utilized to prevent soil erosion (see Appendix 5-A – Revision 1). Section (f)(1) also notes that while landscape screening plantings will encroach onto locations where post construction stormwater controls, including vegetated filter strips will be located, the materials proposed for landscape screening plantings are compatible with the stormwater management controls shown on the Preliminary Design Drawings (see Appendix 5-A – Revision 1).*

When approved by the fire code official, exemptions or modifications may be made for solar facility fire apparatus access roads. The Applicant has proposed access roads that would consist of 14-foot-wide permanent gravel roads, with 3-foot-wide vegetated compacted shoulders on either side of the road.

The 2020 Fire Code of New York State (Section 503.2.1) requires 20-foot-wide access roads exclusive of shoulders.

> ***Response:*** *Correct. As discussed in Section (f)(4) of Exhibit 5 (Design Drawings) – Revision 1, exemptions or modifications for solar facility fire apparatus access roads are permissible when approved by the fire code official. The Facility does include access roads that would consist of 14-foot-wide permanent gravel roads, with 3-foot-wide vegetated compacted shoulders on either side of the road, for a 20-foot clearance width throughout much of the Facility. The Facility access roads will include 95% percent compacted subgrade, a geotextile fabric, and New York State Department of Transportation (NYSDOT) type two aggregate subbase no less than 6 inches deep. These roads will accommodate fire access to the necessary portions of the Facility and are adequate to ensure appropriate emergency vehicle access to the Facility. There will not be traffic within the Facility during operations, and the 14-foot-wide access roads (with a total 20-foot clearance width) provide sufficient access for emergency personnel to quickly access emergencies anywhere in the site without obstruction. Adding an additional 6 feet to permanent gravel width to all Facility access roads would create unnecessary agricultural, environmental, and stormwater impacts.*

The proposed project design does not include access roads that extend to within 150 feet of all portions of the Facility. Regarding special use permits, the Town of Fenner Land Use Regulations (Section 606.5(B)) state that the planning board shall take into consideration the maximum safety of vehicular circulation

between the site and road network.

***Response:*** *As discussed in Section (f)(4) of Exhibit 5 (Design Drawings) – Revision 1, Project design does not include access roads that extend to within 150 feet of all portions of the Facility, as it would be impractical to include roads to all parts of the Facility, including panels located in distant locations from public access points, and the inclusion of additional access roads to satisfy this requirement would create unnecessary agricultural, environmental, and stormwater impacts. However, Oxbow Hill Solar has provided permanent access roads and turnarounds to every inverter and medium voltage transformer throughout the Facility. In addition, access roads that dead end and are in excess of 150 feet will provide turnarounds.*

The Applicant states should a fire occur within the solar array, electrically isolating the equipment will minimize fuel for the fire, requiring little if any water to contain the fire. Therefore, the proposed turning radii and turnarounds are adequate, and no water supply or fire hydrant systems are required given the proposed Facility design. According to the Town of Fenner Land Use Regulations (Section 405) The design, construction, maintenance and operation of storage facilities for flammable liquids, chemicals and explosives shall comply with all applicable laws, codes and regulations. It is the intent of The Applicant to construct a Solar Farm, as defined by the Town of Fenner Land Use Regulations. The proposed construction of Oxbow Hill Solar by the Applicant does not comply with the Town of Fenner's Land Use Regulations Local Law No. 2 of 2021.

***Response:*** *As discussed in Section (f)(4) of Exhibit 5 (Design Drawings) – Revision 1, with respect to turning radii (Section 503.2.4), the minimum centerline curve radius for the Facility access roads will be designed to be 50 feet, and the return radius at the public road intersection will be designed to be a minimum of 25 feet. With respect to turnarounds (Section 503.2.5), Facility access roads that dead end and are longer than 150 feet will provide turnarounds that will be 60 feet long and 14 feet wide, with a 25-foot turn radius. The substation access road will consist of a 20-foot-wide permanent gravel road with an approved turnaround. All turning radii are suitable for an E-ONE HP 95 Mid Mount fire truck. Finally, with respect to water supply (Section 507.1) or fire hydrant systems (Section 507.5), should a fire occur within the solar array, electrically isolating the equipment from which the fire originates will minimize fuel for the fire, requiring little if any water to contain the fire. Electrical fires within the site can be contained with electrical fire specific extinguishers found on local/regional emergency response vehicles. Therefore, the proposed turning radii and turnarounds are adequate, and no water supply or fire hydrant systems are required given the proposed Facility design.*

*As discussed in Section (a) of Exhibit 6 (Public Health, Security and Safety) – Revision 1, once constructed, the presence of electrical equipment both within the arrays and at the collection substation carries some risk of an electrical hazard. However, generally, these systems have been tested and proven to operate safely, and these areas will have perimeter controls (i.e., security fencing, signage) as is required by local*

*law, New York State Fire Code, and the National Electrical Safety Code to prevent potential injury. Certain equipment, such as inverters, also may present a combustion risk. The New York State Fire Code provides access and brush clearing requirements for ground-mounted solar systems, as well as a description of requirements for equipment installation (including maximum allowable capacities). Facility design complies with the setback requirements in 16 NYCRR 1100-2.6(d) to protect people and structures near the Facility from potential harm in the event of an emergency, such as fire. In addition, as discussed in Section (c)(6) of Exhibit 6 – Revision 1, a fire at the Facility's collection substation or at one of the intra-array inverters would be contained through a combination of the underlying gravel pad and/or the substation access road. The gravel pad and the access road will provide a buffer between the component and surrounding vegetation to help prevent the spread of fire. In addition, the collection substation will be constructed within a fenced gravel yard. Routine maintenance of the gravel yard will eliminate combustible material within the buffer area between equipment and the substation fence line. Lastly, the Applicant's Safety Response Plan contains a protocol and guidelines to be followed in the event of a fire emergency or hazardous substance incident (see Appendix 6-B [Site Security Plan] – Revision 1).*

# Appendix 06

## Public Health, Safety, and Security

64 – 5 –The project sponsors argument for a negligible impact to the environment at a NYS-wide level assumes that the land could alternatively be used as a traditional energy generation facility. Per the Local Comprehensive Plan and community input, the impact should be measured against the existing condition of the properties as either agricultural land or a wind energy system.

**Response:** *There is no requirement in 16 NYCRR § 1100-2.7 to assess public health, safety and security concerns associated with construction and operation of the Facility against existing conditions of the properties per the local Comprehensive Plan or otherwise. Moreover, the Applicant appropriately assessed the impacts of the Facility as compared to conventional fossil fuel power plants as the Facility is being developed in furtherance of the CLCPA goals, and as a replacement for fossil fuel-based generation.*

65 – General – The Safety Response Plan was reviewed and confirmed to be in compliance with NYS fire code requirements and safety standards.

66 – General – The Site Security Plan was reviewed and confirmed to be in compliance with Title 16 New York Codes, Rules, and Regulations (16 NYCRR) Section 1100-2. 7(b). The plan has been submitted to local emergency responders for the Town of Fenner and Madison County. Any comments or concerns resultant from their reviews should be addressed and incorporated into the final document.

**Response:** *As discussed in Section (e) of Exhibit 6 (Public Health, Safety and Security) – Revision 1, the Applicant has consulted with local emergency responders and relevant municipal agencies to ensure that its safety and security plans appropriately consider local conditions, risks, and resources. The Site Security Plan (Appendix 6-A – Revision 1) and the Safety Response Plan (Appendix 6-B – Revision 1) were provided to local emergency responders on January 16, 2024, for review and comment. Furthermore, the Applicant hosted a meeting with representatives from the Cazenovia Fire Department, Smithfield Fire Department, Madison County, and Town of Fenner on February 1, 2024, to solicit input on the Site Security and Safety Response Plans (a copy of the meeting minutes is included in Appendix 2-A). The Applicant updated the Safety Response Plan to incorporate the local emergency responders' requests to the extent practicable. Further, the Site Security Plan (Appendix 6-A – Revision 1) and the Safety Response Plan (Appendix 6-B – Revision 1) were provided to the New York State Division of Homeland Security and Emergency Services (DHSES) on October 6, 2023. In addition, on May 7, 2024, the Applicant met with DHSES and the Office of Renewable Energy Siting and Electric Transmission to receive feedback and additional recommendations for the Site Security and Safety Response Plans. The notes from the meeting are provided in Appendix 2-C*

*(Consultation Materials) – Supplement. As a result of this meeting, the Applicant revised versions of the Safety Response Plan – Revision 1 and Site Security Plan – Revision 1 to incorporate enhanced discussions on backup power, more comprehensive details on access control, and refined language for improved clarity. See Exhibit 2 (Overview and Public Involvement) – Revision 1, Appendix 2-B (Local Engagement and Outreach Efforts), and Appendix 2-C (Consultation Materials) – Supplement for this correspondence.*

# Appendix 07

## Noise and Vibration

62 - 7 – The applicant states a cumulative noise assessment is not required by the Article VIII regulations. However, Article VIII, Section 900-2.8 Exhibit 7: Noise and vibration, Section (C) Radius of evaluation states the evaluation of the maximum noise levels to be produced during operation of the facility should be conducted on a cumulative basis, if applicable, when the proposed project is located near existing or approved facilities.

Despite this, the regulation later appears to contradict itself by specifying that for solar facilities, the cumulative noise evaluation only needs to include noise from other existing solar facilities and substations—without mentioning wind farms or other noise sources. This inconsistency makes it unclear whether cumulative impacts must be held to the regulatory sound limits or if the requirement only applies in cases with multiple solar farms or multiple wind farms, independent of alternative renewable energy projects.

If cumulative noise impacts were subject to regulatory limits, there would be sensitive receptor locations where the predicted sound levels would exceed the allowable thresholds. The table below summarizes these instances.

| Receptor ID | Participation Status | Regulatory Maximum Sound Level (dBA) | Wind and Solar Combined (dBA) |
|---|---|---|---|
| 99 | Non-Participating | 45 | 46 |
| 150 | Non-Participating | 45 | 45.2 |
| 152 | Non-Participating | 45 | 45.1 |
| 165 | Non-Participating | 45 | 46.50 |
| 209 | Non-Participating | 45 | 46 |
| 211 | Non-Participating | 45 | 47.6 |
| 5 | Non-Participating | 45 | 47.4 |
| 210 | Non-Participating | 45 | 47.2 |
| 169 | Non-Participating | 45 | 45.2 |
| 170 | Non-Participating | 45 | 45 |
| 208 | Non-Participating | 45 | 46.3 |

| | | | |
|---|---|---|---|
| 161 | Non-Participating | 45 | 50.8 |
| 162 | Non-Participating | 45 | 49 |
| 214 | Non-Participating | 45 | 48.7 |
| 163 | Non-Participating | 45 | 48.4 |
| 212 | Non-Participating | 45 | 47.9 |
| 213 | Non-Participating | 45 | 47.8 |
| 2 | Non-Participating | 45 | 47.5 |
| 1 | Non-Participating | 45 | 45.1 |

**Response:** *As discussed in Section (d) of Exhibit 7 (Noise and Vibration) – Revision 1, the maximum sound increase at any non-participating residence as a result of development of the proposed Facility is 2.6 A-weighted decibel (dBA). Because it generally takes a difference of approximately five dBA for a change in sound level to be perceptible to most people, these small incremental changes of three dBA or less are essentially inaudible and intangible. Thus, the cumulative analysis concludes that the potential sound emissions from the Facility will have no adverse cumulative effect on the existing general environmental sound level, and further illustrates that sound conditions will continue to be driven by the wind turbines and natural wind-induced sounds when wind speeds are sufficient for the Fenner Wind Farm to operate. During calm periods when the wind turbines are idle, the sound emissions from the Facility will be minimal (<39 dBA) at all residential receptors and therefore will meet Article VIII noise limits.*

**Additional Considerations:**

62 – 9 – Applicant documents construction noise to take place 8am to 8pm on Sunday and National Holidays. A review of the local code does not prohibit noise or construction during these time periods however, the Town should be aware of this intent.

***Response:*** *No response needed.*

195 – 36 – Within Appendix 7-A Project Noise Impact Assessment, it is noted that Contractors will be encouraged to replace their standards back up alarms with white noise alarms to reduce construction noise impacts. The Town might consider requesting this as a requirement of approval.

***Response:*** *As discussed in Section (n) of Exhibit 7 (Noise and Vibration) – Revision 1, measures employed to minimize and mitigate temporary construction noise may include using back-up alarms with a minimum increment above the background sound level to satisfy the performance requirements of the current revisions of Standard Automotive Engineering and Occupational Safety and Health Administration (OSHA) requirements. Siting Permit Condition 4.4(a) requires that construction and*

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

# Appendix 08

## Visual Impact Assessment

44 - 50 – The applicant states "The local law establishes agricultural fencing as a permitted fence type that does not requiring issuance of a building permit by the code enforcement officer. As discussed in Section 2.2, security fencing surrounding the PV arrays will utilize wood fence posts and agricultural mesh and is meets this standard." The local law defines an "AGRICULTURAL FENCE" to be "A fence erected on a Farm for the express purpose of containing and restraining livestock, or for protecting crops from wild animals". Because the purpose of this fence is not the stated purpose in the definition, it will require the issuance of a building permit by the code enforcement officer.

***Response:*** *The requirement to obtain a building permit is a procedural requirement that is supplanted by Article VIII.*

44 – 50 – Local law permits a maximum fence height of 6 feet. The proposed project fencing has a maximum height of 9 feet and will require a waiver.

***Response:*** *As discussed in Section 2.2.2 of Appendix 8-A (Visual Impact Assessment) – Revision 1, fencing surrounding the PV arrays will consist of 9-foot-tall wood fence posts spaced 12 to 15 feet apart supporting 8-foot-tall agricultural mesh. The fencing surrounding the collection substation will consist of 6-foot-tall galvanized steel fence posts spaced approximately 10 feet apart and supporting chain-link mesh. The chain link fence will be topped with 1-foot-tall angle arms strung with three strands of barbed wire. In Table 24-1 (Applicable Substantive Requirements and Compliance Plan) in Section (d) of Exhibit 24 (Local Laws and Ordinances) – Revision 1, the Applicant notes that these styles of fence comply with subsection B of the Town's Fence Regulations; however, the Applicant also notes that the National Electric Code and the Article VIII regulations require fencing which encloses all mechanical equipment to be a minimum height of seven feet. As such, the Applicant sought a waiver of the height limitation for fences. Further justification for this waiver is provided in Section III of Appendix 24-C (Statement of Justification for Local Law Waiver Requests) – Revision 1. This waiver request was granted by ORES as part of the Siting Permit findings. For further information, see the Applicant's Response to Issues Statement, Party Status Request, Municipal Statements of Compliance and Public Comments on Draft Permit.*

40 – 6 – The applicant states "The only overhead conductors will include a small length of transmission line that will connect to the proposed point of interconnection (POI) at the existing Fenner Wind Farm substation." The Town of Fenner Local Law No.2 states that "All utility services and electrical wiring/lines shall be placed underground and otherwise be placed within the walls or unobtrusive conduit." This transmission line is not within accordance with the local law and will require a variance.

***Response:*** *As discussed in Section 2.2.3 of Appendix 8-A (Visual Impact Assessment) - Revision 1, the high-*

*voltage energy will be transferred from the collection substation via three parallel overhead 115-kV transmission lines, each approximately 150 feet in length, to the point of interconnection (POI) at the existing Fenner Substation. The reasoning and statement of justification for the Applicant's local law waiver requests are presented in Exhibit 24 (Local Laws and Ordinances) – Revision 1 and Appendix 24-C (Statement of Justification for Local Law Waiver Requests) – Revision 1. For further information, see the Applicant's Response to Issues Statement, Party Status Request, Municipal Statements of Compliance and Public Comments on Draft Permit.*

**Additional Considerations:**

150 – 8 – The applicant summarizes "the Town of Fenner Local Law No. 2 of 2021 prohibits large scale solar projects like Oxbow Hill Solar from the Town (Local Law No. 2 of 2021, a local law to amend the Town of Fenner Land Use Regulations with respect to Solar Energy Systems ("2021 Solar Law"). Therefore, there are no local requirements pertaining to the assessment of visual impacts within this law that are applicable to the Facility. However…Fourteen of the 16 views selected for photo simulation development occur within the Town of Fenner… This information allows potential concerns from the Town of Fenner regarding visual impacts to be taken into consideration during the 94-c [sic] review process."

Although the Town of Fenner does not have any visual impact laws to regulate the proposed development, the 94-c [sic] process encourages applicants to consult with the public to identify visual concerns and incorporate feedback into the assessment. If there are additional community concerns which have not been addressed at this time, these should be submitted to the applicant for consideration.

> ***Response:*** *As discussed in Section 3.5.2 of Appendix 8-A (Visual Impact Assessment [VIA]) – Revision 1, per the requirements set forth in Article VIII, the Applicant conducted outreach to agencies and stakeholders to assist in the identification of any additional visually sensitive resources (VSRs) and locations that would be suitable for the development of photosimulations. A response was received from a representative of the Town of Fenner and the Madison County Planning Board that recommended one resource that was not previously identified: the Fenner Renewable Energy Education (FREE) Center. This VSR was subsequently added to the VSR inventory (VSR ID #19) within the "Local Parks and Recreation Areas" category. Copies of correspondence sent by the Applicant as part of this outreach process and the responses received from state agencies and municipal stakeholders are included as Attachment G of the VIA.*

# Appendix 09

## Cultural Resources

172 – General - A long-term vegetative screen monitoring plan should be provided. This plan should review all plantings proposed for the project to ensure health of the landscaping. All trees found to be unhealthy, dead, or dying, should be replaced.

***Response:*** *Siting Permit Condition 4.4(l)(3) Screen Planting Plans requires the Applicant to retain a qualified landscape architect, arborist, or ecologist to inspect the screen plantings for two years following installation to identify any plant material that did not survive, appears unhealthy, and/or otherwise needs to be replaced. The Applicant must remove and replace plantings that fail in materials, workmanship, or growth within two years following the completion of installing the plantings. In addition, Siting Permit Condition 6.1(e)(4) requires submission of a Vegetation Management Plan prior to construction which will include inspections of the success of vegetation management practices.*

# Appendix 10

## Geology, Seismology, and Soils

35 - 4 - 3% of the proposed development is in areas with greater than 15%. According to local law Section 407, construction of facilities on slopes of 15% or more shall require a special use permit. It does not appear a waiver request has been submitted for this item.

***Response:*** *Section 407 of the Town's Land Use Regulations states "the construction of new buildings, roads, and other facilities on slopes of 15% or more grade (15% = ½ foot rise in 10 feet horizontal distance) shall require a special use permit." The issuance of a special use permit is procedural and supplanted by Article VIII.*

35 – 16 (Section 13) – The Bedrock Analyses and Maps section states that the design drawings depict typical foundation depths of the various Facility components however, typical depths are not present on the submitted design drawings. This information is critical to support the statements made within Exhibit 10 that the site is suited to the proposed facility and should therefore be included as part of the 94-c [sic] application.

***Response:*** *The design drawings presented in Appendix 5-A (Design Drawings) – Revision 1 are consistent with the requirements outlined in 16 NYCRR Section 1100-2.6, providing an appropriate level of detail for permitting. The Final Plans, Profiles and Detail Drawings, including foundation drawings, will be provided to ORES for review and approval prior to commencement of construction consistent with Siting Permit Condition 6.1(c)(2).*

171 – 9 (Section 6.1) – Based on the findings of the geotechnical investigation, it is recommended a zinc coating with a minimum thickness in accordance with ASTM A123 should be specified to provide allowance for any corrosion loss resultant from the soils. Additionally, thicker pile sections may be necessary to accommodate any reduction in the structural capacity over time. A site-specific corrosion evaluation report has been recommended to estimate the rate of corrosion for zinc and bare steel and inform the design and selection of pile foundations / buried steel across the site. We would recommend this evaluation be conducted prior to finalizing the design.

***Response:*** *As discussed in Section (a)(4) of Exhibit 10 (Geology, Seismology, and Soils) – Revision 1, a site survey will be performed prior to construction to stake out the exact location of proposed Facility components and horizontal directional drilling (HDD) crossings. Once site surveys are complete, a detailed geotechnical investigation will be performed to verify subsurface conditions and facilitate the development of final designs for the Facility.*

*A corrosion evaluation will be considered for the Project's specific geotechnical investigation and final structural design. Specifically, the final structural design will consider the useful life of galvanized (zinc) coating, followed by the anticipated loss of steel due to corrosion to ensure the structural integrity of the Facility is maintained throughout the Project's service life. For structural steel shapes, a minimum zinc*

*coating thickness typically ranges from 3 to 4 mil depending on the steel section size as specified by ASTM A123. Thicker pile sections, increased zinc coating thickness, or other corrosion protection measures may be necessary to accommodate any reduction in structural capacity.*

171 – 11 (Section 6.2) – The geotechnical report recommends that all structural foundations be founded at 50 inches below grade of deeper, for a 25-year design life. For the PV array piles, a minimum depth

of 36" is recommended for frost protection. Currently, details are not provided on the design documents specifying this construction.

***Response:*** *The design drawings presented in Appendix 5-A (Design Drawings) – Revision 1 and Appendix 5-B (Electrical Design Drawings) – Revision 1, are consistent with the requirements outlined in 16 NYCRR Section 1100-2.6, providing an appropriate level of detail for permitting. The Final Plans, Profiles and Detail Drawings, including foundation drawings, will be provided to ORES for review and approval prior to commencement of construction consistent with Siting Permit Condition 6.1(c)(2).*

171 – 12 (Section 7.3) – The geotechnical report recommends over excavating the subgrade by at least six (6) inches, lining the exposed materials with a geotextile separation fabric, and bringing the subgrade back up to the design foundation elevation with compacted structural fill. Currently, details are not provided on the design documents specifying this construction.

***Response:*** *The design drawings presented in Appendix 5-A (Design Drawings) – Revision 1 are consistent with the requirements outlined in 16 NYCRR Section 1100-2.6, providing an appropriate level of detail for permitting. The Final Plans, Profiles and Detail Drawings, including foundation drawings, will be provided to ORES for review and approval prior to commencement of construction consistent with Siting Permit Condition 6.1(c)(2) and will be informed by the detailed geotechnical investigation performed prior to construction.*

**Additional Considerations:**

- 35 – 4 (Section a.3.) – It is documented that all ground disturbance within existing agricultural lands, including excavation and topsoil removal, will be conducted in accordance with Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands, developed by the NYS Department of Agriculture and Markets. . These guidelines require stripped topsoil be sampled and any topsoil removed from permanently converted agricultural areas (ex. permanent roads) should be spread evenly in adjacent agricultural fields and this should be indicated on drawings. At this time, this information is not present within the submitted drawings. It is later stated in Section 13 that "Final cut and fill storage areas will be

available as part of the Construction Operations Plan pre-construction filing requirement consistent with 16 NYCRR Section 1100-10.2 (e) (2) following approval and will be included in the pre-construction compliance filing plans, profiles, drawings, and SWPPP."

***Response:*** *Information regarding excavation and topsoil removal will be prepared as part of the final Storm Water Pollution and Prevention Plan (SWPPP). As indicated in Appendix 5-D (Phasing and Compliance Filing Plan) – Supplement, a copy of the final SWPPP will be provided as a pre-construction compliance filing.*

- 35 – 7 – Table 10.1 documents soils for all horizontal directional drilling (HDD) locations proposed on site. The locations are numbered 1-23 however, Figure 10-2. Trenchless Installation Locations – Revision 1 identifies HDD locations as 0-22. Review and revise as necessary.

***Response:*** *HDD location 23 presented in Table 10.1 of Exhibit 10 (Geology, Seismology and Soils) – Revision 1 is the same location numbered 0 in Figure 10-2 (Trenchless Installation Locations)-Revision 1. A revised table is provided below:*

| *HDD* | *Soil Series Name* | *Slope Range (percent)* | *Depth to Bedrock (cm)* | *Depth to Water Table (cm)* |
|---|---|---|---|---|
| *0* | *Lima silt loam* | *3-8* | *>200* | *>200* |
| *1* | *Lima silt loam* | *3-8* | *>200* | *54* |
| *2* | *Honeoye silt loam* | *3-8* | *>200* | *>200* |
| *3* | *Appleton loam* | *3-8* | *>200* | *20* |
| *3* | *Honeoye silt loam* | *3-8* | *>200* | *>200* |
| *4* | *Honeoye silt loam,* | *8-15* | *>200* | *>200* |
| *5* | *Lyons silt loam* | *0-3* | *>200* | *0* |
| *6* | *Lima silt loam,* | *3-8* | *>200* | *54* |
| *7* | *Aurora silt loam* | *8-15* | *86* | *54* |
| *8* | *Honeoye silt loam* | *3-8* | *>200* | *>200* |
| *9* | *Honeoye silt loam* | *3-8* | *>200* | *>200* |
| *10* | *Appleton loam* | *3-8* | *>200* | *20* |

| *HDD* | *Soil Series Name* | *Slope Range (percent)* | *Depth to Bedrock (cm)* | *Depth to Water Table (cm)* |
|---|---|---|---|---|
| *0* | *Lima silt loam* | *3-8* | *>200* | *>200* |
| *10* | *Lima silt loam* | *3-8* | *>200* | *54* |
| *11* | *Lima silt loam* | *3-8* | *>200* | *54* |
| *12* | *Appleton loam* | *3-8* | *>200* | *20* |
| *12* | *Honeoye silt loam* | *3-8* | *>200* | *>200* |
| *13* | *Honeoye silt loam* | *3-8* | *>200* | *>200* |
| *14* | *Honeoye silt loam* | *3-8* | *>200* | *>200* |
| *15* | *Lima silt loam* | *3-8* | *>200* | *54* |
| *16* | *Alluvial land* | *0-3* | *>200* | *0* |
| *16* | *Lima silt loam* | *3-8* | *>200* | *54* |
| *17* | *Honeoye silt loam* | *15-25* | *>200* | *>200* |
| *17* | *Honeoye silt loam* | *25-50* | *>200* | *>200* |
| *18* | *Honeoye silt loam* | *3-8* | *>200* | *>200* |
| *18* | *Lima silt loam* | *3-8* | *>200* | *54* |
| *19* | *Honeoye silt loam* | *3-8* | *>200* | *>200* |
| *20* | *Wayland soils complex, frequently flooded* | *0-3* | *>200* | *0* |
| *21* | *Lyons silt loam* | *0-3* | *>200* | *0* |
| *22* | *Lima silt loam* | *3-8* | *>200* | *54* |

- An Inadvertent Return Plan will be required to be submitted following approval.

  ***Response:*** *Prior to construction, Siting Permit Condition 6.1(f)(5) requires submission of an Inadvertent Return Plan.*

- A Compliant Management Plan will be required to be submitted following approval.

  ***Response:*** *Prior to construction, Siting Permit Condition 6.1(e)(7) requires submission of a Complaint Management Plan.*

- With Figure 10-4. Bedrock, for areas with 1-3 feet of mapped depth to bedrock, a dotted fill is assigned in the legend. In a few areas within the exhibit (ex Bore ID: B-14), the depth to bedrock

is noted as 0-2 feet however, the hatch for bedrock is not consistent with the 1-3 foot depth definition in the legend.

***Response:*** *As noted in Section (a)(13) of Exhibit 10 (Geology, Seismology, and Soils) – Revision 1, Figure 10-4 shows depth to bedrock and depth to the high-water table across the Facility Site relative to Facility components. Representations of bedrock and high-water table depth are derived from both public data (i.e., USDA NRCS SSURGO) and the Applicant's site-specific data (i.e., data from individual borings completed during the geotechnical investigation). It is important to note that public data may represent mapped bedrock and high-water table depth differently than the site-specific bedrock depth and high-water table depth measured during geotechnical investigations. This is primarily due to a lack of field verification in some areas of the public datasets. Appendix 10-A (Geotechnical Report) includes maps, figures, and a more detailed discussion of subsurface conditions across the Facility Site.*

# Appendix 11

## Terrestrial Ecology

Documents 115 (Impact to Plant Communities) and 236 (Plant and Wildlife Species List) have been reviewed, and no technical discrepancies were identified.

# Appendix 11

## Terrestrial Ecology

148 – 3 – Recent review of EAF mapper indicated potential presence of Schweinitz's Sedge. It does not appear that a presence/absence survey has been conducted for this species based on document review. A presence/absence survey is recommended prior to any earth disturbance.

***Response:*** *The Applicant's consultant EDR reviewed the EAF mapper on April 7, 2025. No potential presence/absence of Schweinitz's Sedge was indicated for the Facility Site or the immediate surrounding area. Schweinitz's sedge is an obligate wetland species, found in a variety of wetland habitats. It occurs in various perennially wet habitats including marshes, swamps, seeps, streambanks, roadside ditches, and shores. Schweinitz's Sedge was not observed during any wetland and stream delineations as presented in Appendix 14-A (Wetland and Stream Delineation Report), discovered in any of the data inquires provided in Appendix 12-A (Wildlife Site Characterization), or identified in Appendix 11-A (Plant and Wildlife Species List). Lastly, ORES did not recommend any presence/absence surveys for this species during the pre-application consultation meetings.*

Documents 115 (Impact to Plant Communities) and 236 (Plant and Wildlife Species List) have been reviewed and no additional technical discrepancies were identified.

# Appendix 12

## NYS Threatened or Endangered Species

6 – General – The applicant states the following "NYS policy and laws—most notably the CLCPA— require the development of renewable energy facilities in order to significantly increase generating capacity from renewable sources, meet clean energy goals, and combat climate change (CLCPA, 2020). The Facility has been designed to avoid and minimize impacts to environmental resources to the extent practicable, while also making an important contribution to renewable energy generation in NYS and furthering well-established policy goals. As many policymakers, scientists, and developers are aware, climate change represents one of the most significant threats to a variety of wildlife species, potentially threatening two-thirds of North American bird species with extinction (National Audubon Society, 2019). Thus, any unavoidable impacts to bird species and their habitats from development of renewable energy facilities, such as the Facility, must be balanced against the environmental threats to those species and their habitats posed by a failure to address and mitigate climate change." Although renewable energy goals are a national priority, so are the protections of our nations wildlife. The argument presented above seems to suggest prioritizing green energy over environmental impacts. It is our opinion that both can be protected with appropriate design and planning.

224 – General - Recent review of EAF mapper indicated potential presence of Schweinitz's Sedge. It does not appear that a presence/absence survey has been conducted for this species based on document review. A presence/absence survey is recommended prior to any earth disturbance.

***Response:*** *Exhibit 12 (NYS Threatened or Endangered Species) – Revision 1 covers impacts to animal wildlife. The Applicant's environmental consultant, EDR, reviewed the EAF mapper on April 7, 2025. No potential presence/absence of Schweinitz's Sedge was indicated for the Facility Site or the immediate surrounding area. Schweinitz's sedge is an obligate wetland species, found in a variety of wetland habitats. It occurs in various perennially wet habitats including marshes, swamps, seeps, streambanks, roadside ditches, and shores. Schweinitz's Sedge was not observed during any wetland and stream delineations as presented in in Appendix 14-A (Wetland and Stream Delineation Report), discovered in any of the data inquires provided in Appendix 12-A (Wildlife Site Characterization), or identified in Appendix 11-A (Plant and Wildlife Species List). Lastly, ORES did not recommend any presence/absence surveys for this species during the pre-application consultation meetings.*

# Appendix 13

## Water Resources and Aquatic Ecology

15 – 16 – The Section (b) Surface Waters discussion should be updated to discuss recent NYSDEC freshwater wetlands regulatory changes which took effect January 1, 2025. It should also be noted that C&S staff conducted a desktop review of potential NYSDEC jurisdiction over delineated features under the new regulations (see comment to Document 109); Please note that final jurisdiction under the updated NYSDEC regulations is subject to review and approval by the NYSDEC.

***Response:*** *As discussed in Exhibit 14 (Wetlands), EDR coordinated on behalf of the Applicant with Arcadis (who was retained by ORES) to conduct on-site reviews of delineated wetland and stream boundaries within the Facility Site to determine their state jurisdictional status. As a result of this review, and the associated consultations conducted in accordance with 16 NYCRR Section 1100-1.3(e), ORES issued a NYS Surface Water Jurisdictional Determination (Appendix 13-E) and a NYS Wetlands Jurisdictional Determination (Appendix 14-C) on January 26, 2022. These determinations are valid for a period of five years and are not subject to updated regulations within that timeframe.*

15 – 23 – A discussion is provided on invasive species with reference that an Invasive Species Control and Management Plan will be provided pre-construction. More information on proposed management of invasive species throughout construction and operation of the facility is recommended.

***Response:*** *Prior to construction, Siting Permit Condition 6.1(f)(4) requires submission of an Invasive Species Control and Management Plan (ISCMP). The ISCMP requires identification of specific control contingency measures to be implemented as part of the ISCMP for each identified and mapped invasive species for the duration of the Facility adaptive management and monitoring period (i.e., 5 years, unless extended). The ISCMP shall include a detailed sequence and schedule for all contingency mechanical and chemical control measures to be implemented during the monitoring period.*

33-9- The applicant addresses that a phasing plan must be developed in order to disturb more than 5-acres at a time but have not included any notes on phasing of construction in the submitted document. Due to the size of construction and need to disturb greater than 5 acres of soil at one time, we advise that the Town request a phasing plan prior to the commencement of construction.

***Response:*** *Prior to construction, the Applicant will need to obtain coverage under the New York State Pollution Discharge Elimination System General Permit for Stormwater Discharges from Construction Activity (GP-0-25-001) pursuant to Section 402 of the CWA and Article 17 of the Environmental Conservation Law. As part of this request for coverage, the Applicant will prepare a final SWPPP and additional documentation as necessary to disturb more than five acres of soil at a time, including a phasing plan. As indicated in Appendix 5-D (Phasing and Compliance Filing Plan) – Supplement, a copy*

*of the final SWPPP will be provided as a pre-construction compliance filing.*

33-13- The applicant states that the ultimate owner of the stormwater facilities will be required to have a maintenance plan in place. We recommend to the town that the necessary post-construction maintenance documents are provided to the Town to ensure the agreement is binding and compliant with local regulations.

***Response:*** *Prior to construction, Siting Permit Condition 6.1(e)(4) requires submission of a Vegetation Management Plan. In addition, the NYSDEC requires that, prior to submitting the electronic Notice of Termination (eNOT) to close out the permit for construction, the owner or operator has a mechanism in place requiring operation and maintenance of the practice(s) in accordance with the operation and maintenance plan, such as a deed covenant in the owner or operator's deed of record.*

33-16- The document states that an analysis of stormwater quantity had not yet been developed for the site.

***Response:*** *An analysis of stormwater quantity will be prepared as part of the final SWPPP. As indicated in the Appendix 5-D (Phasing and Compliance Filing Plan) – Supplement, a copy of the final SWPPP will be provided as a pre-construction compliance filing.*

33-17- A NYSDEC Notice of Intent was not provided, with a statement that it would be prepared during final engineering design.

***Response:*** *A NYSDEC Notice of Intent will be prepared as part of the final SWPPP and request to NYSDEC for coverage under GP-0-25-001. As indicated in Appendix 5-D (Phasing and Compliance Filing Plan) – Supplement, a copy of the final SWPPP will be provided as a pre-construction compliance filing.*

33-20- The figures that were included in the soil map survey were not legible to determine the existing soil boundaries. The applicant did not provide a figure in the SWPPP report identifying the soil types across the site to compare to the soil types used in stormwater calculations. The applicant provided a map of soil types as part of the design drawings but not the SWPPP package. It is our recommendation that the applicant provide a similar figure with hydrologic soil groups due to the scale of the project area and include said document in the SWPPP.

***Response:*** *Information on hydrologic soil groups will be prepared as part of the final SWPPP. As indicated in Appendix 5-D (Phasing and Compliance Filing Plan) – Supplement, a copy of the final SWPPP will be provided as a pre-construction compliance filing.*

33-97- Applicant lists bioretention areas for watershed and stormwater sizing calculations but a figure of the areas was not provided. A drainage area map showing the delineated drainage areas is needed to accurately analyze the SWPPP.

***Response:*** *Information regarding drainage areas will be prepared as part of the final SWPPP. As indicated in Appendix 5-D (Phasing and Compliance Filing Plan) – Supplement, a copy of the final*

*SWPPP will be provided as a pre-construction compliance filing.*

33-97- Bioretention areas are named but the exact practices to be implemented were not identified in the SWPPP. It is noted that the maximum contributing area for bioretention practices is between 2 to 10 acres. Percolation tests should also be performed in areas with proposed bioretention practices to ensure that the infiltration rate is consistent with the NYSDEC Design Manual. Bioretention areas are shown in the design documents (Document numbers 75-78) but figures should also be provided in the SWPPP with numbering. The contributing area for these practices should be delineated to ensure that they don't exceed the maximum acreage.

***Response:*** *More detailed bioretention information will be prepared as part of the final SWPPP. As indicated in Appendix 5-D (Phasing and Compliance Filing Plan) – Supplement, a copy of the final SWPPP will be provided as a pre-construction compliance filing.*

33-111- The NYSDEC has recently released a new SPDES General Permit for Stormwater Discharges from Construction Activity GP-0-25-001 effective January 29, 2025, as well as a 2025 Stormwater Design Manual. The current SWPPP utilizes the GP-0-20-001 and 2015 Design Manual. If documents are not updated to utilize the newly issued permit, an explanation will need to be provided for why the SWPPP was not updated. The newly issued permit also requires a statement regarding climate change impacts.

***Response:*** *GP-0-25-001 became effective after submittal of this Application. However, the final SWPPP will be prepared in accordance with the requirements of GP-0-25-001. As indicated in Appendix 5-D (Phasing and Compliance Filing Plan) – Supplement, a copy of the final SWPPP will be provided as a pre-construction compliance filing.*

33-General- A portion of Area 1 appears to be in close proximity to Class AA AAS watershed per NYSDEC Stormwater Interactive Map. We recommend the applicant provide a figure with the watershed boundary overlaid to ensure that no disturbance is occurring in a Class AA AAS Watershed.

***Response:*** *It is correct that approximately 0.75 acres of the Facility Site are within a Class AA/AAS watershed. More detailed watershed information will be prepared as part of the final SWPPP. As indicated in Appendix 5-D (Phasing and Compliance Filing Plan) – Supplement, a copy of the final SWPPP will be provided as a pre-construction compliance filing. The C&S Companies statement suggests that disturbances within AA or AAS watersheds is not allowed, which is inaccurate. The Stormwater General Permit limits the disturbance within AA or AAS watersheds to one acre, only if all of the following apply: construction activity is being undertaken on land with no existing impervious cover (applicable to this Project) and proposes disturbances on steep slopes (not applicable to this Project). Steep slopes as defined in the General Permit are: land area designated on the current USDA Soil Survey as soil slope phase D (only if the unit name is inclusive of slopes greater than 25%) or slope phases E or F. Based on a review of the soils within the AA/AAS watershed, the steepest slope phase observed is Phase C; therefore, disturbances within this specific AA/AAS watershed for the Project are allowed with no*

*maximum limit of disturbance.*

33-General- The design documents (Document numbers 75-78) indicate vegetation removal. This tree removal and change in land use should be analyzed as part of the stormwater calculations. The SWPPP also did not provide a limits of disturbance value.

***Response:*** *More detailed information regarding vegetation removal and limits of disturbance will be prepared as part of the final SWPPP. As indicated in Appendix 5-D (Phasing and Compliance Filing Plan) – Supplement, a copy of the final SWPPP will be provided as a pre-construction compliance filing.*

33-General- Filter strips were discussed in the SWPPP as part of implemented practices. As the SWPPP develops, filter strip calculations consistent with the NYSDEC GI Worksheets should be included in the SWPPP package.

***Response:*** *Filter strip calculations will be prepared as part of the final SWPPP. As indicated in Appendix 5-D (Phasing and Compliance Filing Plan) – Supplement, a copy of the final SWPPP will be provided as a pre-construction compliance filing.*

33-General- Figures demonstrating the location of erosion and sediment control practices were not provided in the SWPPP package or design drawings submissions.

***Response:*** *More detailed information on erosion and sediment control will be prepared as part of the final SWPPP and design drawings. As indicated in Appendix 5-D (Phasing and Compliance Filing Plan) – Supplement, a copy of the final SWPPP will be provided as a pre-construction compliance filing.*

33-General- The SWPPP did not contain maps showing pre and post development conditions with drainage boundaries and design points as consistent with the requirements of the general permit. These figures are crucial for reviewing the content of the SWPPP. We also recommend that a narrative describing the site and delineated drainage areas be incorporated into the SWPPP.

***Response:*** *More detailed information on drainage boundaries will be prepared as part of the final SWPPP. As indicated in Appendix 5-D (Phasing and Compliance Filing Plan) – Supplement, a copy of the final SWPPP will be provided as a pre-construction compliance filing.*

211 – General - An unconsolidated aquifer is located northeast of the proposed site. Groundwater appears to flow towards the north in this area. Private well locations and groundwater well offset areas are redacted. Some NYSDEC mapped water wells are on or near the proposed solar site.

***Response:*** *It is correct that there are two water supply wells located within 100 feet of proposed collection lines and access roads, as discussed in Section (a)(2) of Exhibit 13 (Water Resources and Aquatic Ecology) – Revision 1. However, these wells are associated with participating parcels. There are four water supply wells located within 200 feet of proposed photovoltaic arrays. These wells are also all associated with participating parcels. Six water wells are located within 500 feet of proposed HDD operations. Two of these wells are on non-participating parcels and four are on participating parcels. All*

*of these crossings are designed to cross under public roadways. Blasting activities are not anticipated for the construction of this Facility. Consistent with 16 NYCRR Section 1100-6.4(n), the Applicant will engage a qualified third party to perform pre- and post-construction testing of the potability of water wells located on non-participating properties that that fall within 500 feet of HDD operations both prior to and after construction.*

*With respect to aquifers, the Facility Site does not border or contain any part of a primary aquifer or sole source aquifer. The nearest primary aquifer is located approximately 20 miles northwest of the Facility Site and the nearest sole source aquifer is located over eight miles southwest of the Facility Site. There are several unconsolidated aquifers of unknown or mid yields within five miles of the Facility Site, but none directly underlying the area (see Figure 13-2 [Groundwater Aquifers and Recharge Areas]). The Applicant will develop and follow the Preliminary Spill Prevention, Control and Countermeasures (SPCC) Plan (see Appendix 13-D) in accordance with the State Pollutant Discharge Elimination System General Permit for Construction Activity. The Facility is not anticipated to result in groundwater contamination.*

The purpose of the District A Land Use District is to provide attractive built-up housing areas in rural settings that will maintain health via proper sewage disposal, safe water supply, and the minimum of nuisance indifferent land uses. It is of importance to the town to provide safe water supply and mitigate nuisance indifferent land use.

***Response:*** *As stated previously, the Facility is not anticipated to result in groundwater contamination. As further discussed in Section (a) of Exhibit 6 (Public, Health, Safety and Security) – Revision 1, solar facilities do not require water for operation or result in the discharge of wastewater, producing energy without affecting the availability or quality of surface water or groundwater.*

**Additional Comments:**

179- General – The provided document contains the Spill Prevention, Control, and Countermeasure Plan for the management of oil storage on-site. The information provided is consistent with the requirements of the EPA 40 CFR Part 112.

# Appendix 14

## Wetlands Functions and Values Forms

109 – General - The wetland and waterway impact mapping should be updated with appropriate jurisdictional status of each feature identified. This includes adding 100' regulated buffers as appropriate. Determining the potential impact and necessary mitigation measures for these features cannot be completed without accurate jurisdictional information. It is plausible that many of the features noted as federally regulated only are New York State regulated as a result of recent regulatory changes.

Due to the recent NYSDEC regulatory updates that took effect January 1, 2025, C&S staff reviewed delineated wetlands provided in the Wetland Delineation Report for potential jurisdiction by the NYSDEC, with particular regard to any differences from the 2022 JD document. Please note that this review focused mainly on wetlands greater than 12.4 acres in size, either entirely within the site boundaries or estimated for wetlands extending outside of the original survey area. Several wetlands smaller than 12.4 acres were identified that are associated with the recently released NYSDEC Mapped Informational Wetlands – these wetlands were not considered potentially jurisdictional for the purposes of this review. However, the latter wetlands could potentially fall under jurisdiction as wetlands of unusual importance per the most recent regulatory updates – a more thorough review, likely requiring additional field investigation, would be required for analysis of wetlands of unusual importance. Please note that final jurisdictional determination is subject to review and approval by the NYSDEC.

The JD document included in this submission identified Wetlands 002, 004, 032, 036, 048, 049, 050, 054, 060, 066, 068, 072, and W032 as NYSDEC regulated wetlands. In addition to the latter wetlands, C&S identified the following wetlands as potentially jurisdictional by the NYSDEC: 003 (within 100 feet of regulated Wetland 002), 026 (maybe/not likely – goes off site, boundaries unclear from aerials), 046 (maybe/not likely – goes off site, boundaries unclear from aerials), 049 (goes off site, possibly greater than 12.4 acres), 051 (maybe/not likely – goes off site, boundaries unclear from aerials), 052 (within 100 feet of regulated Wetland 054), 053 (within 100 feet of Wetland 052), 058 (maybe/not likely – goes off site, boundaries unclear from aerials), 073 (goes off site, possibly greater than 12.4 acres), 074 (goes off site, possibly greater than 12.4 acres), 075 (goes off site, possibly greater than 12.4 acres), 077 (goes off site, possibly greater than 12.4 acres), AW-001 (Maybe/Not Likely – in the vicinity of large Informational Wetlands system), 05-W001 (goes off site, possibly greater than 12.4 acres), 66-W008 (goes off site, possibly greater than 12.4 acres), and 66-W009 (goes off site, possibly greater than 12.4 acres. Potential jurisdiction, as well as our opinion on the likelihood of jurisdiction is summarized in Table 1 below.

Table 1. Potential NYSDEC Jurisdiction per 2025 regulatory changes.

| Wetland ID | Likelihood of NYSDEC Jurisdiction | Notes |
|---|---|---|
| 3 | Likely | Within 100 feet of Wetland 2 |
| 26 | Maybe/Not Likely | Goes off site, not likely over 12.4 acres |
| 46 | Maybe/Not Likely | Goes off site, not likely over 12.4 acres |
| 49 | Possibly | Goes off site, possibly greater than 12.4 acres |
| 51 | Maybe/Not Likely | Goes off site, not likely over 12.4 acres |
| 52 | Likely | Within 100 feet of Wetland 53 |
| 53 | Likely | Within 100 feet of Wetland 53 |
| 58 | Maybe/Not Likely | Goes off site, not likely over 12.4 acres |
| 73 | Possibly | Goes off site, possibly greater than 12.4 acres |
| 74 | Possibly | Goes off site, possibly greater than 12.4 acres |
| 75 | Possibly | Goes off site, possibly greater than 12.4 acres |
| 77 | Possibly | Goes off site, possibly greater than 12.4 acres |
| AW001 | Maybe/Not Likely | In the vicinity of large DEC informational wetlands |
| 05-W001 | Possibly | Goes off site, possibly greater than 12.4 acres |
| 66-W008 | Possibly | Goes off site, possibly greater than 12.4 acres |
| 66-W009 | Possibly | Goes off site, possibly greater than 12.4 acres |

113 – General - The wetland and waterway impact mapping should be updated with appropriate jurisdictional status of each feature identified. This includes adding 100' regulated buffers as appropriate.

165 – 9 – Section 2.2; Describes old DEC regulations prior to informational maps/January 2025 regulatory updates. Regulations should be updated to January 2025.

165 – 12 – Section 3.2.1; Should be revised to reference "Previously Mapped Freshwater Wetlands" and add discussion on NYSDEC Mapped Informational Wetlands

165 – 17 – Table 5; Anticipated State Jurisdiction is based on old regulations and may differ.

165 – 43 – Figure 4. Mapped Wetlands and Streams; Does not include recently published NYSDEC Mapped Informational Wetlands; "NYSDEC Mapped Wetland" should be revised to "NYSDEC Previously Mapped Freshwater Wetlands".

***Response:*** *As discussed in Exhibit 14 (Wetlands), ORES issued a NYS Surface Water Jurisdictional Determination (Appendix 13-E) and a NYS Wetlands Jurisdictional Determination (Appendix 14-C)on January 26, 2022. These determinations are valid for a period of five years and are not subject to updated regulations within that timeframe.*

147 – 4 – Section (b), Line 4; There is a sentence saying "Furthermore, none of the supplemental delineations are expected to fall under state jurisdiction, as they are not associated with wetlands mapped by the NYSDEC and do not exceed 12.4 acres in size." – this may change if the delineations are subject to review under new regulations. This section notes that an ORES JD was obtained in 2022; the Joint Application for Permit was not to be submitted until late 2024 or early 2025, indicating that the new regulatory changes will apply and could potentially change potential jurisdiction by the DEC.

***Response:*** *Any additional wetland and stream delineations conducted for the Project will be evaluated in accordance with the regulations in place at the time they are conducted. Similarly, the Applicant will work with ORES to determine jurisdiction of the wetlands and streams consistent with the Article VIII regulations.*

147 – General - A formal mitigation plan should be provided as part of this application to demonstrate that the impacts to State and federally regulated wetlands can be reasonably accounted for. Given additional State regulated wetlands (and regulated adjacent areas) could occur within the project limits, a mitigation plan should include impacts to features that fall within the jurisdiction of NYSDEC as of 2025.

169 – The conceptual mitigation plan provides too little information on the plan to offset impacts to State regulated wetlands. Items needed include ratio of wetland/adjacent area created, restored, or enhanced, geotechnical information, preliminary grading plans, and planting plans. A formal mitigation plan should be provided as part of this application to demonstrate that the impacts to State and federally

regulated wetlands can be reasonably accounted for. Given additional State regulated wetlands (and regulated adjacent areas) could occur within the project limits, a mitigation plan should include impacts to features that fall within the jurisdiction of NYSDEC as of 2025.

***Response:*** *Prior to construction, Siting Permit Condition 6.1(f)(2) requires submission of a final Wetland Restoration and Mitigation Plan.*

# Appendix 15

## Agricultural Resources

221 – General – The contents of this document were redacted, rendering it unavailable for review.

32 – General - C&S completed a GIS review of agricultural soils within the Facility Site and the Town of Fenner to compare soil acreages within the latter boundaries and analyze potential agricultural soil loss. A site boundary was digitized in ArcGIS Pro using a georeferenced image from the Wetland Delineation Report figures; please note that the site boundary scale and orientation is approximate. This analysis is approximate as it considers the entire survey area rather than the final limits of disturbance (LOD) for the project, and is intended for general reference purposes only.

The review was conducted for NYSERDA mineral soil group soils, USDA NRCS farmland soils, and New York State Department of Agriculture and Markets agricultural districts. Results of the GIS review are summarized in Table 2 below. Overall, the site boundary contains 22.78% of NYSERDA soil groups 1 through 4 (MS-1 through MS-4) within the Town of Fenner (the site boundary contains 8.39% of MS-2 soils, 13.43% of MS-3 soils, and 0.96% of MS-4 soils within the Town).

Farmland soils, including prime farmland, farmland of statewide importance, and prime farmland if drained) within the site boundary account for 30.17% of farmland soils within the Town, including 14.36% of prime farmland if drained soils, 5.98% of farmland of statewide importance, and 9.83% of prime farmland.

The site boundary contains 1,108.24 acres of land classified under Agricultural District 2. This land accounts for 9.87% of agricultural districts within the Town. The Town also contains land categorized as Agricultural Districts 1 and 3; however, these districts are not mapped within the site boundary.

Table 2. C&S Agricultural Resources GIS Review.

| NYSERDA 2022 Soils | | | |
|---|---|---|---|
| **Soil Type** | **Acreage within AOI** | **Acreage within Town** | **% Loss within Town** |
| MS-1 | 0.00 | 11.57 | 0.00% |
| MS-2 | 489.50 | 5830.97 | 8.39% |
| MS-3 | 320.71 | 2387.57 | 13.43% |
| MS-4 | 5.86 | 607.85 | 0.96% |
| **USDA NRCS Farmland Soils** | | | |
| **USDA NRCS Farmland Soils** | **Acreage within AOI** | **Acreage within Town** | **% Soil Loss** |
| Not Prime Farmland | 184.96 | 3813.72 | 4.85% |
| Prime Farmland if Drained | 210.66 | 1467.03 | 14.36% |
| Farmland of Statewide Importance | 382.63 | 6394.33 | 5.98% |
| All Areas are Prime Farmland | 810.12 | 8237.43 | 9.83% |
| **Agricultural Districts** | | | |
| **Agricultural Districts** | **Acreage within AOI** | **Acreage within Town** | **% Soil Loss** |
| 1 | 0.00 | 11.02 | 0.00% |
| 2 | 1108.24 | 11231.38 | 9.87% |
| 3 | 0.00 | 3.65 | 0.00% |
| 4 | 0.00 | 0.00 | N/A |

***Response:*** *C&S Companies' analysis is based on the total Facility Site parcel acreage and is an overestimation of actual Project impacts to agricultural lands. As further described in Section (a)(7) of*

*Exhibit 15 (Agricultural Resources) – Revision 1, permanent and temporary vegetation and soil disturbance to agricultural lands as a result of the Project are characterized by three different types of impacts: permanent, long-term conversion, and temporary impacts.*

*Permanent impacts refer to areas where land will be covered with built structures and impervious surfaces that will not be decommissioned at the end of the Facility's useful life. In accordance with the Decommissioning Plan (Appendix 23-A) – Revision 1, this area will be limited to the point of interconnection (POI).*

*Long-term conversion impacts refer to areas which will have maintained vegetation for the life of the Facility and include the area within the Facility's limits of vegetation management (LOVM).. This generally includes all areas within and adjacent to the PV panel array fence lines, areas adjacent to access roads outside the fence line where road edges will be mowed/maintained, areas adjacent to the collection substation and POI fence lines, visual screening plantings, non-agricultural areas along collection line corridors, and areas maintained for stormwater purposes. Long-term conversion impacts do not include the area of the POI which represents a permanent impact as described previously. These areas will be maintained as an early successional vegetative community. Agricultural operations within these areas will therefore be taken out of production for the life of the Facility; however, upon decommissioning and restoration of the Facility, agricultural uses would be able to begin again.*

*Temporary impacts during construction refer to areas outside of the LOVM but within the outer bounds of the Facility's anticipated disturbance footprint, or the limits of construction activity (LOCA). The LOCA includes any necessary vegetation clearing, defined work corridors along Facility components, security fencing, and collection line corridors within agricultural areas, and incorporates areas where construction vehicles and/or personnel may need extra room to construct the Facility. Once construction is complete, agricultural areas outside of the LOVM that are temporarily disturbed will be restored in accordance with the Agricultural Plan provided in Appendix 15-B and the NYSAGM Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (Revision 10/18/2019) and any farming practices can resume in these areas.*

*Once the Facility is operational, there will be no interference with ongoing farming operations outside the LOVM, aside from occasional and limited maintenance and repair activities. Access roads built for the Facility (outside the fenced PV arrays) will be available to farmers for equipment access to their fields. In addition, the host landowner payments will allow farmers in the area to continue active operations on other lands in the vicinity of the Facility, helping to preserve the area's agricultural character in the future.*

*Table 15-4 (Impacts to Active Agricultural Areas) of Exhibit 15 estimates the impacts to active agricultural land use, mineral soil groups, and the intersection of these two areas (i.e., active agricultural lands on mineral soil groups 1-4). Active agricultural lands were defined as actively utilized field croplands, row croplands, and pasturelands mapped by the Applicant. Specifically, as detailed in Section (a) of Exhibit 11 (Terrestrial Ecology), plant communities within the Facility Site were classified and mapped by the Applicant's environmental consultant, EDR, using a combination of desktop review of*

*recent (2022) aerial imagery,[2] publicly available datasets for land cover and soil, and data collected during on-site ecological field surveys (e.g., wetland delineations and avian surveys) conducted between 2020 and 2023. These plant communities correspond to specific community descriptions provided in NYSDEC's Ecological Communities of New York State. As such, the mapping used to define active agricultural land within the Facility Site in the Application is much more refined than the publicly available data sets used by C&S Companies and is more representative of the actual impacts to active agricultural lands currently being used within the Facility Site.*

[2] Imagery obtained from the 2022 New York State New York Statewide Digital Orthoimagery Program.

# Appendix 16

## Effect on Transportation

160 – General - The prepared FAA Correspondence document provides the results of the Federal Aviation Administration (FAA) Notice Criteria Tool for determining if proposed structures will require a notice to the FAA for construction of structures. The applicant utilized the heights of the solar panels at 10' as structure heights, as well as a height of 56' presumably for the construction of overhead electric. The online tool did not identify the need for a notice to be submitted based on the provided structure heights and location information.

***Response:*** *Correct. The FAA Correspondence is provided in Appendix 16-B.*

161-2 - Based on 900-2.17 Exhibit 16: Effect on Transportation (b)(2), information should be provided on use levels of the roads. It is discussed that the transportation routes are under the design hour volumes, however these aren't provided. Design hour volumes and thresholds should be identified and compared. NYS Route 13 may not be under a design hour volume thresholds within the Village of Canastota.

***Response:*** *As discussed in Section VI (Traffic and Accident Data) of Appendix 16-A (Route Evaluation Study) the local and county roads having Annual Average Daily Traffic (AADT) data are listed in Table 5 (Local and County Road Traffic Conditions). Although not all roads have published traffic volume data, the local roads in the Project Study Area appear to operate below vehicle capacity due to the low traffic volumes. As such, all of the roadway data available indicates current traffic is below the design hour volumes. Additionally, after reviewing the public traffic information for the NYS Route 13 road section, it was found that this road segment has an AADT of 11,656 vehicles, with 7% estimated to be trucks, totaling an average of 859 heavy trucks per day. Table 2 (Estimated Total Number of Heavy Vehicle Trips Required for Project Construction and Operations) presented in Section III(B) of Appendix 16-A (Route Evaluation Study) presents the estimated traffic per day and the estimated maximum traffic per day in the Project area. The estimated truck traffic shown in Table 2 indicates that the average trips per day of trucks during construction is 44. Assuming all heavy vehicles, including aggregate trucks, will need to transit through NYS Route 13, the total increment in truck traffic will be just 5%.*

*Prior to construction, the Engineering, Procurement, and Construction team will provide a more precise estimate once the construction schedule, aggregate sources, and module delivery routes are defined. If NYS Route 13 needs to be utilized, it is assumed that the road meets NYS Department of Transportation standards. Therefore, it is adequate for non-permitted (non-oversized or overweight) loads. Prior to construction, Siting Permit Condition 6.1(e)(8) requires submission of a Traffic Control Plan which will include final haul routes developed in consultation with the host municipalities and State, County, and municipal highway officials, and copies of all necessary transportation permits, utility agreements and road use and restoration agreements.*

161-3 – It is stated that there are no State Routes anticipated for the transportation routes, however, the

transportation route for the project is shown along NYS Route 13 (Peterboro Road) in Canastota.

***Response:*** *NYS Route 13 becomes CR25 Oxbow Road south of SR-5. Appendix 16-A (Route Evaluation Study) considered roads in the immediate Project area including CR25 Oxbow Road.*

161-13 - Based on 900-2.17 Exhibit 16: Effect on Transportation (d) (2), an evaluation of adequacy of the road system to accommodate the project traffic, analysis to be conducted separately for the peak construction impacts of the facility.

The proposed transportation route bisects directly through the Village of Canastota on NYS Route 13. There is no existing traffic data or analysis supplied for NYS Route 13 in the Village. This should be considered further to identifying potential impacts to traffic through the Village on NYS Route 13 (N Peterborough Road).

***Response:*** *NYS Route 13 becomes CR25 Oxbow Road south of SR-5. Appendix 16-A (Route Evaluation Study) considered roads in the immediate Project area including CR25 Oxbow Road.*

161-13 - The review of accidents and supporting information does not provide sufficient data on collision types and locations to determine if construction could exasperate any issues.

***Response:*** *As discussed in Section VI (Traffic and Accident Data) of Appendix 16-A (Route Evaluation Study), a Freedom of Information Law (FOIL) request was submitted on July 14, 2023 to NYSDOT Region 2 in Utica for information on accident data in the Town of Fenner. The existing accident data received is from the years 2020 to 2022. The accident data within the project study limits is included in Appendix B of this report. The police reports supporting the information contained in Appendix B can be provided if needed.*

161-14 - At the time the study was completed, the localized transportation route serving the immediate array areas overlap with existing school bus routes. The study does indicate that construction will be coordinated with impacted school districts and there will be no road closures. The transportation route does pass multiple schools in the Village of Canastota, those should be added to the bus routes and considered.

***Response:*** *As discussed in Exhibit 16 (Effect on Transportation), the Applicant reviewed school district routes for the districts that serve the Facility Site. The possible proposed haul routes travel through the Cazenovia School District, Canastota Central School District, and Morrisville-Eaton Central School District (see Figure 6 of Appendix 16-A) and Figure 3-2 (Municipal Boundaries and Taxing Jurisdictions). The Applicant will coordinate with the local school districts to minimize potential impacts and delays to bus routes throughout the construction process. Local school districts will be notified in advance of any road closures. It is anticipated that there will be minimal to no impacts to local bus routes.*

*In addition, prior to construction, Siting Permit Condition 6.1(e)(8) requires submission of a Traffic Control Plan which will include final haul routes developed in consultation with the host municipalities and State, County, and municipal highway officials, and copies of all necessary transportation permits, utility agreements and road use and restoration agreements. Lastly, Siting Permit Condition 4.3(c) requires that*

*the Applicant coordinate with state, county, and local highway agencies to respond to and apply applicable traffic control measures to any locations that may experience any traffic flow or capacity issues.*

# Appendix 17

## Consistency with Energy Planning Objectives

31 – 16 – More region-specific climate change data for Central New York is available from NYSERDA than is currently reported within the document. The application should consider referencing these updated sources for accuracy.

> ***Response:*** *Section (g) of Exhibit 17 (Consistency with Energy Planning Objectives) – Revision 1 discusses the interim findings of the Climate Impacts Assessment Report which was not formally published until after the Application was submitted to ORES. Regardless, the Applicant reviewed the region-specific information presented in the 2024 NYS Climate Change Impacts Assessment Chapter 02: New York State's Changing Climate Report and the regional data falls within the statewide climate projection ranges presented in Exhibit 17 – Revision 1.*

31 – General – The applicant's discussion of energy planning objectives is limited to the state level, overlooking important local initiatives. This section should also consider Madison County's participation in the Climate Smart Communities program and its status as an Advanced Community under NYSERDA's Clean Energy Communities program. Additionally, the Town of Fenner's comprehensive plan outlines local energy planning objectives that warrant review. By excluding these localized goals, the application underreports and under analyzes key regional energy priorities.

# Appendix 18

## Socioeconomic Effects

14 – 16 – Within Criterion 3, the applicant states that solar arrays are not well-suited to Brownfield Opportunity Areas (BOAs), which isn't always inaccurate. BOAs encompass a range of land types, including vacant, agricultural, downtown, and waterfront areas, and they exist in municipalities of all sizes, from large cities to rural towns and villages. Counties also establish BOA plans that extend across municipal boundaries. The applicant should revise this statement to clarify that neither the County nor the Town has a designated BOA or brownfield planning framework in place to support renewable energy development on brownfield sites.

14 – 16 – Applicant should consider including discussion surrounding consistency with the Town of Fenner 2023 Comprehensive Plan which specifically identifies commercial solar and renewable energy within the community. Concepts and concerns identified within the comprehensive plan which should be addressed as part of the applicant's application include:

- Permanent land protection as a mitigation strategy for commercial solar development
- Concerns about loss of habitat and forest cover, fence pollution, and solar panel saturation as a result of large land requirements to support commercial solar.
- The interruption or loss of overall agricultural character within the Town, both functionally and visually.

**Additional Considerations:**

14 – 3 – More recent data is available from the Department of Labor statistics and school district budgets than what is currently reported in the document. The applicant should reference these updated sources for accuracy.

> ***Response:*** *According to the 2020 NYS Department of Labor Statistics, overall employment in Central New York is projected to grow 24.6% by 2030 compared to 2020 levels. This is a slightly lower rate than the 25.0% projected growth for New York State. The five fastest-growing sectors forecasted for Central New York are mostly service-related industry sectors and consist of Food Preparation and Serving Related Occupations, Personal Care and Service Occupations, Healthcare Support Occupations, Community and Social Service Occupations, and Transportation and Material Moving Occupations.*[3]

14 – 8 – Within Tables 18-6, 18-7, and 18-8 multiple sums reported at the bottom of the tables are not consistent with the sum of values provided within the tables. The inconsistency is not significant, however, incorrect. The error may be a result of rounding. Consider reviewing for accuracy.

[3] New York State Department of Labor (NYSDOL). 2020. *Regional Long-Term Occupational Employment Projections: Southern Tier*. Available at: https://dol.ny.gov/employment-projections (Accessed April 2025).

# Appendix 19

***Response:*** *Sums of provided values are not errors; the results of estimated labor calculations are rounded to the nearest integer independently from total sum calculations, and then presented as full-time equivalent (FTE) numbers to make more sense to the reader. This is clear in the footnote presented in Table 18-8: "Earnings are independently rounded and may not add up directly to the integers shown in this table." The Applicant acknowledges that the following footnote should have been added to Tables 18-6 and 18-7 for clarity: "Numbers presented in this table are independently rounded and may not add up directly to the integers shown in this table."*

# Appendix 20

## Environmental Justice

The prepared environmental justice mapping and narrative information are aligned with publicly available census data, DEC environmental justice maps, and state-defined criteria. No environmental justice or potential environmental justice areas were identified within a 0.5-mile radius around the Facility Site. The Facility Site is, however, located within a Disadvantage Community (DAC) and the applicant has described potential impacts and mitigation measures as required by the 94-c [sic] permitting requirements.

# Appendix 21

## Effect on Communications

28 – General – The document was reviewed and no impacts on communication systems are anticipated as a result of this project. The majority of the data in Figure 20 – 1. Communication Systems, was redacted, rendering it unavailable for review.

# Appendix 21 & 22

## Electrical System Effects and Interconnections

## Electric and Magnetic Fields

141 - 2 – The applicant states "Final interconnection with the electrical grid will occur at a switching station, to be owned by National Grid, that loops the existing Fenner 115 kV transmission line through the POI." Per the Town of Fenner Local Law No.2 of 2021, "Any connection to the public utility grid must be inspected by the appropriate public utility." This should be considered as a condition of approval.

> ***Response:*** *Siting Permit Condition 4.5(f) requires that the Applicant provide a copy of the interconnection documents to the secretary of the New York State Department of Public Service (NYSDPS) and ORES throughout the life of the Facility.*

141 – 2 – The applicant states, "The 115kV overhead transmission line is anticipated to be a single circuit, three phase, H frame design which will be approximately 65 feet tall." According to the Town of Fenner Local Land Use Regulations (Table 1, Land Use Schedule), the maximum allowable structure height in any zoning district is 35 feet, except for properties designated with a "Farm" land use, where the maximum height is 45 feet. Additionally, the Town of Fenner Local Law No. 2 specifies that "All utility services and electrical wiring/lines shall be placed underground and otherwise be placed within the walls or unobtrusive conduit." As proposed, both the structure height and the use of overhead lines are not in compliance with Town regulations and will require waivers if the project is approved.

***Response:*** *The reasoning and statement of justification for the Applicant's local law waiver requests are presented in Exhibit 24 (Local Laws and Ordinances) – Revision 1 and Appendix 24-C (Statement of Justification for Local Law Waiver Requests) – Revision 1. For further information, see the Applicant's Response to Issues Statement, Party Status Request, Municipal Statements of Compliance and Public Comments on Draft Permit.*

**Additional Considerations:**

According to the Town of Fenner Local Law No. 2 of 2021 (Section 409(f)(9)), all utility services and electrical wiring/lines shall be placed underground and otherwise be placed within the walls or unobtrusive conduit, no conduits or feeds may be laid on the roof, and feeds to the inverter shall run within the building and penetrate the roof at the solar panel location. The Applicant has proposed the construction of an above-ground transmission line from the photovoltaic panels to the interconnecting utility. The construction of an overhead transmission line does not comply with the Town of Fenner's Land Use Regulations.

***Response:*** *The reasoning and statement of justification for the Applicant's local law waiver requests are presented in Exhibit 24 (Local Laws and Ordinances) – Revision 1 and Appendix 24-C (Statement of*

# Appendix 21 & 22

*Justification for Local Law Waiver Requests) – Revision 1. For further information, see the Applicant's Response to Issues Statement, Party Status Request, Municipal Statements of Compliance and Public Comments on Draft Permit.*

According to the Town of Fenner Land Use Regulations (Table 1, Land Use Schedule), business, professional or industrial uses maintain a minimum lot area of 1 acre, lot frontage of 200 feet, lot depth of 200 feet, front yard setbacks of 50 feet, side yard setbacks of 40 feet and rear yard setbacks for 50 feet. According to the Town of Fenner's Solar Law (Solar Law 409 (c)(d)) also applies these setbacks to ground-mounted solar energy systems. The Applicant has proposed the construction of collection cables, and other facility components across the lot lines of participating parcels 70.-1-23.11 and 70.-3-1 on design drawings C-013, C-015, and C-116, parcels 70.-1-39, 70.-1-34, and 70.-1-38 on design drawing C-111, parcels 70.-1-34 and 70.-1-26.1 on design drawing C-112, parcels 70.-1-26.1 and 70.-1-34.5 on design drawing C-113, parcels 70.-2-47.1 and 70.-2-52.1 on design drawing C-115, parcels 79.-1-12.1 and 70.-1-35.2 on design drawing C-211, parcels 70.-1-35.2, 79.-1-32, and 79.-1-18.11 on design

drawing C-212, parcels 79.-1-32 and 79.-1-18.11 on design drawing C-214, parcels 79.-1-32, 70.-1-35.2, and 79.-1-12 on design drawing C-215, parcels 79.-1-12 and 79.-1-6.1 on design drawing C-216, and parcels 78.-1-24 and 78.-1-25 on design drawing C-413. The construction of these collection cables, and associated components does not comply with the Town of Fenner's Land Use Regulations.

***Response:*** *The reasoning and statement of justification for the Applicant's local law waiver requests are presented in Exhibit 24 (Local Laws and Ordinances) – Revision 1 and Appendix 24-C (Statement of Justification for Local Law Waiver Requests) – Revision 1. For further information, see the Applicant's Response to Issues Statement, Party Status Request, Municipal Statements of Compliance and Public Comments on Draft Permit.*

# Appendix 23

## Site Restoration and Decommissioning

7-5- The Town of Fenner Local Law regarding Solar Energy Systems states that "If solar energy systems ceases to perform its originally intended function for more than 12 consecutive months, the property owner shall completely remove, at his own sole cost and expense, the system, and all other associated equipment and components by no later than 90 days after the end of the twelve month period". The applicant states that "All decommissioning activities will be completed within one year of decommissioning initiation unless otherwise approved by the Office of Renewable Energy Siting."

***Response:*** *Correct. As outlined in Table 23-1 (Decommissioning Performance Criteria), in Section (a) of Exhibit 23 (Site Restoration and Decommissioning) – Revision 1, the decommissioning process is expected to take approximately nine months. The following summarizes the assumed timeline for the decommissioning activities:*

- *Site mobilization, site preparation and erosion and sediment control installation: 2 weeks.*
- *Disassemble solar panels: 16-20 weeks.*
- *Remove and reclaim panel foundations and access roads: 8 weeks.*
- *Remove and reclaim the substation, temporary laydown areas, and demobilize: 8 weeks.*
- *Reclamation work includes grading, backfilling, erosion control activity, reseeding and revegetation: during disassembly and removal of solar panels and up to 4 weeks thereafter.*
- *Reclamation monitoring: several months.*
- *Additional restoration work: as needed.*

*All decommissioning activities will be completed within one year of decommissioning initiation unless otherwise approved by ORES.*

7- 15- Decommissioning costs were provided in 2023 costs and were not adjusted for inflation over the anticipated lifespan of the project. It is recommended that the applicant provide a cost estimate that accurately represents anticipated decommissioning costs at the end of the 30-40 year lifespan of the project, and that the letter of credit provided by the Applicant be equal to those costs.

***Response:*** *Prior to construction, Siting Permit Condition 6.1(b) requires submission of a Final Decommissioning Plan. The Decommissioning Plan must require that the letter of credit (or other financial assurance approved by ORES) and a copy of the agreement between the Applicant and the Town establishing a right for the Town to draw on the letter of credit (or other financial assurance approved by ORES) will be provided to ORES one year after of facility operation and updated every fifth year thereafter specifying changes (due to inflation or other cost increases) to the structure of the letters*

*of credit (or other financial assurance approved by ORES).*

7-15- The Applicant states that the cost summary is to be updated to reflect current market rates and prices near the end of its project lifecycle. Recommendations by the NYSERDA Solar Guidelines include a periodic reevaluation of decommissioning costs, and we recommend the applicant consider modifying the terms of the decommissioning agreement to implement more frequent analysis of decommissioning costs.

***Response:*** *As stated previously, Siting Permit Condition 6.1(b)(2) requires that the estimate be updated every fifth year specifying changes (due to inflation or other cost increases) to the structure of the letters of credit (or other financial assurance approved by ORES).*

7-General- The Decommissioning Plan does not state what will happen if the Project has not generated electricity for 12 months and decommissioning efforts are not taken by the Owner. Decommissioning plans can provide language that states the Town can use the decommissioning assurance to hire qualified contractors to conduct decommissioning activities.

***Response:*** *Siting Permit Condition 4.5(h)2) requires the Applicant to report any malfunction which causes a significant reduction in the capability of the Facility to deliver power for an extended duration (i.e., expected to last longer than one month) with NYSDPS, with copies to the serving utility and ORES, and plans and schedule for making repairs to remedy the reduction.*

23-5 – The Applicant states "Applicant also commits to utilizing stormwater and erosion control measures like those used during the construction phase. These methods are included in the Facility's SWPPP". It is noted that a SWPPP will likely need to be developed at the time of decommissioning, with the expense being paid for by decommissioning funds. This was not directly stated by the client but is noted for informational purposes.

Additional Comments:

139 – General- The provided document is the same Site Restoration and Decommissioning document provided in Document Number 23, with the same applicable comments.

# Appendix 24

## Local Laws and Ordinances

111 – General - Included in this appendix is an email from Jessica Klami, Esq. dated August 23rd, 2023, in response to the Town of Fenner's Fence Regulations. In this correspondence, Jessica Klami states the type and style of fence proposed for the Oxbow Hill Solar Site. The Section 94-c [sic] regulations for fencing surrounding mechanical equipment conflict with the Town's Fence Regulations.

According to the Town of Fenner Local Law No. 2 of 2021, Subsection D of Section 100.4, prohibited uses of solar energy within the Town are Solar Farms. Solar Farms are defined as a principal land use of converting solar energy to electricity with the primary purpose of supplying electricity to a utility grid for wholesale or retail sales of electricity to the public or utility provider. It is the intent of The Applicant to construct a Solar Farm, as defined by the Town of Fenner Land Use Regulations. The proposed construction of Oxbow Hill Solar by the Applicant does not comply with the Town of Fenner's Land Use Regulations Local Law No. 2 of 2021.

According to the Town of Fenner Local Law No. 2 of 2021, Subsection F of Section 100.4, no permit, license, or authorization issued by any local, state, or federal government, agency, commission, or board to allow the conduct, use, or activity which would violate Section 100.4 or the Revised Town of Fenner Land Use Local Law generally shall be deemed valid within the Town of Fenner. It is the intent of The Applicant to receive a waiver of the Town of Fenner's Land use Regulations from the NYS Office of Renewable Siting and Electric Transmission. A waiver by the NYS Office of Renewable Siting and Electric Transmission, defined as an office of the New York State Government, does not comply with the Town of Fenner's Land Use Regulations Local Law No. 2 of 2021.

According to the Town of Fenner Land Use Regulations (Section 409, Note B), the maximum fence height from grade to the top of the fence shall be six feet in any front yard. The Town of Fenner Land Use Regulations define a front yard as an open, unoccupied space with a main building, extending the full width of the lot and situated between the edge of the highway right-of-way and the front line of the building projected to the sidelines of the lot. The Applicant has proposed the construction of an 8ft fence surrounding the photovoltaic panels, as indicated on design drawing C-603. The Applicant has proposed the construction of a minimum 7ft fence at the substation consisting of 6ft of fence fabric and at least 1ft of three or more strands of barbed wire, as indicated on design drawing E104. The proposed fence height does not comply with Town of Fenner's Land Use Regulations

157 – General – In this appendix, The Applicant provides reasoning for waiving Revised Town of Fenner Laws Land Use Local Law to ORES. According to section 94-c [sic], The Applicant must show the degree of burden caused by the Town Law, why the burden should not be bared by The Applicant, that the waiver request made by The Applicant cannot be made with design changes, that the waiver request made by

The Applicant is the least necessary, and that the impacts of granting the waiver be mitigated to the maximum extent possible consistent with Section 94-c [sic].

The Applicant is requesting a waiver of the Town Law prohibiting solar farms, structure height limit fence height requirements, setbacks, landscape screening requirements. The Applicant is seeking a waiver of provisions of the Town Solar Law.

**Comments**

I. Waiver of Use Prohibition

As mentioned in Document ID 111, According to the Town of Fenner Local Law No. 2 of 2021, Subsection D of Section 100.4, prohibited uses of solar energy within the Town are Solar Farms. Solar Farms are defined as a principal land use of converting solar energy to electricity with the primary purpose of supplying electricity to a utility grid for wholesale or retail sales of electricity to the public or utility provider. It is the intent of The Applicant to construct a Solar Farm, as defined by the Town of Fenner Land Use Regulations. The proposed construction of Oxbow Hill Solar by the Applicant does not comply with the Town of Fenner's Land Use Regulations Local Law No. 2 of 2021.

According to the Town of Fenner Local Law No. 2 of 2021, Subsection F of Section 100.4, no permit, license, or authorization issued by any local, state, or federal government, agency, commission, or board to allow the conduct, use, or activity which would violate Section 100.4 or the Revised Town of Fenner Land Use Local Law generally shall be deemed valid within the Town of Fenner. It is the intent of The Applicant to receive a waiver of the Town of Fenner's Land use Regulations from the NYS Office of Renewable Siting and Electric Transmission. A waiver by the NYS Office of Renewable Siting and Electric Transmission, defined as an office of the New York State Government, does not comply with the Town of Fenner's Land Use Regulations Local Law No. 2 of 2021.

II. Waiver of Structure Height Limit (POI Switchyard and Project Collection Substation)

According to the Town of Fenner Local Land Use Regulations (Table 1, Land Use Schedule), the maximum structure height, of any zoning district, is 35 feet, except for properties with the land use of "Farm", the maximum structure height is 45 feet. The proposed, non-compliant, 55ft overhead gen-tie lines between stations and associated pole structures are identified on design drawing sheet E102. The Applicant has identified that the proposed height of the point of interconnection switchyard, project collection substation, overhead gen-tie line between stations and associated pole structure, the high- voltage loop-in and loop-out lines, and lighting masts, do not comply with the Town of Fenner Land Use Regulations.

III. Waiver of Fence Height Requirements

As previously mentioned, the Town of Fenner Land Use Regulations (Section 409, Note B), the maximum fence height from grade to the top of the fence shall be six feet in any front yard. The Town

of Fenner Land Use Regulations define a front yard as an open, unoccupied space with a main building, extending the full width of the lot and situated between the edge of the highway right-of-way and the front line of the building projected to the sidelines of the lot. The Applicant has proposed the construction of an 8ft fence surrounding the photovoltaic panels, as indicated on design drawing C-603. The Applicant has proposed the construction of a minimum 7ft fence at the substation consisting of 6ft of fence fabric and at least 1ft of three or more strands of barbed wire, as indicated on design drawing E104. The proposed fence height does not comply with Town of Fenner's Land Use Regulations.

IV. Waiver of Setbacks

According to the Town of Fenner Land Use Regulations (Table 1, Land Use Schedule), business, professional or industrial uses maintain a minimum lot area of 1 acre, lot frontage of 200 feet, lot depth of 200 feet, front yard setbacks of 50 feet, side yard setbacks of 40 feet and rear yard setbacks for 50 feet. According to the Town of Fenner's Solar Law (Solar Law 409 (c)(d)) also applies these setbacks to ground-mounted solar energy systems. The Applicant has proposed the construction of photovoltaic panels across the lot lines of participating parcels 70.-1-23.11 and 70.-3-1 on design drawings C-013, C-015, and C-116, parcels 70.-1-39, 70.-1-34, and 70.-1-38 on design drawing C-111, parcels 70.-1-34 and 70.-1-26.1 on design drawing C-112, parcels 70.-1-26.1 and 70.-1-34.5 on design drawing C-113, parcels 70.-2-47.1 and 70.-2-52.1 on design drawing C-115, parcels 79.-1-12.1 and 70.-1-35.2 on design drawing C-211, parcels 70.-1-35.2, 79.-1-32, and 79.-1-18.11 on design drawing C-212, parcels 79.-1-32 and 79.-1-18.11 on design drawing C-214, parcels 79.-1-32, 70.-1-35.2, and 79.-1-12 on design drawing C-215, parcels 79.-1-12 and 79.-1-6.1 on design drawing C-216, and parcels 78.-1-24 and 78.-1-25 on design drawing C-413.

The Applicant has proposed the construction of fencing, landscaping, access roads, collection cables, and other facility components across the lot lines of participating parcels 70.-1-23.11 and 70.-3-1 on design drawings C-013, C-015, and C-116, parcels 70.-1-39, 70.-1-34, and 70.-1-38 on design drawing C-111, parcels 70.-1-34 and 70.-1-26.1 on design drawing C-112, parcels 70.-1-26.1 and 70.-1-34.5 on design drawing C-113, parcels 70.-2-47.1 and 70.-2-52.1 on design drawing C-115, parcels 79.-1-12.1 and 70.-1-35.2 on design drawing C-211, parcels 70.-1-35.2, 79.-1-32, and 79.-1-18.11 on design drawing C-212, parcels 79.-1-32 and 79.-1-18.11 on design drawing C-214, parcels 79.-1-32, 70.-1-35.2, and 79.-1-12 on design drawing C-215, parcels 79.-1-12 and 79.-1-6.1 on design drawing C-216, and parcels 78.-1-24 and 78.-1-25 on design drawing C-413.

The construction of photovoltaic panels, fencing, landscaping, access roads, collection cables, and associated components does not comply with the Town of Fenner's Land Use Regulations.

V. Waiver of Landscape Screening Requirements

The Applicant stated proposed design of Oxbow Hill Solar does not include landscape screening between participating parcels or non-participating, non-residential parcels. The Town of Fenner Land

Use Regulations (Table 1, Land Use Schedule Note e) requires a landscaped screening zone at least 15 feet wide to be maintained by the owner on those sides of his lot that adjoin any residential property owned by another party. According to The Applicant, screening will not be provided between parcels 78.-1-31.111 (non-participating residential) and 78.-1-25 (participating). Also, according to The Applicant, screening will not be provided between parcels 79.-1-25.1 (non-participating residential) and 79.-1-18.11 (participating). Regardless of occupancy status or existing vegetative conditions, the lack of necessary landscape screening between these parcels, per the design drawings, does not comply with the Town of Fenner Land Use Regulations.

According to The Applicant, screening will not be provided between parcels 79.-1-3 and 79.-1-2 (non-participating residential) and parcels 78.-1-38.11 and 79.-1-6.1 (participating). Regardless of occupancy status, existing visibility from occupied structures, or the outcome of other proposed renewable energy projects, the lack of necessary landscape screening between these parcels, per the design drawings, does not comply with the Town of Fenner Land Use Regulations.

VI. Provisions of Solar Law

According to the Town of Fenner Local Law No. 2 of 2021(Section 409(C)(c)), ground-mounted solar energy systems are prohibited in front yards. The Town of Fenner Land Use Regulations define a front yard as an open, unoccupied space with a main building, extending the full width of the lot and situated between the edge of the highway right-of-way and the front line of the building projected to the sidelines of the lot. The Applicant has proposed the construction of photovoltaic panels in the front yard of parcels, with and without buildings. The construction of photovoltaic panels in the front yard of parcels does not comply with the Town of Fenner's Land Use Regulations.

According to the Town of Fenner Local Law No. 2 of 2021(Section 409(C)(h)), neither the ground-mounted solar energy system, nor any component thereof, shall be sited within any required buffer area. The Applicant states they cannot assess compliance with the "buffer areas as it is not defined in the Solar Law or the Town's Land Use Regulations. Due to a lack of definition for buffer area within the Town of Fenner's Land Use Regulations, there is not enough information to support a dispute to The Applicant's claim.

According to the Town of Fenner Local Law No. 2 of 2021 (Section 409(C)(i)), the total surface area of all ground-mounted solar energy system components shall not exceed the area of the ground covered by the building structure of the largest building on the lot, measured from the exterior walls, excluding patios, decks, balconies, screened and opened porches, and attached garages, provided that non-residential placements exceeding this size may be approved by the Planning Board, subject to site plan review. The Applicant has proposed the construction of photovoltaic panels in excess of the area of the largest building on the lot and on lots without proposed buildings. The construction of photovoltaic panels in excess of the area of the largest building on the lot and on parcels without buildings does not comply with the Town of Fenner's Land Use Regulations.

According to the Town of Fenner Local Law No. 2 of 2021 (Section 409(C)(j)), the area beneath the ground-mounted solar energy system shall be included in calculating whether the lot meets the maximum permitted lot coverage requirements for the applicable district, notwithstanding that the collectors are not "buildings". The Applicant has proposed the construction of photovoltaic panels in excess of the maximum permitted lot coverage per the area of the largest building on the lot and on lots without proposed buildings. The construction of photovoltaic panels in excess of the area of the largest building on the lot and on parcels without buildings does not comply with the Town of Fenner's Land Use Regulations.

According to the Town of Fenner Local Law No. 2 of 2021 (Section 409(f)(9)), all utility services and electrical wiring/lines shall be placed underground and otherwise be placed within the walls or unobtrusive conduit, no conduits or feeds may be laid on the roof, and feeds to the inverter shall run within the building and penetrate the roof at the solar panel location. The Applicant has proposed the construction of an above-ground transmission line from the photovoltaic panels to the interconnecting utility. The construction of an overhead transmission line does not comply with the Town of Fenner's Land Use Regulations.

According to the Town of Fenner Local Law No. 2 of 2021 (Section 409(f)(10)), if a solar energy system ceases to perform its originally intended function for more than 12 consecutive months, the property owner shall completely remove, at his own sole cost and expense, the system, mount and all other associated equipment and components by no later than 90 days after the end of the twelve-month period or within 10 days of written notice from the Town. The Applicant has proposed the removal of utilities down to a depth of 48 inches below grade in agricultural lands and 36 inches in non-agricultural lands. The Applicant has proposed collector cabling below the depths of 48 inches. The Applicant has proposed a decommission time of 9 months per The Decommissioning Plan in Exhibit 23 (Site Restoration and Decommissioning). The abandoning-in-place of proposed collector cabling does not comply with the Town of Fenner's Land Use Regulations. The extent of time at which The Applicant proposes to decommission the solar site does not comply with the Town of Fenner's Land Use Regulations.

**Additional Considerations**

II. Waiver of Fence Height Requirements

According to the Town of Fenner Land Use Regulations (Section 606.3, Note B) a special permit will not be granted unless the location, nature, and height of buildings, walls, and fences will not discourage the development and use of adjacent land and buildings or impair their value. The Applicant has proposed the construction of an 8ft fence as indicated on design drawing C-603. The Applicant has proposed the construction of a minimum 7ft fence at the substation consisting of 6ft of fence fabric and at least 1ft of three or more strands of barbed wire as indicated on design drawing E104. C&S Engineers, Inc. recommends the Town of Fenner to consider this note in their review.

V. Waiver of Landscape Screening Requirements

The interpretation of the Town of Fenner Land Use Regulations (Table 1, Land Use Schedule Note e) by C&S Engineers, Inc. is the landscaped screening zone of at least 15 feet wide shall be maintained by The Applicant on his side of the parcel boundary that adjoins any residential property owned by another party.

It appears the necessary landscape screening is not provided between parcels 70.-1-37.1 (non-participating residential) and 70.-1-35.2 (participating) on their shared boundary west of Rouses Rd. The lack of necessary landscape screening can be identified on design drawings C-114. Regardless of existing visibility from occupied structures, the lack of necessary landscape screening between these parcels, per the design drawings, does not comply with the Town of Fenner Land Use Regulations as interpreted by C&S Engineers, Inc.

It appears the necessary landscape screening is not provided between parcels 79.-1-18.16 (non-participating residential) and 79.-1-18.11 (participating) on their shared boundary south of Peterboro Rd. The lack of necessary landscape screening can be identified on design drawings C-213, C-214, C- 215, and C-216. Regardless of existing visibility from occupied structures, the lack of necessary landscape screening between these parcels, per the design drawings, does not comply with the Town of Fenner Land Use Regulations as interpreted by C&S Engineers, Inc.

It appears the necessary landscape screening is not provided between parcels 79.-1-13.32 (non-participating residential) and 79.-1-12, (participating) on their shared boundary south of Peterboro Rd. The lack of necessary landscape screening can be identified on design drawings C-213, C-214, C-215, and C-216. Regardless of occupancy status, the lack of necessary landscape screening between these parcels, per the design drawings, does not comply with the Town of Fenner Land Use Regulations as interpreted by C&S Engineers, Inc.

> ***Response:*** *The reasoning and statement of justification for the Applicant's local law waiver requests are presented in Exhibit 24 (Local Laws and Ordinances) – Revision 1 and Appendix 24-C (Statement of Justification for Local Law Waiver Requests) – Revision 1. For further information, see the Applicant's Response to Issues Statement, Party Status Request, Municipal Statements of Compliance and Public Comments on Draft Permit.*

# Appendix 25

## Other Permits and Approvals

137 – General - The Town of Fenner should be advised of the permits and approvals mentioned in this document and confirm that the Applicant is in possession before starting construction. These required permits include but are not limited to:

a. U.S. Army Corps of Engineers Nationwide Permit for the placement of fill in federal jurisdictional Waters of the United States (WOTUS) pursuant to Section 404 of the Clean Water Act (CWA).
b. Water Quality Certification for the placement of fill in federal jurisdictional WOTUS pursuant to Section 401 of the CWA.
c. New York State Pollution Discharge Elimination System General Permit for Stormwater Discharges from Construction Activity (GP-0-20-001) pursuant to Section 402 of the CWA and Article 17 of the Environmental Conservation Law.
d. Additional consultation with SHPO and federally recognized Indian Nations will be necessary under Section 106 of the National Historic Preservation Act (in connection with Section 404 permit).
e. Coordination with the United States Fish and Wildlife Service under the National Environmental Policy Act.

***Response:*** *Prior to construction, Siting Permit Condition 6.1 (a) requires submission of copies of all federal and federally delegated permits for construction and operation of the Facility.*

February 11, 2025

Mr. David Jones
Town of Fenner
3151 Fenner East Road
Cazenovia, New York 13035

**Re: Professional Engineering Services**
**Cypress Creek / Oxbow Hill Solar, LLC Project**
**ORES Matter No. 23-00060**
**Town of Fenner, Madison County, New York**

Dear Mr. Jones:

C&S has completed their technical review of the proposed Oxbow Hill Solar, LLC Project 94-c [sic] application in the Town of Fenner, Madison County, New York. Having reviewed the 262 application documents for completeness and appropriateness with attention to potential impacts within the Town, we have provided a high level summary of our findings below. This summary should serve as a supplement to the more detailed reviews included in our package.

1. **Conflict with Local Zoning and Land Use Regulations**
    - The project directly conflicts with the Town of Fenner's Local Law No. 2 of 2021, which prohibits large-scale solar farms.
    - The applicant is requesting waivers for use prohibition, structure height limits, fence height requirements, setbacks, and landscape screening requirements.
2. **Noise and Vibration Concerns**
    - Construction noise is planned for 8 AM - 8 PM on Sundays and national holidays, which is not prohibited per local law but should be noted by the town.
    - The 94-c [sic] regulations are unclear on the analysis of cumulative impacts when a proposed solar farm is sited adjacent to an existing wind farm. Under the cumulative impact analysis, multiple non-participating receptor locations have noise impacts slightly above the regulatory threshold.
3. **Geotechnical and Structural Design Deficiencies**
    - The design documents do not include foundation depths, critical to confirming the design approach based on the geotechnical recommendations.
    - Site-specific corrosion evaluation has been recommended but has not yet been conducted.
    - Over-excavation and structural fill recommendations are missing from the design documents.
4. **Environmental and Wetland Concerns**
    - Wetland impact mapping does not include the latest NYSDEC jurisdictional changes (as of January 2025).
    - Additional wetlands may be state regulated, requiring further evaluation.

- The conceptual mitigation plan lacks critical details, including wetland restoration ratios and geotechnical information.
- No formal mitigation plan has been provided to demonstrate how impacts to state and federally regulated wetlands will be offset.

5. **Stormwater and Erosion Control Deficiencies**
    - A phasing plan was not included within the 94-c [sic] application.
    - A stormwater quantity analysis has not yet been developed which is required for compliance.
    - The NYSDEC Notice of Intent was not provided.
    - Filter strips, bioretention areas, and erosion control locations are not adequately detailed in the SWPPP or design drawings for construction or evaluation of compliance with regulatory requirements.
6. **Agricultural and Land Use Conflicts**
    - The project does not align with local land preservation goals and could result in a significant loss of prime agricultural land within the Town.
    - No agrivoltaics or co-utilization strategies are proposed by the applicant, despite the discussion of these approaches within the Town of Fenner's Comprehensive Plan.
7. **Energy and Socioeconomic Considerations.**
    - The application does not include updated climate change date for Central New York from NYSERDA.
    - Local energy initiatives in Madison County and Fenner's Climate Smart Communities program are not considered, underreporting regional energy priorities.
8. **Transportation Considerations**
    - The proposed transportation route travels through the Village of Canastota on NYS Route 13. The provided study along this route does not have adequate data to analyze the impacts.
    - The proposed transportation route overlaps with existing school bus routes with no proposed coordination / mitigation measures.

In conclusion, the Oxbow Hill Solar Project, as currently proposed, presents significant non-compliance with local laws, particularly regarding land use, energy priorities, stormwater management, and wetland impacts. The project's reliance on state-level waivers, rather than alignment with the Town of Fenner's regulations, raises concerns regarding community alignment and environmental impacts. Design deficiencies exist within the geotechnical design, stormwater, and wetland mitigation planning, requiring further documentation and evaluation. If approval is granted, it should be contingent upon correcting these identified deficiencies and providing comprehensive mitigation plans to minimize the impacts to the Town of Fenner.

Thank you and please reach out with any questions.

Sincerely,

C&S Engineers, INC.

Emma Jo Aversa, P.E.
*Senior Project Engineer*

## Stacy A. Marris

**From:** Emma Aversa <EAversa@cscos.com>
**Sent:** Monday, March 17, 2025 10:35 AM
**To:** Stacy A. Marris; Bryan Bayer
**Cc:** Rachel A. Brenner; Nadine C. Bell
**Subject:** RE: ORES DMM Matter No. 23-02998– Notice of Issues Identified Within State Agency Jurisdiction



Good morning Stacy-

Thank you for the additional time on this.

We have reviewed the draft permit against the technical comments resulting from our review of the 94-c [sic] application documents.
In summary, the permit grants waivers for all the local laws and regulations the applicant had requested or states these waivers are not required because ORES does not believe the local law applies to the proposed development.

I've included the concerns summarized in the "Conclusions.pdf" we provided on 02/11/2025 with annotation on how the permit addresses them below.

1. **Conflict with Local Zoning and Land Use Regulations**
    - The project directly conflicts with the Town of Fenner's Local Law No. 2 of 2021, which prohibits large-scale solar farms. – The permit approves relief this local law.
    - The applicant is requesting waivers for use prohibition, structure height limits, fence height requirements, setbacks, and landscape screening requirements. – The permit approves relief from use prohibition, states the structure height limit is not applicable, approves limited relief for fence height, states that local setback requirements do not apply, and states the local landscaped screening requirement does not apply.
2. **Noise and Vibration Concerns**
    - Construction noise is planned for 8 AM - 8 PM on Sundays and national holidays, which is not prohibited per local law but should be noted by the town. – The permit approves these hours for construction.
    - The 94-c [sic] regulations are unclear on the analysis of cumulative impacts when a proposed solar farm is sited adjacent to an existing wind farm. Under the cumulative impact analysis, multiple non-participating receptor locations have noise impacts slightly above the regulatory threshold. – The permit deems the submitted material sufficient and does not state any additional analysis requirements from the applicant.
3. **Geotechnical and Structural Design Deficiencies**
    - The design documents do not include foundation depths, critical to confirming the design approach based on the geotechnical recommendations. – On page 47 of the permit, under section (c) Plans, Profile, and Detail Drawings, it is noted that foundation drawings shall be included in plan and section with the foundation type and location with applicable design criteria shall be listed and described in the drawings to be stamped and signed by a professional engineer, licensed and registered in NYS. Although this does not explicitly

require this work be completed prior to permit approval, it implies it will need to be performed as part of final design.

- Site-specific corrosion evaluation has been recommended but has not yet been conducted. – Same as above.
- Over-excavation and structural fill recommendations are missing from the design documents. – Same as above.

4. **Environmental and Wetland Concerns**
    - Wetland impact mapping does not include the latest NYSDEC jurisdictional changes (as of January 2025). – No mention of additional wetland delineation work was made in the permit.
    - Additional wetlands may be state regulated, requiring further evaluation. – No mention of additional wetland delineation work was made in the permit.
    - The conceptual mitigation plan lacks critical details, including wetland restoration ratios and geotechnical information. – The permit holds the applicant to the wetland restoration and mitigation plan submitted as part of 94-c [sic] which was deemed complete by the agency.
    - No formal mitigation plan has been provided to demonstrate how impacts to state and federally regulated wetlands will be offset. – The permit holds the applicant to the wetland restoration and mitigation plan submitted as part of 94-c [sic] which was deemed complete by the agency.
5. **Stormwater and Erosion Control Deficiencies**
    - A phasing plan was not included within the 94-c [sic] application. – There is no mention of the stormwater component or DEC permit included as part of the permit. This applies to all items below.
    - A stormwater quantity analysis has not yet been developed which is required for compliance.
    - The NYSDEC Notice of Intent was not provided.
    - Filter strips, bioretention areas, and erosion control locations are not adequately detailed in the SWPPP or design drawings for construction or evaluation of compliance with regulatory requirements.
6. **Agricultural and Land Use Conflicts**
    - The project does not align with local land preservation goals and could result in a significant loss of prime agricultural land within the Town. – The permit approves relief to the Town's prohibition. In instances where the applicant proposes to permanently or temporarily impact active agricultural lands (defined in the permit, not necessarily classified as prime farmland), an independent, third-party agricultural monitor will be required to oversee compliance with agricultural conditions and requirements.
    - No agrivoltaics or co-utilization strategies are proposed by the applicant, despite the discussion of these approaches within the Town of Fenner's Comprehensive Plan. – If co-utilization strategies were proposed in the 94-c [sic] application, the applicant would be held to those however, none were proposed, and no additional requests were included from ORES as part of the permit.
7. **Energy and Socioeconomic Considerations.**
    - The application does not include updated climate change date for Central New York from NYSERDA. – The permit has deemed the submitted material as complete and does not require additional updates for approval.
    - Local energy initiatives in Madison County and Fenner's Climate Smart Communities

program are not considered, underreporting regional energy priorities. – The permit has

deemed the submitted material as complete and does not require additional updates for approval.

8. **Transportation Considerations**
    - The proposed transportation route travels through the Village of Canastota on NYS Route 13. The provided study along this route does not have adequate data to analyze the impacts. – The permit expressly authorizes the NYSDOT to administer permits associated with constructing and operating the facility based on the submitted materials. The permit approval is not contingent on any addition evaluation or data.
    - The proposed transportation route overlaps with existing school bus routes with no proposed coordination / mitigation measures. – The permit expressly authorizes the NYSDOT to administer permits associated with constructing and operating the facility based on the submitted materials. The permit approval is not contingent on any addition evaluation or data.

We would advise this be reviewed by a legal expert if it has not already.

Thank you and let me know if you'd like to discuss anything further.
Emma Aversa

C&S COMPANIES®

*Build your career at C&S!*

**Emma Aversa, P.E.**
**Senior Project Engineer**
office: (315) 455-2000
direct: (315) 703-4289
cell: (315) 530-0641
eaversa@cscos.com

My hours are Monday through Friday 7:30 am to 4:30 pm ET