Amended Short Environmental Assessment Form Part 1 - Project Information

Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information

Name of Action or Project:

Promulgation of regulations to implement Executive Law Section 94-c (Section 4 of the Accelerated Renewable Energy Growth and Benefit Act)

Project Location (describe, and attach a location map):

New York State

Brief Description of Proposed Action:

The proposed action will be the promulgation of regulations which are intended to fulfill the statutory responsibility of the agency as set forth in Section 4 of the Accelerated Renewable Energy and Community Benefit Act (the Act) (Chapter 58 Part JJJ of the Laws of 2020) and Executive Law Section 94-c, to achieve the State's goal of reaching certain net zero greenhouse gas emissions targets ("CLCPA targets") in the Climate Leadership and Community Protection Act ("CLCPA") (Chapter 106 of the Laws of of 2019)

Please see attachment A for a description of the intent of the Proposed Action.

Name of Applicant or Sponsor:	Telephone: (518) 473-4590
New York State Office of Renewable Energy Siting	E-Mail: Houtan.Moaveni@ores.ny.gov

Address:

Empire State Plaza, 240 State Street, P-1 South, J Dock

City/PO:	State:	Zip Code:
Albany	NY	12242

	NO	YES
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.	☐	☑
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval:	☐	☐

3. a. Total acreage of the site of the proposed action? _____ acres
   b. Total acreage to be physically disturbed? _____ acres
   c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres

4. Check all land uses that occur on, are adjoining or near the proposed action:

5. ☐ Urban ☐ Rural (non-agriculture) ☐ Industrial ☐ Commercial ☐ Residential (suburban)
   ☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other(Specify):
   ☐ Parkland

	NO	YES	N/A
5. Is the proposed action,			
a. A permitted use under the zoning regulations?	☐	☐	☐
b. Consistent with the adopted comprehensive plan?	☐	☐	☐

	NO	YES
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	☐	☐

	NO	YES
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?		
If Yes, identify: _____	☐	☐

	NO	YES
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	☐	☐
b. Are public transportation services available at or near the site of the proposed action?	☐	☐
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	☐	☐

	NO	YES
9. Does the proposed action meet or exceed the state energy code requirements?		
If the proposed action will exceed requirements, describe design features and technologies: _____ _____	☐	☐

	NO	YES
10. Will the proposed action connect to an existing public/private water supply?		
If No, describe method for providing potable water: _____ _____	☐	☐

	NO	YES
11. Will the proposed action connect to existing wastewater utilities?		
If No, describe method for providing wastewater treatment: _____ _____	☐	☐

	NO	YES
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?	☐	☐
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	☐	☐

	NO	YES
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	☐	☐
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	☐	☐
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____		

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:

☐ Shoreline ☐ Forest ☐ Agricultural/grasslands ☐ Early mid-successional

☐ Wetland ☐ Urban ☐ Suburban

	NO	YES
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	☐	☐
16. Is the project site located in the 100-year flood plan?	☐	☐
17. Will the proposed action create storm water discharge, either from point or non-point sources?	☐	☐
If Yes,		
a. Will storm water discharges flow to adjacent properties?	☐	☐
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?	☐	☐
If Yes, briefly describe: _____ _____		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)?	☐	☐
If Yes, explain the purpose and size of the impoundment: _____ _____		
~~1~~9. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility?	☐	☐
If Yes, describe: _____ _____		
20.Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste?	☐	☐
If Yes, describe: _____ _____		

I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE

Applicant/sponsor/name: Houtan Moaveni Date: 02/23/2021

Signature: *Houtan Moaveni* Title: Acting Executive Director

PRINT FORM

Amended Attachment A
Short Environmental Assessment Form
Part 1 - Project Information

Proposed Action

The proposed action consists of the adoption of regulations by the Office of Renewable Energy Siting (ORES or the Office), as required by Executive Law Section 94-c and the Accelerated Renewable Energy Growth and Community Benefit Act (Part JJJ of Chapter 58 of the Laws of 2020) to achieve the State's goal of reaching certain net zero greenhouse gas emissions targets ("CLCPA targets") in the Climate Leadership and Community Protection Act ("CLCPA") (Chapter 106 of the Laws of 2019).[1]

In 2020, the Legislature enacted the Accelerated Renewable Energy Growth and Community Benefit Act (Act), parts of which were codified into Executive Law §94-c. In order to achieve the CLCPA targets, Executive Law Section 94-c consolidates the environmental review and permitting of major renewable energy facilities in the State of New York and provides a single forum in which the Office may undertake a coordinated and timely review of proposed major renewable energy facilities to meet the State's renewable energy goals, while ensuring the protection of the environment and consideration of all pertinent social, economic, and environmental factors in the decision to permit (or not permit) such facilities.

Description of Regulatory Action

The proposed regulatory action consists of the promulgation by ORES of new regulations as required by the Executive Law §94-c with respect to the following:

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[1] On July 19, 2019, Governor Andrew M. Cuomo signed the Climate Leadership and Community Protection Act into law (Chapter 106 of the Laws of 2019), which:

(a) Directed the Department of Environmental Conservation (NYSDEC) to establish a statewide greenhouse gas emissions limit as a percentage of 1990 emissions as follows:
    1. 2030: 60% of 1990 emissions; and
    2. 2050: 15% of 1990 emissions;
(b) Directed the Public Service Commission (PSC) to establish programs to require a minimum of 70% of statewide electrical generation be produced by renewable energy systems by 2030, and that by the year 2040 the statewide electrical demand system will generate zero emissions; and
(c) Directed the PSC to require the procurement by the State's jurisdictional load serving entities of at least 9 gigawatts of offshore wind electricity generation by 2035 and 6 gigawatts of photovoltaic solar generation by 2025, and to support three gigawatts of statewide energy storage capacity by 2030 (collectively, the "CLCPA targets").

Executive Law	Required Rule Making	Proposed Regulations
94-c(3)(b)	ORES shall promulgate new uniform standards and conditions for the siting, design, construction and operation of each type of major renewable energy facility relevant to issues that are common for particular classes and categories of major renewable energy facilities.	19 NYCRR Subpart 900-6
94-c(3)(g)	ORES shall promulgate new rules and regulations with respect to all necessary requirements for the permitting of major renewable energy facilities pursuant to this section.	19 NYCRR Subparts 900-1 through 900-5, and Subparts 900-7 through 900-14

Intent of Regulatory Action

The overarching legislative objective of the Act is to take action to achieve the targets set forth in the CLCPA, which establishes a framework to accelerate the State's goal of reaching net zero greenhouse gas emissions.[2] The stated purpose of Section 94-c is to establish a framework that consolidates the environmental review and permitting of major renewable energy facilities in New York State to provide a single forum in which ORES may undertake a coordinated and timely review of applications to meet the State's renewable energy goals, while ensuring the protection of the environment and consideration of all pertinent social, economic and environmental factors (EL 94-c(1)).

The existing process for permitting of renewable energy facilities, which currently falls under Article 10 of the Public Service Law, is not tailored to major renewable energy facilities and can be cumbersome and inefficient. Section 94-c and the proposed regulations replace this process with a balanced, timely and cost-effective framework that is: 1) focused on the review of qualifying wind and solar renewable energy generation projects; 2) includes consideration of local laws concerning zoning (if any), the environment and public health and safety; and 3) avoids or minimizes, to the maximum extent practicable, significant adverse environmental impacts.

Adoption of the proposed regulations is consistent with the purpose of Executive Law Section 94-c and State policy in the Act for expediting the regulatory review of applications for the siting of major renewable energy facilities necessary to meet the CLCPA targets, in recognition of the importance of these facilities to lowering carbon emissions (Act Section 4(a)). Additionally, the proposed regulations would fulfill the following purposes of the Act:

[2] Act at Section 2, subd. [2][a], which provides that in order to achieve the CLCPA targets, the State shall take appropriate action to ensure that new renewable energy projects can be sited in a timely and cost-effective manner that includes consideration of local laws concerning zoning, the environment or public health and safety and avoids or minimizes, to the maximum extent practicable, adverse environmental impacts.

- Developing uniform permit standards and conditions (USCs) that are applicable to classes and categories of renewable energy facilities, that reflect the environmental benefits of such facilities and address common conditions necessary to minimize impacts to the surrounding community and environment;
- Implementing a host community benefit to communities where renewable energy facilities and transmission infrastructure would be sited; and
- Implementing the state's policy to protect, conserve and recover endangered and threatened species while establishing additional mechanisms to facilitate the achievement of a net conservation benefit to endangered or threatened species which may be impacted by the construction or operation of major renewable energy facilities.[3]

Section 94-c defines a major renewable energy facility as having a nameplate generating capacity of 25 megawatts or more, and any co-located system storing energy generated from such a renewable energy system prior to delivering it to the transmission grid. The Act complements New York State policies that have over the past several years established increasingly stringent goals aimed at substantially increasing the use of large-scale renewables and reducing greenhouse gas emissions. The Act builds on the CLCPA, signed by Governor Andrew M. Cuomo in July 2019, which increases the State's clean energy goal from 50% renewables to 70% renewables by 2030 (the 70 by 30 goal). The 70 by 30 goal would likely encourage development of new renewable energy throughout the State. Through the Office of Renewable Energy Siting and the promulgation of uniform standards and conditions, environmental review and permitting of major renewable energy facilities will be consolidated and will undergo a coordinated and timely review to meet the state's renewable energy goals while ensuring opportunities for public engagement, the protection of the environment and consideration of local laws concerning zoning and all pertinent social, economic and environmental factors (including Environmental Justice) in the decision to permit such facilities.

The proposed action of promulgating regulations does not include any direct approval of applications for the siting of major renewable energy facilities but rather establishes substantive and procedural requirements for a more efficient siting process tailored to renewable energy facilities. Each application for a siting permit would undergo an individual, site-specific review by ORES in accordance with the procedural and substantive requirements of Section 94-c and the proposed regulations in a manner that avoids or minimizes, to the maximum extent practicable, significant adverse environmental impacts.

The Proposed Rule Making to establish uniform standards and conditions (I.D. No. DOS-37-20-00016-P) and Proposed Rule Making to establish procedural requirements for siting, construction and operation of major renewable energy facilities (I.D. No. DOS-37-20-00015-P) are incorporated herein by reference. The ORES regulations are also incorporated by reference and can be found at: https://ores.ny.gov/regulations.

[3] Act at Section 2(4)(c), (e) and (g); see also Executive Law §§94-c(3)(b), (c), (d) and (e) and 5(f).

Agency Use Only [If applicable]

Project:	
Date:	

Amended Short Environmental Assessment Form
Part 2 - Impact Assessment

Part 2 is to be completed by the Lead Agency.
Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	**Moderate to large impact may occur**
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	☑	☐
2. Will the proposed action result in a change in the use or intensity of use of land?	☑	☐
3. Will the proposed action impair the character or quality of the existing community?	☑	☐
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	☑	☐
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	☑	☐
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	☑	☐
7. Will the proposed action impact existing: a. public / private water supplies?	☑	☐
b. public / private wastewater treatment utilities?	☑	☐
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	☑	☐
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	☑	☐
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	☑	☐
11. Will the proposed action create a hazard to environmental resources or human health?	☑	☐

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Agency Use Only [If applicable]

Project:

Date:

Short Environmental Assessment Form
Part 3 Determination of Significance

For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

Please see Attachment B for discussion.

☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

☑ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Office of Renewable Energy Siting	02/23/2021
Name of Lead Agency	Date
Houtan Moaveni	Acting Executive Director
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
Houtan Moaveni	
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)

PRINT FORM

Short Environmental Assessment Form
Part 2 – Impact Assessment

Executive Law §94-c Regulations Chapter XVIII Title 19

Adoption of the proposed uniform standards and conditions (19 NYCRR Subpart 900-6) advances statutory purposes in Executive Law (EL) §94-c and State public policy for establishment of a timely and cost-effective siting process for proposed major renewable energy facilities (Accelerated Renewable Energy Growth and Community Benefit Act (the Act) (§2(2)(a)). Consistent with State policy, the proposed uniform standards and conditions are applicable to the classes and categories of renewable energy facilities that will be reviewed by ORES, reflect the environmental benefits of such facilities, and contain substantive requirements to address common conditions necessary to avoid or minimize, to the maximum extent practicable, adverse environmental impacts to the surrounding community and environment (Act §4(c)). Additionally, the proposed uniform standards and conditions put the applicant and public on notice of the conditions that would be required for a project to avoid, minimize or mitigate significant adverse environmental impacts and obtain siting permit approval.[1]

Adoption of the proposed new siting program procedural regulations (19 NYCRR Subparts 900-1 through 900-5, and Subparts 900-7 through 900-14) advances statutory purposes of EL §94-c and State public policy for expediting the regulatory review of applications for the siting of major renewable energy facilities necessary to meet the Climate Leadership and Community Protection Act (CLCPA) targets, in recognition of the importance of these facilities to lowering carbon emissions (Act §2(2)(a) and §4(a)). Additionally, the proposed regulations fulfill the State's policy of implementing one or more programs to provide community benefits to owners of land and communities where renewable energy facilities and transmission infrastructure would be sited (Act §4(e)).[2]

Collectively, the new Major Renewable Energy Development Program established by EL §94-c and proposed regulations provide a timely and cost-effective permitting framework that: 1) ensures opportunities for public engagement from the earliest pre-application stages through the hearing process and consideration of local laws concerning zoning, the environment or public health and safety; and 2) avoids or minimizes, to the maximum extent practicable, significant adverse environmental impacts (Act §2(2)(a)).

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[1] The proposed uniform terms and conditions at 19 NYCRR Subpart 900-6 would be incorporated into draft permits issued by the Office for public comment and are intended to complement the siting program procedural regulations that are the topic of the separate ORES rulemaking. Pursuant to Executive Law §94-c, ORES (in consultation with the NYSDEC) also remains responsible for developing site-specific terms and conditions needed to implement specific avoidance, minimization and mitigation measures for any potential environmental impact(s) not addressed by the proposed uniform standards and conditions.

[2] 19 NYCRR §§900-6.1(f), 900-2.19(g) and (k), and 900-10.2(j).

Additionally, the new program implements the State's policy to protect, conserve and recover endangered and threatened species, and establishing additional mechanisms to ensure, as applicable on a case-by-case basis, a net conservation benefit to endangered or threatened species that may be impacted by the construction of major renewable energy facilities (Act §4(g)).[3]

The proposed action of promulgating regulations does not include any direct approval of applications for the siting of major renewable energy facilities, but rather establishes substantive and procedural requirements for a more efficient siting process tailored to renewable energy facilities. Each application for a siting permit would be individually reviewed by ORES in accordance with the consolidated, balanced, timely and cost-effective process required by EL §94-c and the proposed regulations while ensuring the protection of the environment and consideration of all pertinent social, economic and environmental factors (including Environmental Justice areas) in the decision to permit (or not permit) any particular facility.

Short EAF Part 2 – Impact Assessment

(Note: Part 2 questions are consolidated as indicated below.)

1 - 3. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations; result in the change in or use or intensity of use of land; or impair the character or quality of the existing community:

No. The action of promulgating regulations does not include any site-specific approval of applications for the siting of major renewable energy facilities. Each application for a siting permit would be individually reviewed by ORES in accordance with the balanced, timely and consolidated process in EL §94-c and the proposed regulations, in a manner that ensures the protection of the environment and consideration of all pertinent social, economic and environmental factors (including Environmental Justice areas) in the decision to permit or not permit any particular facility. Consideration of location- and/or site-specific impacts will occur at a later stage.

Adoption of the regulations is required by statute and will consolidate the environmental review and permitting of major renewable energy facilities in New York State to a single forum in which ORES may undertake a coordinated and timely review of applications to meet the State's renewable energy goals, while ensuring the protection of the environment and consideration of all pertinent social, economic and environmental factors.

[3] The proposed regulations provide that at the earliest point possible in the applicant's preliminary project planning (and as a condition of application submittal) the applicant is required to conduct site-specific studies and analyses of water resources and aquatic ecology (including wetlands), New York State threatened and/or endangered species, and archeological and cultural resources, for use in the initial application filing.

Final siting permit approval requires a finding by ORES that the proposed project, with any applicable uniform and site-specific standards and conditions, would comply with applicable local laws and ordinances. As a result, ORES must factor comprehensive planning and adopted land use laws into its decision-making. ORES may, however, elect not to apply, in whole or in part, any substantive local requirements if it finds that, as applied to the facility, such requirements are unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the proposed facility. The applicant has the burden of establishing any request for such a determination in accordance with the requirements in the regulations, and local government has the opportunity to present evidence in support of any such local law or ordinance. If ORES determines any local law or regulations to be unreasonably burdensome it may elect not to apply it. Otherwise, the local law or regulation applies. This requirement has its genesis in statute (including without limitation Executive Law Section 94-c and existing Article 10), and is required to balance local needs with State policy that new renewable energy generation projects be sited in a timely and cost-effective manner that includes consideration of local laws concerning zoning, the environment or public health and safety, and avoids or minimizes, to the maximum extent practicable, significant adverse environmental impacts.

4 - 5. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA), or result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway:

No. As noted, the action of promulgating regulations does not include approval for the siting or construction of any facilities. There will be no direct impact on the environment.

6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities:

No. Adoption of the proposed regulations will consolidate the environmental review and permitting of major renewable energy facilities in New York State to a single forum in which the Office may undertake a coordinated and timely review of applications to meet the State's renewable energy goals, while ensuring the protection of the environment and consideration of all pertinent social, economic and environmental factors. The proposed action is consistent with the State's public policy and legislative interest in taking action to achieve CLCPA targets and thereby, address the impacts of climate change to protect the environment.

7 - 11. Will the proposed action impact existing public/ private water supplies or public/private wastewater treatment utilities; impair the character or quality of important historic, archeological, architectural or aesthetic resources; result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna); result in an increase in the potential for erosion, flooding or drainage problems; or create a hazard to environmental resources or human health:

No. The action of promulgating regulations does not include approval for the siting or construction of any facilities. There will be no direct impact on the environment. Adoption of the proposed regulations will consolidate the environmental review and permitting of major renewable energy facilities in New York State to provide a single forum in which the Office may undertake a coordinated and timely review of applications to meet the State's renewable energy goals, while ensuring the protection of the environment and consideration of all pertinent social, economic and environmental factors. By providing greater certainty on the procedural and substantive requirements for the new program, the proposed regulations are designed to better inform the regulated community and minimize potential adverse environmental impacts that could result from major renewable energy facilities subject to the new process.

Amended Attachment B
Assessment of Significance
Regulations Implementing Executive Law §94-c
Part 3 - Determination of Significance

1. Introduction

In New York, the environmental review of large scale renewable electrical generating projects has been managed under various siting regimes since 1972 — most recently under the State Environmental Quality Review Act (SEQRA) and Article 10 of the Public Service Law (Article 10). In 2020, New York State enacted the Accelerated Renewable Energy Growth and Community Benefit Act (Act), which established the Office of Renewable Energy Siting (the Office or ORES) to undertake a coordinated and timely review of such facilities to meet the State's renewable energy goals, while ensuring the protection of the environment and consideration of all pertinent social, economic, and environmental factors, pursuant to new Executive Law (EL) §94-c.

In 2019, New York State enacted the Climate Leadership and Community Protection Act (CLCPA), landmark legislation that established nation-leading goals of fighting climate change by achieving 70% of statewide electrical generation from renewable energy sources by 2030, and reducing the statewide electrical demand system to zero emissions by the year 2040. The Act recognizes that the responsible and timely siting of major renewable energy facilities will be critical to realizing these goals, given the ability of these facilities to reduce carbon emissions.

The Act and EL §94-c require the Office to promulgate regulations to implement the statute within one year of its effective date. The Office proposed the adoption of regulations at Subparts 900-1 through 900-15 of Chapter XVIII Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) on September 16, 2020.

The Office accepted public comments from September 16, 2020 until December 7, 2020. The Office held seven public hearings, while complying with public health and safety guidelines due to the circumstances presented by the COVID-19 pandemic. Consequently, the Office received oral comments from nearly 200 individuals during the public hearings and over 5,000 letters and emails containing comments and questions from various stakeholders. After careful consideration of all comments received, the Office made several non-substantive changes to address the comments and to clarify the proposed regulations and USCs. A copy of the full assessment of public comments is available on the ORES website.

In conjunction therewith, ORES conducted a review of the potential environmental impacts of the regulations pursuant to SEQRA and prepared a Short Environmental Assessment Form, Coastal Assessment Form and negative declaration. In light of the comments received, the Office updated the Short Environmental Assessment Form, Coastal Assessment Form and negative declaration (as set forth herein).

2. Executive Law §94-c Regulations Part 900 of Chapter XVIII Title 19

In accordance with EL §94-c(3)(g), the Office developed a comprehensive set of regulations necessary to process applications for the siting, design, construction and operation of major renewable energy facilities, as defined at EL §94-c(2)(h). These rules contain provisions related to basic procedures for pre-application consultations with the Office and other state agencies, filing, service and publication of notice of an application, the required contents of a complete application, requirements for applicants transferring from NYS Public Service Law (PSL) Article 10 or another alternate permitting process, the ORES's processing of an application, the establishment and administration of the local agency account, amending an application, a comprehensive set of uniform standards and conditions (USCs) for the siting, design, construction and operation of solar and land-based wind major renewable energy facilities, notice and conduct of public hearings, issuance of a final determination by the Office, submission and review of compliance filings, modification, transfer or relinquishment of permits, enforcement and other miscellaneous provisions, as detailed below.

Prior to the enactment of EL §94-c, major renewable energy facilities were reviewed and approved pursuant to Article 10 of the PSL. Article 10 provides for the siting review of new and repowered or modified major electric generating facilities in New York State by the Board on Electric Generation Siting and the Environment (Siting Board) in a unified proceeding instead of requiring a developer or owner of such a facility to apply for numerous state and local permits. The Siting Board adopted regulations at 16 NYCRR Parts 1000 et seq., which contain the rules specifying the content of an application to site, construct and operate a major electric generating facility. Many of the rules contained in the EL §94-c regulations are based on regulations adopted by the Siting Board.

Similarly, because the Act requires parties who wish to litigate issues within the administrative process to demonstrate such issues are "substantive and significant," the threshold set forth in the New York Department of Environmental Conservation's (NYSDEC) regulations at 6 NYCRR Part 624, the Part 624 rules served as a model for the hearing rules for the new permit hearing process under EL §94-c.

The USCs were developed based on the many certificate requirements developed through the Article 10 process and in consultation with other state agencies and authorities that provided both substantive expertise and experience including, the New York State Department of Public Service (NYSDPS), the NYSDEC, the New York State Department of Agriculture and Markets (NYSAGM), the Office of Parks, Recreation and Historic Preservation (OPRHP).

An overview of the ORES regulations is annexed hereto at **Appendix 1** and incorporated herein by reference. Important cornerstones of this framework are discussed next:

1) Mandatory Pre-Application Requirements – Applicants are required to assess the presence of natural and cultural resources early in the project design process and to consult with the Office, and with NYSDEC or OPRHP, respectively in order to delineate wetlands, waterbodies and threatened or endangered species, as well as to identify the potential presence of cultural and archaeological resources. This early identification will allow applicants to design their facilities to avoid or minimize impacts to such resources. In addition, as noted in **Appendix 1**, the regulations provide

opportunities for public engagement as project applicants are required to, among other things: 1) consult with local governments and meet with potentially affected local community members at least 60 days before filing an application; 2) provide written notice of intent to file an application, notice of application filing and pre-construction notice to persons residing within one mile of a proposed solar facility and five miles of a proposed wind facility; 3) serve both electronic and paper copies of the filed application on local governments and libraries within the affected communities; and 4) publish newspaper notice of the application at least three days prior to filing an application. Applicants are also required to provide information to local agencies and potential community intervenors regarding the future availability of "Local Agency Account" funds under Subpart 900-5, which may be used to pay for the preparation of the required statement as to the compliance of the proposed facility with local laws and regulations, as well as the costs of expert fees to contribute to a complete record leading to an informed permit decision as to the appropriateness of the site and facility and whether the facility is designed to be constructed and operated in compliance with applicable local laws and regulations. Collectively, these mandatory pre-application procedures ensure the protection of the environment and identification of relevant areas of environmental concern at the earliest stages of project formation, thereby facilitating consideration of all pertinent social, economic and environmental factors as required by EL §94-c and the Act and in the same way that would be done under SEQRA.

2) Comprehensive Application Submission - Applicants are required to prepare twenty-five detailed exhibits, as described in **Appendix 1**, analyzing the potential impacts of a major renewable energy facility, demonstrating the avoidance and minimization measures evaluated, and detailing the mitigation measures that will be implemented to address unavoidable significant adverse environmental impacts. The exhibits set forth specific design goals and methodologies for analyzing and evaluating potential impacts. The Office will review each comprehensive application submission for completeness on a case-by-case basis.

3) Draft Permit Process – USCs and Site-Specific Conditions - Within 60 days following the date upon which an application is deemed complete, the Office shall prepare and publish a draft siting permit for public comment. The USCs are anticipated to function as a list of standard permit conditions that will apply to land-based wind and solar facilities. In addition, certain permit terms and conditions are inherently site-specific and not appropriately addressed by the USCs, and the Office retains the authority to issue site-specific conditions to address impacts unique to a particular facility. Any final siting permit issued by the Office will include the relevant USCs in accordance with Subpart 900-6 and site-specific conditions to avoid, minimize and mitigate, to the maximum extent practicable, potential adverse environmental impacts.

4) Compliance and Enforcement - The final cornerstone of the regulations is compliance and enforcement. Subpart 900-10 specifies the compliance filing process that would be required subsequent to issuance of a siting permit by the Office. More specifically, §900-10.1 addresses the timing of approvals of filings, §900-10.2 identifies pre-

construction compliance filings and §900-10.3 describes post-construction filings that would be required. Subpart 900-11 addresses permit modifications, transfers of issued or pending permits and relinquishment of permits. Specifically, the regulations propose a process for modifying or terminating permits issued by the Office, including modifications requested by the applicant and modifications or terminations initiated by ORES. The regulations contain timeframes for review and address the need for adjudicatory hearings if substantial or material modifications posing additional potential impacts are proposed. Subpart 900-12 provides NYSDPS and New York State Public Service Commission (PSC or Commission) with the authority to monitor, administer and enforce all terms and conditions in the event of noncompliance with an issued permit condition. Section 900-12.1 also provides ORES Staff and NYSDPS with stop-work authority and describes a process for lifting a stop-work order. Collectively, these requirements provide additional post-approval agency oversight to ensure that any potential significant adverse environmental impacts are avoided, minimized and mitigated to the maximum extent practicable throughout the course of the life of the major renewable energy facility.

Appendix 2 provides an overview with examples demonstrating how the requirements in the ORES regulatory framework work together to require a thorough evaluation of potential areas of environmental concern, specific measures to avoid, minimize and mitigate, to the maximum extent practicable, any potential significant adverse impacts on the environment, and opportunities for public engagement throughout the process.

3. SEQRA Record of Related Large-Scale Renewable Energy Siting

New York State developed an extensive SEQRA record evaluating the potential environmental impacts from the implementation of its major renewable energy policies to address the impacts of climate change, including with respect to the Act and EL §94-c. Specifically, in September 2020, the PSC completed a final supplemental generic environmental impact statement (SGEIS) as part of its proceedings that, in part, examined the range of potential impacts that could result from the siting of renewable energy projects. It is important to note that the SGEIS analyses built upon the Generic Environmental Impact Statement (2015 GEIS) completed by the Commission in February 2015 for the Reforming the Energy Vision (REV) and Clean Energy Fund (CEF) proceedings in Cases 14-M-0101 and 14-M-0094.

The PSC proceeding (Case 15-E-0302) examined the implementation of the Large-Scale Renewable (LSR) Program and the Clean Energy Standard (CES) and, more recently, the implementation of the CLCPA. The environmental analyses for the LSR Program and the CES examined the implementation of New York's policy for 50% of all electricity consumed in New York to be supplied by renewable resources by 2030. The environmental analyses for the CLCPA examined the impacts of increasing the amount of electricity supplied by renewable sources in New York from 50% to 70% by 2030.

Below is a discussion of the environmental impact analyses completed for each proceeding related to renewable energy siting.

3.1. Large-Scale Renewables (LSR) Program and Clean Energy Standard (CES)

A Draft Supplemental Environmental Impact Statement (2016 DSEIS) was issued by the Commission on February 23, 2016, that identified the potential adverse impacts that could result from the implementation of the LSR Program and CES and, if impacts were identified, how they would be avoided or minimized. The 2016 DSEIS considered establishing several renewable energy tiers eligible for renewable energy credits, including new renewable energy generation facilities with no limitation on facility size.

The 2016 DSEIS identified the amounts and types of renewable generation that are needed to meet the CES goal and the environmental analyses considered a portfolio of LSR using a supply curve model. The 2016 DSEIS identified the range of impacts that could result in the approval and implementation of the CES; the assessment of potential environmental impacts in that document is largely qualitative. A quantitative assessment of the potential impacts was not included in the 2016 DSEIS because information on the location of specific projects was not known at the time the SEQRA review was prepared. The 2016 DSEIS recognizes that the environmental impacts of specific projects selected as a result of the implementation of the CES would be analyzed as part their respective environmental processes, either under SEQRA or Article 10.

The Commission issued a Final Supplemental Environmental Impact Statement (2016 FSEIS) for the proceedings on May 19, 2016, that included a response to comments and revisions to the 2016 DSEIS.

3.2. Climate Leadership and Community Protection Act

The Commission completed a Draft Supplemental Generic Environmental Impact Statement (2020 DSGEIS) for the CLCPA on June 11, 2020. The 2020 DSGEIS relies upon and references the previous completed SEQRA analyses, including the 2015 GEIS completed for the REV, and the 2016 FSEIS completed for the LSR Program and the CES. The CLCPA increases the State's clean energy goal from 50% renewables to 70% renewables by 2030. As such, the 2020 DSGEIS evaluates the environmental impacts associated with the incremental resources needed to comply with the CLCPA.

Specifically, the 2020 DSGEIS addresses issues either not addressed in the above-referenced prior SEQRA analyses or issues that needed further analysis based on the expansion of the State's renewable energy goals pursuant to the CLCPA. The 2020 DSGEIS considered the following factors when determining which resource areas required new or further analysis: changes in the type of renewable resources, increases in scale of development, and new information (e.g., previously unknown impacts on a threatened or endangered species, or technology change of large-scale renewable resource and distributed solar generation).

The 2020 DSGEIS identifies the impacts that could result from the implementation of the goals under the CLCPA and includes a quantitative and qualitative discussion of the potential environmental impacts and potential measures to avoid or minimize those impacts. As with the previous environmental analyses, the 2020 DSGEIS recognizes that project-specific

environmental impacts would be addressed as part of the environmental review processes for those individual projects, under SEQRA or Article 10.

Following required public comment on the 2020 DSGEIS, the Commission completed the Final Supplemental Generic Environmental Impact Statement for the CLCPA (2020 FSGEIS) on September 17, 2020, which included a response to comments and revisions to the 2020 DSGEIS. The 2020 FSGEIS builds upon and incorporates by reference relevant material from the 2015 GEIS, 2016 FSEIS and related prior SEQRA proceedings evaluating the environmental impacts associated with New York's nation-leading clean energy policies and goals, and includes evaluation of renewable energy resources and potential impact areas before concluding, *inter alia,* that the assessment of environmental impacts and development of appropriate mitigation measures would be suitably implemented on a project-specific basis, as required by applicable state and federal permits and authorizations, in accordance with applicable federal and state laws and regulations.

4. Executive Law §94-c and the SEQRA Analyses for Other Siting Processes

This section compares the environmental impact review requirements of the EL §94-c regulations against the other major electric generating facilities siting processes in New York State (Article 10 and SEQRA).

4.1. Article 10 and Executive Law §94-c

In accordance with Subdivision 5 of Section 8-0115 of the Environmental Conservation Law, projects subject to PSL Article 10 are excluded from review under SEQRA and classified as Type II under the implementing regulations governing SEQRA. See 6 NYCRR 617.5(c)(44). The rationale underlying the exclusion is that review of any potential significant environmental impacts from the construction and operation of a major electric generating facility subject to Article 10 is just as comprehensive as it would be if reviewed under SEQRA and its implementing regulations, found at 6 NYCRR Part 617. The Article 10 regulations require the submission of 41 exhibits to support the Siting Board's findings about the nature of the environmental impacts related to construction and operation of the facility and related facilities (e.g., access roads, transmission lines, transportation). In weighing the environmental impacts of a project, the Siting Board must determine, in relevant part, that any significant adverse environmental effects of the construction and operation of the facility will be avoided or minimized and mitigated to the maximum extent practicable.

The Article 10 regulations were promulgated, including the exhibit requirements, to cover all types of electric generating facilities, including fossil fuel, nuclear and renewable energy facilities. As such, the application requirements under Article 10 include an analysis of a number of impacts that are directly related to the combustion of fossil fuels for the generation of energy and the associated impacts related to this type of energy generation, such as pollution control facilities and back-up fuel. In contrast, EL §94-c is only applicable to major renewable energy facilities that do not utilize a fossil fuel resource in the process of generating electricity and the 94-c application requirements are, therefore, limited to the potential impacts associated with the construction and operation of such facilities.

The EL §94-c regulations are designed to guide applicants to consider and avoid or minimize significant environmental impacts in the first instance and, where possible, to specify mitigation to address unavoidable impacts. As such, an important distinction between Article 10 and EL §94-c is the pre-application consultations required under the proposed regulations to proactively identify significant natural resources such as wetlands, waterbodies and threatened and endangered species. Through the pre-application process, applicants are expected to work closely with local municipalities, communities and New York State agencies to identify such resources in order that the applicant can design the facility to avoid and minimize, to the maximum extent practicable, any potential significant adverse environmental impacts. The substantive preapplication consultations further ensure responsible project design layout to avoid and minimize significant environmental impacts to natural resources in the first instance before an application is submitted. This will minimize the likelihood of the Office receiving incomplete applications or poorly sited projects, which historically has been a very cumbersome aspect of the Article 10 process.

The EL §94-c permit application requirements are more prescriptive regarding the assessment and analysis of potential impacts and require more specific details than are currently required under Article 10. These application requirements ensure that the assessment of environmental and socioeconomic impacts from the development of major renewable energy facilities is as comprehensive as the environmental assessments conducted pursuant to Article 10.

One of the key challenges to navigating the Article 10 process is the need to individually negotiate terms and conditions for each project in each impact category, even though the impacts are often similar among various projects. Rather than negotiating or litigating avoidance, minimization and mitigation requirements for each impact category with multiple state agencies and intervenors at every individual site, the USCs required by EL §94-c will provide the majority of the substantive requirements that will be imposed in a siting permit. The application process is designed to drive applicants toward compliance with the relevant USCs. The development of USCs as part of the regulations is critical toward establishing a consolidated process that sets forth how major renewable energy projects should be sited and designed to avoid and minimize significant environmental impacts. The ORES regulations also include mitigation requirements where projects cannot avoid significant adverse impacts.

4.2. SEQRA and Executive Law §94-c

As discussed above, the ORES regulations require a robust review of all potential significant environmental impacts associated with the construction and operation of a major renewable energy facility. A comparison of the environmental analysis conducted pursuant to the EL §94-c regulations and SEQRA finds that the two processes are comparable, and that the assessment and analysis of potential adverse environmental impacts required by the EL §94-c regulations are as prescriptive and comprehensive as would be required by SEQRA. SEQRA requires that significant adverse impacts must be avoided and minimized to the maximum extent practicable, and where impacts cannot be avoided, mitigation must be provided. As discussed above, the EL §94-c regulations contain the same requirements with regard to avoiding and minimizing impacts.

5. Negative Declaration

A key tenet of the EL §94-c regulations is to facilitate the siting of major renewable energy facilities to meet the State's goal to reduce the production of greenhouse gases and fight climate change. The responsible siting of major renewable energy projects in New York, overall, will result in positive environmental impacts from the reduction of greenhouse gas emissions, while ensuring the protection of the environment and consideration of all pertinent social, economic, and environmental factors in the decision to permit such facilities.

EL §94-c(6) excludes Article 8 of the Environmental Conservation Law from the list of other agency approvals otherwise needed for a major renewable energy facility, and the regulations implement the intent of the statute to undertake a coordinated and timely review of proposed major renewable energy facilities to meet the state's renewable energy goals, while ensuring the protection of the environment and consideration of all pertinent social, economic, and environmental factors in the decision as to whether to permit such facilities.

The EL §94-c regulations provide a framework for impact assessment that is consistent with principles of SEQRA to avoid, minimize or mitigate, to the maximum extent practicable, significant adverse environmental impacts to the surrounding community and environment. Collectively, the EL §94-c regulations provide a timely and cost-effective permitting framework that: 1) ensures, from the earliest pre-application stages through the administrative hearing process, opportunities for public engagement and consideration of local laws concerning zoning, the environment or public health and safety; and 2) avoids, minimizes or mitigates, to the maximum extent practicable, significant adverse environmental impacts (Act §2(2)(a)).

The pre-application and application processes in Subpart 900-1, the exhibit requirements in Subpart 900-2, USCs in Subpart 900-6 and impact assessment and mitigation features described herein also provide a transparent and informative application review process that: 1) elicits required information from the applicant regarding relevant areas of environmental and regulatory concerns; 2) provides clear design and engineering standards to the regulated community concerning the requirements for a complete application; 3) includes consideration of local laws concerning zoning, the environment or public health and safety; and 4) requires the applicant to avoid, minimize or mitigate, to the maximum extent practicable, adverse environmental impacts — as would occur under SEQRA and Article 10. Application materials will be made available to local agencies and the public for review and comment, a public comment hearing will be held on all applications, and an adjudicatory hearing will be conducted if the application raises significant and substantive issues are raised.

Adoption of the procedural regulations (19 NYCRR Subparts 900-1 through 900-5, and Subparts 900-7 through 900-15) fulfills statutory requirements in EL §94-c and advances State policy for expediting the regulatory review of applications for the siting of major renewable energy facilities necessary to meet the CLCPA targets, in recognition of the important role these facilities play in lowering carbon emissions (Act §4(a)). Additionally, the regulations fulfill the State's policy to provide community benefits to owners of land and communities where renewable energy facilities and transmission infrastructure would be sited (Act §4(e)).

Adoption of the regulations establishing uniform standards and conditions (19 NYCRR Subpart 900-6) fulfills statutory requirements in EL §94-c and advances State public policy for establishment of a timely and cost-effective siting process for proposed major renewable energy facilities (Act §2(2)(a)). Consistent with State policy, the USCs are applicable to the most common classes and categories of renewable energy facilities (solar and land-based wind facilities) that will be reviewed by the Office, reflect the environmental benefits of such facilities, and contain substantive requirements to address common conditions necessary to avoid or minimize, to the maximum extent practicable, significant adverse environmental impacts to the surrounding community and environment (Act §4(c)). Additionally, the USCs put the applicant and public on notice of the conditions that would be required for a project to avoid, minimize or mitigate significant adverse environmental impacts and obtain siting permit approval.

EL §94-c(5)(e) provides that a final siting permit may only be issued if the Office makes a finding that the proposed project, together with any applicable USCs and site-specific standards and conditions, would comply with applicable laws and regulations. In making this determination, the Office may elect not to apply, in whole or in part, any local law or ordinance which would otherwise be applicable if it makes a finding that, as applied to the proposed facility, it is unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the proposed facility.

Section 900-2.25(c) of the regulations includes this requirement in the EL §94-c review process, and requires the applicant to submit a statement justifying any waiver request to "show with facts and analysis the degree of burden caused by the requirement, why the burden should not reasonably be borne by the applicant, that the request cannot reasonably be obviated by design changes to the facility, that the request is the minimum necessary, and that the adverse impacts of granting the request are mitigated to the maximum extent practicable consistent with applicable requirements set forth in the regulations." Additional details are required for waiver requests based upon technological limitations, cost or economics and the needs of consumers (§§900-2.25(c)(1)–(3)). The applicant has the burden of justifying any request for such a determination, and the relevant local agencies are required to submit to the Office a statement indicating whether the proposed facility is designed to be sited, constructed and operated in compliance with applicable local laws and regulations, if any, concerning the environment, or public health and safety. If the Office determines compliance with a particular provision of a local law or ordinance to be unreasonably burdensome, it may elect not to apply it. This requirement has its genesis in the statute, and is required to balance local needs with State policy that new major renewable energy generation projects be sited in a timely and cost-effective manner that includes consideration of local laws concerning zoning, the environment or public health and safety, and avoids or minimizes, to the maximum extent practicable, adverse environmental impacts.

<u>Discussion of Prior SEQRA Reviews</u>

As discussed above, the Office, in completing this review, has evaluated and incorporated the prior SEQRA determinations in the 2015 GEIS, 2016 FSEIS, 2020 FSEIS and related prior SEQRA proceedings, and concurs with the findings. Those findings identified potentially significant adverse cumulative impacts related to the development of major solar and wind facilities

(including without limitation, land use and land cover, visual resources and aesthetics, threatened or endangered species and their habitat including grassland birds, noise pollution and air resources impacts assessed therein), and determined that they would not be expected to result in significant adverse cumulative impacts given the variety of measures to avoid or minimize permanent or other impacts to resources.

The LSR Program, CES and the CLCPA all involved the implementation of ambitious clean energy goals in order to address impacts from climate change. The implementation of EL §94-c does not in any way change the clean energy goals that have been established by the State policies. In enacting EL §94-c, the New York State legislature found that the public interest would be served by "expediting the regulatory review for the siting of major renewable energy facilities and transmission infrastructure necessary to meet the CLCPA targets, in recognition of the importance of these facilities and their ability to lower carbon emissions" (Act §§2(2)(a), 4(a)). In other words, EL §94-c establishes a new review process in order to facilitate the siting of major renewable energy facilities in order to meet the State's climate goals, but it does not increase the need for additional renewable facilities. As such, it is reasonable and appropriate for the Office to rely upon the previous SEQRA analyses conducted for the policies that established the climate goals for the promulgation of its regulations.

As discussed in detail above, the environmental review required under EL §94-c and its implementing regulations is as robust and comprehensive as that required under SEQRA and Article 10. Under EL §94-c, each permit application would be individually reviewed by the Office in accordance with the procedural and substantive requirements in EL §94-c and the regulations, which ensure consideration of all pertinent social, economic and environmental factors (including Environmental Justice areas) in the decision to permit (or not permit) any particular facility.

The Office concurs with the findings in these prior SEQRA proceedings that potential unavoidable adverse impacts associated with individual projects will be mitigated through the various mechanisms provided in the applicable review process. As part of the EL §94-c permitting process, applicants will be expected to adhere to all project-specific and site-specific requirements in the EL §94-c regulations, which will include the applicable USCs and site-specific terms and conditions to avoid, minimize or mitigate, to the maximum extent practicable, potential adverse environmental impact.

With respect to potential irreversible and irretrievable commitment of environmental resources, the Office agrees with the findings in these prior SEQRA proceedings that responsibly-sited renewable energy facilities can avoid, minimize and mitigate potential impacts to such resources, and provide for the long-term preservation of resources.

With respect to potential growth-inducing aspects and socio-economic impacts, and potential impacts on energy consumption, the Office concurs with the findings in the prior SEQRA proceedings and reiterates the public policy and legislative objectives of the CLCPA, the Act and EL §94-c to reduce the production of greenhouse gases, increase production of electrical energy from clean and renewable sources, and help to fight climate change. The Office further notes that the proposed regulations require detailed consideration of potential socioeconomic effects (§900-2.19), and an assessment of the potential for significant and adverse disproportionate

environmental impacts to Environmental Justice areas (§900-2.20), as well as measures to avoid, minimize or mitigate any identified significant and adverse disproportionate environmental impacts.

Negative Declaration

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the adoption of proposed new regulations by the Office of Renewable Energy Siting (ORES or the Office) at 19 NYCRR Part 900, Subparts 900-1 through 900-15. This determination is based upon the Office's finding, pursuant to regulations implementing Article 8 of the Environmental Conservation Law contained in 6 NYCRR Part 617, that such action will not have a significant adverse effect on the environment. The proposed action is an "Unlisted Action" under 6 NYCRR §617.2.

Based upon the Office's review of the record, including prior SEQRA proceedings referenced in the Environmental Assessment Form and incorporated herein, the Office finds that the proposed action of promulgating the EL §94-c regulations would not result in any significant adverse environmental impacts. The proposed action of promulgating regulations does not include any direct approval of applications for the siting of major renewable energy facilities. Any application for a specific project submitted to the Office, will undergo the necessary site-specific regulatory and environmental reviews pursuant to Executive Law §94-c, the accompanying regulations and other applicable federal and state laws, in a manner that avoids or minimizes, to the maximum extent practicable, significant adverse environmental impacts.

The address of ORES, the Lead Agency for purposes of the environmental quality review of this action, is: Office of Renewable Energy Siting, 240 State Street, P1 South - J Dock, Empire State Plaza, Albany NY 12242.

APPENDIX 1
Overview of Executive Law §94-c Regulations

EL §94-c establishes a new Major Renewable Energy Development Program that consolidates the environmental review and permitting of major renewable energy facilities in New York State to provide a single forum in which ORES may undertake a coordinated and timely review of applications to meet the State's renewable energy goals, while ensuring the protection of the environment and consideration of all pertinent social, economic and environmental factors.

The regulations will implement EL §94-c through the adoption of siting program procedural regulations and uniform standards and conditions for the permitting of applications for major renewable energy facilities, as required under EL §94-c. The new requirements will apply to applications reviewed by ORES for the siting, design, construction, operation, compliance, enforcement and modification of such facilities, and include numerous measures requiring the application to avoid, minimize or mitigate, to the maximum extent practicable, potential environmental impacts.

Adoption of the regulations does not include any direct approval of applications for the siting of major renewable energy facilities, but rather establishes substantive and procedural requirements for a more efficient siting process tailored to renewable energy facilities. Each application for a siting permit would be individually reviewed by ORES in accordance with the consolidated, balanced, timely and cost-effective process in EL §94-c and the implementing regulations, while ensuring the protection of the environment and consideration of all pertinent social, economic and environmental factors (including Environmental Justice areas) in the decision to permit (or not permit) any particular facility.

A summary of the regulations follows:

Section 900-1.1 specifies the purpose of the rules and the types of projects to which the rules apply and reflects the scope of the ORES's authority as specified in the Act. The regulations apply to applications for permits for the siting, design, construction, operation, and modification of major renewable energy facilities pursuant to EL §94-c. A major renewable energy facility is any renewable energy system with a nameplate generating capacity of twenty-five thousand kilowatts (kW) or more, and any co-located system storing energy generated from such a renewable energy system. It also includes electric transmission facilities less than ten miles in length that provide access to load and/or integrate the generation facility into the state's bulk electrical transmission system.

Section 900-1.2 contains definitions of terms applicable to application processing and the adjudicatory process.

Section 900-1.3 provides that the applicant is required to meet with local agencies where the proposed facility will be located at least 60 days prior to filing an application with the Office. At this meeting, the applicant is required to provide local agencies with a summary of the

substantive provisions of local laws applicable to the facility, together with: 1) identification of such substantive provisions for which the applicant will request that the Office make a finding that compliance therewith would be unreasonably burdensome; and 2) an explanation of all efforts by the applicant to comply with such substantive provisions through design changes or otherwise. Further, the applicant must identify any potential impact(s) of the facility for which consultation with local agencies is required to inform the preparation of application exhibits (including but not necessarily limited to transportation and visual resources).

Section 900-1.3 also requires that, no less than 60 days before the date on which an application is filed, the applicant must: 1) conduct a mandatory pre-application meeting with community members who may be adversely impacted by the siting of the proposed facilities; and 2) publish a notice of intent to file an application in accordance with the publication requirements in §900-1.6(c).

Section 900-1.3 further requires that the applicant, at the earliest possible point in the applicant's project planning, complete site-specific studies and consultation with ORES and NYSDEC concerning: 1) wetlands; 2) surface waters; and 3) threatened and/or endangered species. Finally, Section 900-1.3 requires that the applicant complete, at the earliest possible point in the applicant's project planning, an archeological resources consultation consisting of a Phase IA archeological / cultural resources study for the project impact area, and provide that study to the Office to determine whether additional studies will be required.

Section 900-1.4 sets forth the requirements for a complete application for a siting permit and coordination of applications for a water quality certification pursuant to Section 401 of the Clean Water Act.

Section 900-1.5 imposes a fee on the applicant to allow the ORES to recover the costs of reviewing and processing an application in an amount equal to one thousand dollars for each 1,000 kilowatts of capacity, which shall be due at the time of application filing.

Section 900-1.6 addresses requirements for filing, service and publication of notice of an application. The applicant will be required to serve paper and/or electronic copies of the application on the ORES, regulatory agencies, municipalities, libraries in the affected communities and the Attorney General. In addition, notice must be published in a local newspaper and provided to persons residing within one mile of a proposed solar facility and five miles of a proposed wind facility and to relevant members of the state legislature.

Subpart 900-2 contains the proposed requirements for the specific analyses and support for an application for a siting permit and describes what is expected in each of the twenty-five (25) detailed exhibits analyzing the potential impacts of a major renewable energy project, and demonstrating the avoidance and minimization measures evaluated, and the detailed mitigation measures that will be implemented to address unavoidable impacts. The twenty-five (25) exhibits include the following:

- Overview and Public Involvement
- Location of Facilities and Surrounding Land Use
- Real Property
- Design Drawings
- Public Health, Safety and Security
- Noise and Vibration
- Visual Impacts
- Cultural Resources
- Geology, Seismology and Soils
- Terrestrial Ecology
- NYS Threatened and Endangered Species
- Water Resources and Aquatic Ecology
- Wetlands
- Agricultural Resources
- Effect of Transportation
- Consistency with Energy Planning Objectives
- Socioeconomic Effects
- Environmental Justice
- Effects on Communications
- Electric System Effects and Interconnection
- Electric and Magnetic Fields
- Site Restoration and Decommissioning
- Local Laws and Ordinances
- Other Permits and Approvals

Subpart 900-3 describes how applications currently being processed under PSL Article 10 or another permitting process may transfer into the EL §94-c siting process, as specifically authorized by the Act. This section provides that, for any matters and issues that have been identified and resolved in a prior proceeding, the siting permit will reflect such resolution and those provisions will not be the subject of any adjudicatory hearing conducted pursuant to EL §94-c. In addition, it provides that applications deemed complete under Article 10 will be deemed complete upon filing with ORES.

Subpart 900-4 sets forth the process for ORES review of an application once filed and reflects the mandate for ORES to make a determination of completeness within 60 days of receipt of an application. If ORES fails to make a determination within the required time frame, the application will be deemed complete. In the event of an incompleteness determination, the ORES shall identify the deficiencies in the application. The applicant shall have three months to identify a schedule to cure any deficiencies; otherwise, the ORES may deem the application withdrawn, without prejudice. Section 900-4.1 also describes how the Office's decisions will be relayed to the public.

Subpart 900-5 details the use of the local agency account, which contains funds available to local agencies and potential community intervenors for the review of applications filed with the Office.

Local agencies, municipalities and community members may request funds from the local agency account within thirty days of the filing of a siting permit application. The ALJ will make its determination on such request for funding within thirty days of the deadline for submission of requests. Requests for reimbursement will be made to the ORES, and NYSERDA will release funds upon the direction of the ORES.

Subpart 900-6 is intended to put an applicant for a siting permit on notice of the conditions that would, as applicable, be required by the ORES in order for a proposed project to avoid, minimize or mitigate significant adverse environmental impacts. Pursuant to EL §94-c, the Office shall identify site-specific impacts, if any, that may be caused or contributed to by a specific proposed major renewable energy facility and are not addressed by the USCs, and draft site-specific permit terms and conditions for such impacts, including provisions for the avoidance or mitigation thereof, in view of the CLCPA targets and the environmental benefits of the proposed facility. Following review of an application, ORES would incorporate relevant USCs, along with site specific conditions as needed, into a draft siting permit issued for public comment. If ORES cannot prepare draft permit conditions based on the record, it will publish a Statement of Intent to Deny, subject to an adjudicatory hearing that may be requested by the applicant.

Consistent with principles of SEQRA, Section 900-6.1 requires the applicant to implement any impact avoidance, minimization and/or mitigation measures identified in the application exhibits, compliance filings and/or specifics plans approved by the Office. This section also contains permit conditions that include the expiration date of an issued permit, the need for an applicant to obtain other approvals (including Water Quality Certification pursuant to Section 401 of the Clean Water Act, if required, prior to commencement of construction), and other conditions that specify the scope of the authorization contained in a permit issued by the Office, including the need for an applicant to receive a Notice to Proceed with Construction from ORES.

Section 900-6.2 specifies USCs for required applicant notifications prior to construction, following construction and following restoration of the site, thus ensuring opportunities for public notice and engagement and regulatory oversight on areas of environmental concern.

Section 900-6.3 provides general construction USCs related to compliance with local laws and federal requirements, as well as state and local coordination with respect to traffic issues.

Section 900-6.4 includes USCs specifically addressing environmental conditions related to facility construction and maintenance and contains avoidance and mitigation measures that complement application requirements specified in Section 900-2. This section provides 21 construction- and maintenance-related USCs that are focused on environmental impacts the Office has determined are common to solar and land-based wind projects, and provides substantive and procedural requirements designed to avoid or minimize, to the maximum extent practicable, significant adverse environmental impacts.

- Construction Hours
- Environmental and Agricultural Monitoring

- Pre-Construction Meeting Requirements
- Construction Reporting and Inspections
- Flagging
- Dig Safely NY
- Natural Gas Pipeline Cathodic Protection
- Pole Numbering
- Fencing
- Air Emissions
- Construction Noise
- Visual Mitigation
- General Environmental Requirements
- Water Supply Protection
- Threatened and Endangered Species
- Wetlands, Water Bodies and Streams
- Wetlands
- Work in NYS-Protected Waters
- Agricultural Resources
- Hazardous Materials
- Cultural Resources Avoidance, Minimization and Mitigation Plan

Section 900-6.5 includes USCs that specifically address environmental conditions related to the operational phase of a major renewable energy facility and contains avoidance and mitigation measures that complement application requirements in Section 900-2. This section includes eight operational USCs that are focused on environmental impacts the Office has determined are common to the classes of solar and wind projects that will be reviewed under the new program, and provides substantive and procedural requirements designed to avoid or minimize, to the extent practicable, significant adverse environmental impacts.

Section 900-6.6 addresses decommissioning requirements, including obligations for the applicant to comply with the Decommissioning Plan required by 19 NYCRR Section 900-2.24, comply with all State laws and regulations in effect at the time of decommissioning regarding the disposal and recycling of components, and provide and maintain the required financial assurance.

Subpart 900-7 addresses the amendment of an application and the impact of an amendment on the review of a pending application. Specifically, the rules indicate that amendments may only be made prior to a notice of complete application and, for a major change to an existing application, the rules specify that the timeframes for review would be suspended.

Subpart 900-8 contains the Office's rules for the public comment and hearing processes. The rules, which are based on 6 NYCRR Part 624, detail the steps of the adjudicatory process and describe whether and how an issue raised during a public comment period may be adjudicated. This subpart addresses each stage of the hearing process beginning with the publication of the draft permit (Section 900-8.1), notice and content of the hearing (Section 900-8.2) and rules related to a public comment hearing and issues determination (Section 900-8.3). The regulations at Section 900-8.4 provide a process for potential parties to seek party status and raise issues for

adjudication. The rules provide definitions for the terms “substantive” and “significant”, which constitute the legal standard for adjudication.

Section 900-8.5 includes general rules of practice for actions such as service of documents, motion practice, and expedited appeals and Section 900-8.6 provides proposed rules for disclosure, motion for protective orders and submission of pre-filed testimony. Sections 900-8.7 addresses the order of events for adjudicatory hearings, describes the powers of the administrative law judge presiding over the hearing, and Section 900-8.8 contains rules governing the submission of evidence, assigning the burden of proof and establishing the standard of proof in adjudicatory hearings.

Section 900-8.9 provides rules to address the potential for ex parte communications and Section 900-8.10 provides that the costs of any adjudicatory hearing are the responsibility of the applicant. The regulations also address the contents of the record of the hearing (Section 900-8.11) and detail how the final decision of the administrative law judge will be incorporated into a recommended decision and hearing report and accompanied by a summary of the comments received from the public (Section 900-8.12).

Subpart 900-10 sets forth the compliance filing process that is required subsequent to issuance of a siting permit by the Office. More specifically, Section 900-10.1 addresses the timing of approvals of filings, Section 900-10.2 identifies pre-construction compliance filings and Section 900-10.3 describes post-construction filings that will be required.

Subpart 900-11 addresses permit modifications, transfers of issued permits and relinquishment of permits. Specifically, the regulations define a process for modifying or terminating permits issued by the Office, including modifications requested by the applicant and modifications or terminations initiated by ORES. The regulations contain timeframes for review and address the need for additional hearings.

Subpart 900-12 establishes rules for the enforcement of permits issued by ORES and provides ORES and the NYSDPS with stop-work authority in the event of noncompliance with an issued permit condition and describes a process for lifting the stop-work order.

Finally, Subpart 900-13 contains a severability provision, Subpart 900-14 contains the effective date of the rules and Subpart 900-15 provides a list of documents incorporated by reference into Part 900.

The Rule Making to establish uniform standards and conditions (I.D. No. DOS-37-20-00016-P) and Rule Making to establish procedural requirements for siting, construction and operation of major renewable energy facilities (I.D. No. DOS-37-20-00015-P) are incorporated herein by reference. The complete text of the regulations can be found on the Office website, and is incorporated herein by reference.

APPENDIX 2
Assessment and Mitigation Framework

As detailed in **Appendix 1**, the regulations put an applicant for a siting permit on notice of the conditions that would be required by the Office to address potential environmental impact(s) (including measures to avoid, minimize or mitigate, to the maximum extent practicable, significant adverse environmental impacts), and allow for a determination by ORES that an application is ready for public review and comment.

While not intended as an exclusive list, the examples provided in this **Appendix 2** document the Office's regulatory framework for the identification and assessment of potential environmental impacts, the requirements for the applicant to design the facility to avoid, minimize or mitigate, to the extent practicable, adverse environmental impacts from a proposed facility, and the opportunities for public engagement that are embedded at various stages throughout the permitting review process for a proposed major renewable energy facility.

The information in this **Appendix 2** also supports the determination of the Office that the proposed regulations ensure consideration of all pertinent social, economic and environmental factors (including Environmental Justice areas) in the decision to permit (or not permit) any particular facility.

Noise

The Office developed noise standards §900-2.8 and §900-6.5 to be protective of public health and safety. The regulations are based on careful consideration of the best practices for siting major renewable energy projects, including consideration of accepted standards for evaluating potential noise impacts of proposed major renewable energy facilities. §900-2.8 (Exhibit 7 – Noise and Vibration) refers to the design goals, methodologies, scope, and documentation to be considered in the noise and vibration studies and application materials, and §§900-6.5(a) (Noise Limits for Wind Facilities) and 900-6.5(b) (Noise Standards for Solar Facilities) provides extensive USCs for operational noise limits at wind and solar facilities.

Section 900-2.8 (Exhibit 7 – Noise and Vibration) sets a design goal for both wind and solar facilities of a maximum noise limit of forty-five (45) dBA $L_{eq\ (8\text{-}hour)}$, at the outside of any existing non-participating residence, and fifty-five (55) dBA $L_{eq\ (8\text{-}hour)}$ at the outside of any existing participating residence. §900-2.8(b). Further limitations are imposed on collector substations associated with solar and wind facilities (§§900-2.8(b)(1)(v) and (b)(2)(ii)).

In addition, the regulations include provisions requiring design-level evaluation of potential prominent tonal sounds (§§900-2.8(b) and (e)), infrasound (§900-2.8(g)), low frequency noise (§900-2.8(f)) and perceptible vibrations (§900-2.8(b)(iv)), together with an evaluation of ambient preconstruction baseline noise conditions (§900-2.8(i)). Applicants are also responsible for assessing potential community noise impacts in the form of hearing loss as defined by the World Health Organization (WHO) Guidelines for Community Noise, and the potential for structural damage due to construction activities (§900-2.8(m)).

The minimum radius of evaluation for wind facilities includes all sensitive receptors within one mile of any wind turbine or substation, and a two mile radius for cumulative analysis of any wind turbine or substation existing or proposed at the time of the filing of the application (§900-2.8(c)(1)). For solar facilities, the radius is 1,500 feet from any noise source or within the 30dBA contour, whichever is greater, or cumulative analysis, 3,000 feet or within the 30 dBA cumulative noise contour, whichever is greater (§900-2.8(c)(2)). Required modeling standards, input parameters and assumptions are specified (§900-2.8(d)) along with required reporting content and format (§§900-2.8(h), (k), (l), (p) and (q)).

Applicants must identify and evaluate all reasonable noise abatement measures for construction activities (§900-2.8(n)) and noise abatement measures for the design and operation of the facility to comply with the specified limits in this section (§900-2.8(o)). The USCs require applicants to minimize noise impacts during construction and respond to complaints in accordance with an Office approved complaint resolution protocol (§900-6.4(k)).

Section 900-6.5(a) specifies extensive USCs for operational noise limits at wind facilities including: standards for noise levels by all noise sources from wind facilities (§900-6.5(a)(1)); post-construction noise compliance and monitoring for wind facilities (§900-6.5(a)(2)); noise exceedances from wind facilities and required mitigation measures (§900-6.5(a)(3)); noise and vibration complaints from wind facilities and required mitigation measures (§900-6.5(a)(4)); and facility logs of operational conditions of all wind turbines and a schedule and log of noise-reduced operations for individual turbines (§900-6.5(a)(5)).

For solar facilities, the USCs require at §900-6.5(b) that the permittee implement the approved design in the Exhibit 7 materials and information approved by the Office following the draft permit public comment period.

Visual Impact

Subpart 900-1.3 (Pre-application procedures) requires the applicant to consult with local officials at the pre-application meeting on any potential impact(s) of the facility for which consultation with local agencies is required to inform the preparation of application exhibits, including visual impacts.

Section 900-2.9(a) (Exhibit 8 – Visual Impacts) requires the applicant to prepare a comprehensive Visual Impact Assessment (VIA), and includes requirements for the assessment of potential visual impacts on the surrounding community or neighborhood and other sensitive receptors. Viewshed maps are required depicting areas of facility visibility within two miles of a solar facility and five miles of a wind facility, as well as any potential visibility from specific significant visual resources beyond the specified study area (§900-2.9(b)). The applicant is required to develop representative viewpoints in consultation with local and state officials, including consultation with the Office and, where appropriate, OPRHP and/or the Adirondack Park Agency. (Id.) The VIA must include a Visual Contrast Evaluation consisting of photographic simulations of the proposed facilities and showing any proposed mitigation alternatives, from the representative viewpoints in the community (§900-2.9(c)).

Section 900-2.9(d) then requires the applicant to prepare a detailed Visual Impacts Minimization and Mitigation Plan, inclusive of proposed mitigation measures (such as landscaping, architectural design, rearrangement or reduction of facility components and other measures described in §900-2.9), and other details such as analysis of shadow flicker for wind facilities, glare for solar facilities and FAA and facility lighting plans.

USCs at Sections 900-6.1(a) and 900-6.4(l) require the applicant to implement the approved Visual Impact Minimization and Mitigation Plan (for wind facilities or solar facilities, as the case may be). USCs at Section 900-6.4(l)(3) also require the applicant to retain a qualified landscape architect, arborist of ecologist to inspect screen plantings for two years following installation and requires the replacement of plantings that fail in materials, workmanship or growth within two years following the completion of installing the plantings.

Environmental assessment information and other data derived from the applicant's comprehensive VIA also informs the applicant's assessment of other potential impacts and proposed mitigation measures under the regulations, such as the required qualitative assessment of the compatibility of the facility with existing, proposed and allowed land uses, and local and regional land use plans located within a one (1)-mile radius of the facility site under §900-2.4(l) (Exhibit 3 - Location of Facilities and Surrounding Land Use), and the required qualitative and descriptive wetland functional assessment under §900-2.15(b) (Exhibit 14 - Wetlands).

Cultural Resources

Section 900-1.3(h) (Pre-application procedures) requires that at the earliest (pre-application) point in the applicant's preliminary project planning, the applicant undertake a review to determine if any portion of the project impact area (PIA) falls within an area of archaeological sensitivity due to its inclusion on the statewide archaeological inventory map. The PIA is defined as the geographic area or areas within which the proposed undertaking may cause any change, beneficial or adverse, in the character or use of an identified archaeological site, historic resource, or cultural property(§900-1.2(bk)). In such cases, the applicant is required to complete a Phase 1A archaeological / cultural resources study (§900-1.3(h)(1)).

The Office, in consultation with the OPRHP, will review the Phase IA report and determine whether a Phase IB report will be required (§900-1.3(h)(2)). In such cases, the applicant will conduct a Phase II site evaluation of study the boundaries, integrity and significance of cultural resources identified in the Phase IA/IB studies (§900-1.3(h)(3)). The applicant shall provide these studies in the siting permit application at Exhibit 9 (§900-1.3(h)(4)).

Section 900-2.10(a) (Exhibit 9 – Cultural Resources) requires the applicant to complete a study of the potential impacts of the construction and operation of the facility, including interconnections and related facilities, on archaeological and cultural resources within the PIA. This study shall include a discussion of measures taken to avoid and minimize impacts to archaeological and cultural resources and an assessment of potential effects on historic resources, and shall include the Phase IA, Phase IB and/or Phase II studies conducted at the pre-application stage. The

applicant must also provide an Unanticipated Discovery Plan prepared by a professional archaeologist in accordance with New York Archaeological Council (NYAC) standards to address circumstances where resources of cultural, historic or archaeological importance are encountered in the excavation stage, including provision for work stoppage upon discovery of potential archaeological or human remains (§900-2.10(a)(5)).

Section 900-2.10(b) requires the applicant to evaluate the potential impacts of the facility on historic resources within the PIA. This study must include results of field inspections, a review of the statewide inventory of historic property, and consultation with local historic preservation groups and federal/state-recognized Indian Nations to identify sites or structures listed or eligible for listing in the State or National Register of Historic Places within the PIA, including an analysis of potential impact on any standing structures which appear to be at least fifty (50) years old and potentially eligible for listing in the State or National Register of Historic Places, based on an assessment by a qualified individual.

If the siting permit is approved, a detailed Cultural Resources Avoidance, Minimization and Mitigation Plan must be prepared and submitted by the applicant as a required pre-construction compliance filing (§900-10.2(g)).

Threatened and Endangered Species

An important legislative objective of the Act is implementation of the State's policy to protect, conserve and recover endangered and threatened species while achieving a net conservation benefit to endangered or threatened species which may be impacted by the construction or operation of major renewable energy facilities (Act Section 2, §4(g)). Accordingly, EL §94-c(3)(d) requires that the application of USCs and any site-specific conditions drafted by ORES (in consultation with NYSDEC) shall achieve a net conservation benefit to any impacted endangered and threatened species.

EL §94-c(3)(e) further provides that to the extent that environmental impacts are not completely addressed by USCs and site-specific permit conditions proposed by the Office, and the Office determines that mitigation of such impacts may be achieved by off-site mitigation, the Office may require payment of funds sufficient to implement such off-site mitigation into the endangered and threatened species mitigation fund established pursuant to State Finance Law Section 99-hh. The amount to be paid shall be set forth in the final siting permit.

To achieve these objectives, the §900-1.3 pre-application procedures require that, at the earliest (pre-application) point in the applicant's preliminary project planning, the applicant is required to prepare a wildlife site characterization report summarizing all bird, bat and other species of wildlife and occupied habitat at the site, including NYS-listed threatened or endangered species.

The applicant is required to provide the results of this review to the Office and NYSDEC, and the parties shall within four weeks meet with the Office and NYSDEC to agree on a comprehensive work plan for the assessment of potential impacts, including recommended habitat assessments and species surveys (§900-1.3(g)(2)). Upon completion of this work, the parties shall review the

results of the habitat assessments and surveys, and discuss the requirements for a Net Conservation Benefit Plan (NCBP), if applicable (§900-1.3(g)(6)).

Within 30 days of this meeting, the Office shall provide its draft determination regarding whether occupied habitat for one or more NYS threatened or endangered species exists within the facility site, the boundary of the occupied habitat, whether de minimis levels as provided in §900-2.13 of this Part might be attainable for grassland birds, and, if applicable, the amount of mitigation funding that may be necessary if impacts cannot be avoided or mitigated (§900-1.3(g)(7)). The applicant shall then provide the approved wildlife site characterization report, habitat assessment and/or survey reports, and NCBP (if required) in the siting permit application at Exhibit 12 (§900-1.3(g)(8)).

Section 900-2.13 (Exhibit 12 – NYS Threatened and Endangered Species) requires the applicant to submit the wildlife characterization report and associated reports completed during the pre-application phase, together with the Office's determination as to the existence of occupied habitat at the facility site (§§900-2.13(a) – (c)). If the facility site is confirmed or presumed to have occupied habitat, the applicant is required to detail the proposed avoidance and minimization measures that will be incorporated into its facility design, as well as any unavoidable impacts to NYS threatened or endangered species or species of special concern (§900-2.13(d)).

For facilities determined to have only a de minimis impact on NYS threatened or endangered grassland birds or their habitats, the applicant is required to document: (1) the facility has been designed such that the only impacts would be to occupied habitat identified in records greater than five (5) years old from the time of the applicant's wildlife site characterization report, but for which appropriate surveys conducted by the applicant as approved by the Office demonstrate the species is not present at the facility site; or (2) construction will only impact grasslands less than 25 acres in size and will not include a recent (i.e., less than 5 years) confirmed nesting or roosting location; or (3) that impacts would only be to occupied habitat for NYS threatened or endangered species for which NYSDEC has issued a Notice of Adoption of regulations delisting or downlisting to Special Concern (§900-2.13(e)).
USCs at §900-6.4(o) (Threatened and Endangered Species) specify requirements for the protection of threatened or endangered species of wildlife and associated habitat during facility construction and maintenance, including requirements for an approved NCBP demonstrating a net conservation benefit to endangered or threatened species which may be impacted by the construction or operation of proposed major renewable energy facility.

Section 900-6.4 also sets forth specific requirements for the protection of NYS threatened and endangered grassland birds and bats, as well as bald eagles, as well as additional notification, avoidance, reporting and specimen requirements in the event nests or dead or injured NYS threatened or endangered bird species are discovered within the facility site at any time during the facility life (§900-6.4(o)(8)).

<u>Wetlands, Water Resources and Aquatic Ecology</u>

Sections 900-1.3(e) and (f) collectively require, at the earliest (pre-application) point in the applicant's preliminary project planning, identification and/or delineation of potential wetlands, water resources and aquatic ecology, including the boundaries of all federal, state and locally-regulated wetlands and surface waters on the project site and within 100 feet of the areas to be disturbed by construction, including interconnections. The required assessments include areas regulated pursuant to Environmental Conservation Law (ECL) Article 15 (Water Resources) and Article 24 (Freshwater Wetlands) and other federal, state and local law, and the applicant is responsible for providing relevant draft pre-application delineations and reports to the Office and NYSDEC for review, and to consult with the Office and NYSDEC as required.

The approved wetland delineation and surface water delineation reports derived from these analyses are incorporated into key application exhibits at Subpart 900-2, including Exhibit 13 (Water Resources and Aquatic Ecology) and Exhibit 14 (Wetlands), to demonstrate a thorough assessment of potential environmental impacts and applicant measures to avoid or minimize, to the maximum extent practicable, adverse environmental impacts to wetlands and waterbodies. This information also informs the preparation of other required exhibits such as Exhibit 3 (Location of Facilities and Surrounding Land Use), Exhibit 5 (Design Drawings), Exhibit 11 (Terrestrial Ecology), Exhibit 8 (Visual Impacts) and Exhibit 15 (Agricultural Resources).

Section 900-2.14 (Exhibit 13 – Water Resources and Aquatic Ecology) requires the applicant to prepare a comprehensive assessment of, and proposed measures to avoid, minimize or mitigate potential impacts to: groundwater, including a survey based upon publicly available information and the results of a private, active groundwater well survey of property owners and residents within specified distances of the proposed facility and associated construction activities described in the regulations (i.e., 1,000 feet of a proposed facility to identify existing, active water supply wells within 100 feet of proposed collection lines or access roads, 500 feet of horizontal directional drilling operations, 200 feet of proposed foundations not requiring blasting and 1,000 feet of any blasting operations) (§900-2.14(a)); surface water, including preparation of maps and reports describing all federal, state and locally-regulated surface waters (including ECL Article 15 Water Resources) present on the project site, and within 100 feet of any area to be disturbed by construction, including interconnections, together with a Stream Restoration and Mitigation Plan for facilities that require compensatory mitigation (§900-2.14(b)); stormwater control, including preparation of a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the New York Stormwater Discharge Elimination System (SPDES) General Permit for Stormwater Discharge from Construction Activity and the New York State Standards and Specifications for Erosion and Sediment Control, or for facilities not covered by these requirements, a preliminary plan prepared in accordance with the New York State Stormwater Management Design Manual (§900-2.14(c)); chemical and petroleum bulk storage, including a description of the spill control measures in place for the storage of potential hazardous substances on the site (§900-2.14(d)); and aquatic and invasive species, including potential threatened or endangered species and the potential for introducing or spreading invasive species (§900-2.14(e)).

The applicant is also required to provide with its application updated information on any required federal Water Quality Certification in accordance with Section 401 of the Clean Water Act, which will also include confirmation that the proposed activity will be in compliance with water quality standards set forth at 6 NYCRR §608.9 (§900-2.14(f)).

Section 900-2.15 (Exhibit 14 – Wetlands) requires the applicant to prepare a comprehensive assessment of (and propose measures to avoid, minimize or mitigate potential impacts to) all federal, state and locally-regulated wetlands and adjacent areas (including area subject to ECL Article 24) present on the facility site and within 100 feet of areas to be disturbed by construction, including interconnections, to include maps, reports and a qualitative and descriptive wetland functional assessment (§§900-2.15 (a)-(c)); analysis of potential impacts to off-site wetlands within 100 feet of the areas to be disturbed by construction that may be hydrologically or ecologically connected to delineated wetlands (§900-2.15(d)); demonstration of measures to avoid potential impacts to wetlands and adjacent areas (§900-2.15(e)); an impact minimization summary report for areas where potential impacts are unavoidable (§900-2.15(f)); and a Wetland Restoration and Mitigation Plan for facilities where compensatory mitigation is required (§900-2.15(g)).

USCs at §900-6.4(n) (Water Supply Protection) prohibit wind turbines within 100 feet of an existing, active water supply well or water supply intake, and further prohibit the applicant from blasting within 500 feet of any known, existing active water supply well or water supply intake on non-participating property (§§900-6.4(n)(1)(i) and (ii)). The USCs further require pre-construction and post-construction potability testing of water wells located within certain specified distances of wind facilities and appurtenances, with requirements for construction of a new well at specified setbacks if potability standards are not met (§§900-6.4(n)(1)(iii) and (iv)). Similar restrictions apply for solar facilities, with pier and post driving activities prohibited from areas within 100 feet of any existing, active drinking water supply well and allowance for earth screws in these areas (§900-6.4(n)(2)(i)-(iv)).

USCs at §900-6.4(p) (Wetlands, Waterbodies, and Streams) require the applicant to comply with all specified procedures and requirements for construction activities within or near wetlands and adjacent areas subject to ECL Article 24 and surface waters regulated pursuant to ECL Article 15 (as identified by the applicant's approved delineation reports), including 11 specific requirements for: construction flagging of environmentally sensitive areas (ESAs) (§900-6.4(p)(1)); equipment maintenance and refueling, including a 100 foot setback from all wetlands, waterbodies and streams (§900-6.4(p)(2)); fuel storage requirements including a 300-foot setback from any wetland, waterbody or stream (§900-6.4(p)(3)); clean fill requirements (§900-6.4(p)(4)); separation and treatment of turbid water from dewatering operations (§900-6.4(p)(5)); truck washing setback and runoff controls, with requirements for notice to NYSDEC within two hours of any discharge into areas regulated under Article 15 or 24 (§900-6.4(p)(6)); setbacks for concrete washouts and associated equipment prohibitions on the disposal of waste concrete and wash water within 100 feet of any wetland, waterbody or stream (§900-6.4(p)(7)); use of horizontal directional drilling (HDD) to the maximum extent practicable (§900-6.4(p)(8)); restricting open cut trenching in wetlands, waterbodies and streams to lengths that can be completed in a single day (§900-6.4(p)(9)); inadvertent return flow plan testing for HDD under wetlands, waterbodies and streams as required under §900-10.2(f)(5) (§900-6.4(p)(10)); and requirements to stop work and provide notice within two hours in the event of a discharge to an area regulated under Article 15 or 24, resulting in violation of New York Water Quality Standards (including notification of NYSDEC, ORES and NYSDPS) (§900-6.4(p)(11)).

Additional USCs at §900-6.4(q) (Wetlands) impose requirements for construction activities within freshwater wetlands and adjacent areas subject to ECL Article 24, including without limitation: restriction of construction work in breeding areas for NYS threatened or endangered amphibian species unless appropriate additional measures are implemented to prevent impacts or exclude species from work areas, such as silt fences, and adherence to 14 additional measures specified in the regulations (§§900-6.4(q)(1)(i) – (xv)); wetlands restoration in accordance with the applicant's approved Wetland Restoration and Mitigation Plan (§§900-6.4(q)(2)(i) – (v)); allowance for leaving cut vegetation in place, except for invasive species (§900-6.4(q)(3)); required methods for installing access roads through wetlands (§§900-6.4(q)(4)(i) – (ii)); and USCs for solar panel support installation, tree clearing, fill placement, concrete use, stormwater setbacks; and implementation of wetland mitigation measures in the applicant's approved Wetland Restoration and Mitigation Plan, which must be submitted as a pre-construction compliance filing pursuant to §900-10.2 (§§900-6.4(q)(5) – (10)).

Agricultural Resources

The Office recognizes the importance of conserving highly productive agricultural lands in New York State. Prime farmland contains soils classified as mineral soil groups (MSG) 1-4 under NYSAGM's NYS Agriculture Land Classification system. The Office and NYSAGM identified lands with these soil groups as the State's most productive farmland or viable agriculture land, as defined in Agriculture and Markets Law §301.

Section 900-2.16 requires a thorough assessment of the impacts of a project on important aspects of farmland and agricultural land uses. These specific requirements will provide the information necessary to evaluate impacts and make balanced decisions about the farmland and agricultural impacts. The regulations established a clear standard to apply in evaluating the potential impacts to agricultural resources that may result from the construction and operation of the major renewable energy facilities. This standard follows the hierarchy of avoiding, minimizing, and mitigating potential project impacts, thus balancing the need to efficiently advance a major renewable energy facility while protecting farmland and farmers. Under these provisions, applicants must show that impacts to relevant agricultural resources would be minimized or avoided to the maximum extent practicable and offer mitigation measures to offset the unavoidable impacts.

Applicants shall avoid siting major renewable energy facilities in the NYS Agricultural Land Classification MSG 1-4, and land used for active farming activities. To ensure New York State farmlands are protected over time, applicants are required to restore the land to its original state as productive farmland at the end of a project's useful life.

If a facility site includes any of the above-listed types of agricultural lands (MSG 1-4 and active farmlands), Section 900-2.16(c) requires applicants to submit an Agricultural Plan containing proposed measures to avoid, minimize and mitigate impacts to active agricultural lands. The Agricultural Plan must include, to the greatest degree possible, the expected impacts the proposed footprint of a major renewable energy facility will have on agricultural resources. The Agricultural Plan must include detailed information how an applicant plans to adhere to and

comply with the NYSAGM Guidelines as well as monitoring protocols to evaluate any changes over the life of the project that require further mitigation.

Applicants must also submit a remediation plan to address potential damage to surface or sub-surface drainage and the resulting impacts to farmland both within and outside the facility site, along with identification of methods to repair damaged drainage features (§900-2.16(d)). Section 900-2.16(e) addresses concerns about the co-existence of agriculture and renewable energy. The applicant may provide a co-utilization plan including itemization of the investments made to facilitate the agricultural co-utilization. The USCs require applicants to hire an independent agricultural monitor (or environmental monitor qualified as an agriculture-specific monitor), who shall have stop-work authority, to oversee compliance with agricultural permit conditions, including the Agricultural Plan and the approved Remediation Plan (§900-6.4(b) and (s)).

NEW YORK STATE DEPARTMENT OF STATE
COASTAL MANAGEMENT PROGRAM

Coastal Assessment Form

A. INSTRUCTIONS (Please print or type all answers)

1. State agencies shall complete this CAF for proposed actions which are subject to Part 600 of Title 19 of the NYCRR. This assessment is intended to supplement other information used by a state agency in making a determination of significance pursuant to the State Environmental Quality Review Act (see 6 NYCRR, Part 617). If it is determined that a proposed action will not have a significant effect on the environment, this assessment is intended to assist a state agency in complying with the certification requirements of 19 NYCRR Section 600.4.

2. If any question in Section C on this form is answered "yes", then the proposed action may affect the achievement of the coastal policies contained in Article 42 of the Executive Law. Thus, the action should be analyzed in more detail and, if necessary, modified prior to either (a) making a certification of consistency pursuant to 19 NYCRR Part 600 or, (b) making the findings required under SEQR, 6 NYCRR, Section 617.11, if the action is one for which an environmental impact statement is being prepared. If an action cannot be certified as consistent with the coastal policies, it shall not be undertaken.

3. Before answering the questions in Section C, the preparer of this form should review the coastal policies contained in 19 NYCRR Section 600.5. A proposed action should be evaluated as to its significant beneficial and adverse effects upon the coastal area.

B. DESCRIPTION OF PROPOSED ACTION

1. Type of state agency action (check appropriate response):

   (a) Directly undertaken (e.g. capital construction, planning activity, agency regulation, land transaction) __X__
   (b) Financial assistance (e.g. grant, loan, subsidy) ____
   (c) Permit, license, certification ____

2. Describe nature and extent of action: ___Adoption of regulations at Part 900 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York to implement Executive Law Section 94-c of the Accelerated Renewable Energy Growth and Benefit Act (Part JJJ of Chapter 58 of the Laws of 2020) to achieve the State's goal of reaching certain net zero greenhouse gas emissions targets ("CLCPA targets") in the Climate Leadership and Community Protection Act ("CLCPA") (Chapter 106 of the Laws of of 2019).

3. ~~Lo~~cation of action:

Statewide		
County	City, Town or Village	Street or Site Description

4. If an application for the proposed action has been filed with the state agency, the following information shall be provided:

   (a) Name of applicant: N/A

   (b) Mailing address: N/A

   (c) Telephone Number: N/A

   (d) State agency application number: N/A

5. Will the action be directly undertaken, require funding, or approval by a federal agency?

   Yes _____ No ___X__ If yes, which federal agency?

C. COASTAL ASSESSMENT (Check either "YES" or "NO" for each of the following questions)

	YES	NO
1. Will the proposed activity be located in, or contiguous to, or have a significant effect upon any of the resource areas identified on the coastal area map:		
(a) Significant fish or wildlife habitats?	___	X
(b) Scenic resources of statewide significance?	___	X
(c) Important agricultural lands?	___	X
2. Will the proposed activity have a significant effect upon:		
(a) Commercial or recreational use of fish and wildlife resources?	___	X
(b) Scenic quality of the coastal environment?	___	X
(c) Development of future, or existing water dependent uses?	___	X
(d) Operation of the State's major ports?	___	X
(e) Land and water uses within the State's small harbors?	___	X
(f) Existing or potential public recreation opportunities?	___	X
(g) Structures, sites or districts of historic, archeological or cultural significance to the State or nation?	___	X

3. Will the proposed activity involve or result in any of the following:

(a) Physical alteration of two (2) acres or more of land along the shoreline, land under water or coastal waters?	___	X
(b) Physical alteration of five (5) acres or more of land located elsewhere in the coastal area?	___	X
(c) Expansion of existing public services of infrastructure in undeveloped or low density areas of the coastal area?	___	X
(d) Energy facility not subject to Article VII or VIII of the Public Service Law?	___	X
(e) Mining, excavation, filling or dredging in coastal waters?	___	X
(f) Reduction of existing or potential public access to or along the shore?	___	X
(g) Sale or change in use of state-owned lands located on the shoreline or under water?		
(h) Development within a designated flood or erosion hazard area?	___	X
(i) Development on a beach, dune, barrier island or other natural feature that provides protection against flooding or erosion?	___	X

4. Will the proposed action be located in or have a significant effect upon an area included in an approved Local Waterfront Revitalization Program? ___ X

D. SUBMISSION REQUIREMENTS

If any question in Section C is answered "Yes", AND either of the following two conditions is met:

Section B.1(a) or B.1(b) is checked; or
Section B.1(c) is checked AND B.5 is answered "Yes",

THEN a copy of this completed Coastal Assessment Form shall be submitted to:

New York State Department of State
Office of Coastal, Local Government and Community Sustainability
One Commerce Plaza
99 Washington Avenue, Suite 1010
Albany, New York 12231-0001

If assistance or further information is needed to complete this form, please call the Department of State at (518) 474-6000.

E. REMARKS OR ADDITIONAL INFORMATION

None.

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