



STATE OF NEW YORK

OFFICE OF RENEWABLE ENERGY SITING

ORES DMM Matter Number 22-00024 -- Application of Moraine Solar Energy Center, LLC, for a Major Renewable Energy Facility Siting Permit Pursuant to Section 94-c of the New York Executive Law to Develop, Design, Construct, Operate, Maintain, and Decommission a 94-Megawatt (MW) Solar Energy Facility Located in the Town of Burns (the Town), Allegany County, New York.

SUMMARY AND ASSESSMENT OF PUBLIC COMMENTS

Issued May 18, 2023

1. Introduction

In compliance with 19 NYCRR § 900-8.3(c)(5), the Office of Renewable Energy Siting (Office or ORES) hereby provides this written summary and assessment of public comments received during the public comment period for the application of Moraine Solar Energy Center, LLC (Permittee).

2. Procedural History of Public Comments

On 03/15/2022, the Permittee submitted an application to the Office for a Siting Permit (Permit).

On 11/14/2022, Office Staff published a draft siting permit (Draft Permit) for the proposed Facility on its website for public comment.

On 11/14/2022, the ORES Office of Hearings issued and posted a combined notice of availability of draft permit conditions,

public comment period and public comment hearing, and commencement of the issues determination procedure (Combined Notice) for this matter on the New York State Department of Public Service (NYSDPS) Document Matter Management System (DMM) for ORES DMM Matter Number 22-00024.¹ The Combined Notice established the following:

- 01/18/2023, as the date for an in-person public comment hearing;
- 01/19/2023, as the date through which written public comments would be accepted; and
- 01/20/2023, as the date for submission of any petitions for party status, submission of Permittee's issues statement, and the submission of the municipal statement of facility compliance with applicable local laws and regulations concerning the environment, or public health and safety.

On 01/18/2023, the Office held an in-person public comment hearing at the American Legion, 83 West Main Street, Canaseraga, NY 14822. The hearing started at 6:07 pm and nine (9) speakers commented on the project.²

As of the close of the written public comment period on 01/19/2023, the Office received thirty-six (36) individual written comments from members of the public regarding the proposed Facility.³

¹ Record 49, Combined Notice; see also Record 50, Corrected Combined Notice (correcting the spelling of Allegany County and the address for the Town of Burns Town Hall).

² Record 54, Final Transcript of January 18, 2023, Public Comment Hearing (Transcript).

³ After eliminating one (1) duplicate comment, Staff determined that the Office received a total of thirty-six (36) individual written comments.

On 02/06/2023, the Permittee timely filed its response to public comments received during the public comment period pursuant to 19 NYCRR § 900-8.3(b)(4)(ii).⁴

On 03/08/2023, the assigned Administrative Law Judges (ALJs) issued a Ruling on Issues and Party Status (Issues Ruling), holding that an adjudicable issue existed related to Section II (11) (iii) of the Town of Burns Solar Energy Facility Regulation. The ALJs determined that the parties to the adjudication would be the Permittee, Office Staff, and the Town of Burns.

On 03/15/2023, subsequent to a stipulation among the parties resolving the above issue,⁵ the ALJs issued a Notice Canceling Adjudicatory Hearing and Order of Disposition, remanding the matter to Office Staff to continue processing the Siting Permit.⁶

3. Discussion and Analysis of Comments

The Office received a total of forty-five (45) comments in verbal or written form on the proposed Facility. Overall, fifteen (15) comments were made in opposition to the Facility; twenty-nine (29) comments were made in support of the Facility; and one (1) neutral comment was received regarding the Facility. Of the twenty-nine (29) comments made in support of the Facility, comments in favor included one (1) comment from a representative of the International Union of Operating Engineers (IUOE); two (2) comments from representatives of Laborer's International Union of North America Local #621; and twenty-one (21) identical form letters signed by individual members of Local #621.

⁴ Record 56, Public Comment Response Matrix.

⁵ Record 63, Stipulation of Settlement (Stipulation).

⁶ Record 64, Notice Canceling Adjudicatory Hearing and Order of Disposition; see 19 NYCRR § 900-8.3(c)(5).

Overall, the comments raised both distinct and similar issues. Accordingly, the Office separated comments by topic and grouped related comments together, as set forth below.

General Comments

COMMENTS:

Commenters supporting the proposed Facility focused on items such as: (1) the Facility's contribution to the State's renewable energy goals; (2) the environmental benefits of renewable energy, including combating climate change; and (3) the Facility's socioeconomic benefits (including use of local labor and host community benefits).

Commenters objecting to the proposed Facility expressed concerns with public health and safety, water resources and wetlands, visual impacts, dust and debris, decommissioning, agricultural impacts, terrestrial ecology, public involvement, cultural resources, complaint management, and socioeconomic effects.

DISCUSSION:

The Office acknowledges the various comments and different viewpoints, including support for or opposition to the proposed Facility. The comments in opposition are summarized and responded to by topic below.⁷

Public Health and Safety

COMMENTS:

Several commenters raised concerns regarding potential chemical runoff from solar panels, including potential impacts to the Chesapeake Bay watershed. Commenters also questioned the

⁷ For further discussion, including topics raised in the public comment process and other aspects of the proposed Facility, please refer to Record 57, Office Staff Brief. Staff incorporates the Brief by reference in this Summary and Assessment of Public Comments.

safety of component materials of solar panels and the origin of raw materials used in their manufacture. One commenter raised concerns regarding indirect impacts to a spring on his property due to project construction.

DISCUSSION:

The Office's primary concern is the health and safety of all New Yorkers, and the Siting Permit requires the following provisions:

Solar Panel Details

With respect to the model of solar panels ultimately selected by the Permittee, the Permittee is required by subpart 6(a)(1) of the Siting Permit to submit Final Plans, Profiles, and Detail Drawings including but not limited to all manufacturer-provided information concerning the design, safety, testing, and certification of solar panels and other equipment. Office Staff will review the Permittee's selected technology as a mandatory pre-construction compliance filing under 19 NYCRR §§ 900-10.1(a) and 900-10.2. Additionally, the Siting Permit at subpart 7.2(a) requires the Permittee to provide any updated information regarding the design, safety, and testing of Facility components, including solar panels.⁸

Water Supply Protection

Pursuant to 19 NYCRR § 900-2.14, the Permittee completed a comprehensive evaluation, in consultation with the New York State Department of Health (NYSDOH), Allegany County Department of Health, and the New York State Department of Environmental Conservation (NYSDEC), of potential significant adverse impacts of

⁸ See also 19 NYCRR § 900-10.3(a).

the proposed Facility to active drinking water aquifers and private wells.⁹

The Siting Permit at subpart 5.4(n)(2) prohibits pier and post driving activities, except for fence and utility poles, within 100 feet of an existing, active water supply well. Further, blasting activities are not anticipated for the construction of the proposed Facility.¹⁰

The Siting Permit at subpart 5.4(n)(2) requires the Permittee to engage a qualified third-party to perform pre- and post-construction testing of the potability of existing, active water supply wells, with the permission of the property owner, within 100 feet of collection lines and access roads, 200 feet of pier or post installations, and 500 feet of HDD operations.¹¹ In the event third-party testing concludes that water supplied by an existing, active water supply well met federal and State potability standards prior to construction, but failed to meet such standards post-construction as a result of Facility activities, the Siting Permit requires that the Permittee construct a new water well for the impacted non-participating landowner.¹²

Regarding the specific spring at issue, the Office notes that the Permittee has asserted that "no impacts are anticipated" to this spring.¹³ Further, the Office has not been provided with the

⁹ Record 34, Application Exhibit 13: Water Resources and Aquatic Ecology-REDACTED (Revision 1) at 2-10. Application Exhibit 13 discusses the Permittee's efforts to identify wells and aquifers, and provisions for their protection, in compliance with 19 NYCRR § 900-2.14(a)(2)(i) - (iv).

¹⁰ Record 34, Application Exhibit 13: Water Resources and Aquatic Ecology-REDACTED (Revision 1) at 1, 4, 8, 10. Based on this representation, various USCs regarding blasting and karst were marked inapplicable. See e.g. Siting Permit, subparts 5.4(m)(2) and (3), and 5.4(n)(2)(ii) and (iii)(b).

¹¹ Siting Permit subparts 5.4(n)(2)(iii)(a)-(d).

¹² Id. subpart 5.4(n)(2)(iv).

¹³ Record 56, Moraine Solar Energy Center, LLC, Exhibit A - Public Comment Response Matrix filed February 6, 2023, at 3.

exact location of this spring. Thus, to the extent the Permittee and the Office are made aware of this specific spring's exact location, and to the extent this spring meets the definition of a well and is within the setbacks contained in 19 NYCRR § 900-2.13(a)(2), the Permittee will have to demonstrate compliance with 19 NYCRR § 900-2.13(a)(2) in its compliance filings. For more information, please see the Office Staff Brief at 61-62.¹⁴

Environmental Monitor; Federal/Federally-Delegated Permits

During construction, the Permittee is required to hire an independent, third-party environmental monitor that will have stop-work authority over all aspects of the Facility to ensure that the construction complies with all Siting Permit terms and conditions, including Uniform Standards and Conditions (USCs), Site-Specific Conditions (SSCs), and approved compliance filings.¹⁵ Additionally, the Permittee shall obtain federal and federally-delegated permits, including without limitation, Stormwater Pollution Protection Plan (SWPPP) approval from NYSDEC pursuant to section 402 of the federal Clean Water Act (CWA), and federal wetlands approval pursuant to CWA section 404 from the U.S. Army Corps of Engineers (together with CWA section 401 Water Quality Certification approval from the Office, if required), in compliance subparts 5.1(d) and (e) of the Siting Permit.¹⁶

Compliance Requirements

The Siting Permit at Subpart 6(a)(1) requires the Permittee to prepare Final Plans, Profiles, and Detail Drawings, which must demonstrate without limitation the Permittee's compliance with all

¹⁴ Record 57.

¹⁵ Siting Permit subpart 5.4(b) Environmental and Agricultural Monitoring; see also compliance requirements for Environmental Monitoring Plan at subpart 7.1(e)(6).

¹⁶ 19 NYCRR §§ 900-2.14(c), 900-6.1(d) and (e).

applicable federal and State water supply protection requirements, including the above-noted permit provisions.¹⁷

In addition to requirements for the Permittee's Final Plans, Profiles, and Detail Drawings in subpart 6(a)(1), the Siting Permit includes pre-construction compliance requirements for water supply protection during Facility construction.¹⁸ The Permittee is required to submit this information to the Office for review and approval in compliance with 19 NYCRR § 900-10.1(a).

Additionally, the Siting Permit at subpart 5.5(d) requires the Permittee to have the facilities inspected every year. A report from the inspection, which the Permittee must make available upon request to the New York State Department of Public Service (NYS DPS) or ORES, will contain information about maintenance, repairs, and whether or not there are any problems or defects at the Facility.

Water Resources and Wetlands

COMMENTS:

One commenter raised concerns regarding direct impacts from the project to local wetlands and indirect impacts to local waterbodies due to increased drainage.

DISCUSSION:

The Permittee conducted a comprehensive delineation of all federal, State, and locally-regulated wetlands and adjacent areas in the 1,603 acre Survey Area.¹⁹ Pursuant to 19 NYCRR § 900-1.3(e),

¹⁷ Siting Permit subpart 6(a)(1).

¹⁸ Siting Permit subpart 7 (Compliance Requirements). Without limitation, these requirements include a Quality Assurance and Control Plan, a Construction Operations Plan, a Vegetation Management Plan (including measures for chemical and mechanical treatment of undesirable vegetation and inspection of erosion hazards), an Environmental Monitoring Plan, an Invasive Species Control and Management Plan, and an Inadvertent Return Flow Plan addressing proposed HDD work.

¹⁹ Record 10, Application Appendix 14 - A: Wetland and Stream Delineation Report (Part 1 of 3) at 1.

Office Staff in consultation with NYSDEC reviewed the Permittee's Wetland and Stream Delineation Report and provided a jurisdictional determination to the Permittee on December 29, 2021, identifying four (4) NYS-regulated wetlands covering approximately 57.9 acres.²⁰ Ultimately, Office Staff concluded that the Permittee's iterative siting process achieved full avoidance of NYS-regulated wetlands, and limited impacts to 0.96 acres of NYS-regulated adjacent area.²¹ The Permittee will also protect the impacted NYS regulated wetland adjacent areas by adhering to the SWPPP²² and subpart 5.4(p) of the Siting Permit.²³ For more information, please see the Office Staff Brief at pages 20-22.²⁴

The Permittee conducted a surface water delineation to determine the boundaries of all federal, State, and locally-regulated streams present within the 1,603 acre Survey Area.²⁵ Following consultation with the NYSDEC, the Office issued a final surface waters jurisdictional determination for the Facility with fifteen (15) NYS-regulated streams and waterbodies.²⁶ The Permittee has avoided and minimized potential significant adverse impacts to all NYS-regulated streams and waterbodies²⁷ and proposed a Stream

²⁰ Record 9, Application Appendix 14-C: NYS Wetlands Jurisdictional Determination.

²¹ Record 39, Application Appendix 14-D: Wetland Restoration and Mitigation Plan at 2.

²² See Record 11, Application Appendix 13-C.

²³ Record 39, Application Exhibit 14: Wetlands (Revision 1) at 10 and 15; see also 19 NYCRR § 900-6.4(p) and (q).

²⁴ Record 57.

²⁵ Record 10, Application Appendix 14-A: Wetland and Stream Delineation Report (Part 1 of 3) at 1.

²⁶ Record 10, Application Appendix 13-F: NYS Surface Waters Jurisdictional Determination.

²⁷ Record 34, Application Exhibit 13: Water Resources and Aquatic Ecology (Revision 1) at 16.

Restoration and Mitigation Plan.²⁸ For more information, please see the Office Staff Brief at page 22.²⁹

Visual Impacts

COMMENTS:

Several commenters expressed concerns about visual impacts to non-participating properties, including impacts to property values. One commenter raised concerns regarding the Permittee's request for relief from the requirement in § II (11) (iii) of the Town of Burns Solar Energy Facility Regulation that there be "[n]o vegetation above 24 inches in height inside the solar field," specifically referring to weed growth and visual impacts.

DISCUSSION:

The Office regulations provide a clear standard for evaluating the potential significant adverse visual impacts to the surrounding community that may result from the construction and operation of the Facility.³⁰ Under these provisions, the Permittee must show that the proposed Facility will avoid, minimize, and mitigate potential significant visual adverse impacts to the maximum extent practicable.³¹

The Siting Permit includes requirements for the avoidance, minimization, and mitigation of potential visual impacts to the maximum extent practicable, including impacts to views from public rights of way and neighboring non-participating residential properties. Subject to limited relief from §§ 9(iii) (regarding screening) and 11(iii) (regarding vegetation height) of Town of

²⁸ Id.

²⁹ Record 57.

³⁰ Section 94-c of the Executive Law and its implementing regulations (19 NYCRR part 900), and 19 NYCRR § 900-2.9 (Visual Impacts).

³¹ See Record 57, Office Staff Brief at 25 - 27, 29 - 32, and 44 - 46 for analysis of the Permittee's compliance with statutory and regulatory requirements for visual impacts.

Burns Solar Energy Facility Regulation,³² the Permittee is required to comply with applicable local laws and ordinances concerning potential significant adverse visual impacts; the requirements set forth in 19 NYCRR § 900-2.9; and the standard to avoid, minimize, and mitigate potential significant adverse visual impacts to the maximum extent practicable.

The Siting Permit at subpart 6(b) (Final Visual Impacts Minimization and Mitigation Plan (VIMMP)) requires the Permittee to provide final Screen Planting Plans to the Office for review and approval, as a mandatory pre-construction compliance filing. In addition, subpart 6(e) of the Siting Permit requires the Permittee to provide a final Vegetation Management Plan (VMP) to the Office while subpart 6(c) requires the Permittee's Agricultural Co-Utilization Plan and Implementation Plan to comply with the terms of the final VMP.

In sum, the Permittee has avoided, minimized, and mitigated impacts to visual resources by, without limitation, siting the proposed substation adjacent to the existing Moraine Road Substation;³³ placing all collection lines underground to the extent practicable;³⁴ and proposing four plant modules of native tree, shrub, and herbaceous plant mixes as visual screening treatments at appropriate locations throughout the Facility Site.³⁵ For more information, please see the Office Staff Brief at pages 25-27.

Regarding property values, Executive Law § 94-c does not require findings or studies on the effects of major renewable

³² Siting Permit subparts 4.1(a) and (b).

³³ Record 18, Application Exhibit 8, Visual Impact Assessment at 69.

³⁴ Id.

³⁵ Record 38, Application Exhibit 8, Conceptual Landscape Mitigation Planting Plan (Revision 1).

energy facilities on adjacent and nearby property values.³⁶ As discussed in further detail below (under the topic "Socioeconomic Effects"), Executive Law § 94-c(5)(f) and 19 NYCRR § 900-6.1(f) require the Permittee to provide a host community benefit. Here, the proposed Facility will provide host community benefits to the following taxing jurisdictions: Allegany County, the Town of Burns, the Canaseraga Central School District, and the Canaseraga Fire District.

Dust and Debris

COMMENTS:

One commenter raised a concern regarding dust and debris from the vehicles on their road (i.e., Sikes Road) during the construction phase.

DISCUSSION:

The Siting Permit at 5.4(j)(2) requires the Permittee to implement dust control procedures to minimize the amount of dust generated by construction activities in a manner consistent with the Standards and Specifications for Dust Control, as outlined in the New York State Standards and Specifications for Erosion and Sediment Control.

Decommissioning

COMMENTS:

Some commenters raised concerns about the safe disposal or recycling of panels, or their chemical and metal components, at the time of decommissioning. One commenter expressed concern with the type of financial security proposed for decommissioning.

³⁶ ORES, Assessment of Public Comments on the Office's Regulations (19 NYCRR Part 900) at 93-94, accessible at: <https://ores.ny.gov/system/files/documents/2021/03/assessment-of-public-comments-chapter-xviii-title-19-of-nycrr-part-900-subparts-900-1-through-900-15.pdf>

DISCUSSION:

The Office's primary concern is the health and safety of all New Yorkers, and the Siting Permit includes requirements for the use and disposal of solar array equipment and other facility components. Regarding recycling or disposal of the panels at the time of decommissioning, the Siting Permit conditions, including subpart 5.6(a), require the Permittee to submit and implement an approved Decommissioning and Site Restoration Plan, which - pursuant to 19 NYCRR § 900-2.24 - must address safety and the removal of hazardous conditions, environmental impacts, recycling, and potential future uses for the site. In addition, subpart 5.6(a) of the Siting Permit requires the Permittee to comply with all state laws and regulations in effect at the time of decommissioning regarding the disposal and recycling of components.

The Decommissioning and Site Restoration Plan must provide independent, third-party financial security to the host municipalities during the life of the Facility, to ensure funding for decommissioning and site restoration costs in the event the Permittee defaults on this obligation. The amount of the financial security is subject to update every five years to reflect changes in estimated costs.

Agricultural Resources

COMMENTS:

Commenters raised concerns regarding impacts to agricultural lands, citing the general reduction of available food-producing farmland from productivity and potential impacts to adjacent agricultural properties. One commenter questioned why the developer did not site the project on the hills in the area rather than on the valley floor, where prime farmland is located.

DISCUSSION:

The Office recognizes the importance of conserving highly productive agricultural lands in New York State, and 19 NYCRR § 900-2.16 requires that all applicants: (a) comply with New York State Department of Agriculture and Markets (NYSAGM) Guidelines for Solar Energy Projects to the maximum extent practicable; and

(b) avoid, minimize, and mitigate, to the maximum extent practicable, potential significant adverse impacts to active agricultural lands (i.e., land in active agricultural production in three of the last five years) within NYS Mineral Soil Groups (MSG) 1-4.

Office Staff, in consultation with NYSAGM, found that the Facility layout reflects consideration of existing, ongoing, and adjacent farming practices based on consultation with agricultural landowners during the Permittee's design process.³⁷ Pursuant to 19 NYCRR § 900-2.15(c), the Applicant provided an Agricultural Plan to protect agricultural resources during the construction, post-construction restoration, monitoring and remediation and decommissioning phases, as well as a Drainage Remediation Plan pursuant to 19 NYCRR § 900-2.16(d). Subpart 5.6(a) of the Siting Permit also requires the Permittee to decommission the Facility consistent with its approved Decommissioning and Site Restoration Plan.

While the Permittee's iterative siting process avoided use of land in continued agricultural production and within MSGs 1-4 to the maximum extent practicable, the 581-acre Facility footprint would contain approximately 274 acres of MSGs 1-4 (47% of the Facility footprint).³⁸ Accordingly, consistent with Executive Law § 94-c(3)(d), the Office in consultation with NYSAGM included a SSC at subpart 6(c) of the Siting Permit requiring submission of an Agricultural Co-Utilization Plan consistent with 19 NYCRR §§ 900-2.16(e), 900-10.2, and 900-10.3 to minimize and mitigate potential significant adverse impacts to agricultural resources which cannot reasonably be avoided.³⁹ The Permittee's proposed plan will be reviewed and approved by Office Staff in consultation with

³⁷ Record 40, Application Exhibit 15 (Revision 1): Agricultural Resources at 11-12.

³⁸ Record 40, Exhibit 15 (Revision 1): Agricultural Resources at 13.

³⁹ Siting Permit subpart 6(c).

NYSAGM as a pre-construction compliance filing consistent with 19 NYCRR § 900-10.2.

Finally, subpart 5.4(s) of the Siting Permit and 19 NYCRR § 900-6.4(s) require the Permittee to construct the Facility in accordance with NYSAGM Guidelines for Solar Energy Projects, and to hire an independent, third-party agricultural monitor to oversee compliance with agricultural conditions and requirements.⁴⁰ The qualifications of the agricultural monitor will be reviewed and approved by Office Staff in consultation with NYSAGM. For a thorough assessment of potential impacts to agricultural resources and a discussion the Agricultural Co-Utilization Plan please see the record in this proceeding, including but not limited to the Office Staff Brief.⁴¹

Regarding project siting, in general, Executive Law § 94-c establishes a process and standards where an applicant's proposed measures to avoid, minimize, or mitigate potential significant adverse environmental impacts to the maximum extent practicable are collected for Office Staff to make its application review findings and recommendations. In particular, the Office's regulations require an applicant to provide "[a]n analysis of the comparative advantages and disadvantages of reasonable and available alternative locations or properties identified for construction of the facility."⁴²

After completing its review, the Office found that the Permittee designed its proposed Solar Facility through a comprehensive and iterative site planning process within the Town of Burns, Allegany County, to avoid, minimize, or mitigate potential significant adverse impacts to wetlands, streams, agricultural resources, cultural resources, and other

⁴⁰ Id. subpart 5.4(s).

⁴¹ Record 57, Office Staff Brief at 24-25, 46-51.

⁴² 19 NYCRR § 900-2.18(f).

environmental and ecological resources. For more information, please see the Office Staff Brief at pages 18-20.⁴³

Terrestrial Ecology

COMMENTS:

Two commenters expressed concerns regarding the proposed Facility's potential impact on wildlife habitat. One of these commenters expressed concern about impacts to deer hunting areas.

DISCUSSION:

The Permittee engaged in a comprehensive pre-application consultation and application review process with the Office and NYSDEC, and completed all surveys that would be required to assess potential significant adverse impacts to NYS Threatened or Endangered (T&E) species. This review included a wildlife site characterization report summarizing existing public information on bird, bat, and other species within five miles of the Facility site, consistent with 19 NYCRR § 900-1.3(g).⁴⁴ Following completion of the required surveys, the Permittee submitted a Breeding Bird Survey Report⁴⁵ and a Winter Raptor Survey Report.⁴⁶

Based upon this comprehensive review, Office Staff determined that the Facility site does not contain occupied habitat for any State-listed T&E species, including grassland avian species.⁴⁷ Office Staff determined that there will be no impact to NYS listed species with the presented design and layout, and with the avoidance and minimization measures described in 19 NYCRR § 900-

⁴³ Record 57.

⁴⁴ Record 11, Application Exhibit 12: NYS Threatened or Endangered Species.

⁴⁵ Record 7, Application Appendix 12-C: Breeding Bird Survey Report.

⁴⁶ Record 6, Application Appendix 12-B: Winter Raptor Survey Report.

⁴⁷ Record 11, Application Appendix 12-D: Determination of Occupied Habitat, Incidental Take and Net Conservation Benefit.

6.4(o)(6) to protect a bald eagle nest located within one-quarter (0.25) mile of the Facility.⁴⁸

With respect to potential impacts on unlisted species or their habitat (including game species), the Permittee's comprehensive pre-application consultation and application review included consideration of potential significant adverse impacts to wildlife species in general.⁴⁹ The Permittee's studies concluded, among other things, that because there is abundant availability of habitats similar to those of the Facility site within the vicinity, the proposed Facility is not anticipated to result in landscape or population-level effects; and that construction and operation of the proposed Facility would not result in the extirpation or significant reduction of plant communities or wildlife habitat. Therefore, impacts to wildlife are expected to be minimal and insignificant.⁵⁰ For more information, please see the Office Staff Brief at page 22.

Public Involvement

COMMENTS:

Two commenters raised concerns regarding lack of communication to the public about the proposed project.

DISCUSSION:

Executive Law §94-c and Office's regulations contain a number of features requiring public notice of the application, public access to application materials, and opportunities to participate in the 94-c review process. Further, Executive Law §94-c and its implementing regulations provide funding for local agencies and eligible potential community intervenors to retain qualified

⁴⁸ Id.

⁴⁹ Record 39, Application Exhibit 11 (Revision 1) at 8-13; see also Record 39, Application Appendix 11-A.

⁵⁰ Id.

experts to represent their interests and participate in the 94-c application review process.

An important cornerstone of the Executive Law § 94-c process is pre-application consultation with local agencies and community members who may be adversely impacted by the siting of the proposed Facility. To provide early identification of critical natural and cultural resource issues and avoid, minimize, or mitigate potential adverse impacts to such resources to the maximum extent practicable, the Permittee completed pre-application consultation with the Office and local and State agencies at the earliest point possible in the Permittee's project planning process consistent with 19 NYCRR § 900-1.3(a) - (i).⁵¹ This pre-application consultation included pre-application meetings with the Town of Burns on October 26, 2021, and January 11, 2022,⁵² and meetings for community members on April 27 and 28, 2021, and September 1, 2021.⁵³ The purpose of the community meetings was to inform the public about the proposed Facility, including the anticipated application date, and to provide information regarding the future availability of local agency account funds.

In addition, presentation materials and a summary of questions raised and responses provided during the pre-application meetings were incorporated in the application. The Permittee

⁵¹ As described in Record 23, Application Exhibit 2: Overview and Public Involvement at 14, review of the proposed Solar Facility began in 2018 as an application to the New York State Board on Electric Generation Siting and the Environment (Siting Board) pursuant to Article 10 of the Public Service Law, and included significant public and municipal outreach including, without limitation, the preparation of a Public Involvement Program (PIP) under Article 10. See also DPS Case 18-F-0498, Matter of Moraine Solar Energy Center, LLC, DMM Item No. 1, Moraine Solar Energy Center Public Involvement Program Plan.

⁵² Record 23, Application Exhibit 2: Overview and Public Involvement at 15; see also additional information at Record 23, Application Appendix 2-C (Town Consultation Meetings) and Record 8, Application Appendix 24-A (Local Law Letter).

⁵³ Application Exhibit 2 at 14-16; see also additional information at Application Appendix 2-B (Community Meetings).

published a notice of intent to file an application on January 5, 2022,⁵⁴ which provided a project summary and served to inform local agencies and potential intervenors of the future availability of funding. Finally, on November 14, 2022, the ORES Office of Hearings issued a Combined Notice, including instructions for the filing of petitions for party status. The Office remains committed to working closely with the Town of Burns and community members throughout the development of the proposed Facility. For more information, please see the Office Staff Brief at 2-3.⁵⁵

Cultural Resources

COMMENT:

One commenter raised concerns regarding impacts from the project to historical artifacts, such as arrowheads and other Native American artifacts.

DISCUSSION:

The Permittee consulted with the Office and the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) and State Historic Preservation Office (SHPO) regarding potential historic, archaeological, and cultural resources on the Facility site.⁵⁶ Following completion of a Phase IA cultural resources survey,⁵⁷ a historical resources report,⁵⁸ a Phase IB cultural

⁵⁴ Record 1, Moraine Solar 60-Day Notice of Intent to File an Application at 1.

⁵⁵ Record 57.

⁵⁶ Record 38, Application Exhibit 9 (Revision 1): Cultural Resources; Record 12, Application Appendix 9-A: Cultural Resources Studies Correspondence Summary.

⁵⁷ Record 12, Application Appendix 9-B: Phase IA Archaeological Survey.

⁵⁸ Record 12, Application Appendix 9-C: Phase IA Historic Resources Survey Methodology; Record 12, Application Appendix 9-D: Historic Resources Survey Report.

resources survey,⁵⁹ and additional consultation with the Office and OPRHP/SHPO, OPRHP/SHPO issued final determination letters dated January 31, 2022, and February 7, 2022, stating that the Facility would not impact any archaeological or historic resources.⁶⁰ For more information, please see the Office Staff Brief at 5 and 23-24.⁶¹

Complaint Management

COMMENT:

One commenter raised concerns regarding how adjacent landowners can submit complaints, specifically with respect to the tax assessment of these properties possibly being raised.

DISCUSSION:

The Siting Permit establishes detailed procedures at subparts 5.2(d), 5.4(d), 5.4(k) and 7.1(e) (7) for the Permittee to address potential complaints regarding the construction of the proposed Facility. Specifically, the Siting Permit requires that the Permittee's Complaint Management Plan (CMP) include, without limitation, (1) methods for registering a complaint (which shall include a phone number, email address, mailing address) and a form to report complaints, (2) a provision for reporting to the Office and NYSDPS any complaints not resolved within 30 days, and (3) a provision for filing an annual report of complaint resolution tracking to the Office staff and NYSDPS staff. The Permittee is required to submit its proposed CMP, together with all supporting

⁵⁹ Record 3, Application Appendix 9-E: Phase IB Archaeological Survey (Redacted) Part 1 of 8; Record 4, Application Appendix 9-E: Phase IB Archaeological Survey (Redacted) Parts 2-3 of 8; Record 5, Application Appendix 9-E: Phase IB Archaeological Survey (Redacted) Parts 4-6 of 8; Record 6, Application Appendix 9-E: Phase IB Archaeological Survey (Redacted) Parts 7-8 of 8.

⁶⁰ Record 12, Application Appendix 9-A: Cultural Resources Studies Correspondence Summary.

⁶¹ Record 57.

information and materials, to the Office for review and approval as a mandatory pre-construction compliance filing pursuant to subpart 7 of the Siting Permit. For more information, please see the Office Staff Brief at pages 59-60.⁶²

Regarding the commenter's specific concern with respect to property tax assessment, local authorities (i.e. Town Assessor) will be responsible for assessing all real property located within the Town of Burns.⁶³ Therefore, this specific concern is outside the scope of the Office's jurisdictions.

Socioeconomic Effects

COMMENTS:

Multiple commenters raised doubts about the project's purported economic benefits, specifically referring to claims regarding local revenue and local jobs, and the exemption of the value of a solar panel system from local property taxes. Another commenter raised a concern regarding the sufficiency of PILOT agreements for this type of project. Another commenter raised a concern regarding the need for "good neighbor" agreements with impacted landowners.

DISCUSSION:

The Siting Permit requires the Permittee to provide host community benefits, which may include Payments in Lieu of Taxes (PILOT) agreements, a Host Community Agreement (HCA), or other project(s) agreed to by the local taxing jurisdictions: Allegany County, the Town of Burns, the Canaseraga Central School District, and the Canaseraga Fire District.⁶⁴ The Permittee - as part of its

⁶² Record 57.

⁶³ Record 56, Moraine Solar Energy Center, LLC, Response to Municipal States of Compliance and Public Comments on Draft Permit, Exhibit A - Public Comment Response Matrix at 14.

⁶⁴ Record 34, Application Exhibit 18: Socioeconomic Effects (Revision 1) at 13.

mandatory pre-construction compliance filings - is required to provide documentation of all host community benefits, including any PILOT agreements, to the Office in compliance with Siting Permit condition 7.1(j) and 19 NYCRR §§ 900-10.2(j) and 900-10.1(a).

The amounts and terms of host community benefits must be negotiated by the Permittee and the respective taxing jurisdictions. Here, the Permittee has initiated negotiation of a PILOT agreement with the Allegany County Industrial Development Agency on behalf of the local taxing jurisdictions (i.e. Allegany County, Town of Burns, and Canaseraga Central School District).⁶⁵

Further, the proposed Facility will create construction phase and permanent jobs for New York residents, with the majority anticipated to be held by Allegany County residents.⁶⁶ For further information regarding the proposed host community benefits as well as expected new jobs, please see the Application Exhibit 18: Socioeconomic Effects (Revision 1).

Finally, regarding a "Good Neighbor" clause, such agreements generally are between the renewable energy project developer and adjacent landowners.

Dated: May 18, 2023

NEW YORK STATE OFFICE OF RENEWABLE ENERGY SITING
Empire State Plaza P-1 South, J Dock
Albany, N.Y. 12242

⁶⁵ Id. at 13.

⁶⁶ Id. at 9-12.

APPENDIX:

List of All Commenters (Public Hearing & Written)

Name (Affiliation)	Location in Record
James Neary	Record 54 (Final Transcript), pp. 7-8
Thomas Lippert (Labor's Local 621)	Record 54 (Final Transcript), pp. 8-10; Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Carmen Serrett (Labor's Local 621)	Record 54 (Final Transcript), pp. 10-11
Lynn Vosburg	Record 54 (Final Transcript), pg. 12
Katharine Morrison	Record 54 (Final Transcript), pp. 12-16; Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Ryan VanName	Record 54 (Final Transcript), pp. 17-18
Kimberly Pierce	Record 54 (Final Transcript), pp. 18-20
Ford Hurlbert	Record 54 (Final Transcript), pp. 21-23
Rodney Acomb	Record 54 (Final Transcript), pp. 24-25
Martin Swauger [International Union of Operating Engineers (IUOE)]	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Jeramie Hurlbut (Councilman, Town Board, Town of Burns)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]; Public Comments Tab, Comment #4
Staci Derrenbacher	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]

ORES Summary Assessment of Public Comment
 Moraine Solar Energy Center, LLC (22-00024)

Julius A. Wright (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Mike Gresh (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Matthew Von Vleck (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Joseph M. Weaver (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
John Proctor (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Paul Lecceardone (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Dayton George (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
James R. Halterman, Jr. (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Durwin Jacobs (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Josh McMaster (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Scott Beaver (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]

ORES Summary Assessment of Public Comment
 Moraine Solar Energy Center, LLC (22-00024)

Lenny Peña (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Doug Ratzel (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Justice Peterson (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Douglas Woodard (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Kevin M. Stafford, Sr. (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
James Zinth (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Rick Emke (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Michael Burdick (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Christopher Connelly (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
John Kraus (Labor's Local 621)	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Fran Hoffman	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]

ORES Summary Assessment of Public Comment
 Moraine Solar Energy Center, LLC (22-00024)

Marie Hoffman	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Robert Mahany	Public Comments Tab, Comment #9 [Mail & Emailed Public Comments (Redacted)]
Austin Kuntz (Labor's Local 621)	Public Comments Tab, Comment #1
Peter Rauber	Public Comments Tab, Comment #2
Daniel R Duthoy	Public Comments Tab, Comment #3
Alec Hurlbut	Public Comments Tab, Comment #5
Theresa Bennett	Public Comments Tab, Comment #6
Bryan Acomb	Public Comments Tab, Comment #7
Harold R. Bauer, PhD	Public Comments Tab, Comment #8