

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 NEW YORK STATE BOARD ON
3 ELECTRIC GENERATION SITING AND
4 THE ENVIRONMENT

5 CASE 17-F-0619 - Application of Hecate Energy Greene 1
6 LLC, Hecate Energy Greene 2 LLC, and Hecate Energy Greene
7 County 3 LLC for a Certificate of Environmental
8 Compatibility and Public Need Pursuant to Article 10 of
9 the Public Service Law for Construction of a Solar
10 Electric Generating Facility Located in the Town of
11 Cossackie, Greene County.

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9 CASE 16-F-0559 - Application of Bluestone Wind, LLC for a
10 Certificate of Environmental Compatibility and Public
11 Need Pursuant to Article 10 for Construction of the
12 Bluestone Wind Farm Project Located in the Towns of
13 Windsor and Sanford, Broome County.

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13 Siting Board Meeting

14 Date: Tuesday, September 28, 2021 @ 10:30 am

15

TAMMY MITCHELL, alternate of the Chair

16

JAMES MCCLYMONDS, alternate of Basil Seggos, Department
17 of Environmental Conservation

17

18 DR. ELIZABETH LEWIS-MICHL, alternate of Dr. Howard
19 Zucker, Department of Health

19

VINCENT RAVASCHIERE, alternate of Kevin Younis, Empire
20 State Development Corporation

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21

JOHN WILLIAMS, alternate of Richard Kauffman, New York
22 State Energy Research and Development Authority

22

23 DANIEL KOHLER, Ad Hoc Member for Case 17-F-0619

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24 JOHN MAURO AND BARBARA MIRCH, Ad Hoc Members for Case 16-
25 F-0559

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1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 (The meeting commenced at 10:30 a.m.)

3 MS. MITCHELL: Good morning. My name
4 is Tammy Mitchell. I am the director of the office
5 of electric, gas and water at the New York State
6 Department of Public Service. I have been designated
7 to serve as the alternate representing the Chair of
8 the New York State Board on Electric Generation
9 Siting and the Environment, or, as it is also known,
10 the Siting Board.

11 I call this meeting of the Siting
12 Board to order. Before moving to the agenda, I would
13 like to introduce the alternates representing the
14 permanent members of the Siting Board.

15 James McClymonds, alternate
16 representing the Commissioner of the Department of
17 Environmental Conservation, Dr. Elizabeth Lewis-
18 Michl, alternate representing the Commissioner of the
19 Department of Health, Vincent Ravaschiere, alternate
20 representing the Commissioner of the New York State
21 Department of Economic Development, and John
22 Williams, alternate representing the Chair of the New
23 York State Energy Research and Development Authority.

24 I would also like to introduce the ad
25 hoc members -- for Case 17-F-0619, Daniel Kohler, and

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 for Case 16-F-0559, John Mauro and Barbara Mirch.
3 Secretary Phillips, are there any changes to the
4 agenda?

5 SECRETARY PHILLIPS: There are no
6 changes to the agenda.

7 MS. MITCHELL: Thank you, Secretary
8 Phillips. We will start with Case 17-F-0619,
9 application of Hecate Energy Greene 1, L.L.C., Hecate
10 Energy Greene 2, L.L.C., and Hecate Energy Greene
11 County 3, L.L.C., for a Certificate of Environmental
12 Compatibility and Public Need, pursuant to Article 10
13 of the Public Service Law, for construction of a
14 solar electric generating facility located in the
15 Town of Coxsackie, Greene County, presented by James
16 Costello, Administrative Law Judge, Department of
17 Public Service, Ashley Moreno, Administrative Law
18 Judge, Department of Public Service, Molly McBride,
19 Administrative Law Judge, Department of Environmental
20 Conservation, Dakin LeCakes, Chief Administrative Law
21 Judge, Department of Public Service, and Robert
22 Rosenthal, General Counsel, are available for
23 questions. Judge Costello, please begin.

24 A.L.J. COSTELLO: Good morning,
25 members of the Siting Board. My name is James

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 Costello, and I co-presided over this case with
3 Ashley Moreno, and with associate examiner Molly T.
4 McBride, of the Department of Environmental
5 Conservation.

6 The item before you is a proposed
7 order granting a Certificate of Environmental
8 Compatibility and Public Need, subject to certain
9 terms and conditions, to be issued to Hecate Energy
10 Greene 1, L.L.C, Hecate Energy Greene 2, L.L.C, and
11 Hecate Energy Green County 3, L.L.C., which I will
12 refer to collectively as Hecate Greene, or as the
13 Applicant.

14 Hecate Greene proposes to construct
15 and operate a commercial-scale solar power electric-
16 generating facility in the Town of Cocksackie, Greene
17 County. The facility will be constructed on three
18 hundred and sixty-five acres of land, and will
19 generate up to fifty megawatts of electricity. The
20 grant of a certificate to Hecate Greene would be
21 subject to the conditions that are attached to the
22 proposed order.

23 The proposed order is supported by an
24 evidentiary record that supports the statutory
25 findings the Siting Board must make before issuing a

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 certificate, pursuant to Article 10 of the Public
3 Service Law. The Article 10 review process, both in
4 the pre-application and application phases of this
5 case, was extensive, fair and accessible to the
6 public. Notice to the public was provided, with
7 respect to all significant milestones in the case.

8 There were many instances of community
9 outreach and education, and numerous opportunities
10 for public participation. Hecate Greene implemented
11 the requisite public involvement program by, among
12 other things, hosting open houses, and establishing a
13 project-specific website, local document
14 repositories, and a toll-free telephone number for
15 members of the public to call for information about
16 the project.

17 Throughout the Article 10 process, the
18 Department of Public Service also engaged in public
19 outreach activities, and sent notice of all
20 significant project milestones to the party and
21 service lists. The examiners held two public
22 information sessions, at which the examiners provided
23 an overview of the Article 10 process.

24 Hecate Greene provided an overview of
25 the article -- I'm sorry, of the project -- and

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 members of the public posed questions about the
3 Article 10 process, and the project. One week later,
4 the examiners hosted two public statement hearings
5 via Webex, and encouraged public comments to be
6 submitted through other means.

7 The Department received over three
8 hundred public comments in this case. Most of the
9 comments opposed the project, focusing on
10 environmental, health and financial concerns, as well
11 as impacts to the character of the community.

12 Comments in support of the project
13 cite the economic benefits to the local community, as
14 well as broad support of renewable energy development
15 to counter the harms posed by global warming.

16 In addition to Hecate Greene, active
17 parties to this proceeding include the Department of
18 Public Service, the Department of Environmental
19 Conservation, the Department of Agriculture and
20 Markets, the Town of Coxsackie, the Village of
21 Coxsackie, the Village of Athens, the Association of
22 Property Owners of Sleepy Hollow Lake, Scenic Hudson
23 Inc., the Greene Land Trust, and Saving Greene.

24 Pre-application stage intervenor funds
25 were awarded to the Town and Village of Coxsackie,

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 Saving Greene, and the Association of Property Owners
3 of Sleepy Hollow Lake. Application stage intervenor
4 funds were awarded to the Town and Village of
5 Coxsackie and the Village of Athens, Saving Greene,
6 the Association of Property Owners of Sleepy Hollow
7 Lake, and Scenic Hudson and the Greene Land Trust.

8 The parties were able to agree on many
9 of the issues raised in this case through a
10 settlement proposal, which included proposed
11 certificate conditions, a site engineering and
12 environmental plan guide, and a noise-complaint
13 resolution protocol. Hecate Greene and the Town and
14 Village of Coxsackie later entered into a visual
15 settlement agreement, which addressed additional
16 vegetative screening in certain project areas.

17 Hecate Greene and the Department of
18 Environmental Conservation staff agreed to an
19 alternative facility layout and wetland settlement
20 proposal, in which D.E.C. staff agreed that the
21 proposed alternative layout avoids or minimizes the
22 facility's potential wetland's impacts to the maximum
23 extent practicable.

24 After entering into a separate
25 memorandum of understanding with Hecate Greene

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 involving the Sleepy Hollow Lake, the Association of
3 Property Owners of Sleepy Hollow Lake indicated its
4 support for the project.

5 In addition, the Village of Athens
6 ultimately withdrew as a party, stating that after
7 reviewing the application with its counsel and
8 technical consultant, it had no further issues with
9 respect to the facility. Nevertheless, various
10 parties raised certain exceptions to the examiners'
11 recommended decision, which was issued in this case
12 on August 16th.

13 First, with respect to the potential
14 environmental impacts of the project, the recommended
15 decision concluded that based upon the record, the
16 agreed-upon certificate conditions and the SEEP
17 guide, as modified by the examiners, Hecate Greene
18 carried its burden of demonstrating that the project
19 complies with all applicable state environmental
20 public health and safety laws, and that the adverse
21 environmental impacts of project construction and
22 operation have been avoided, minimized or mitigated
23 to the maximum extent practicable.

24 In the party's briefs on exceptions,
25 exceptions were raised with respect to the examiners'

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 conclusions in two areas, namely impacts to
3 threatened and endangered grassland bird species and
4 their habitat, and impacts to agricultural resources.

5 With respect to threatened and
6 endangered grassland bird species, the entire project
7 site is located within the occupied wintering habitat
8 of the short-eared owl and the northern harrier, both
9 of which are species listed under the State
10 Endangered Species Act. Consequently, the proposed
11 certificate conditions include provisions intended to
12 avoid and minimize impacts to the listed species, in
13 the event it is impracticable to avoid all
14 construction activities during the wintering season.

15 Those conditions include use of an
16 onsite environmental monitor to conduct daily surveys
17 to detect the presence of threatened and endangered
18 grassland bird species in construction areas,
19 notification to the Department of Public Service and
20 Department of Environmental Conservation within
21 twenty-four hours of detection, and use of a five
22 hundred foot buffer around any roosts or nests of
23 threatened and endangered grassland bird species.

24 In addition, to mitigate for the take
25 of threatened and endangered grassland bird-occupied

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 habitat, as a result of project construction and
3 operation, Hecate Greene must prepare a final net
4 conservation benefit plan that requires, among other
5 things, the conservation and management of grassland
6 habitat areas adjacent to the facility site, for the
7 life of the project.

8 Department of Environmental
9 Conservation staff raised two exceptions to the
10 examiners' recommendations. First, D.E.C. staff
11 asserts that to fully avoid impacts to threatened and
12 endangered grassland bird species arising from
13 construction during the wintering season, including
14 the indirect take of individuals as a result of
15 harassment, the certificate conditions must include a
16 stop work order in the event the daily surveys detect
17 the presence of threatened and endangered grassland
18 birds in construction areas.

19 Second, D.E.C. staff takes exception
20 to the examiners' conclusion that the net
21 conservation benefit plan mitigates for both the loss
22 of habitat, as well as indirect takes of species as a
23 result of harassment. The draft order before you
24 disagrees with D.E.C. staff's exceptions.

25 With respect to D.E.C.'s first

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 exception, the draft order concludes that based upon
3 the record in this proceeding, and the Siting Board's
4 precedent in Mohawk Solar, the proposed certificate
5 conditions are sufficient to avoid and minimize
6 impacts to threatened and endangered species -
7 grassland bird species - arising from construction
8 activities in an occupied habitat during the
9 wintering seasons.

10 As to the second exception, the draft
11 order concludes that the weight of record evidence
12 supports Hecate Greene's assertion that the net
13 conservation benefit plan compensates for all
14 indirect takes of threatened and endangered grassland
15 bird species, including both potential harassment and
16 loss of habitat.

17 In their joint brief on exceptions,
18 Scenic Hudson and the Greene Land Trust also raised
19 several exceptions to the preliminary net
20 conservation plan. They argue that Hecate Greene
21 underestimates the amount of occupied habitat taken
22 by the project, that the legal protections employed
23 for the grassland conservation areas proposed for
24 mitigation are insufficient, that the mitigation
25 ratio provided for in the preliminary net

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 conservation benefit plan does not result in a net
3 conservation benefit for the species, and that
4 subjecting the final net conservation benefit plan
5 only to public comment during the compliance phase is
6 insufficient to ensure the final plan complies with
7 the Endangered Species Act and regulations.

8 The draft order before you overrules
9 Scenic Hudson's and Greene Land Trust's exceptions,
10 on the grounds that the weight of record evidence
11 supports Hecate Greene's estimate of the amount of
12 occupied habitat taken by the project, that Hecate
13 Greene is required to demonstrate in its final net
14 conservation benefit plan that sufficient legal
15 protections are in place for the grassland
16 conservation areas, that D.E.C.'s approval of the
17 preliminary net conservation benefit plan provides
18 adequate assurance that the plan, including the
19 proposed mitigation ratio, complies with the
20 requirements of the State Endangered Species Act, and
21 that compliance-phase procedures are sufficient to
22 ensure that the final net conservation benefit plan
23 meets standards.

24 Saving Greene also takes exception to
25 the use of grassland habitat for project siting. The

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 draft order concludes, however, that Saving Greene
3 offers no basis in law or fact for rejecting the
4 examiners' conclusions that the project will comply
5 with all applicable state laws governing wildlife and
6 habitat, or that the project's adverse impacts to
7 wildlife and habitat generally have been avoided,
8 minimized or mitigated to the maximum extent
9 practicable. Accordingly, the draft order accepts
10 and adopts the examiners' conclusions and
11 recommendations regarding the project's impacts to
12 wildlife and habitat.

13 With respect to the project's
14 potential impacts to agricultural resources, Saving
15 Greene takes exception to the recommended decision's
16 conclusion that based upon Hecate Greene's proposed
17 avoidance and minimization measures, together with
18 the relevant proposed certificate conditions and SEEP
19 guide specifications, Hecate Greene carried its
20 burden of demonstrating that the project's impacts to
21 agricultural resources would be avoided and minimized
22 to the maximum extent practicable.

23 Saving Greene argues that the loss of
24 farmland, especially highly productive prime
25 farmland, during the life of the project, will result

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 in impacts that have not been adequately addressed.
3 The draft order before you concludes, however, that
4 Saving Greene provided no legal or factual basis for
5 concluding that impacts to agricultural resources
6 have not been avoided or minimized to the maximum
7 extent practicable, or that the permanent impacts to
8 prime farmland after project decommissioning would be
9 minimal. Accordingly, based on the record, including
10 the relevant proposed certificate conditions and SEEP
11 guide specifications, the draft order concludes that
12 project impacts to agricultural resources will be
13 avoided and minimized to the maximum extent
14 practicable.

15 In its application, Hecate Greene
16 requested a waiver of the Town of Coxsackie's local
17 laws prohibiting utility-scale solar projects outside
18 of commercial and industrial districts, limiting
19 utility-scale solar collection systems to twenty
20 percent of the project lot area, and requiring all
21 transmission lines and wiring associated with the
22 utility-scale solar energy project to be buried in
23 accordance with certain requirements. The examiners'
24 recommended that the Siting Board waive those local
25 laws, as the Siting Board did previously in approving

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 the Flint Mine Solar Project located in the towns of
3 Cossackie and Athens, in Case 18-F-0087.

4 With respect to the zoning law
5 limiting utility-scale solar projects to commercial
6 and industrial districts, Saving Greene argues that
7 the Siting Board should not waive the zoning law
8 which seeks to protect the rural character of the
9 town and areas of economic and agricultural
10 significance, especially given the waiver of that
11 provision for the Flint Mine Solar Project.

12 The draft order recognizes that the
13 Siting Board must balance those interests of the
14 local community with the positive contributions the
15 proposed facility will have in combating greenhouse
16 gas emissions and climate change, which will benefit
17 all ... The draft order also finds that, subject to
18 the proposed certificate conditions, the Hecate
19 Greene facility will minimize environmental impacts,
20 permanent impacts to prime farmlands, and visual
21 impacts to the maximum extent practicable. Because
22 the application of the zoning law would eliminate the
23 facility's construction, the draft order would waive
24 the zoning law as unnecessarily burdensome, as was
25 done in the Flint Mine Solar case.

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 Next, the draft order adopts the
3 examiners' recommended finding that the record does
4 not establish compliance with the town's solar glare
5 provision, which states that, quote, "no unreasonable
6 glare or heat shall be produced that is perceptible
7 beyond the boundaries of the lot on which it is
8 situated," close quote, and that the, quote, "design,
9 construction, operation and maintenance of any
10 utility-scale solar energy system shall prevent the
11 misdirection and/or reflection of solar arrays onto
12 neighboring properties, public roads and public parks
13 in excess of that which already exists," close quote.

14 The draft order agrees with examiners'
15 interpretation of the law as prohibiting the
16 misdirection or reflection of all solar arrays from
17 the facility onto neighboring properties, public
18 roads and public parks, not just unreasonable glare.
19 The draft order also agrees with the town's position
20 that Hecate Greene did not demonstrate that there
21 will be zero minutes of glare at all neighboring
22 properties because the receptor points studied in
23 Hecate Greene's glare analysis do not include all
24 neighboring properties and residential dwellings.

25 However, the draft order does consider

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 and grant Hecate Greene's alternative request that if
3 the Siting Board concludes that the facility does not
4 comply with the town's solar glare provision, the
5 Siting Board waive the local law provision. The Town
6 of Coxsackie opposed such a waiver. The town
7 maintains that without conducting a solar glare
8 analysis with respect to all neighboring properties,
9 Hecate Greene has failed to demonstrate that the
10 requested waiver is the minimum necessary.

11 The draft order finds that a waiver
12 should be granted because Hecate Greene cannot
13 establish that the facility would produce no
14 additional glare, no matter how minor, anywhere on
15 all neighboring properties, that the visual impact
16 from the facility, including glare, have been
17 mitigated to the maximum extent practicable, and that
18 the project's contribution to meeting the state's
19 energy goals outweighs the impacts to the community
20 that would result from waiving the solar glare
21 provision all ratepayers.

22 The draft order also finds that a
23 local law provision addressing habitat preservation
24 contains a substantive provision requiring, quote,
25 "habitat protection on a one-to-one ratio, with one

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 acre of protected habitat for every acre of habitat
3 impacted by development," close quote. Hecate Greene
4 concedes that it proposes a point eight to one
5 mitigation ratio.

6 The draft order determines that Hecate
7 Greene's request for a waiver, made for the first
8 time in its initial brief, did not provide the
9 parties with adequate notice of an opportunity to
10 present evidence in support of the local law. The
11 draft order therefore requires Hecate Greene to
12 comply with the local standard, by filing a Habitat
13 Preservation Plan demonstrating protection of an
14 additional sixty-seven acres of grassland habitat.

15 Turning next to arguments concerning
16 cumulative impacts in the Flint Mine Solar
17 proceeding, the Siting Board rejected an argument
18 made in that case, that a certificate should not be
19 issued in that case, based upon the cumulative
20 impacts of that solar project, and the solar project
21 before you today. The same argument is also made in
22 this case. Saving Greene argues that the combined
23 impact of the two projects will change the rural
24 character of the community.

25 The draft order recognizes that

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 Article 10 does not require a holistic analysis of
3 cumulative impacts from separate projects. As
4 designed and conditioned, this facility will mitigate
5 environmental and visual impacts to the maximum
6 extent practicable, and lease payments from Hecate
7 Greene will help the participating landowner to
8 continue farming operations elsewhere in their town,
9 while allowing him to retain the land used for the
10 project for future agricultural uses.

11 In summary, the record supports a
12 finding by the Board that the probable environmental
13 impacts of the construction and operation of the
14 facility will be minimized or avoided to the maximum
15 extent practicable, provided that the Applicant
16 complies with the certificate conditions. The record
17 also supports a finding by the Board that the
18 facility is designed to operate in compliance with
19 all applicable state and local environmental health
20 and safety laws and regulations that are not
21 otherwise waived.

22 Proposed order finds that the
23 construction and operation of the project will serve
24 the public interest because the project will be
25 consistent with state energy policies, long-range

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 energy planning objectives, the strategy set forth in
3 the most recent state energy plan, and the additional
4 social economic and other factors deemed relevant by
5 the Board. Advisory staff recommend that the Board
6 adopt the proposed order, including the attached
7 certificate conditions. Thank you.

8 MS. MITCHELL: Thank you, Judge
9 Costello, for your comprehensive summary of the item
10 before us. I believe the order flows from a process
11 that was open and thorough, and is supported by the
12 record, and the certificate conditions appropriately
13 address the identified concerns. I'm going to
14 support this item. Let me turn to my fellow Board
15 members for any comments or questions. Judge
16 McClymonds?

17 A.L.J. MCCLYMONDS: No comments or
18 questions.

19 MS. MITCHELL: Dr. Lewis-Michl?

20 DR. LEWIS-MICHL: No comments or
21 questions.

22 MS. MITCHELL: MR. Ravaschiere?

23 MR. RAVASCHIERE: No comments or
24 questions.

25 MS. MITCHELL: Mr. Williams?

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 MR. WILLIAMS: No comments or
3 questions.

4 MS. MITCHELL: Mr. Kohler?

5 MR. KOHLER: Questions. In the
6 discussion, with respect to the threatened and
7 endangered species, D.E.C. originally requested that
8 there's no construction ... and then they requested
9 that once you went to the twenty-four hour monitoring
10 system, that if there was any kind of sighting of
11 birdlife in the habitat, that construction would
12 stop, and there would be a stop order, and that the
13 D.P.S. and --.

14 SECRETARY PHILLIPS: I'm sorry, Mr.
15 Kohler, could you please turn on your microphone?

16 MR. KOHLER: Oh, sorry. And that the
17 D.P.S. and the D.E.C. would then determine when it
18 was safe to resume construction. That was also
19 denied. I'm not sure if I'm using the right legal
20 terminology, but hopefully semantically it's correct.
21 Now, those two items -- I believe that Hecate
22 indicated that they were concerned about delays,
23 construction cost -- did those concerns of Hecate,
24 about construction delays and cost, bear any weight
25 in your decision to deny those requests by the

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 D.E.C.?

3 A.L.J. COSTELLO: I'm going to refer
4 the question to our associate examiner, Molly
5 McBride, on behalf of the Department of Environmental
6 Conservation.

7 A.L.J. MCBRIDE: Good morning, Mr.
8 Kohler.

9 MR. KOHLER: Good morning.

10 A.L.J. MCBRIDE: Thank you for your
11 question.

12 MR. KOHLER: Sure.

13 A.L.J. MCBRIDE: So in reviewing that
14 issue that was raised, we looked at precedent from
15 the Siting Board in previous decisions and, as you
16 saw on the recommended decision, we reviewed the
17 decision in Mohawk Solar that was issued by the
18 Siting Board, where the certificate was issued. And
19 based on precedent in prior cases, we determined that
20 with the certificate conditions that had been
21 proposed and agreed upon, that the protections would
22 be in place, and that the regulations would be
23 complied with.

24 MR. KOHLER: Okay. Now I did read
25 that D.E.C. stated -- and maybe there's no

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 evidentiary basis for that -- that Mohawk Solar had a
3 much lower density of birds than the Cocksackie Flats
4 did.

5 A.L.J. MCBRIDE: Yeah. As we noted in
6 the -- as I see it in the draft Siting Board order,
7 it's noted that although D.E.C. staff, in their brief
8 on exceptions to the recommended decision, noted that
9 issue, they were not able to support it with any
10 evidence on the record. There is no testimony to
11 support that, and there's no other evidence in the
12 record to support that statement that was put in the
13 brief, whereas Hecate Greene did put support evidence
14 in the record to support their position.

15 MR. KOHLER: The bird panel.

16 A.L.J. MCBRIDE: So based on the
17 evidence in the record.

18 MR. KOHLER: Okay. And later on,
19 you'd go ahead -- and Scenic Hudson and Greene Land
20 Trust, they want to have a one-to-one replacement
21 ratio -- and you denied that. I guess there are a
22 couple of pieces of evidence. But, in addition, you
23 cited the D.E.C. as having the expertise to say that
24 the net conservation benefit plan was satisfactory,
25 but yet you overrode their opinion -- that is, the

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 D.E.C.'s opinion -- on these other matters. How do
3 you reconcile that?

4 A.L.J. MCBRIDE: Well, first of all,
5 as I said, there was no evidence in the record on the
6 issue that we just discussed, so we are limited to
7 the evidence that's in the record. So based on the
8 evidence before us, we did make that decision, in the
9 recommended decision. As for the issue on the net
10 conservation benefit plan, the final plan will be
11 developed by D.E.C., in conjunction -- well, by
12 Hecate Greene, with D.E.C. in consultation,
13 throughout the process. And D.E.C. technical staff
14 will be working with the Applicant for that final
15 plan, and those are the people with the expert
16 knowledge of how to best comply with the regulations.

17 MR. KOHLER: Okay. And there will be
18 a one-to-one replacement because of the Cocksackie
19 town zoning law, correct?

20 A.L.J. MCBRIDE: Yes.

21 MR. KOHLER: Okay. With respect to
22 the solar laws -- I don't know who gets these
23 questions -- but you decided to -- at the end, you
24 indicated that, I guess, the -- even though Hecate
25 Greene did not comply with the town provision, you

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 went ahead and waived that law because it was, I
3 guess, burdensome, with respect to the fact that
4 there was no way to measure a baseline of glare along
5 the property line. Is that correct? What was the
6 reason for the waiver?

7 A.L.J. COSTELLO: The reason -- go
8 ahead.

9 MR. ROSENTHAL: I could take that on.
10 This is Bob Rosenthal. I'm the counsel to the Siting
11 Board. So the reason for that, you know, lay it out,
12 but it's in the record -- the Siting Board
13 determined, first of all, as we've discussed, the way
14 that Article 10 of the Public Service Law works, is
15 that the Siting Board is a one-stop shopping entity.
16 It has to apply all state and local laws. Any local
17 law or state law deemed unreasonably burdensome, it
18 can waive. So that's sort of what the standard is
19 here.

20 So the first thing that the Siting
21 Board had to do was interpret the local law. And it
22 interpreted it consistent with the way we believe
23 that the town did -- that there had to be no glare
24 from this facility at any receptor. So that was a
25 determination of what that law means. The general

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 argument that was made by the Applicant in its
3 submission that the Siting Board treat it as a
4 motion, was that that local law would be impossible
5 to meet, and so that ultimately the Siting Board
6 agreed with that determination.

7 If a law is not possible to meet, it
8 sort of by definition means that it's unreasonably
9 burdensome. And I could take you through the
10 whole -- you know, sort of the entire thinking, and
11 through the decision, if you would like me to.

12 MR. KOHLER: Well, not necessarily.
13 But one question is, did you do your own independent
14 research on why it would be possible -- it would be
15 impossible to meet that law?

16 MR. ROSENTHAL: So let me just, you
17 know, give you a general sense of what the decision
18 did. And the answer to your question is yes, and
19 I'll take you through the decision to show you that.
20 And the part of the draft order, you know, regarding
21 the Siting Board's interpretation of the local law,
22 and the Applicant's, you know, inability to show
23 compliance with the local law, the Siting Board also
24 determined on page twenty-four, quote, "we agree with
25 the examiners' determinations that the visual impacts

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 have been mitigated to the extent practicable, and we
3 recognize that the facility's arrays are designed to
4 avoid glare." So these cases are based ultimately on
5 the record.

6 As you heard Judge McBride just
7 discuss with you, there's an application that's filed
8 by the Applicant. The application includes direct
9 testimony from the Applicant's experts. The
10 intervenors and staff in these cases -- D.P.S.,
11 Department of Public Service, and D.E.C. -- also
12 provide prewritten direct testimony. Then there's a
13 live case where there's cross-examination of
14 witnesses, and that occurred in this case. Then
15 there's a recommended decision, and that occurred in
16 this case, and then there was exceptions.

17 With respect to this particular issue,
18 there was a filing made by the Applicant, arguing
19 that it did comply with the local law, which the
20 Siting Board determined through this decision, or if
21 you agreed with that, would determine the decision
22 that the Applicant was unable to show that.

23 In any event, you know, if I take you
24 down to the bottom of page four, onto page five of
25 the decision, the Applicant ultimately stated that

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 the town glare provision, as interpreted by the
3 Siting Board -- by the examiners -- would be
4 impossible to comply with. So that's the question,
5 really, before the Siting Board -- is it impossible
6 to comply with?

7 The Siting Board would have already
8 made a determination that the law itself can only be
9 complied with by showing that there is no glare at
10 any receptors. So if, you know, I take you toward
11 the end of the decision, on pages twenty-six and
12 twenty-seven, and I'll just read it into the record,
13 "As we interpret the local law, any glare from the
14 facility, no matter how minor, would result in an
15 apparent violation of local provisions."

16 Thus the Applicant appears to be in a
17 situation where the only way he could ensure
18 compliance, to the satisfaction of the plain language
19 of the town law, is that the facility not be built.
20 So just that basic argument comes down to if the
21 Applicant can't show that it can meet the -- can
22 comply with this law, and it's impossible to comply
23 with, then it meets its burden.

24 MR. KOHLER: So I guess my question is,
25 I understand that they did things to minimize visual

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 impact and other things that would reduce
3 whatever -- if there was glare, it would reduce it.
4 But they stated that it was impossible to meet that,
5 and I understand what you're saying is that it would
6 be very -- we don't -- did you actually determine
7 that it would be impossible to meet that? That's my
8 question.

9 MR. ROSENTHAL: Yes. The final
10 determination at the end of the day, in this order,
11 based on the entire record, is that it would be
12 impossible to meet it. There are other aspects of
13 the order that I have read, and of the record, to
14 show that the solar arrays are made out of a very
15 specific material, that the full intent of the arrays
16 is that they absorb and do not reflect sunlight.

17 MR. KOHLER: ... reflective stuff they
18 absorb, but yeah.

19 MR. ROSENTHAL: Right, exactly. And
20 they also put a coating on the arrays, which is
21 consistent with what others use, and still they
22 reflect. And so the mere fact that they reflect
23 means that there is going to be glare coming from the
24 facility itself. It is going to be seen at some
25 receptors near the facility.

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 MR. KOHLER: But the arrays don't go
3 up to the border, do they?

4 MR. ROSENTHAL: Up to the border?

5 MR. KOHLER: Up to the adjacent
6 neighboring borders.

7 MR. ROSENTHAL: That's correct. There
8 are setback requirements.

9 MR. KOHLER: So there is a distance
10 between the arrays and the border, so really did you
11 take that into account?

12 MR. ROSENTHAL: We took everything in
13 the record into account, in determining that the
14 local law would not be possible to meet.

15 MR. KOHLER: Okay.

16 MR. ROSENTHAL: And it's sort of a one
17 or the other. Either they can meet the local law,
18 right, and here they can't meet the local law, based
19 on a determination that it really is impossible to
20 meet the local law. And that really -- you know, at
21 the end of the day, it is consistent with a
22 determination that it's unreasonably burdensome, the
23 local law.

24 MR. KOHLER: I can understand the
25 unreasonably burdensome part. I just don't

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 understand the determination that they can't meet it
3 because, again, it appears that that was never
4 tested. But anyway, I understand your decision.

5 MR. ROSENTHAL: Okay, thank you.

6 MR. KOHLER: I have a question about
7 cumulative impact because I know that's something
8 that I read, that the Town of Coxsackie indicated
9 that about nine percent of the land in Coxsackie is
10 now, or will be occupied by two utility-scale solar
11 facilities. That is the Flint Mine, and then Hecate
12 Greene. And the way I read it, is that the law
13 indicates that each -- and you state that in the
14 order, the law -- or in the recommended decision, one
15 of them.

16 The law requires that each project be
17 looked at as an individual project, as a standalone
18 project. And so, is there at any point -- so right
19 now, it's nine percent. Let's say in a year it's up
20 to fifteen percent, and twenty percent. Is there any
21 point -- and I assume the answer is no because of the
22 way that it's described that the law is written.

23 Is there any point where you guys say,
24 or where you can say, as an examiner that, you know,
25 even though each project individually is putting

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 aside enough land for the birds, and is -- you know,
3 and basically is, you know, we maintain some
4 agricultural land, and everything is good with
5 the -- you know, with the runoff. Is there any point
6 where you say, like, everything works, everything
7 complies with Article 10, but we've gone ahead and
8 destroyed Coxsackie, or not destroyed, but basically
9 changed the entire character of Coxsackie? And maybe
10 you can't answer that, you know, because that's just
11 speculation.

12 MR. ROSENTHAL: I think that I can.
13 So there's the legal answer, which is that Article 7
14 is exempt from the State Environmental Quality Review
15 Act, which otherwise would require cumulative impact.
16 As you noted, these cases are about site-specific
17 impacts.

18 There are other, you know, orders
19 that, for example, the Public Service Commission has
20 issued, one being the 2015 Clean Energy Standard
21 order, in which it undertook a generic environmental
22 impact statement. Another being the October 2020
23 Public Service Commission order, in which it
24 supplemented the Clean Air Act standard, and it
25 issued a supplemental generic environmental impact

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 statement.

3 SEQRA does require a cumulative
4 impact, and it was done in that case. It certainly
5 did not do a cumulative impact based on, you know, a
6 specific town, as you've raised. Nevertheless, you
7 know, at one point -- there is a standard under
8 Article 10 that these projects have to, you know, be
9 consistent with the public interest. And I think,
10 you know, just to answer your question, it is
11 definitely concerning to staff that, you know,
12 facilities take over a town, as you stated. It's not
13 something that we would take lightly, and just
14 ignore.

15 MR. KOHLER: Well, that's good to
16 hear.

17 MR. ROSENTHAL: And at one
18 point -- you know, I think that in the future, if it
19 gets beyond that percentage, I think the -- you know,
20 an intervenor could certainly argue -- I'm not saying
21 that what the outcome would be -- could certainly
22 argue that the project is not consistent with the
23 public interest because of the impact on a single
24 community regarding, you know, multiple projects.

25 MR. KOHLER: So can you give us a

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 rough range as to what percentage of the land

3 would --?

4 MR. ROSENTHAL: I mean, I'm
5 literally -- you know, you asked a good question, and
6 I'm telling you, you know, based on my understanding
7 of the law, what type of an argument I could foresee
8 an applicant raising. What I can't foresee, and I
9 can't predict, is how the Siting Board would rule on
10 that.

11 MR. KOHLER: Well, I hope you're the
12 chief counsel if it comes around again. A final
13 question, when I looked through the recommended
14 decision, there was a lot of information on the
15 amount that Hecate Greene -- what the construction
16 cost would be, both non-payroll, and there's
17 something else with what the payroll is, how much the
18 ongoing cost would be. And I have them all here, but
19 you have them too.

20 There was a discussion about the
21 PILOT, even though that's something that's negotiated
22 between the developer and the town, and the
23 municipalities, but that was going to be like four
24 point five million, I believe, over forty years. And
25 so that information is laid out there, and I think

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 it's supposed to say hey, this development is going
3 to put something into the community.

4 If the town or intervenor of some sort
5 wanted to go and say yes, this actually is the data,
6 and we agree with it -- this is what it's going to
7 cost, this is what the annual payments will end up
8 being, but we think that there are actual
9 externalities or a cost to that -- people are going
10 to have reduced property values. Maybe less people
11 would want to move here because there are two huge
12 solar facilities.

13 The town relies a lot on tourism and
14 recreation, and there's going to be less of that
15 because, you know, you've got two huge solar
16 facilities in your town. Would you accept the fact,
17 you know, in addition to talking about the positive
18 benefits, which is a lot of money -- I don't know how
19 much would go to Cossackie or not -- and would you
20 accept that into the record? My understanding was
21 you wouldn't.

22 A.L.J. COSTELLO: I think the
23 information, except for with respect to -- I'm sorry,
24 except for with respect to property values, which the
25 Siting Board in prior cases has determined, is not

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 something that's before the Siting Board for
3 consideration, the impact on property values. But
4 otherwise, that information, if properly developed in
5 the record, would be certainly subject to
6 consideration.

7 MR. KOHLER: Okay. And there was
8 discussion about what the PILOT might be because it
9 has to be determined between the developer and the
10 municipalities, but it came out, the estimate using
11 the numbers that you guys provided was about hundred
12 and twenty thousand a year. So going back to
13 property value, what if it turned out that the impact
14 on property values was over hundred and twenty
15 thousand dollars a year? You still wouldn't accept
16 that information?

17 A.L.J. COSTELLO: Well, I think the
18 argument can be made. But as I said in prior cases,
19 the effect of siting these renewable projects in
20 towns and places, the impacts on property values have
21 been determined not to be a consideration. Again, it
22 doesn't mean you can't make the argument. The
23 argument can always be made. The argument can be
24 made that the Siting Board should reconsider what it
25 did previously. But there is precedent out there

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 which says, with respect to property values, that's
3 not properly before the Siting Board.

4 MR. KOHLER: Okay. But the other
5 information, which would be the externalities, which
6 would be the loss of business, like B&B business,
7 wedding venues, things like that, that can be ...

8 A.L.J. COSTELLO: I believe yes. If
9 you provided information that was in the record, and
10 that was, you know, evidentiary in nature, that that
11 would be something that the Siting Board could
12 consider.

13 MR. KOHLER: Okay. And that might
14 appear in the recommended decision next to all the
15 information about how much the --?

16 A.L.J. COSTELLO: That would
17 be -- right. The arguments may -- what we try to do
18 is lay out all the arguments made. And if that is
19 one of the arguments in considering, that would be
20 laid out as well.

21 MR. KOHLER: Okay. And one final
22 question because I think you were talking
23 about -- when I asked a question about cumulative
24 impact, or maybe even prior to that, there was a
25 discussion about how the landowner would be able to

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 continue farming elsewhere. Is that something he's
3 required to do?

4 A.L.J. COSTELLO: No. But that is
5 something that was a consideration.

6 MR. KOHLER: Okay.

7 A.L.J. COSTELLO: Because one of the
8 arguments is that it's taking away from the agrarian
9 nature of this area, and the landowner has put in the
10 record that by doing this, it's allowing him to
11 continue his farming operations elsewhere in the
12 town, which is a counterbalancing factor, saying
13 that, you know, this is helping with the agrarian
14 nature.

15 It also states that, after
16 decommissioning, it's possible for that land itself
17 to go back into farmland -- active farmland -- which
18 the landowner says is a possibility. So it was just
19 pointed out as a counterbalance to saying there are
20 also factors that help keep the community -- with the
21 agrarian nature of it, so that's why that was pointed
22 out.

23 MR. KOHLER: Okay. Thank you for
24 answering my questions.

25 MS. MITCHELL: Thank you. I will now

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 call for a vote. This is Tammy Mitchell, and my own
3 vote is in favor of the recommendation as just
4 described. Judge McClymonds, how do you vote?
5 A.L.J. MCCLYMONDS: In favor.
6 MS. MITCHELL: Dr. Lewis-Michl?
7 DR. LEWIS-MICHL: In favor.
8 MS. MITCHELL: Mr. Ravaschiere?
9 MR. RAVASCHIERE: In favor.
10 MS. MITCHELL: Mr. Williams?
11 MR. WILLIAMS: In favor.
12 MS. MITCHELL: Mr. Kohler?
13 MR. KOHLER: Not in favor.
14 MS. MITCHELL: Thank you. The order
15 is confirmed, and the recommendation is adopted.
16 Next is Case 16-F-0559, application of Bluestone
17 Wind, L.L.C., for a Certificate of Environmental
18 Compatibility and Public Need, pursuant to Article
19 10, for construction of the Bluestone Wind Farm
20 Project located in the Towns of Windsor and Sanford,
21 Broome County, presented by Brian Ossias, Managing
22 Attorney, Department of Public Service, Corey Strub,
23 Utility Supervisor Environmental, and Robert
24 Rosenthal, General Counsel, are available for
25 questions. Mr. Ossias, please begin.

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 MR. OSSIAS: Good morning, Chair, and
3 members of the Siting Board. On December 16th, 2019,
4 the New York State Board on Electric Generation
5 Siting and the Environment granted the Certificate of
6 Environmental Compatibility and Public Need, with
7 conditions, to Bluestone Wind, pursuant to Public
8 Service Law section 168.

9 The certificate authorizes Bluestone
10 Wind to construct and operate a utility-scale wind
11 energy facility, with a total nameplate capacity of
12 hundred twenty-four megawatts, in the Towns of
13 Windsor and Sanford, in Broome County.

14 The certificate contains specific
15 conditions that require several compliance filings by
16 the certificate holder, including conditions for
17 construction and operational impact mitigation to be
18 approved by the Siting Board, or the Public Service
19 Commission once the Siting Board jurisdiction has
20 ceased. The certificate holder previously submitted
21 several compliance filings, including those related
22 to tree clearing and other types of construction
23 activities.

24 Before you today is another draft
25 order recommending approval of compliance filings

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 forty-six and fifty-seven, which pertain to
3 collection, substation construction, operation and
4 maintenance, facility construction and turning radius
5 construction for turbine deliveries, subject to
6 conditions. Pursuant to the Siting Board's
7 regulations, 16 N.Y.C.R.R., section 1002.3, a
8 certificate holder is required to submit, quote, "a
9 description of and citation to the requirements under
10 the certificate, or an order for which compliance is
11 to be demonstrated, a description of how the
12 Applicant will comply with the requirements of the
13 certificate or order, and final maps, plans,
14 diagrams, drawings, studies, reports and other
15 documents demonstrating compliance," close quote.

16 Under the Siting Board's regulations,
17 16 N.Y.C.R.R., section 1002.2, sub-G, the Siting
18 Board, or the Commission, if the Board's jurisdiction
19 has ceased, may approve compliance filings subject to
20 specified terms, conditions, limitations or
21 modifications.

22 Finally, pursuant to 16 N.Y.C.R.R.,
23 section 1002.2(i), the standard review for compliance
24 filings shall be whether the compliance filing
25 reasonably ensures compliance with the certificate

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 order. No comments were filed on these compliance
3 filings. Department of Public Service staff has
4 reviewed these compliance filings and supplements,
5 and advises that as filed and/or supplemented, they
6 reasonably ensure compliance with the corresponding
7 certificate conditions in the certificate order, and
8 should be approved subject to the following
9 condition.

10 A detailed traffic control plan is
11 needed to mitigate dangers in traffic, highlighted
12 within the route evaluation study. Therefore, the
13 delivery of turbines associated with phase four of
14 the SEEP construction should not commence until a
15 detailed traffic control plan has been filed with the
16 secretary, and approved by the Siting Board, or the
17 Public Service Commission if the Board's jurisdiction
18 has ceased. This concludes my presentation, and
19 myself and Corey Strub are available for questions.
20 Thank you.

21 MS. MITCHELL: Thank you, Mr. Ossias.
22 I have no questions or comments on this item. Let me
23 turn to my fellow Board members for any comments or
24 questions. Judge McClymonds?

25 A.L.J. MCCLYMONDS: No question or

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021
2 comments.
3 MS. MITCHELL: Dr. Lewis-Michl?
4 DR. LEWIS-MICHL: No questions or
5 comments.
6 MS. MITCHELL: Mr. Ravaschiere?
7 MR. RAVASCHIERE: I have no questions
8 or comments.
9 MS. MITCHELL: Mr. Williams?
10 MR. WILLIAMS: No question or
11 comments.
12 MS. MITCHELL: Mr. Mauro?
13 MR. MAURO: No question or comments.
14 MS. MITCHELL: Ms. Mirch?
15 MS. MIRCH: No questions or comments.
16 MS. MITCHELL: Thank you. I will now
17 call for a vote. My vote is in favor of the
18 recommendation as described. Judge McClymonds, how
19 do you vote?
20 A.L.J. MCCLYMONDS: In favor.
21 MS. MITCHELL: Dr. Lewis-Michl?
22 DR. LEWIS-MICHL: In favor.
23 MS. MITCHELL: Mr. Ravaschiere?
24 MR. RAVASCHIERE: In favor.
25 MS. MITCHELL: Mr. Williams?

1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 MR. WILLIAMS: In favor.

3 MS. MITCHELL: Mr. Mauro?

4 MR. MAURO: In favor.

5 MS. MITCHELL: Ms. Mirch?

6 MS. MIRCH: In favor.

7 MS. MITCHELL: Thank you. The order

8 is approved, and the recommendation is adopted.

9 Secretary Phillips, is there anything further to come
10 before us today?

11 SECRETARY PHILLIPS: There is nothing
12 further to come before you.

13 MS. MITCHELL: Thank you. With that,
14 we are adjourned.

15 (The proceeding concluded at 11:18
16 a.m.)

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1 17-F-0619 and 16-F-0559 - Siting Board - 9-28-2021

2 STATE OF NEW YORK

3 I, ROBERT WURTZ, do hereby certify that the foregoing was
4 reported by me, in the cause, at the time and place, as
5 stated in the caption hereto, at Page 1 hereof; that the
6 foregoing typewritten transcription consisting of pages 1
7 through 44, is a true record of all proceedings had at the
8 hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 30th day of September, 2021.

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13 ROBERT WURTZ, Reporter

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A	
A.L.J 3:24 20:17 22:3,7,10,13 23:5,16 24:4,20 25:7 35:22 36:17 37:8,16 38:4,7 39:5 42:25 43:20	allowing 19:9 38:10
a.m 2:2 44:16	alternate 1:13,14,16,17,19 2:7 2:15,18,19,22
able 7:8 23:9 37:25	alternates 2:13
absorb 29:16,18	alternative 7:19,21 17:2
accept 35:16,20 36:15	amount 11:21 12:11 34:15
accepts 13:9	analysis 16:23 17:8 19:2
accessible 5:5	and/or 16:11 42:5
account 30:11,13	annual 35:7
acre 18:2,2	answer 26:18 31:21 32:10,13 33:10
acres 4:18 18:14	answering 38:24
Act 9:10 12:7,20 32:15,24	anyway 31:4
active 6:16 38:17	apparent 28:15
activities 5:19 9:14 11:8 40:23	appear 37:14
actual 35:8	appears 28:16 31:3
ad 1:21,22 2:24	applicable 8:19 13:5 19:19
addition 6:16 8:5 9:24 23:22 35:17	applicant 4:13 19:15 24:14 26:2 27:8,18,22,25 28:16,21 34:8 41:12
additional 7:15 17:14 18:14 20:3	Applicant's 26:22 27:9
address 20:13	application 1:4,7 3:9 5:4 7:3 8:7 14:15 15:22 27:7,8 39:16
addressed 7:15 14:2	apply 25:16
addressing 17:23	appropriately 20:12
adequate 12:18 18:9	approval 12:16 40:25
adequately 14:2	approve 41:19
adjacent 10:6 30:5	approved 40:18 42:8,16 44:8
adjourned 44:14	approving 14:25
Administrative 3:16,17,19,20	area 14:20 38:9
adopt 20:6	areas 7:16 9:2,18 10:6,18 11:23 12:16 15:9
adopted 39:15 44:8	argue 11:20 33:20,22
adopts 13:10 16:2	argues 13:23 15:6 18:22
adverse 8:20 13:6	arguing 27:18
advises 42:5	argument 18:17,21 26:2 28:20 34:7 36:18,22,23,23
Advisory 20:5	arguments 18:15 37:17,18,19 38:8
agenda 2:12 3:4,6	arising 10:12 11:7
agrarian 38:8,13,21	arrays 16:11,16 27:3 29:14,15 29:20 30:2,10
agree 7:8 26:24 35:6	article 1:5,8 3:12 5:2,3,17,23 5:25 6:3 19:2 25:14 32:7,13 33:8 39:18
agreed 7:18,20 22:21 26:6 27:21	Ashley 3:17 4:3
agreed-upon 8:16	aside 32:2
agreement 7:15	asked 34:5 37:23
agrees 16:14,19	aspects 29:12
agricultural 9:4 13:14,21 14:5 14:12 15:9 19:10 32:4	assertion 11:12
Agriculture 6:19	
ahead 23:19 25:2,8 32:7	
Air 32:24	

asserts 10:11
associate 4:3 22:4
associated 14:21 42:13
Association 6:21 7:2,6 8:2
assume 31:21
assurance 12:18
Athens 6:21 7:5 8:5 15:3
attached 4:21 20:6
Attorney 39:22
August 8:12
Authority 1:20 2:23
authorizes 40:9
available 3:22 39:24 42:19
avoid 9:12,13 10:11 11:5 27:4
avoidance 13:17
avoided 8:22 13:7,21 14:6,13
 19:14
avoids 7:21
awarded 6:25 7:4

B

B&B 37:6
back 36:12 38:17
balance 15:13
Barbara 1:22 3:2
based 8:15 11:2 13:16 14:9
 18:19 22:19 23:16 24:7 27:4
 29:11 30:18 33:5 34:6
baseline 25:4
basic 28:20
basically 32:3,8
Basil 1:14
basis 13:3 14:4 23:2
bear 21:24
behalf 22:5
believe 20:10 21:21 25:22 34:24
 37:8
benefit 10:4,21 11:13 12:2,3,4
 12:14,17,22 15:16 23:24 24:10
benefits 6:13 35:18
best 24:16
beyond 16:7 33:19
bird 9:3,6,18,23 10:12 11:7,15
 23:15
bird-occupied 9:25
birdlife 21:11
birds 10:18 23:3 32:2
Bluestone 1:7,8 39:16,19 40:7,9
Board 1:1,2,11 2:1,8,10,12,14
 3:1,25 4:1,25 5:1 6:1 7:1 8:1

9:1 10:1 11:1 12:1 13:1 14:1
 14:24,25 15:1,7,13 16:1 17:1
 17:3,5 18:1,17 19:1,12,17
 20:1,5,5,14 21:1 22:1,15,18
 23:1,6 24:1 25:1,11,12,15,21
 26:1,3,5,23 27:1,20 28:1,3,5
 28:7 29:1 30:1 31:1 32:1 33:1
 34:1,9 35:1,25 36:1,2,24 37:1
 37:3,11 38:1 39:1 40:1,3,4,18
 40:19 41:1,18 42:1,16,23 43:1
 44:1 45:1
Board's 11:3 26:21 41:6,16,18
 42:17
Bob 25:10
border 30:3,4,10
borders 30:6
bottom 27:24
boundaries 16:7
Brian 39:21
brief 11:17 18:8 23:7,13
briefs 8:24
broad 6:14
Broome 1:9 39:21 40:13
buffer 9:22
built 28:19
burden 8:18 13:20 28:23
burdensome 15:24 25:3,17 26:9
 30:22,25
buried 14:22
business 37:6,6

C

call 2:11 5:15 39:2 43:17
can't 28:21 30:18 31:2 32:10
 34:8,9 36:22
capacity 40:11
caption 45:5
carried 8:18 13:19
case 1:4,7,21,22 2:25 3:2,8 4:2
 5:5,7 6:8 7:9 8:11 15:3,25
 18:18,19,22 27:13,14,16 33:4
 39:16
cases 22:19 27:4,10 32:16 35:25
 36:18
cause 45:4
ceased 40:20 41:19 42:18
certain 4:8 7:16 8:10 14:23
certainly 33:4,20,21 36:5
certificate 1:5,8 3:11 4:7,20
 5:2 7:11 8:16 9:11 10:15 11:4

13:18 14:10 15:18 18:18 19:16 20:7,12 22:18,20 39:17 40:5,9 40:14,16,20 41:8,10,13,25 42:7,7	comply 13:4 17:4 18:12 24:16,25 27:19 28:4,6,22,22 41:12
certify 45:3	comprehensive 20:9
Chair 1:13 2:7,22 40:2	concedes 18:4
change 15:16 18:23	concerned 21:22
changed 32:9	concerning 18:15 33:11
changes 3:3,5	concerns 6:10 20:13 21:23
character 6:11 15:8 18:24 32:9	concluded 8:15 44:15
chief 3:20 34:12	concludes 11:2,11 13:2 14:3,11 17:3 42:18
citation 41:9	concluding 14:5
cite 6:13	conclusion 10:20 13:16
cited 23:23	conclusions 9:2 13:4,10
Clean 32:20,24	condition 42:9
clearing 40:22	conditioned 19:4
climate 15:16	conditions 4:9,21 7:11 8:16 9:11,15 10:15 11:5 13:18 14:10 15:18 19:16 20:7,12 22:20 40:7,15,16 41:6,20 42:7
close 16:8,13 18:3 41:15	conduct 9:16
co-presided 4:2	conducting 17:7
coating 29:20	confirmed 39:15
collection 14:19 41:3	conjunction 24:11
collectively 4:12	Consequently 9:10
combating 15:15	conservation 1:15 2:17 3:20 4:5 6:19 7:18 9:20 10:4,5,9,21 11:13,20,23 12:2,3,4,14,16,17 12:22 22:6 23:24 24:10
combined 18:22	consider 16:25 37:12
come 44:9,12	consideration 36:3,6,21 38:5
comes 28:20 34:12	considering 37:19
coming 29:23	consistent 19:25 25:22 29:21 30:21 33:9,22
commence 42:14	consisting 45:6
commenced 2:2	construct 4:14 40:10
comment 12:5	constructed 4:17
comments 6:5,8,9,12 20:15,17,20 20:23 21:2 42:2,22,23 43:2,5 43:8,11,13,15	construction 1:6,8 3:13 8:21 9:14,18 10:2,13,18 11:7 15:23 16:9 19:13,23 21:8,11,18,23 21:24 34:15 39:19 40:17,22 41:3,4,5 42:14
commercial 14:18 15:5	consultant 8:8
commercial-scale 4:15	consultation 24:12
Commission 32:19,23 40:19 41:18 42:17	contains 17:24 40:14
Commissioner 2:16,18,20	continue 19:8 38:2,11
community 5:8 6:11,13 15:14 17:19 18:24 33:24 35:3 38:20	contribution 17:18
Compatibility 1:5,8 3:12 4:8 39:18 40:6	contributions 15:14
compensates 11:13	control 42:10,15
compliance 12:5 16:4 19:18 26:23 28:18 40:15,21,25 41:10 41:15,19,23,24,25 42:2,4,6	Corey 39:22 42:19
compliance-phase 12:21	Corporation 1:18
complied 22:23 28:9	
complies 8:19 12:6,19 19:16 32:7	

correct 21:20 24:19 25:5 30:7
corresponding 42:6
cost 21:23,24 34:16,18 35:7,9
Costello 3:16,23,24 4:2 20:9
 22:3 25:7 35:22 36:17 37:8,16
 38:4,7
counsel 3:22 8:7 25:10 34:12
 39:24
counter 6:15
counterbalance 38:19
counterbalancing 38:12
County 1:5,7,9 3:11,15 4:11,17
 39:21 40:13
couple 23:22
Coxsackie 1:7 3:15 4:16 6:20,21
 6:25 7:5,14 15:3 17:6 23:3
 24:18 31:8,9 32:8,9 35:19
Coxsackie's 14:16
cross-examination 27:13
cumulative 18:16,19 19:3 31:7
 32:15 33:3,5 37:23

D

D.E.C 7:20 10:10,19,24,25 12:16
 21:7,17 22:2,25 23:7,23 24:2
 24:11,12,13 27:11
D.P.S 21:13,17 27:10
daily 9:16 10:16
Dakin 3:20
dangers 42:11
Daniel 1:21 2:25
data 35:5
Date 1:12
day 29:10 30:21 45:10
December 40:3
decided 24:23
decision 8:11,15 21:25 22:16,17
 23:8 24:8,9 26:11,17,19 27:15
 27:20,21,25 28:11 31:4,14
 34:14 37:14
decision's 13:15
decisions 22:15
decommissioning 14:8 38:16
deemed 20:4 25:17
definitely 33:11
definition 26:8
delays 21:22,24
deliveries 41:5
delivery 42:13
demonstrate 12:13 16:20 17:9
demonstrated 41:11
demonstrating 8:18 13:20 18:13
 41:15
denied 21:19 23:21
density 23:3
deny 21:25
Department 1:14,16 2:6,16,19,21
 3:16,18,19,21 4:4 5:18 6:7,17
 6:18,19 7:17 9:19,20 10:8
 22:5 27:11 39:22 42:3
described 31:22 39:4 43:18
description 41:9,11
design 16:8
designated 2:6
designed 19:4,18 27:3
destroyed 32:8,8
detailed 42:10,15
detect 9:17 10:16
detection 9:21
determination 25:25 26:6 28:8
 29:10 30:19,22 31:2
determinations 26:25
determine 21:17 27:21 29:6
determined 22:19 25:13 26:24
 27:20 35:25 36:9,21
determines 18:6
determining 30:13
developed 24:11 36:4
developer 34:22 36:9
development 1:18,20 2:21,23
 6:14 18:3 35:2
diagrams 41:14
direct 27:8,12
director 2:4
disagrees 10:24
discuss 27:7
discussed 24:6 25:13
discussion 21:6 34:20 36:8
 37:25
distance 30:9
districts 14:18 15:6
document 5:13
documents 41:15
doesn't 36:22
doing 38:10
dollars 36:15
don't 24:22 29:6 30:2,25 35:18
Dr 1:16,16 2:17 20:19,20 39:6,7
 43:3,4,21,22
draft 10:23 11:2,10 12:8 13:2,9

14:3,11 15:12,17,23 16:2,14
 16:19,25 17:11,22 18:6,11,25
 23:6 26:20 40:24
drawings 41:14
dwellings 16:24

E

economic 2:21 6:13 15:9 20:4
education 5:9
effect 36:19
eight 18:4
Either 30:17
electric 1:2,6 2:5,8 3:14 40:4
electric- 4:15
electricity 4:19
eliminate 15:22
Elizabeth 1:16 2:17
emissions 15:16
Empire 1:17
employed 11:22
encouraged 6:5
endangered 9:3,6,10,17,23,25
 10:12,17 11:6,14 12:7,20 21:7
energy 1:4,4,4,20 2:23 3:9,10
 3:10 4:9,10,11 6:14 14:22
 16:10 17:19 19:25 20:2,3
 32:20 40:11
engaged 5:18
engineering 7:11
ensure 12:6,22 28:17 42:6
ensures 41:25
entered 7:14
entering 7:24
entire 9:6 26:10 29:11 32:9
entity 25:15
Environment 1:3 2:9 40:5
environmental 1:5,8,15 2:17
 3:11,19 4:4,7 6:10,18 7:12,18
 8:14,19,21 9:16,20 10:8 15:19
 19:5,12,19 22:5 32:14,21,25
 39:17,23 40:6
especially 13:24 15:10
establish 16:4 17:13
establishing 5:12
estimate 12:11 36:10
evaluation 42:12
event 9:13 10:16 27:23
evidence 11:11 12:10 18:10
 23:10,11,13,17,22 24:5,7,8
evidentiary 4:24 23:2 37:10

exactly 29:19
examiner 4:3 22:4 31:24
examiners 5:21,22 6:4 8:10,17
 8:25 10:10,20 13:4,10 14:23
 16:3,14 26:25 28:3
example 32:19
exception 10:19 11:2,10 12:24
 13:15
exceptions 8:10,24,25 10:9,24
 11:17,19 12:9 23:8 27:16
excess 16:13
exempt 32:14
exists 16:13
expert 24:15
expertise 23:23
experts 27:9
extensive 5:5
extent 7:23 8:23 13:8,22 14:7
 14:13 15:21 17:17 19:6,15
 27:2
externalities 35:9 37:5

F

F-0559 1:22
facilities 31:11 33:12 35:12,16
facility 1:6 3:14 4:16,17 7:19
 8:9 10:6 15:15,19 16:17 17:3
 17:13,16 19:4,14,18 25:24
 28:14,19 29:24,25 40:11 41:4
facility's 7:22 15:23 27:3
fact 13:3 25:3 29:22 35:16
factor 38:12
factors 20:4 38:20
factual 14:4
failed 17:9
fair 5:5
Farm 1:9 39:19
farming 19:8 38:2,11
farmland 13:24,25 14:8 38:17,17
farmlands 15:20
favor 39:3,5,7,9,11,13 43:17,20
 43:22,24 44:2,4,6
fellow 20:14 42:23
fifteen 31:20
fifty 4:19
fifty-seven 41:2
filed 27:7 42:2,5,15
filing 18:12 27:18 41:24
filings 40:15,21,25 41:19,24
 42:3,4

final 10:3 12:4,6,13,22 24:10
 24:14 29:9 34:12 37:21 41:13
Finally 41:22
financial 6:10
finding 16:3 19:12,17
findings 4:25
finds 15:17 17:11,22 19:22
first 8:13 10:10,25 18:7 24:4
 25:13,20
five 9:21 27:24 34:24
Flats 23:3
Flint 15:2,11,25 18:16 31:11
flows 20:10
focusing 6:9
following 42:8
foot 9:22
foregoing 45:3,6
foresee 34:7,8
forth 20:2
forty 34:24
forty-six 41:2
four 27:24 34:23 42:13
full 29:15
fully 10:11
funds 6:24 7:4
further 8:8 44:9,12
future 19:10 33:18

G

gas 2:5 15:16
general 3:22 25:25 26:17 39:24
generally 13:7
generate 4:19
generating 1:6 3:14 4:16
Generation 1:2 2:8 40:4
generic 32:21,25
give 26:17 33:25
given 15:10
glare 16:4,6,18,21,23 17:4,7,14
 17:16,20 25:4,23 27:4 28:2,9
 28:13 29:3,23
global 6:15
go 23:19 25:7 30:2 35:5,19
 38:17
goals 17:19
going 20:13 22:3 29:23,24 34:23
 35:2,6,9,14 36:12
good 2:3 3:24 22:7,9 32:4 33:15
 34:5 40:2
governing 13:5

grant 4:20 17:2
granted 17:12 40:5
granting 4:7
grassland 9:3,6,18,23,25 10:5
 10:12,17 11:7,14,23 12:15,25
 18:14
Green 4:11
Greene 1:4,4,4,7 3:9,10,10,15
 4:10,10,12,14,16,20 5:10,24
 6:16,23,23 7:2,5,7,13,17,25
 8:17 10:3 11:18,20 12:9,13,24
 13:2,15,19,23 14:4,15 15:6,19
 16:20 17:9,12 18:3,11,22 19:7
 23:13,19 24:12,25 31:12 34:15
Greene's 11:12 12:11 13:16
 16:23 17:2 18:7
greenhouse 15:15
grounds 12:10
guess 23:21 24:24 25:3 28:24
guide 7:12 8:17 13:19 14:11
guys 31:23 36:11

H

habitat 9:4,7 10:2,6,22 11:8,16
 11:21 12:12,25 13:6,7,12
 17:23,25 18:2,2,12,14 21:11
harassment 10:15,23 11:15
harms 6:15
harrier 9:8
he's 38:2
health 1:16 2:19 6:10 8:20
 19:19
hear 33:16
heard 27:6
hearing 45:8
hearings 6:4
heat 16:6
Hecate 1:4,4,4 3:9,9,10 4:9,10
 4:11,12,14,20 5:10,24 6:16
 7:13,17,25 8:17 10:3 11:12,20
 12:11,12 13:16,19 14:15 15:18
 16:20,23 17:2,9,12 18:3,6,11
 19:6 21:21,23 23:13 24:12,24
 31:11 34:15
held 5:21
help 19:7 38:20
helping 38:13
hereof 45:5
hereto 45:5
hereunto 45:9

hey 35:2
highlighted 42:11
highly 13:24
hoc 1:21,22 2:25
holder 40:16,20 41:8
holistic 19:2
Hollow 6:22 7:3,6 8:2,3
hope 34:11
hopefully 21:20
hosted 6:4
hosting 5:12
hour 21:9
hours 9:21
houses 5:12
Howard 1:16
Hudson 6:22 7:7 11:18 23:19
Hudson's 12:9
huge 35:11,15
hundred 4:18 6:8 9:22 36:11,14
 40:12

I

I'll 26:19 28:12
I'm 5:25 20:13 21:14,19,19 22:3
 25:10 33:20 34:4,6 35:23
identified 20:13
ignore 33:14
impact 17:15 18:23 29:2 31:7
 32:15,22,25 33:4,5,23 36:3,13
 37:24 40:17
impacted 18:3
impacts 6:11 7:22 8:14,21 9:2,4
 9:12 10:11 11:6 13:6,11,14,20
 14:2,5,7,12 15:19,20,21 17:19
 18:16,20 19:3,5,13 26:25
 32:17 36:20
implemented 5:10
impossible 26:4,15 28:4,5,22
 29:4,7,12 30:19
impracticable 9:13
inability 26:22
include 6:17 9:11,15 10:15
 16:23
included 7:10
includes 27:8
including 10:13 11:15 12:18
 14:9 17:16 20:6 40:16,21
independent 26:13
indicated 8:3 21:22 24:24 31:8
indicates 31:13

indirect 10:14,22 11:14
individual 31:17
individually 31:25
individuals 10:14
industrial 14:18 15:6
information 5:15,22 34:14,25
 35:23 36:4,16 37:5,9,15
initial 18:8
instances 5:8
insufficient 11:24 12:6
intended 9:11
intent 29:15
interest 19:24 33:9,23
interests 15:13
interpret 25:21 28:13
interpretation 16:15 26:21
interpreted 25:22 28:2
intervenor 6:24 7:3 33:20 35:4
intervenor 27:10
introduce 2:13,24
involvement 5:11
involving 8:2
issue 22:14 23:9 24:6,9 27:17
issued 4:9 8:11 18:19 22:17,18
 32:20,25
issues 7:9 8:8
issuing 4:25
it's 21:20 23:7 25:12 26:8
 28:22 30:16,22 31:19,19,22
 33:12 35:2,6 38:8,10,16
item 4:6 20:9,14 42:22
items 21:21

J

James 1:14 2:15 3:15,25
John 1:19,22 2:21 3:2
joint 11:17
Judge 3:16,18,19,21,23 20:8,15
 27:6 39:4 42:24 43:18
jurisdiction 40:19 41:18 42:17

K

Kauffman 1:19
keep 38:20
Kevin 1:17
kind 21:10
know 24:22 25:11 26:10,17,20,22
 27:23 28:10 30:20 31:7,24
 32:2,3,5,10,18 33:5,7,8,10,11
 33:18,19,24 34:5,6 35:15,17

35:18 37:10 38:13 knowledge 24:16 known 2:9 Kohler 1:21 2:25 21:4,5,15,16 22:8,9,12,24 23:15,18 24:17 24:21 26:12 28:24 29:17 30:2 30:5,9,15,24 31:6 33:15,25 34:11 36:7 37:4,13,21 38:6,23 39:12,13	LLC 1:4,4,5,7 local 5:13 6:13 14:16,24 15:14 17:5,23 18:10,12 19:19 25:16 25:16,21 26:4,21,23 27:19 28:13,15 30:14,17,18,20,23 located 1:6,9 3:14 9:7 15:2 39:20 long-range 19:25 looked 22:14 31:17 34:13 loss 10:21 11:16 13:23 37:6 lot 14:20 16:7 34:14 35:13,18 lower 23:3
L	M
L.L.C 3:9,10,11 4:10,10,11 39:17 laid 34:25 37:20 Lake 6:22 7:3,7 8:2,3 land 4:18 6:23 7:7 11:18 12:9 19:9 23:19 31:9 32:2,4 34:2 38:16 landowner 19:7 37:25 38:9,18 language 28:18 law 1:6 3:13,16,17,19,20 5:3 13:3 15:4,7,22,24 16:15 17:5 17:23 18:10 24:19 25:2,14,17 25:17,21,25 26:4,7,15,21,23 27:19 28:8,13,19,22 30:14,17 30:18,20,23 31:12,14,16,22 34:7 40:8 laws 8:20 13:5 14:17,25 19:20 24:22 25:16 lay 25:11 37:18 layout 7:19,21 lease 19:6 LeCakes 3:20 legal 11:22 12:14 14:4 21:19 32:13 Let's 31:19 Lewis- 2:17 Lewis-Michl 1:16 20:19,20 39:6 39:7 43:3,4,21,22 life 10:7 13:25 lightly 33:13 limitations 41:20 limited 24:6 limiting 14:18 15:5 line 25:5 lines 14:21 listed 9:9,12 lists 5:21 literally 34:5 live 27:13	maintain 32:3 maintains 17:7 maintenance 16:9 41:4 management 10:5 Managing 39:21 maps 41:13 Markets 6:20 material 29:15 matter 17:14 28:14 matters 24:2 Mauro 1:22 3:2 43:12,13 44:3,4 maximum 7:22 8:23 13:8,22 14:6 14:13 15:21 17:17 19:5,14 McBride 3:18 4:4 22:5,7,10,13 23:5,16 24:4,20 27:6 McClymonds 1:14 2:15 20:16,17 39:4,5 42:24,25 43:18,20 mean 34:4 36:22 means 6:6 25:25 26:8 29:23 measure 25:4 measures 13:17 meet 26:5,7,15 28:21 29:4,7,12 30:14,17,18,20 31:2 meeting 1:11 2:2,11 17:18 meets 12:23 28:23 megawatts 4:19 40:12 Member 1:21 members 1:22 2:14,25 3:25 5:15 6:2 20:15 40:3 42:23 memorandum 7:25 mere 29:22 Michl 2:18 microphone 21:15 milestones 5:7,20 million 34:24 Mine 15:2,11,25 18:16 31:11

minimal 14:9
minimization 13:17
minimize 9:12 11:5 15:19 28:25
minimized 8:22 13:8,21 14:6,13
 19:14
minimizes 7:21
minimum 17:10
minor 17:14 28:14
minutes 16:21
Mirch 1:22 3:2 43:14,15 44:5,6
misdirection 16:11,16
Mitchell 1:13 2:3,4 3:7 20:8,19
 20:22,25 21:4 38:25 39:2,6,8
 39:10,12,14 42:21 43:3,6,9,12
 43:14,16,21,23,25 44:3,5,7,13
mitigate 9:24 19:4 42:11
mitigated 8:22 13:8 17:17 27:2
mitigates 10:21
mitigation 11:24,24 12:19 18:5
 40:17
modifications 41:21
modified 8:17
Mohawk 11:4 22:17 23:2
Molly 3:18 4:3 22:4
money 35:18
monitor 9:16
monitoring 21:9
Moreno 3:17 4:3
morning 2:3 3:24 22:7,9 40:2
motion 26:4
move 35:11
moving 2:12
multiple 33:24
municipalities 34:23 36:10

N

N.Y.C.R.R 41:7,17,22
name 2:3 3:25 45:10
nameplate 40:11
nature 37:10 38:9,14,21
near 29:25
necessarily 26:12
necessary 17:10
Need 1:5,8 3:12 4:8 39:18 40:6
needed 42:11
negotiated 34:21
neighboring 16:12,17,21,24 17:8
 17:15 30:6
nests 9:22
net 10:3,20 11:12,19,25 12:2,4

12:13,17,22 23:24 24:9
never 31:3
Nevertheless 8:9 33:6
New 1:2,19 2:5,8,20,22 40:4
 45:2
nine 31:9,19
noise-complaint 7:12
non-payroll 34:16
northern 9:8
noted 23:5,7,8 32:16
notice 5:6,19 18:9
notification 9:19
number 5:14
numbers 36:11
numerous 5:9

O

objectives 20:2
occupied 9:7 11:8,21 12:12
 31:10
occurred 27:14,15
October 32:22
offers 13:3
office 2:4
Oh 21:16
Okay 22:24 23:18 24:17,21 30:15
 31:5 36:7 37:4,13,21 38:6,23
once 21:9 40:19
one-stop 25:15
one-to-one 17:25 23:20 24:18
ongoing 34:18
onsite 9:16
open 5:12 20:11
operate 4:15 19:18 40:10
operation 8:22 10:3 16:9 19:13
 19:23 41:3
operational 40:17
operations 19:8 38:11
opinion 23:25 24:2
opportunities 5:9
opportunity 18:9
opposed 6:9 17:6
order 2:12 4:7,22,23 10:16,23
 11:2,11 12:8 13:2,9 14:3,11
 15:12,17,23 16:2,14,19,25
 17:11,22 18:6,11,25 19:22
 20:6,10 21:12 23:6 26:20
 29:10,13 31:14 32:21,23 39:14
 40:25 41:10,13 42:2,7 44:7
orders 32:18

originally 21:7
Ossias 39:21, 25 40:2 42:21
outcome 33:21
outreach 5:9, 19
outside 14:17
outweighs 17:19
overrode 23:25
overrules 12:8
overview 5:23, 24
owl 9:8
Owners 6:22 7:2, 6 8:3

P

page 26:24 27:24, 24 45:5
pages 28:11 45:6
panel 23:15
parks 16:12, 18
part 26:20 30:25
participating 19:7
participation 5:10
particular 27:17
parties 6:17 7:8 8:10 18:9
party 5:20 8:6
party's 8:24
payments 19:6 35:7
payroll 34:17
people 24:15 35:9, 10
percent 14:20 31:9, 19, 20, 20
percentage 33:19 34:2
perceptible 16:6
permanent 2:14 14:7 15:20
pertain 41:2
phase 12:5 42:13
phases 5:4
Phillips 3:3, 5, 8 21:14 44:9, 11
pieces 23:22
PILOT 34:21 36:8
place 12:15 22:22 45:4
places 36:20
plain 28:18
plan 7:12 10:4, 21 11:13, 20 12:2
 12:4, 6, 14, 17, 18, 22 18:13 20:3
 23:24 24:10, 10, 15 42:10, 15
planning 20:2
plans 41:13
please 3:23 21:15 39:25
point 18:4 31:18, 21, 23 32:5
 33:7, 18 34:24
pointed 38:19, 21
points 16:22

policies 19:25
posed 6:2, 15
position 16:19 23:14
positive 15:14 35:17
possibility 38:18
possible 26:7, 14 30:14 38:16
potential 7:22 8:13 11:15 13:14
power 4:15
practicable 7:23 8:23 13:9, 22
 14:7, 14 15:21 17:17 19:6, 15
 27:2
pre-application 5:4 6:24
precedent 11:4 22:14, 19 36:25
predict 34:9
preliminary 11:19, 25 12:17
prepare 10:3
presence 9:17 10:17
present 18:10
presentation 42:18
presented 3:15 39:21
preservation 17:23 18:13
prevent 16:10
previous 22:15
previously 14:25 36:25 40:20
prewritten 27:12
prime 13:24 14:8 15:20
prior 22:19 35:25 36:18 37:24
probable 19:12
procedures 12:21
proceeding 6:17 11:3 18:17
 44:15
proceedings 45:7
process 5:3, 17, 23 6:3 20:10
 24:13
produce 17:13
produced 16:6
productive 13:24
program 5:11
prohibiting 14:17 16:15
project 1:9 5:16, 20, 25 6:3, 9, 12
 7:16 8:4, 14, 18, 21 9:6 10:2, 7
 11:22 12:12, 25 13:4, 25 14:8
 14:12, 20, 22 15:2, 11 18:20, 20
 19:10, 23, 24 31:16, 17, 18, 25
 33:22 39:20
project-specific 5:13
project's 13:6, 11, 13, 20 17:18
projects 14:17 15:5 18:23 19:3
 33:8, 24 36:19
properly 36:4 37:3

properties 16:12,17,22,24 17:8
17:15
property 6:22 7:2,6 8:3 25:5
35:10,24 36:3,13,14,20 37:2
proposal 7:10,20
proposed 4:6,22,23 7:10,21 9:10
11:4,23 12:19 13:16,18 14:10
15:15,18 19:22 20:6 22:21
proposes 4:14 18:4
protect 15:8
protected 18:2
protection 17:25 18:13
protections 11:22 12:15 22:21
protocol 7:13
provide 18:8 27:12
provided 5:6,22,24 11:25 14:4
19:15 36:11 37:9
provides 12:17
provision 15:11 16:5 17:4,5,21
17:23,24 24:25 28:2
provisions 9:11 28:15
public 1:5,6,8 2:6 3:12,13,17
3:18,21 4:8 5:2,6,6,10,11,15
5:18,18,21 6:2,4,5,8,18 8:20
9:19 12:5 16:12,12,17,18
19:24 25:14 27:11 32:19,23
33:9,23 39:18,22 40:6,7,18
42:3,17
pursuant 1:5,8 3:12 5:2 39:18
40:7 41:6,22
put 23:12,13 29:20 35:3 38:9
putting 31:25

Q

Quality 32:14
question 22:4,11 26:13,18 28:4
28:24 29:8 31:6 33:10 34:5,13
37:22,23 42:25 43:10,13
questions 3:23 6:2 20:15,18,21
20:24 21:3,5 24:23 38:24
39:25 42:19,22,24 43:4,7,15
quote 16:5,8,8,13 17:24 18:3
26:24 41:8,15

R

radius 41:4
raised 7:9 8:10,25 10:9 11:18
22:14 33:6
raising 34:8
range 34:2

ratepayers 17:21
ratio 11:25 12:19 17:25 18:5
23:21
Ravaschiere 1:17 2:19 20:22,23
39:8,9 43:6,7,23,24
read 22:24 28:12 29:13 31:8,12
really 28:5 30:10,19,20
reason 25:6,7,11
reasonably 41:25 42:6
received 6:7
receptor 16:22 25:24
receptors 28:10 29:25
recognize 27:3
recognizes 15:12 18:25
recommend 20:5
recommendation 39:3,15 43:18
44:8
recommendations 10:10 13:11
recommended 8:11,14 13:15 14:24
16:3 22:16 23:8 24:9 27:15
31:14 34:13 37:14
recommending 40:25
reconcile 24:3
reconsider 36:24
record 4:24 8:15 11:3,11 12:10
14:9 16:3 19:11,16 20:12
23:10,12,14,17 24:5,7 25:12
27:5 28:12 29:11,13 30:13
35:20 36:5 37:9 38:10 45:7
recreation 35:14
reduce 29:2,3
reduced 35:10
refer 4:12 22:3
reflect 29:16,22,22
reflection 16:11,16
reflective 29:17
regarding 13:11 26:20 33:24
regulations 12:7 19:20 22:22
24:16 41:7,16
rejected 18:17
rejecting 13:3
related 40:21
relevant 13:18 14:10 20:4
relies 35:13
renewable 6:14 36:19
replacement 23:20 24:18
reported 45:4
Reporter 45:13
reports 41:14
repositories 5:14

representing 2:7, 13, 16, 18, 20, 22	saying 29:5 33:20 38:12, 19
request 17:2 18:7	says 37:2 38:18
requested 14:16 17:10 21:7, 8	Scenic 6:22 7:7 11:18 12:9
requests 21:25	23:19
require 19:2 32:15 33:3 40:15	screening 7:16
required 12:13 38:3 41:8	season 9:14 10:13
requirements 12:20 14:23 30:8	seasons 11:9
41:9, 12	second 10:19 11:10
requires 10:4 18:11 31:16	secretary 3:3, 7 21:14 42:16
requiring 14:20 17:24	44:9
requisite 5:11	section 40:8 41:7, 17, 23
research 1:20 2:23 26:14	see 23:6
residential 16:24	seeks 15:8
resolution 7:13	seen 29:24
resources 9:4 13:14, 21 14:5, 12	SEEP 8:16 13:18 14:10 42:14
respect 5:7 8:9, 13, 25 9:5 10:25	Seggos 1:14
13:13 15:4 17:8 21:6 24:21	semantically 21:20
25:3 27:17 35:23, 24 37:2	sense 26:17
result 10:2, 14, 23 12:2 13:25	sent 5:19
17:20 28:14	separate 7:24 19:3
resume 21:18	September 1:12 45:10
retain 19:9	SEQRA 33:3
review 5:3 32:14 41:23	serve 2:7 19:23
reviewed 22:16 42:4	service 1:6 2:6 3:13, 17, 18, 21
reviewing 8:7 22:13	5:3, 18, 21 6:18 9:19 25:14
Richard 1:19	27:11 32:19, 23 39:22 40:8, 18
right 21:19 29:19 30:18 31:18	42:3, 17
37:17	sessions 5:22
roads 16:12, 18	set 20:2
Robert 3:21 39:23 45:3, 13	setback 30:8
roosts 9:22	settlement 7:10, 15, 19
Rosenthal 3:22 25:9, 10 26:16	shopping 25:15
29:9, 19 30:4, 7, 12, 16 31:5	short-eared 9:8
32:12 33:17 34:4 39:24	show 26:19, 22 27:22 28:21 29:14
rough 34:2	showing 28:9
route 42:12	sighting 21:10
rule 34:9	significance 15:10
runoff 32:5	significant 5:7, 20
rural 15:8 18:23	single 33:23
<hr/> S <hr/>	
s 10:25 12:16 24:2	site 7:11 9:7 10:6
safe 21:18	site-specific 32:16
safety 8:20 19:20	siting 1:1, 2, 11 2:1, 9, 10, 11, 14
Sanford 1:9 39:20 40:13	3:1, 25 4:1, 25 5:1 6:1 7:1 8:1
satisfaction 28:18	9:1 10:1 11:1, 3 12:1, 25 13:1
satisfactory 23:24	14:1, 24, 25 15:1, 7, 13 16:1
Saving 6:23 7:2, 5 12:24 13:2, 14	17:1, 3, 5 18:1, 17 19:1 20:1
13:23 14:4 15:6 18:22	21:1 22:1, 15, 18 23:1, 6 24:1
saw 22:16	25:1, 10, 12, 15, 20 26:1, 3, 5, 21
	26:23 27:1, 20 28:1, 3, 5, 7 29:1
	30:1 31:1 32:1 33:1 34:1, 9

35:1,25 36:1,2,19,24 37:1,3
 37:11 38:1 39:1 40:1,3,5,18
 40:19 41:1,6,16,17 42:1,16
 43:1 44:1 45:1
situated 16:8
situation 28:17
sixty-five 4:18
sixty-seven 18:14
Sleepy 6:22 7:3,6 8:2,3
social 20:4
solar 1:6 3:14 4:15 11:4 14:17
 14:19,22 15:2,5,11,25 16:4,10
 16:11,16 17:4,7,20 18:16,20
 18:20 22:17 23:2 24:22 29:14
 31:10 35:12,15
sorry 5:25 21:14,16 35:23
sort 25:18 26:8,10 30:16 35:4
species 9:3,6,9,10,12,18,23
 10:12,22 11:6,7,15 12:3,7,20
 21:7
specific 29:15 33:6 40:14
specifications 13:19 14:11
specified 41:20
speculation 32:11
staff 7:18,20 10:9,10,19 20:5
 23:7 24:13 27:10 33:11 42:3
staff's 10:24
stage 6:24 7:3
standalone 31:17
standard 18:12 25:18 32:20,24
 33:7 41:23
standards 12:23
start 3:8
state 1:2,18,20 2:5,8,20,23
 8:19 9:9 12:20 13:5 19:19,25
 20:3 25:16,17 31:13 32:14
 40:4 45:2
state's 17:18
stated 22:25 27:25 29:4 33:12
 45:5
statement 6:4 23:12 32:22 33:2
states 16:5 38:15
stating 8:6
statutory 4:24
stop 10:16 21:12,12
strategy 20:2
Strub 39:22 42:19
studied 16:22
studies 41:14
study 42:12

stuff 29:17
sub-G 41:17
subject 4:8,21 15:17 36:5 41:5
 41:19 42:8
subjecting 12:4
submission 26:3
submit 41:8
submitted 6:6 40:20
subscribed 45:10
substantive 17:24
substation 41:3
sufficient 11:5 12:14,21
summary 19:11 20:9
sunlight 29:16
Supervisor 39:23
supplemental 32:25
supplemented 32:24 42:5
supplements 42:4
support 6:12,14 8:4 18:10 20:14
 23:9,11,12,13,14
supported 4:23 20:11
supports 4:24 11:12 12:11 19:11
 19:17
supposed 35:2
sure 21:19 22:12
surveys 9:16 10:16
system 16:10 21:10
systems 14:19

T

T 4:3
take 9:24 10:14 25:9 26:9,19
 27:23 28:10 30:11 33:12,13
taken 11:21 12:12
takes 10:19,22 11:14 12:24
 13:15
talking 35:17 37:22
Tammy 1:13 2:4 39:2
technical 8:8 24:13
telephone 5:14
telling 34:6
terminology 21:20
terms 4:9 41:20
tested 31:4
testimony 23:10 27:9,12
thank 3:7 20:7,8 22:10 31:5
 38:23,25 39:14 42:20,21 43:16
 44:7,13
that's 24:7 25:18 27:7 28:4
 29:7 30:7 31:7 32:10 33:15

<p>34:21,21 36:2 37:2 38:21 there's 21:8 22:25 23:11 27:7 27:12,13,15 32:13 34:16 35:14 thing 25:20 things 5:12 10:5 28:25 29:2 37:7 think 32:12 33:9,18,19 34:25 35:8,22 36:17 37:22 thinking 26:10 thorough 20:11 thousand 36:12,15 threatened 9:3,5,17,23,25 10:11 10:17 11:6,14 21:6 three 4:17 6:7 time 18:8 45:4 today 18:21 40:24 44:10 toll-free 5:14 total 40:11 tourism 35:13 town 1:6 3:15 4:16 6:20,25 7:4 7:13 14:16 15:9 17:5,6 19:8 24:19,25 25:23 28:2,19 31:8 33:6,12 34:22 35:4,13,16 38:12 town's 16:4,19 17:4 towns 1:9 15:2 36:20 39:20 40:12 traffic 42:10,11,15 transcription 45:6 transmission 14:21 treat 26:3 tree 40:22 true 45:7 Trust 6:23 7:7 11:18 23:20 Trust's 12:9 try 37:17 Tuesday 1:12 turbine 41:5 turbines 42:13 turn 20:14 21:15 42:23 turned 36:13 turning 18:15 41:4 twenty 14:19 31:20 36:12,14 twenty-four 9:21 21:9 26:24 40:12 twenty-seven 28:12 twenty-six 28:11 two 5:21 6:4 9:2 10:9 18:23 21:21 31:10 35:11,15 type 34:7</p>	<p>types 40:22 typewritten 45:6</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimately 8:6 26:5 27:4,25 unable 27:22 underestimates 11:21 understand 28:25 29:5 30:24 31:2,4 understanding 7:25 34:6 35:20 undertook 32:21 unnecessarily 15:24 unreasonable 16:5,18 unreasonably 25:17 26:8 30:22 30:25 use 9:15,21 12:25 29:21 uses 19:10 Utility 39:23 utility-scale 14:17,19,22 15:5 16:10 31:10 40:10</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>value 36:13 values 35:10,24 36:3,14,20 37:2 various 8:9 vegetative 7:16 venues 37:7 Village 6:20,21,25 7:4,5,14 8:5 Vincent 1:17 2:19 violation 28:15 visual 7:14 15:20 17:15 19:5 26:25 28:25 vote 39:2,3,4 43:17,17,19</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>waive 14:24 15:7,23 17:5 25:18 waived 19:21 25:2 waiver 14:16 15:10 17:6,10,11 18:7 25:6 waiving 17:20 want 23:20 35:11 wanted 35:5 warming 6:15 water 2:5 way 25:4,13,22 28:17 31:12,22 we've 25:13 32:7 Webex 6:5 website 5:13 wedding 37:7 week 6:3</p>
--	---

weight 11:11 12:10 21:24	11:18 44:15
went 21:9 25:2	16 41:7,17,22
wetland 7:19	16- 1:22
wetland's 7:22	16-F-0559 1:1,7 2:1 3:1,2 4:1
WHEREOF 45:9	5:1 6:1 7:1 8:1 9:1 10:1 11:1
wildlife 13:5,7,12	12:1 13:1 14:1 15:1 16:1 17:1
Williams 1:19 2:22 20:25 21:2	18:1 19:1 20:1 21:1 22:1 23:1
39:10,11 43:9,10,25 44:2	24:1 25:1 26:1 27:1 28:1 29:1
wind 1:7,9 39:17,19 40:7,10,10	30:1 31:1 32:1 33:1 34:1 35:1
Windsor 1:9 39:20 40:13	36:1 37:1 38:1 39:1,16 40:1
wintering 9:7,14 10:13 11:9	41:1 42:1 43:1 44:1 45:1
wiring 14:21	168 40:8
withdrew 8:6	16th 8:12 40:3
WITNESS 45:9	17-F-0619 1:1,4,21 2:1,25 3:1,8
witnesses 27:14	4:1 5:1 6:1 7:1 8:1 9:1 10:1
work 10:16	11:1 12:1 13:1 14:1 15:1 16:1
working 24:14	17:1 18:1 19:1 20:1 21:1 22:1
works 25:14 32:6	23:1 24:1 25:1 26:1 27:1 28:1
wouldn't 35:21 36:15	29:1 30:1 31:1 32:1 33:1 34:1
written 31:22	35:1 36:1 37:1 38:1 39:1 40:1
WURTZ 45:3,13	41:1 42:1 43:1 44:1 45:1
X	18-F-0087 15:3
Y	2
yeah 23:5 29:18	2 1:4 3:10 4:10
year 31:19 36:12,15	2015 32:20
years 34:24	2019 40:3
York 1:2,19 2:5,8,20,23 40:4	2020 32:22
45:2	2021 1:12 45:10
you'd 23:19	28 1:12
you're 29:5 34:11	3
you've 33:6 35:15	3 1:5 3:11 4:11
Younis 1:17	30th 45:10
Z	4
zero 16:21	44 45:7
zoning 15:4,7,22,24 24:19	5
Zucker 1:16	6
0	7
1	7 32:13
1 1:4 3:9 4:10 45:5,6	8
10 1:5,8 3:12 5:2,3,17,23 6:3	9
19:2 25:14 32:7 33:8 39:19	9-28-2021 1:1 2:1 3:1 4:1 5:1
10:30 1:12 2:2	6:1 7:1 8:1 9:1 10:1 11:1
1002.2 41:17	
1002.2(i) 41:23	
1002.3 41:7	

12:1	13:1	14:1	15:1	16:1	17:1
18:1	19:1	20:1	21:1	22:1	23:1
24:1	25:1	26:1	27:1	28:1	29:1
30:1	31:1	32:1	33:1	34:1	35:1
36:1	37:1	38:1	39:1	40:1	41:1
42:1	43:1	44:1	45:1		