

Siting Board - 16-F-0328 - 11-12-19

NEW YORK STATE BOARD ON
ELECTRIC GENERATION SITING AND
THE ENVIRONMENT

Case 16-F-0328 - Application of Number Three Wind LLC for
a Certificate of Environmental Compatibility and Public
Need Pursuant to Article 10 for Construction of a Wind
Project Located in Lewis County.

SITING BOARD
Tuesday, November 12, 2019
Albany, New York

JOHN B. RHODES, Chair

LOUIS ALEXANDER, alternate of Basil Seggos, Department of
Environmental Conservation

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

VINCENT RAVASCHIERE, alternate of Eric Gertler, Empire
State Development Corporation

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

Leslie A. Sheldon, Ad Hoc Member

William H. Schaab, Ad Hoc Member

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2 MR. RHODES: I'd like to call this
3 meeting of the Board on Electric Generation Siting
4 and the Environment to order. Before moving to the
5 agenda I would like to introduce the alternates
6 representing the permanent members of the Siting
7 Board. We have Lou Alexander alternate of Basil
8 Seggos, Department of Environmental Conservation.
9 We've got Elizabeth Lewis-Michl alternate of Howard
10 Zucker Department of Health. In New York we have
11 Vincent Ravaschiere alternate for Eric Gertler Acting
12 Commissioner in New York State Department of Economic
13 Development and President and Chief Executive Officer
14 designate of the Empire State Development and we have
15 John Williams also in New York City, alternate of
16 Richard Kauffman New York State Energy Research and
17 Development Authority. Also I would like to
18 introduce the Ad Hoc members of the Siting Board, we
19 have Leslie Sheldon and we have William Schaab.

20 Now I turn to you acting Secretary
21 Phillips, are there any changes to the agenda?

22 MS. PHILLIPS: There are no changes to
23 the agenda.

24 MR. RHODES: Thank you. So let's get
25 started. We're going to discuss Case 16-F-0328

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2 Application of Number Three Wind LLC for a
3 Certificate of Environmental Compatibility and Public
4 Need Pursuant to Article 10 for Construction of a
5 Wind project located in Lewis County, presented by
6 Maureen Leary Administrative Law Judge Department of
7 Public Service. We also have Molly McBride
8 Administrative Law Judge Department in -- of
9 Environmental Conservation. We have James McClymonds
10 Chief A.L.J. of the Department of Environmental
11 Conservation. We have Ashley Moreno Acting Chief
12 A.L.J. of the Department of Public Service. And Bob
13 Rosenthal, General Counsel of the Department of
14 Public Service, all available to answer questions.
15 Judge Leary, please begin.

16 MS. LEARY: Thank you. Good morning
17 Chairman Rhodes and members of the Siting Board. My
18 name is Maureen Leary, I am the presiding examiner in
19 this proceeding in which Number Three Winds seeks a
20 certificate of environmental compatibility and public
21 need, pursuant to Article 10 of the Public Service
22 Law.

23 As the Chair has noted with me is
24 Chief Judge James McClymonds from the Department of
25 Environmental Conservation, my colleague Molly

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2 McBride also from D.E.C., and acting Chief Judge
3 Ashley Moreno. All -- this team as well as many
4 members of senior staff, were instrumental during the
5 entire proceeding and as well as in presenting the
6 order today to the Siting Board.

7 I will offer hopefully brief remarks
8 today on the item before you, which is a proposed
9 order and certificate with conditions to be issued by
10 the Siting Board granting a certificate. The
11 certificate is subject to detailed commissions in --
12 including a site engineering and environmental plan
13 which I will refer to today as a CEP. Both of these
14 are -- that is the conditions on the CEP are included
15 as Appendices A and B to the proposed order.

16 This order authorizes Number Three
17 Wind to construct and operate a commercial scale wind
18 electric generating facility in the towns of Lowville
19 and Harrisburg which are located in Lewis County, New
20 York.

21 The project will consist of up to
22 thirty-one turbines having a total maximum generating
23 -- generating capacity of 105.8 megawatts. The order
24 also authorizes associated facilities including 12.5
25 miles of access roads, 32 miles of underground

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2 collection lines, a sub-station, two permanent
3 meteorological towers of approximately 200 feet in
4 height, an operations and maintenance building, a
5 construction laydown yard, a point of intra
6 connection switch yard, transmission lines and other
7 in -- intra connection facilities that will connect
8 the project to New York's Electric System Grid via
9 National Grid's Lowville Breman 115 kW transmission
10 line.

11 The Article 10 review process here was
12 fair and open and included the award of pre-
13 application and post-application intervener funding.
14 Public Notice was provided with respect to all
15 significant milestones in the case. There were
16 multiple instances of community outreach and
17 education, and numerous opportunities for public
18 participation.

19 The applicant sponsored open house
20 events, maintained a website and established a toll-
21 free telephone number for public questions and
22 comments. The Department of Public Service held two
23 information sessions in Lowville, followed by on-the-
24 record Public Statement Hearings in the Lowville
25 project area.

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2 Party status and pre-application and
3 application phase, intervener funding was awarded to
4 the towns of Lowville and Harrisburg. Party status
5 and application state inter -- intervener funding was
6 also awarded to the Tug Hill Alliance for Rural
7 Preservation, also known as THARP. THARP
8 participated throughout the proceeding.

9 The proposed order before you are
10 based upon an extensive evidentiary record that
11 supports all of the findings and conclusions the
12 Siting Board must make under Public Service Law
13 Article 10. Specifically Public Service Law Section
14 168. The record consists of Number Three Winds
15 application. The party's expert testimony and
16 exhibits, among other things. It was compiled during
17 an evidentiary hearing held over a three-day period
18 from May 15th, I'm sorry, May 13th to May 15th, in
19 the town of Lowville at which witness testimony was
20 taken on the record and other evidence admitted.

21 The examiners and the parties also
22 conducted site visits to facility component locations
23 during that timeframe. Although this was a fully
24 litigated case, the parties were able to resolve some
25 limited issues raised in the proceeding following the

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2 evidentiary hearing. This resolution was contained
3 in a June 2019 stipulation among certain parties.

4 Throughout the proceeding project
5 information was widely available to the public
6 through various means including the Department of
7 Public Services management document and matter
8 management system. Approximately 44 comments were
9 submitted to D.M.M. by the public throughout the
10 Article 10 process starting in 2018 and continuing
11 through October 2019. Those who support the project
12 in these comments cited the economic benefits to the
13 local area, including new and temporary jobs, PILOT
14 payments and the need for renewable energy in our
15 state.

16 Project opponents cited among other
17 things, adverse impacts on wildlife, concerns about
18 health impacts due to noise and shadow flicker,
19 aviation and lighting impacts, adverse economic
20 impacts on tourism and local businesses and the
21 cumulative visual impacts associated with the
22 facility and two other nearby wind farms known as the
23 Maple Ridge Wind Farm having 195 turbines, and the
24 Copenhagen Wind Farm with 40 turbines. In general
25 those opposing the project indicate that the adverse

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2 impacts of the project outweigh its benefits.

3 Notably the two host towns in which
4 the project will be located Lowville and Harrisburg,
5 have indicated no objections to the project. THARP
6 continues to oppose the project on several grounds,
7 including deficiencies and Number Three Winds public
8 participation efforts, adverse human health impacts,
9 adverse socio-economic impacts on area tourism, and
10 adverse visual impacts.

11 In the order the agreed upon
12 certificate conditions executed by the parties in the
13 June 2019 stipulation have been adopted. Some have
14 been revised however, and other conditions have been
15 added for purposes of both clarity and consistency
16 with orders issued in other Article 10 proceedings,
17 most notably Baron Winds and Cassadaga Wind.

18 On the whole the order and certificate
19 conditions the Siting Board is adopting here seek to
20 address the identified impacts of the project
21 including the impacts that have been the subject of
22 adjudication by the parties and comments by the
23 public.

24 Pursuant to Public Service Law Section
25 168, the order includes findings by the board that

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2 the probable environmental impacts of the
3 construction and operation of the project will be
4 minimized or avoided to the maximum extent
5 practicable based upon Number Three Winds compliance
6 with the order and the certificate conditions in
7 Appendices A and B.

8 Pursuant to Public Service Law 168.3,
9 the order includes a finding that the project will be
10 constructed and -- and operated in compliance with
11 all applicable local -- local laws. Section 168.3E
12 specifically provides the board may not grant a
13 certificate for the construction or operation of a
14 major electric generation facility unless the board
15 determines that the facility is designed to operated
16 in compliance with the applicable state and local
17 laws and regulations.

18 Here Number Three Winds sought a
19 waiver of subset of local laws governing the siting
20 of wind facilities from the towns of Lowville and
21 Harrisburg. In its application Number Three
22 requested that the Siting Board authorize the towns
23 to exercise that authority and grant a procedural
24 waiver of certain substantive laws governing the wind
25 facilities. Those laws included set-back

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2 requirements, collection and transmission line
3 undergrounding and several other requirements.

4 In this Siting Board I'm sorry, in
5 this order the Siting Board rejects the request.
6 Siting's determination in Cassadaga Wind and the
7 examiners recommend a decision. The Siting Board
8 here reiterates that allowing municipalities to waive
9 the substantive provisions of local law would
10 undermine the Article 10 process by allowing local
11 municipalities to preempt the boards waiver
12 authority.

13 The order here also finds that Section
14 168.3 -- that the -- I'm sorry. That the Siting
15 Board elects not to apply the local laws and in part,
16 upon finding the compliance is unreasonably
17 burdensome. Under the Article 10 regulations, the
18 applicant has the burden of seeking the Siting
19 Board's waiver of a substantive law in the first
20 instance, and of showing that it is unreasonably
21 burdensome.

22 In this order the Siting Board is
23 treating Number Three Winds waiver request to the
24 towns as a waiver request to the Siting Board itself.
25 The board considers the towns waivers of these local

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2 laws as indicative of their expressed desire. And as
3 local home ruling municipalities, their desire to
4 waive certain substantive local requirements is
5 telling.

6 In the order the Siting Board finds
7 that the record is deficient to support waiver of
8 certain substance of local laws and that Number Three
9 Winds should comply with those requirements. The
10 Siting Board also finds that the record is -- is
11 sufficient to support the waiver of other substantive
12 local laws and has granted a waiver of those.

13 The proposed order differs from the
14 examiners recommended decision in certain respects.
15 For example, the examiners propose the Siting Board's
16 adoption of a condition that would establish a short-
17 term regulatory noise limit of 42 D.B.A. L.E.Q. 8
18 hour for non-participating residences, and 52 D.B.A.
19 L.E.Q. 8 hour for participating residences. In this
20 order the Siting Board departs from this
21 recommendation by noting that in Baron Winds it
22 established a short-term regulatory limit of 45
23 D.B.A. L.E.Q. 8 hour at non-participating residences
24 and 55 D.B.A. L.E.Q. 8 hour at participating
25 residences, with a 5 D.B.A. tonal penalty. The

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2 Siting Board here finds that at those levels, noise
3 impacts from this project would be avoided and
4 minimized to the maximum extent practicable. It made
5 that very finding in Baron Winds.

6 The Siting Board left open the
7 possibility that the evolving scientific area related
8 to human exposure to noise may result in different
9 levels being established by the Siting Board in the
10 future. Notably the order also adopts the site
11 engineering and environmental plan specifications I
12 referred to earlier as CEP specifications which are
13 attached to Appendix B. The CEP specifications I'm
14 sorry, the conditions required compliance filings to
15 be consistent with the CEPs specifications. Those
16 specifications will guide the certificate holders
17 sequence submission -- submissions to D.P.S staff and
18 other parties and allow for efficiencies in obtaining
19 limited notices to proceed with construction
20 activities.

21 In summary, the order includes the
22 boards required findings pursuant to Public Service
23 Law Section 168.3 namely that the project as a new
24 renewable generation facility is a beneficial
25 addition to, or substitution for the existing

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2 electric generation compacity of the state. That the
3 construction and operation of the project will serve
4 the public interest, that the environmental impacts
5 -- the probably environmental impacts of the
6 construction and operation of the facility will be
7 minimized or avoided to the maximum extent
8 practicable. That the project does not have an
9 adverse disproportion environmental impact on
10 environmental justice communities, that the project
11 is consistent with the state's energy policies and
12 the long-range planning objectives and strategies
13 contained in the most recent state energy plan, and
14 that the project is designed to operated in
15 compliance with applicable state and local laws and
16 regulations.

17 In making these findings the Siting
18 Board also considered additional factors as noted in
19 the order. This -- that it includes the state of
20 available technology, the nature and economics of
21 reasonable alternatives to the project, the projects
22 environmental and community character impacts, the
23 projects impact and related facilities, utilities and
24 communications, an additional social economical
25 visual and aesthetic considerations.

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2 The examiners and Judges Moreno and
3 McClymonds and members of Senior Advisory Staff are
4 available for any questions the members of the Siting
5 Board may have. Thank you.

6 MR. RHODES: Thank you very much. My
7 -- I'll make a few comments and then turn to my
8 colleagues. Kind of the clear and important goal in
9 our work as a Siting Board is to approve and only
10 approve, appropriately sited projects. Importantly
11 including renewable projects which serve the
12 environmental and energy needs and goals of the
13 state. When I think about my -- how I'm going to
14 approach this, I look mainly at two factors. I look
15 at the conditions that are going to apply to this
16 project, conditions that address and mitigate to the
17 best extent possible health issues, like noise,
18 environmental issues that generally often have to do
19 with species that we care about. Economic issues
20 that can be both positive and negative. And
21 community concerns which are -- are their business.

22 And I also care and I find that these
23 are well treated, they are approached with
24 great seriousness and I think the resolution of all
25 these issues strikes a very good balance, and we need

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2 to strike that balance and it strikes a balance after
3 having I don't know if this is a right word, but
4 engineer the best solution possible. I also care
5 about inclusion, it matters a great deal to -- to me
6 and also to the legitimate -- legitimacy of what we
7 do.

8 Parties have a chance to speak and be
9 heard. I care about inclusion, I care about
10 transparency. I look to see that there's ample and a
11 meaningful part -- public participation. And to --
12 and that there's a party resolution to the maximum
13 extent possible. That's how I view each case. I
14 note for the record that I'd also like consistency.
15 Where -- where it makes sense in an individual case,
16 consistency is a good thing. So I'm going to be in
17 favor of -- of this recommendation.

18 Lou, do you have any comments or
19 questions you would like?

20 MR. ALEXANDER: I do have a couple of
21 -- of questions and comments thank you, Chairman
22 Rhodes. In reviewing, the record has raised some
23 questions for me however, the proposed order and
24 today's presentation has answered virtually all of
25 them. I still have a couple that I would like to

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2 pose.

3 The first deals with the sort of
4 hierarchy of documents. We have before us an order,
5 certificate conditions, A -- Attachment A to Appendix
6 A required filings, as well as the CEP. And it's my
7 understanding that if there are inconsistencies
8 between the Attachment A, the required filings and
9 the CEP and the certificate conditions, it's the
10 certificate conditions that control.

11 MS. LEARY: That is correct.

12 MR. ALEXANDER: And in terms of these
13 two documents, the CEP and the required filings, is
14 there any thought given to the possibility perhaps in
15 the future to integrating those two documents rather
16 than having separate documents, only from the
17 perspective that the more documents you have the more
18 chance of some sort of perceived inconsistency.

19 MS. LEARY: The -- the inclusion of
20 Attachment A was done for the purpose of respecting
21 the agreement reached by the parties, which the
22 examiners felt was important to foster in this case.

23 That as I think you may be correct
24 absolutely, in terms of could there be confusion.

25 This was certainly the subject of great discussion,

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2 and at -- at the end of the day we think that the
3 document as a whole adequately explains that the
4 certificate and order and certificate conditions
5 govern over any of the provisions of the CEP
6 specifications, as well as what I'll call Attachment
7 A, which are required filings. So those are more
8 for explanatory purposes, but in any event the
9 certificate itself, as well as the certificate
10 conditions governs.

11 Yes, there was -- there -- I believe
12 there, without speaking out of school, there
13 certainly is consideration of one attachment, one
14 document or perhaps maybe maximum two. But future
15 cases, I think the Siting Board will -- will
16 certainly not necessarily go this way unless the
17 parties have you know, there's a good reason to. And
18 the parties reaching an agreement here that was
19 entitled to some level of respect.

20 Notably as -- as I noted in the
21 presentation, even the conditions that were agreed to
22 were you know, tweaked and -- and revised to an
23 extent by the Siting Board for purposes of clarity
24 and consistency.

25 MR. ALEXANDER: Thank you. My second

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2 question deals with a grassland bird habitat. I know
3 from, you know, reading certain of the documents in
4 the record, certain parties sort of focused on this
5 three to one mitigation ratio. But from reviewing
6 the order and some of the other materials, it seems
7 that a simple focus on three-to-one ignores the fact
8 that this is a more sophisticated approach, which
9 takes into account a succession of grassland habitat
10 over time.

11 You know, is -- it is my understanding
12 that this is a more nuanced approach you know,
13 correct that's what the order would seem to -- to
14 imply.

15 MS. LEARY: I think that's right. I'm
16 going to defer to my colleagues from D.E.C. on
17 responding more specifically.

18 MS. MCBRIDE: That's correct. It
19 would be wrong to think it's as simple as a three-to-
20 one and it's important that you read the details
21 contained in the documents to understand the
22 rationale and reasoning behind it. A great deal of
23 effort went into this with D.E.C. staff and it's
24 important that all those details be looked at.

25 MR. ALEXANDER: Thank you. In terms

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2 of decommissioning, I know that there has been a -- a
3 look at a what happens at the end of the day. And
4 you know, I see from the order and certificate of
5 condition 45, that we address things such as an
6 irrevocable letter of credit. There was discussion
7 regarding the salvage issue. In terms of where we
8 are at the end of the road, will the letter of credit
9 be sufficient, are there other things that will be
10 taken into account in the final decommissioning plan?

11 MS. LEARY: Yes. The most important
12 thing here is that the towns would be protected at
13 the end of the project life. And so the letter of
14 credit as an instrument, specifically that instrument
15 was required or is required, in the certificate
16 conditions here. As a result of the quality of that
17 particular instrument, there are additional
18 requirements of a -- an analysis of what
19 decommissioning costs will be over time. So their
20 cost of living, or other increases associated with
21 decommissioning these facilities will be reviewed
22 every five years.

23 We think that the towns are fully
24 capable of overseeing this process but there is a --
25 a mechanism to communicate with D.P.S. staff in this

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2 regard. The estimate for decommissioning will be
3 revised over the life of the project and that
4 estimate will not include the salvage value of the
5 components. In large part because it was -- it's
6 unclear today what the value would be at the end of
7 the project life. So there -- that is the reason for
8 the way that the certificate conditions are
9 structured on the letter of credit and the
10 decommissioning requirements. It's important I
11 believe, for the Siting Board to protect the towns in
12 this instance.

13 MR. ALEXANDER: Thank you. And my
14 last question is more of a comment. As I understand
15 from this order, and the presentation today that with
16 respect to local laws, Article 10 applicants must
17 present requests for waiver of local substantive laws
18 to the Siting Board in the first instance, is that
19 correct?

20 MS. LEARY: That is correct. And --
21 and yet you know, one of the things that is noted in
22 -- in this order is the recommendation that
23 applicants work closely with host towns as the
24 applicant did here. That is -- that is to be
25 respected that is to be fostered. Because local --

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2 this is their community and it's important for the
3 applicant to gain their input and their confidence,
4 etc.

5 So the order here while it does take a
6 firm line on the appropriate procedure to follow if
7 there is a waiver of substantive laws sought, it
8 still seeks to continue to foster communications with
9 towns that are really critical to the success of
10 these projects.

11 MR. ALEXANDER: Well thank you very
12 much. I appreciate the answers to the questions I
13 had. Back to the Chair.

14 MR. RHODES: Thank you. Betsy, do you
15 have any comments or questions?

16 MS. LEWIS-MICHL: I -- I have no
17 comments or questions.

18 MR. RHODES: Thank you. Vince any
19 comments or questions?

20 MR. RAVASCHIERE: No questions, thank
21 you.

22 MR. RHODES: And John -- John
23 Williams?

24 MR. WILLIAMS: No questions.

25 MR. RHODES: Thank you. And I will

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2 now turn to the ad hoc colleagues on the board,
3 Leslie do you have any comments or questions?

4 MS. SHELDON: One, that I know. Can
5 you clarify the issue of the -- the aircraft
6 detection lighting system, the A.L.D.S., is that a
7 condition that would be enforced by Number Three
8 Wind?

9 MS. LEARY: The aircraft detection
10 lighting system, or A.D.L.S. is a mechanism for
11 aircraft to see the turbine towers, and because of
12 the location of Fort Drum Airbase, it was really
13 critically important that their interest be served
14 here. What this order does is essentially, defer to
15 the Department of Defense and the lighting that will
16 be required for these turbines.

17 Notably though, Maple Ridge with 195
18 turbines, and Copenhagen with 40 additional turbines,
19 all have lighting. And I suspect I do not know, but
20 that had to be approved by Fort Drum, as well. So
21 the Department of Defense is probably the -- the
22 most critical player in this. Because what works for
23 the airbases is certainly important.

24 So A.D.L.S., if it's required by the
25 Department of Defense our -- an agreement that we

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2 understand the applicant has reached. If that's
3 required that is what will be on the turbines. But
4 the -- this order really defers to the -- the federal
5 air -- the federal interest here.

6 MS. SHELDON: Thank you.

7 MR. RHODES: Bill, any comments or
8 questions? I'm sorry, I'm not on. Bill, any
9 comments or questions?

10 MR. SCHAAB: Yes. I did come in late
11 in the game and I -- I reflected on the role I'm
12 supposed to play in this protecting the -- the public
13 and the concerns of the local municipality, the
14 residents of Lowville and Lewis County, and I sit
15 here so very impressed in all the work that's gone
16 into this. The questions that have been asked and
17 answered through the process to get to where we are
18 today.

19 And I -- I feel that all aspects, so
20 many details have been gone through. And I -- I -- I
21 am -- I am -- I'm proud to be a part of this and I --
22 I do see that both sides have had to compromise to an
23 extent, but in the -- the better interest of
24 economics, I do support this project.

25 MR. RHODES: Thank you -- thank you.

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2 So, with that I will now proceed to the next step
3 which is to call for a vote. And we'll vote one by
4 one. My own vote is in favor or the recommendation
5 to approve the Application of Number Three Wind, LLC,
6 for a Certificate of Environmental Compatibility and
7 Public Need, with conditions as described. Mr.
8 Alexander, how do you vote?

9 MR. ALEXANDER: I also vote in favor.

10 MR. RHODES: Dr. Lewis-Michl, how do
11 you vote?

12 DR. LEWIS-MICHL: In favor.

13 MR. RHODES: Mr. Ravaschiere, how do
14 you vote?

15 MR. RAVASCHIERE: In favor.

16 MR. RHODES: Mr. Williams, how do you
17 vote?

18 MR. WILLIAMS: In favor.

19 MR. RHODES: Ms. Sheldon, how do you
20 vote?

21 MS. SHELDON: The negative impacts
22 outweigh the benefits, I vote no.

23 MR. RHODES: Mr. Schaab, how do you
24 vote?

25 MR. SCHAAB: I vote in favor.

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MR. RHODES: The matter is approved,
and the recommendation is adopted. Acting Secretary
Phillips, is there anything further to come before us
today?

MS. PHILLIPS: No -- no there's not.

MR. RHODES: Okay. Thank you very
much, we are adjourned.

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2 STATE OF NEW YORK

3 I, MIMSOO LEE, 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 24, 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 19th day of November 2019.

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13 MIMSOO LEE, Reporter

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