

**New York Solar Energy Industries Association )**  
**Comments in Response to the New York State )**  
**Department of Environmental Conservation ) GP-0-25-004**  
**Draft General Permit for Community-Scale )**  
**Solar Energy Installations )**

**Comments of New York Solar Energy Industries Association in Response to the New York State Department of Environmental Conservation’s Draft General Permit for Community-Scale Solar Energy Installations**

## Introduction

New York Solar Energy Industries Association (NYSEIA) respectfully provides the following comments regarding the New York State Department of Environmental Conservation’s (DEC) draft General Permit for Community-Scale Solar Energy Installations. NYSEIA is New York’s distributed solar and energy storage trade association, representing hundreds of companies that develop community-scale solar energy projects in the State. The solar industry employs 15,490 workers in New York at hundreds of local and regional companies. The solar industry works collaboratively with state and local governments to build projects that deliver utility bill savings, tax revenue, and economic opportunity to communities across the State while driving steady progress toward New York’s legislatively mandated renewable electricity goals.

On January 1, 2025, in accordance with recent amendments to Article 24 of the Freshwater Wetlands Act, the DEC implemented new regulations that expand the agency’s jurisdiction over certain smaller and unmapped freshwater wetlands in New York State. The DEC’s jurisdiction is set to expand further in 2028. Historically, the DEC has enforced a de facto ban against community-scale solar projects on and adjacent to DEC-regulated lands, making this jurisdictional expansion a threat to the viability of New York’s most successful clean energy sector. In the last few months alone, multiple companies have ceased new community solar development in New York and laid off their local development staff, citing the DEC jurisdictional expansion as one of the key factors in their decision to exit New York State. This highlights the importance of developing a viable permitting pathway for community solar projects in New York, even as the State expands protections for freshwater wetlands.

Throughout 2024, NYSEIA urged the DEC to develop a viable General Permit (GP) for community-scale solar energy installations before the jurisdictional expansion in order to mitigate job losses in the solar industry and to ensure reasonable balance between New York’s statutory obligations to protect freshwater wetlands and to deploy renewable energy resources. While the DEC did not adopt a GP for community solar before the new regulations went into

effect, the agency did engage with the solar industry on the matter and published a draft GP on February 5, 2025. NYSEIA thanks the DEC for engaging with the solar industry and for developing this draft GP.

While NYSEIA believes that the DEC's draft GP was developed in good faith by the agency, many provisions lack a clear scientific basis and are overly restrictive, impeding community-scale solar development in the State. Before providing detailed recommendations to improve the GP, NYSEIA encourages the DEC to zoom out and consider the big picture. According to the DEC, New York has more than 5 million acres of freshwater wetlands. A typical community solar project occupies approximately five acres per megawatt of solar capacity. If New York were to build an additional ten gigawatts (more than all the solar capacity ever constructed in New York State) of community-scale solar *exclusively on freshwater wetlands*, this would occupy just 1% of New York's freshwater wetlands. Of course, much of New York's solar capacity will be constructed on the built environment and away from wetlands, which means the true impact of granting a full exemption to solar, similar to that enjoyed by agriculture, would be well below 1%. It is also important to consider the environmental benefits of renewable energy generation in comparison to more polluting power sources and competing land uses; solar production directly reduces fossil fuel combustion, eliminating air, land and water pollution that would otherwise harm New York's environmental resources.

Additionally, NYSEIA encourages the DEC to consider the reduced ecological impact of community-scale solar energy installations in comparison to incumbent land uses or competing forms of development. NYSEIA asserts that well-designed and well-managed community-scale solar energy installations can materially improve the ecological health of adjacent freshwater wetlands relative to incumbent land uses, such as industrial agriculture. By developing a GP that is adequately permissive while requiring design and management best practices, the DEC can advance its dual mandate of ecological conservation and climate mitigation. NYSEIA respectfully provides the following recommended modifications to the draft GP, which will advance this outcome. If NYSEIA's recommendations are incorporated, the GP will limit solar industry job losses and limit Climate Leadership and Community Protection Act (CLCPA) regulatory impacts by enabling sustained community solar development in New York State.

## NYSEIA Comments and Recommendations

### Applicability

The DEC's draft GP proposes that it be applicable for "community-scale solar energy projects not regulated under Articles VII, VIII, or 10 of the New York State Public Service Law or Section 94-c of the Executive Law that occur within state-regulated freshwater wetlands and freshwater wetland adjacent areas (Article 24) and/or protected streams (Article 15, Title 5) in

accordance with the conditions identified in this permit and the DEC approved project specific plans.”

The Office of Renewable Energy Siting and Electric Transmission (ORES) is the Authority Having Jurisdiction (AHJ) for solar projects above 25 megawatts-AC. Therefore, NYSEIA recommends adding the following definition to the GP for the heretofore undefined term “community-scale solar energy project” in order to eliminate ambiguity regarding applicability:

*community-scale solar energy project: a solar photovoltaic and/or energy storage system, including the balance of plant, capable of exporting no more than 25 megawatts of instantaneous power to the electric transmission or distribution system.*

It is critical that the definition be inclusive of energy storage systems, as the New York State Public Service Commission recently authorized a six gigawatt energy storage roadmap and NYSEIDA’s subsequent implementation plans to achieve that goal. Energy storage systems are an increasingly integral part of community-scale solar energy projects; battery energy storage systems have a small physical footprint, however, they can make solar energy systems more environmentally beneficial by enabling the solar projects to export during times of peak demand, reducing reliance on fossil fuel peaker plants. From a wetlands protection perspective, energy storage systems are no different than other balance of plant electrical equipment and should be explicitly allowed under the GP. NYSEIA reminds the DEC that there are additional state fire code and AHJ regulations that govern safe battery energy storage system siting/permitting, and the scope of article 24 is limited to freshwater wetlands protection. As such, any restrictions placed upon the location of energy storage equipment should be limited to those required to protect DEC jurisdictional freshwater wetlands.

NYSEIA also urges the DEC to provide Blanket Section 401 Water Quality Certification (WCQ) Coverage for community-scale solar energy projects under this GP to ensure that the GP eliminates the need for the solar project to secure additional WCQ approval for otherwise compliant access roads. According to the DEC, “The DEC Blanket Water Quality Certification, only applies to limited activities, and those that are covered by a specific U.S. Army Corps of Engineers Nationwide 404 Permit.”<sup>1</sup> NYSEIA reminds the DEC that community-scale solar energy projects are covered under the US Army Corps of Engineers (USACE) Nationwide Permit 51 for Land-Based Renewable Energy Generation Facilities. As such, it is appropriate for the DEC to provide the requested blanket WCQ coverage.

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<sup>1</sup> New York State Department of Environmental Conservation.  
<https://dec.ny.gov/regulatory/permits-licenses/waterways-coastlines-wetlands/protection-of-waters-program>. Accessed March 4, 2025.

## Access Roads

NYSEIA is generally supportive of the section of the GP that allows for 20-foot wide access roads and up to 0.25-acres of fill. This allowance should adequately address the access road requirements for a typical community-scale solar energy installation based on current code requirements for access roads.

NYSEIA requests clarification from the DEC that the 20-foot allowable width does not include shoulders, grading slopes, stormwater features, or other related disturbances. 20-foot access road width is what is generally required by fire code for vehicular access, not including turn-around areas; if 20-feet were the entire limitation of disturbance it would not be adequate for code compliant access roads. The 0.25-acre cap on this allowance will still limit overall impacts and discourage wetland crossing in cases where it is avoidable, but the additional flexibility will enable more projects to proceed with efficient access roads that minimize disturbance. NYSEIA recommends the following modifications to the GP language to account for the fact that access roads sometimes require grading, side slopes and other related disturbances (modifications in blue):

*1. Construction of temporary and permanent access roads and associated vegetation clearing in freshwater wetlands and freshwater wetland adjacent areas subject to all of the following requirements and limits:*

- a. Permanent access roads may be no more than twenty (20) feet in width (not including shoulders, grading, side slopes, stormwater features, or other related disturbances);*
- b. Construction of permanent access roads (including shoulders) in freshwater wetlands may result in no more than 0.25-acre of fill; and*
- c. Construction of temporary access roads in freshwater wetland adjacent areas shall be minimized to the maximum extent practicable.*

## ALTERNATIVE APPROACH

Another approach the DEC could consider is simply striking section 1(a). This would not cap road width (providing more flexibility to account for changing fire code requirements, etc) but would maintain a strict 0.25 acre cap on overall disturbance:

*1. Construction of temporary and permanent access roads and associated vegetation clearing in freshwater wetlands and freshwater wetland adjacent areas subject to all of the following requirements and limits:*

- ~~*a. Permanent access roads may be no more than twenty (20) feet in width (not including shoulders);*~~

*b. Construction of permanent access roads (including shoulders) in freshwater wetlands may result in no more than 0.25-acre of fill; and*

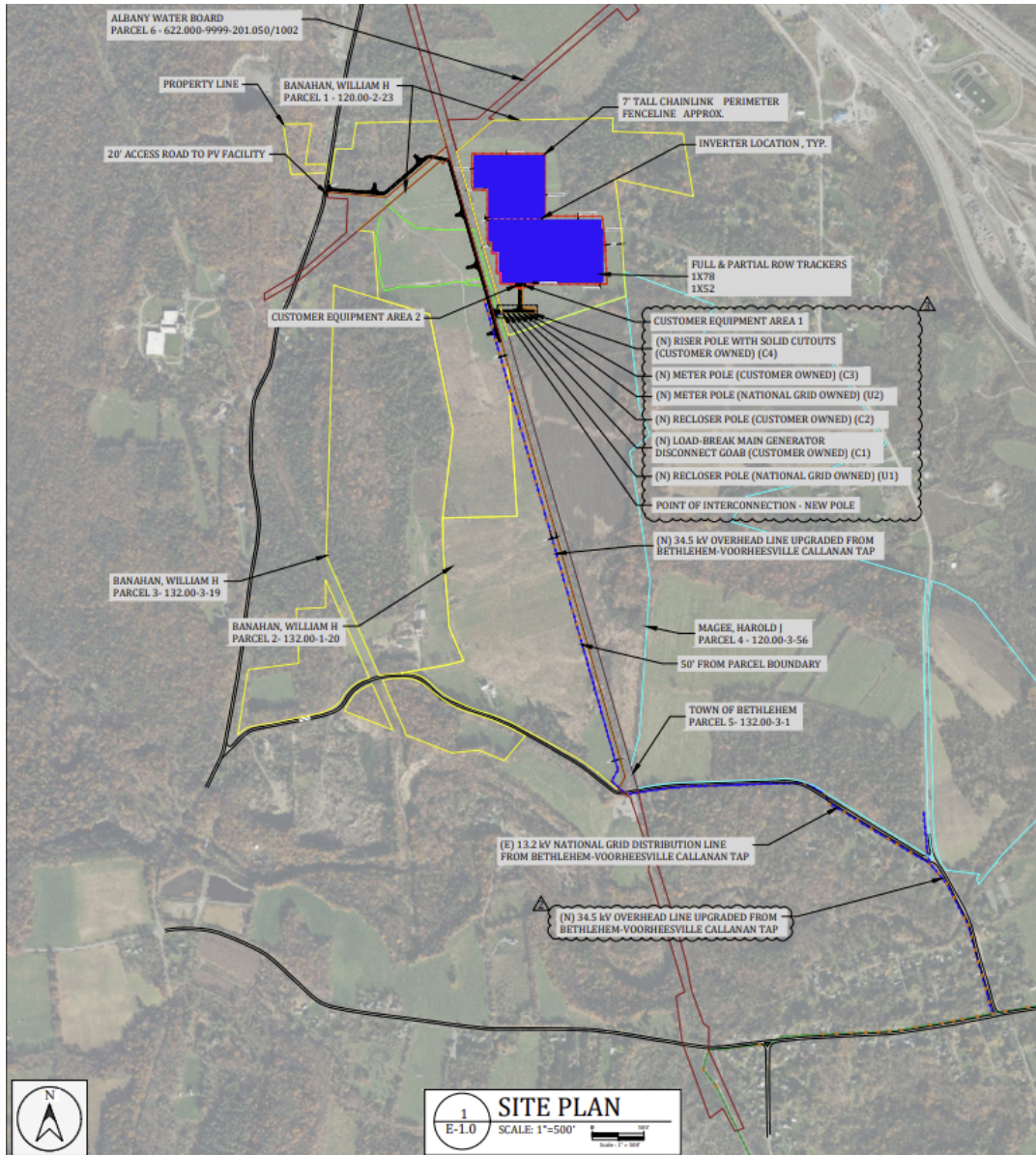
*c. Construction of temporary access roads in freshwater wetland adjacent areas shall be minimized to the maximum extent practicable.*

Finally, NYSEIA requests that the DEC clarify our interpretation of 1(c), which is that permanent access roads are allowable in adjacent areas and do not count toward the 0.25 acre fill limit.

## Interconnection Lines

NYSEIA appreciates the inclusion of an allowance in the draft GP for power lines to interconnect community-scale solar energy installations with the existing electric transmission or distribution system. The draft language requires that power lines be “located in or immediately adjacent to a permanent access road.” NYSEIA interprets this language as an attempt by the DEC to limit disturbance to wetlands by consolidating multiple uses in a single right-of-way. In general, this approach is logical. However, there are plenty of scenarios where access roads do not run ‘in line’ with electrical equipment. For example, solar projects often interconnect with utility infrastructure at the back of a property, further away from the main road. In some cases, this is the only option based upon the utility infrastructure; in other cases, a back-of-parcel interconnection may be necessary to minimize viewshed impacts and appease town zoning boards, who have wide discretion over land use approvals and conditions for community-scale solar energy installations.

The example project below includes a proposed 5 MW-AC community-scale solar energy installation where the point of interconnection is a substation southeast of the site. However, the access road and the main road are to the west of the site. This is just one example of a common scenario where the point of interconnection is not the same as the point of vehicular access.



Site plan from typical community solar project. Point of interconnection is not adjacent to the access road.

Interconnection options are quite limited, and NYSEIA urges the DEC to allow power lines (underground or overhead) to run through jurisdictional wetlands as a condition of the GP, provided that care is taken to minimize disturbance. NYSEIA recommends the following revisions to the interconnection section of the draft GP:

**2. Construction of power interconnections and collection lines subject to all of the following requirements:**

- a. *To the extent practicable, power interconnection and collection lines in freshwater wetlands must be located in or immediately adjacent to a permanent access road. There are no location restrictions to power interconnections in freshwater wetland adjacent areas.*



*b. In instances where the only feasible option is to run power interconnection lines through undisturbed freshwater wetlands, these features must be designed, installed and maintained in a manner that minimizes disturbance.*

## Vegetation Clearing and Ground Disturbance

Section 4 of the DEC draft GP governs the bulk of the area of a typical community-scale solar energy installation, describing setback requirements and allowable disturbance, which varies based upon the incumbent land use. The DEC's draft GP is more permissive of solar installation on areas under active agricultural use and more restrictive for undisturbed wetlands and adjacent areas. NYSEIA appreciates the general approach taken by the DEC; however, the terms are still quite restrictive and will make the GP inapplicable to hundreds of potential community solar projects.

## Solar is Ecologically Beneficial in Comparison to Incumbent Land Uses

Creating regulatory barriers that prevent community-scale solar energy installations on active agricultural land may actually result in a worse outcome for the local ecosystem and freshwater wetlands the DEC is charged with protecting. The Freshwater Wetlands Act provides a blanket exemption for agricultural activities, which means that most active agricultural land is outside of the DEC's jurisdiction. In many cases, these active agricultural lands experience soil compaction from heavy machinery and intensive application of fertilizer and pesticides, causing ecological damage to adjacent freshwater wetlands via runoff and groundwater pollution. Alternatively, well-managed solar projects have minimal local ecological impacts, and enable the restoration of previously disturbed farm land to meadow. Preliminary results of an ongoing field study conducted by researchers at Cornell University show that the vegetation, soil health and biodiversity for land with community-scale solar energy installations in New York are materially improved in comparison to the same indicators based on the incumbent agricultural land use<sup>2</sup>. While these findings are preliminary, the implications are clear. The relative ecological benefits of community-scale solar energy installations in comparison to the incumbent land use should be considered, and the GP should be more permissive of solar on land where solar installation will typically result in improved ecology. These local ecological improvements are additional to the environmental benefits associated with renewable electricity generation and corresponding reduction to pollution and adverse public health effects of fossil fuel combustion.

While NYSEIA is firm in our assertion that well-managed solar projects will promote the health of adjacent wetlands in comparison with industrial agriculture, we acknowledge the economic and public policy imperative for preserving farmland in New York State. The DEC's proposed

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<sup>2</sup> Zhang, Max; Van Es, Harold; Losey, John; Walter, Todd, et. al. Cornell University. Informational meetings with NYSEIA and DEC personnel to share preliminary findings from field research conducted with support from the US Department of Energy under DE-FOA-002605. *Holistic framework to assess the costs and benefits of ecosystem services from solar facilities*. February-March 2025.

setback requirements and other restrictions that limit solar on active agricultural land will require that more farm land be taken out of production in order to support a similarly sized solar energy system. NYSEIA's proposed changes to section 4 are critical for ensuring that the DEC enables community-scale solar energy installations to continue being deployed in New York at a meaningful scale, while minimizing impacts to both wetlands and farmland.

#### The DEC's GP for Community-Scale Solar Energy Installations Should be no More Restrictive than ORES Regulations for Utility-Scale Projects

The Office of Renewable Energy Siting and Electric Transmission (ORES) is the AHJ for larger-scale renewable energy projects in New York State, i.e., projects above 25 megawatts. In 2024, ORES promulgated rules (Chapter XI, Title 16 of NYCRR Part 1100) to implement Article VII of the Public Service Law. These rules, which were developed in consultation with the DEC, include guidelines for freshwater wetlands protections and describe mitigation requirements for unavoidable wetlands impacts.

Community-scale Solar Energy Installations are ecologically similar to utility-scale solar projects, and should not be subject to any more stringent requirements than utility-scale projects. In fact, community-scale projects are smaller and therefore have a lesser impact and should be granted greater leniency. According to Table 1 on the following page, the following allowances are granted for utility-scale solar projects on Class III and IV wetlands:

- ORES allows solar panels and energy storage to be installed on Class III and IV wetlands with a 1:1 mitigation ratio and has no mitigation requirement for solar and storage on adjacent areas. The DEC's draft GP does not allow solar on natural wetlands and requires Enhancement Plans for solar on adjacent areas and actively farmed wetlands. The DEC's GP should eliminate the Enhancement requirement for solar installed on adjacent areas and wetlands under agricultural use.
- ORES allows "Grading and manipulation of disturbed areas (active hay/row crops, existing commercial/industrial development)" without any acreage limits. To align with ORES' approach, the DEC should increase the one acre limit to allowable "disturbance from vegetation clearing and ground disturbance combined", or, alternatively, clarify that the one acre limit is just applicable to actual ground disturbance.
- ORES allows fencing on Class III and IV wetlands with no mitigation. The DEC's draft GP does not allow fencing on wetlands and requires enhancement plans for fencing on adjacent areas of disturbed/actively farmed wetlands. The DEC should allow fencing on wetlands for community-scale installations, in alignment with ORES' regulations for utility-scale projects.



- ORES allows access roads on Class III and IV wetlands with 1:1 mitigation ratio. The DEC's draft GP allows up to 0.25 acres of access roads on wetlands with a 2:1 mitigation ratio. The DEC should eliminate the mitigation requirement for such a small quantity of disturbance. At minimum, the mitigation ratio should be reduced to 1:1 to align with the ORES regulations for utility-scale projects.
- ORES allows selective cutting of trees and shrubs in Class III and IV wetlands. The DEC draft GP should also allow selective cutting, which is sometimes necessary for overhead power interconnection lines or to ensure safe and efficient operation of a solar energy system by minimizing shade and risk of property damage.

# ORES Wetland Mitigation Requirements for Utility-Scale Renewable Projects

## REGULATIONS IMPLEMENTING ARTICLE VIII OF THE PUBLIC SERVICE LAW

**Table 1: Wetland Mitigation Requirements**

Feature/Activity	Class I <sup>a</sup>		Class II <sup>a</sup>		Class III & IV <sup>a</sup> Unmapped >12.4 acres	
	FWW	AA	FWW	AA	FWW	AA
<b>Major Activities</b>						
Wind Turbines	X	A(M3)**	X	A(E)*	A(M3)	A
Solar Panels	X	A(E)**	A(M2)	A(E)*	A(M3)	A
Energy Storage	X	A(M3)**	X	A(E)*	A(M3)	A
Access Roads	A(M1)	A(E)*	A(M2)	A(E)*	A(M3)	A
Power interconnections (including clearing for interconnections)	A(M1)	A(E)*	A(M2)	A(E)*	A(M3)	A
Clearing of forest	X	A(M3)**	A(M2)	A(E)*	A(M3)	A
Other activities and structures integral to the project involving placement of fill	X	A(M3)**	A(M2)	A(E)*	A(M3)	A
<b>Intermediate Activities</b>						
Security fence	X	A(E)*	A(M3)	A	A	A
Clearing and manipulation of undisturbed herbaceous vegetation	X	A(E)*	A(M3)	A	A(M3)	A
Other activities integral to the project involving grading	X	A(E)*	A(M3)	A	A(M3)	A
<b>Minor Activities</b>						
Grading and manipulation of disturbed areas (active hay/row crops, existing commercial/industrial development)	X	A(E)*	A(M3)	A	A(E)	A
Selective cutting of trees and shrubs	A	A	A	A	A	A
*No enhancements or mitigation required with 75 foot or more setback						
** 75-foot setback from wetland boundary required in undisturbed adjacent area						
<sup>a</sup> ECL article 24 classification as determined under 6 NYCRR Part 664.						

- (a) X: Not an allowable feature or activity.
- (b) A: Allowed; no mitigation or enhancement required.
- (c) A(M1): Allowed, mitigation required (3:1 mitigation ratio by area of impact - creation only, broken down by cover type)
- (d) A(M2): Allowed, mitigation required (2:1 mitigation ratio by area of impact - creation, restoration, and enhancement)
- (e) A(M3): Allowed, mitigation required (1:1 mitigation ratio by area of impact – creation, restoration and enhancement)
- (f) A(E): Allowed, enhancements and/or mitigation required (e.g., planting of adjacent area, mitigating hydrological changes)

NYSEIA offers the following recommendations and language for the DEC's consideration:

- Better define “*areas under active agricultural use*”: The draft GP states that reduced (25 foot) buffer areas around wetlands are permissible for community-scale solar energy installations on “land in active agricultural production and use in three (3) of the last five (5) years.” NYSEIA recommends that the GP both clarify and broaden the definition of areas under active agricultural use. Here is a proposed definition:

*Areas under agricultural use: land that is either: 1) located in an Agricultural District in accordance with the New York State Department of Agriculture and Markets; 2) land used for the production of “Crops, livestock and livestock products” as defined in § 301 Agriculture & Markets (AGM) CHAPTER 69, ARTICLE 25-AA at any point in the last five years; or 3) land that receives an agricultural tax exemption as determined by the NYS Board of Real Property Services.*

- Include necessary pad mounted electrical equipment as an allowable disturbance, subject to the GP requirements. While the majority of the land mass of a solar PV system is composed of trackers and solar panels, a small amount of pad mounted electrical equipment is necessary for the system operation.
- Reduce adjacent area setbacks from 25 feet to 10 feet for solar on active agricultural land and 50 feet to 25 feet for other sites. NYSEIA is not aware of any scientific basis for maintaining a buffer area of 25 to 50 feet between freshwater wetlands and community-scale solar energy installations. Reducing the buffer area will allow community-scale solar energy installations to more efficiently utilize land. As an alternative, NYSEIA recommends that the GP incorporate requirements for vegetation management best practices.
- Define disturbance in a manner that aligns with the USACE definition, and ensure that any expanded restrictions have sound scientific basis. The USACE only considers ground disturbance to non-forested freshwater wetlands, however, the DEC draft GP considers the entire area where solar panels are installed as a disturbance, including partial shade cast by the solar panels under the array and even the vacant space between rows of solar panels. Preliminary results of Cornell University's ongoing field study and biophysical analysis of solar photovoltaic systems ecological impacts demonstrate that solar PV systems with trackers have minimal impact on the health of underlying soil and vegetation.
  - NYSEIA recommends that the DEC adopt the USACE approach to quantifying disturbance for solar photovoltaic systems by just counting acreage of ground disturbance and excluding clearing. There is no evidence that solar PV arrays mounted on elevated single-axis trackers harm the

ecology of underlying soil and vegetation. In fact, Cornell's preliminary research suggests the opposite, with soil health and biodiversity improving at active solar sites in New York in comparison to incumbent land uses. Not only is this approach scientifically sound; it will better align New York's permitting process with regional and national norms, making New York a more viable geography for cost-effective solar development.

- If the DEC is not amenable to this approach, NYSEIA urges the DEC to at least increase the allowable acreage of disturbance to freshwater wetlands under agricultural use from one acre to five acres to account for the minimal ecological impacts of well-designed and well-managed community-scale solar energy installations on freshwater wetland ecosystem services.

- Draft language for both approaches is included in the following section:

**4. Vegetation clearing and ground disturbance in freshwater wetland adjacent areas and areas under active agricultural use<sup>3</sup>** *(i.e., ~~land in active agricultural production and use in three (3) of the last five (5) years~~—associated with community-scale solar projects including activities such as clearing and grubbing, landscaping, grading, installation of panels, ~~fencing~~, installation of electrical equipment (including concrete pad mounted inverters, transformers, battery energy storage systems, and other necessary electrical equipment), drainage, and stormwater features subject to all of the following requirements and limits:*

*a. Activities in freshwater wetland adjacent areas under ~~active~~ agricultural use must maintain a ~~twenty-five (25)~~ ten (10) foot setback from the wetland boundary of freshwater wetlands not under active agricultural use.*

*b. Activities in freshwater wetland adjacent areas not under active agricultural use must maintain a ~~fifty (50)~~ twenty-five (25) foot setback from all freshwater wetland boundaries.*

*c. Activities in freshwater wetlands under ~~active~~ agricultural use shall result in no more than one (1) acre of disturbance from ~~vegetation clearing and~~ ground disturbance ~~combined~~.*

*d. No vegetation clearing or ground disturbance is permitted in freshwater wetlands not under ~~active~~ agricultural use.*

*e. Security fencing around community-scale solar projects shall be allowed in freshwater wetlands.*

#### **ALTERNATIVE OPTION FOR SECTION C**

*c. Activities in freshwater wetlands under ~~active~~ agricultural use shall result in no more than ~~one (1) acre~~ five (5) acres of disturbance from vegetation clearing and ground disturbance combined.*

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<sup>3</sup>Areas under agricultural use: land that is either: 1) located in an Agricultural District in accordance with the New York State Department of Agriculture and Markets; 2) land used for the production of "Crops, livestock and livestock products" as defined in § 301 Agriculture & Markets (AGM) CHAPTER 69, ARTICLE 25-AA at any point in the last five years; or 3) land that receives an agricultural tax exemption as determined by the NYS Board of Real Property Services.

## Agrivoltaic Projects Should Retain their Agricultural Exemption

There is an emerging trend where farmers are integrating solar photovoltaic technologies with their existing farm operations; a practice known as agrivoltaics<sup>4</sup>. For many farmers, solar provides an additional revenue stream that supports the economic sustainability of their agricultural operations. Solar PV system design and agricultural innovations are demonstrating that, in many instances, solar and agricultural production can coexist on the same land. There are strong economic and policy imperatives for both expanding solar PV generation and retaining agriculture in New York State. As such, NYSEIA urges the DEC to clarify that agrivoltaic projects will retain their agricultural exemption under Article 24. This clarification will result in efficient dual-use of land that is already disturbed, thereby reducing the amount of solar being installed on undisturbed land.

## Mitigation and Enhancement

The draft GP requires mitigation and enhancement activities for even minor, unavoidable disturbance of freshwater wetlands and adjacent areas. Simply put, this is overkill, and will impose a significant administrative burden and expense on solar projects in New York State relative to other geographies. Many solar projects in New York are already marginally viable due to siting and interconnection challenges; the added red tape associated with mitigation plans and monitoring for minor encroachments into DEC jurisdictional wetlands will render more projects nonviable and push more solar development to states with more favorable permitting environments. If this is not fixed in the final GP, it will render the GP ineffective at counteracting the detrimental effect of the DEC's expanded jurisdiction on New York's community solar market. If New York continues to impose new administrative burdens and costs on solar projects, it will decrease the supply of solar power, extend New York's reliance on fossil fuels, cause solar industry layoffs, and exacerbate the energy affordability crisis facing New York families and businesses, who cannot afford to pay ever rising electricity costs.

Mitigation Plans and Enhancement Plans are important tools for specific situations where significant disturbance to pristine Class I and II wetlands cannot be avoided. However, these plans and the associated 5-year monitoring requirement are administratively burdensome and expensive. As such, they should only be required for Community-Scale Solar Energy Installations in cases where significant disturbance, i.e., disturbance beyond the amounts allowed in the GP, cannot be avoided. Mitigation or enhancements should not be required for minor disturbance, or disturbance to previously disturbed wetlands that are under agricultural use. There is precedent for the agency to allow a small amount of unavoidable disturbance without making mitigation a permit condition. DEC guidance is that mitigation is required for unavoidable disturbance "unless it can be shown that the losses are inconsequential or that, on balance, economic or social need for the project outweighs the losses."<sup>5</sup> NYSEIA requests

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<sup>4</sup> Gashler, Krisy. Solar solutions: Agrivoltaics offer array of options for farmland use. <https://news.cornell.edu/stories/2025/02/solar-solutions-agrivoltaics-offer-array-options-farmland-use>. February 25, 2025.

<sup>5</sup> New York State Department of Environmental Conservation. Freshwater Wetlands Regulatory Guidelines on Compensatory Mitigation. [https://extapps.dec.ny.gov/docs/wildlife\\_pdf/wetlmit.pdf](https://extapps.dec.ny.gov/docs/wildlife_pdf/wetlmit.pdf). 1993.

that the DEC grant a general dispensation for unavoidable minor disturbance based upon the economic and social need for community-scale solar energy installations.

With regard to disturbing freshwater wetlands under active agricultural use, NYSEIA requests that the DEC waive the enhancement plan requirement altogether. As discussed above, installing a community-scale solar energy installation on farmed wetland will provide significant improvements to the local ecosystem. Intensive land use, including the application of fertilizer and pesticides, will be replaced with a more passive land use, providing a net benefit to the local ecosystem. Rather than a required enhancement plan, NYSEIA recommends that the DEC instead consider requiring vegetation management best practices, such as using native seed mixes (except in the case of agrivoltaic applications where agricultural production will continue beneath the solar array), or simple prescriptive enhancements.

### Other Feedback on the Draft GP

On page 2, EXCLUDED ACTIVITIES, the GP outlines six scenarios under which projects would not be eligible. The sixth one is “For proposed activities that require a permit under 6 NYCRR § 182.” This would mean that community-scale solar projects seeking a permit under New York’s endangered species regulations would not be eligible to use the GP. It is not clear to NYSEIA why projects seeking one permit from the DEC would be ineligible to seek this separate GP from the DEC. NYSEIA recommends striking this restriction.

On page 6, Condition 16, there is a prohibition on using erosion control matting products. NYSEIA recommends limiting this prohibition to just the wetlands and buffers, not the entire project site:

*Synthetic erosion control matting, blankets, and netting for temporary erosion and sediment control is prohibited within wetlands and adjacent areas, to minimize pollution and limit wildlife entanglements. Prohibited synthetic netting materials include polypropylene, nylon, polyethylene, polyester, or other synthetic fibers.*

On page 6, Condition 14, there is a prohibition against any tree removal for 7-9 months of the year in order to protect threatened and endangered bat species. This is overly restrictive, and NYSEIA recommends that this only apply when bat species are listed as or near the site by the New York Natural Heritage Program or NYSDEC Environmental Resource Mapper.

Conditions 24, 28, and 31 require the use of native species without exception for areas under active (or planned) agricultural use. NYSEIA recommends that agrivoltaic projects be exempt from Article 24 altogether. However, if the DEC rejects this request then NYSEIA recommends that the native species requirement include an exception for land where dual-use solar power generation and agricultural production will occur.



## Implementation Considerations

NYSEIA urges the DEC to incorporate feedback and issue the final GP as soon as possible to limit the harm caused to New York's community solar industry. This is important for minimizing job losses and minimizing impacts on progress toward New York's CLCPA compliance.

NYSEIA requests that the GP include a defined timeline for permit review and approval to provide community-scale solar energy installation developers with a reasonable and predictable timeline. For example, if a project does not require mitigation, the DEC should provide approval or request additional information within 10 business days, similar to the DEC stormwater permit. If a project requires mitigation, the DEC should provide feedback on the project's proposed mitigation plan within 10 business days.

## Conclusion

The DEC's jurisdictional expansion without a viable GP for community-scale solar energy installations has decreased solar investment in New York State, harmed solar companies, caused job losses, and impeded progress toward New York's legislatively mandated clean energy goals. An overly restrictive GP will not correct these issues, however, a more permissive GP can do so while protecting New York's ecological resources. NYSEIA appreciates the DEC's commitment to developing a viable GP to provide clear guidelines for community-scale solar energy installations in New York State. The draft GP is an important step in the right direction, although material improvements are needed for the GP to achieve the objective of enabling sustained community solar development in New York State. If the DEC incorporates NYSEIA's recommendations, we are confident that the resultant GP will enable progress toward the DEC's dual mandates of ecological conservation and climate mitigation. NYSEIA thanks the DEC for their work on this GP and for the opportunity to provide input.

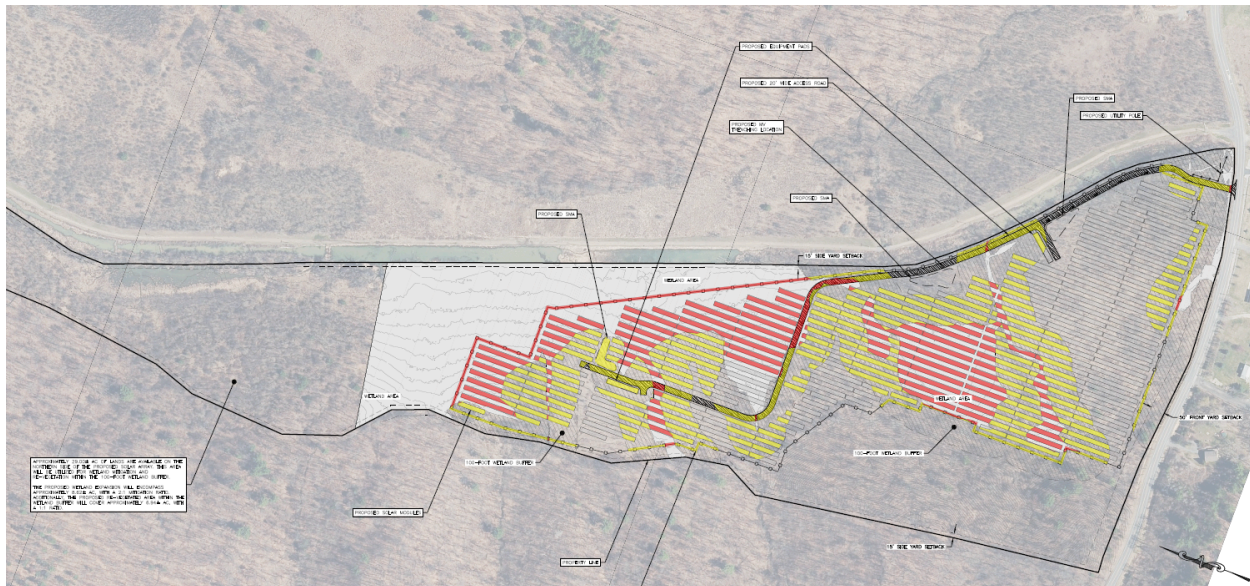
# Appendix: Site-Specific Analysis of the DEC's Expanded Jurisdiction on Community-Scale Solar Energy Installation

## Background

NYSEIA offers the following analysis of a real New York State community solar project to illustrate the deleterious effects of the DEC's expanded jurisdiction on solar project feasibility. The analysis also illustrates how improvements to the GP could reduce the negative impacts and increase solar project feasibility. Generally speaking, community solar projects need to be at or close to 5 megawatts in order to be economically viable. Community solar projects in New York State have significant fixed costs, including permitting, project management, lease payments, and interconnection, along with relatively narrow profit margins. As such, smaller community solar projects tend to be uneconomic, whereas larger projects can support the associated fixed costs and move forward.

## Initial Solar Design

Initially, this New York community solar project was designed to be 5 megawatts-AC. This is considered a full size community solar project. The site is a former agricultural parcel, although it hasn't been actively farmed in the last several years because it was not economically feasible for the landowner to farm the parcel. As of December 2024, the project did not intersect with any DEC jurisdictional wetlands according to the DEC Environmental Resource Mapper. A wetlands delineation found some wetlands on the site, however, the solar design was still viable based on USACE Nationwide Permit 51.

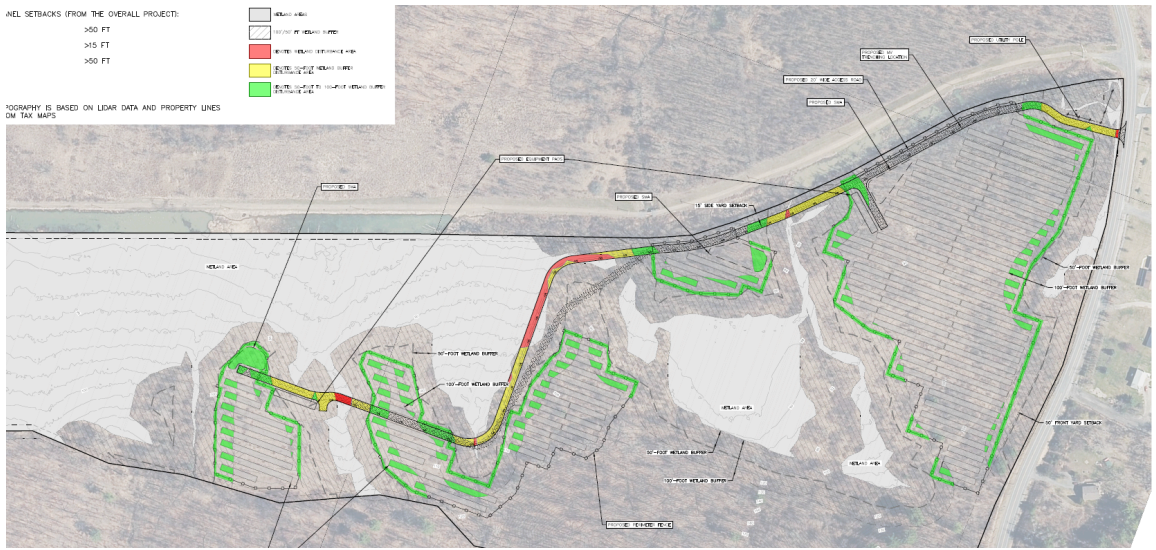


Assuming the DEC takes jurisdiction over the wetlands based on the recent amendment to the Freshwater Wetlands Act, without a GP, the system size would need to be dramatically reduced in order to avoid the wetland (red above) and the 100 foot buffer/adjacent area (yellow above). The new system size is only 2.67 megawatts – a 47% reduction to the original system size. This project would not be viable and would certainly be canceled.



### Scenario 2: Draft GP Setbacks and Allowances

If the terms outlined in the DEC’s draft GP for community-scale solar energy installations were applied to the site, the project size would increase slightly from 2.67 megawatts to approximately 3.3 megawatts. The additional capacity is enabled by the reduction to the adjacent area/buffer from 100 feet to 50 feet. While this site is an old farm field, it was not actively farmed for three of the last five years, so it would not benefit from the more relaxed 25 foot setback in the DEC’s draft GP. At 3.3 megawatts, this project is still not economically viable and will be cancelled.



### Scenario 3: Draft GP with 25-Foot Setbacks

The final scenario modeled includes a reduced buffer (25 feet) with some fence posts in the 25 foot buffer area (as is allowed by ORES for large-scale projects). This system is 4 megawatts. While it is 20% smaller than the original design, this particular project would likely be viable and move forward.

