



Department of
Agriculture and Markets

NYS Farmland Protection Working Group (FPWG)

Monday, February 28, 2022
2:00 to 4:00 PM EST

Kathy Hochul
Governor

Richard A. Ball
Commissioner

Welcome from Commissioner Ball



**Department of
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Housekeeping Considerations

- ✓ This remote meeting is open to the public and viewing access has been made accessible via WebEx.
- ✓ The meeting will be recorded and posted for future viewing
- ✓ Principle members and presenters will not be muted during the discussion. Please mute your own lines when not speaking.
- ✓ If members would like to speak on a subject, please use the raise hand function. We will also be monitoring the chat box.



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Agenda

- Welcome
- Role Call / Introduction of Advisors
- Review of Existing Controls
- Strategy Development – Discussion and Recommendations
- Wrap Up & Next Steps
- Adjourn



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Roll Call



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Existing Controls

NYSERDA



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Promotion of a vibrant agricultural economy is an important State policy goal. The **New York State Energy Research and Development Authority (NYSERDA)** recognizes the importance of collaboration between the agriculture and clean energy sectors as a critical part of the State’s overall decarbonization strategy. NYSERDA works in close coordination with the Department of Agriculture and Markets (NYSAGM) and other stakeholders to responsibly support the development of renewable energy projects. The following provides a summary of how NYSERDA advances its renewable energy goals while working to promote State agricultural policies.



- **NY-Sun Program**
- **The Large-Scale Renewables (LSR) Program**
- **Agricultural Technical Working Group (A-TWG)**
- **Environmental Research**



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Existing Controls

ORES



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The overarching framework of Executive Law § 94-c and accompanying regulations at 19 NYCRR part 900 (Part 900) is to avoid, minimize, or mitigate, to the maximum extent practicable, any potential significant adverse environmental impacts of proposed major renewable energy facilities. In accordance with Executive Law § 94-c(5)(e), the Office of Renewable Energy Siting (ORES or Office) may only issue a final siting permit if it makes a finding that the proposed project, together with any applicable uniform and site-specific standards and conditions, would comply with applicable laws and regulations. In making this determination, the Office may elect not to apply, in whole or in part, any local law or ordinance which would otherwise be applicable if it makes a finding that, as applied to the proposed major renewable energy facility, the local law is unreasonably burdensome in view of the Climate Leadership and Community Protection Act (CLCPA) targets and the environmental benefits of the proposed major renewable energy facility.



The Office recognizes the importance of conserving highly productive agricultural lands in New York State (NYS) and has developed a comprehensive set of regulations, in consultation with the New York State Department of Agriculture and Markets (NYSAGM), to address potential impacts to agricultural resources. The Office conducts a thorough assessment of potential significant adverse environmental impacts to agricultural resources on a case-by-case basis, and makes a siting permit determination based on a specific siting permit application and hearing record developed specifically on that application. Under the following provisions of Part 900, applicants must demonstrate that potential significant adverse environmental impacts to relevant agricultural resources would be avoided and minimized to the maximum extent practicable and offer mitigation measures to offset any unavoidable impacts.



1. Pre-application Procedures (19 NYCRR 900-1.3): At the earliest stages of a project's development, applicants are required to consult with local municipalities and host community members where a proposed facility is located, and conduct a thorough pre-application screening of natural resources in consultation with ORES and other involved NYS agencies. During these pre-application consultations, ORES, in consultation with NYSAGM, works with applicants to avoid siting major renewable energy facilities on lands used for active farming activities containing the NYS Agricultural Land Classification mineral soil groups (MSG) 1-4 so as to avoid significant adverse environmental impacts to highly productive agricultural lands to the maximum extent practicable.

2. Exhibit 15 (19 NYCRR 900-2.16): Section 900-2.16 requires applicants to provide ORES with the information necessary to evaluate potential significant adverse environmental impacts to agricultural resources on a case-by-case basis and to make decisions that balance the need to efficiently advance a major renewable energy facility while protecting farmland and farmers. The regulations established a clear standard to apply in evaluating the potential impacts to agricultural resources that may result from the construction and operation of major renewable energy facilities.



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Agricultural Plan: If a facility site is proposed to be located on active agricultural lands (i.e., land in active agricultural production defined as active three (3) of the last five (5) years) containing MSG 1 through 4, § 900-2.16 requires applicants to develop an Agricultural Plan that is consistent with the NYSAGM guidelines for solar and wind facilities to the maximum extent practicable. Applicants must address in the Agricultural Plan how they plan to avoid, minimize, and mitigate agricultural impacts to those active agricultural lands.



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Agricultural Co-utilization Plan: Applicants are strongly encouraged to explore options for co-location of major renewable energy facilities and farming activities to allow for continued agricultural production within the facility site. In addition to using the facility site for traditional row crops and hay where feasible, such activities may include sheep grazing, the cultivation of pollinator-friendly plantings, and the installation of apiaries. The regulations specifically contemplate the development of co-utilization plans to detail proposed practices that would be implemented throughout the useful life of the facility. The proposed activities should be consistent with and support the existing on-farm agricultural production whenever possible. The regulations are intended to encourage innovation and flexibility, rather than being prescriptive, and to guide applicants in the process of requesting and obtaining a permit for a solar or wind facility.



Decommissioning and Site Restoration Plan: To ensure New York State farmlands are protected over time, developers are required to restore the land to its original state as productive farmland at the end of a project's useful life. Section 900-2.24(a) requires the preparation of a Decommissioning and Site Restoration Plan consistent with NYSAGM guidelines. Section 900-6.6 further requires permittees to provide financial security in the form of a letter of credit or other approved financial assurance for decommissioning and site restoration activities, in accordance with an approved Decommissioning and Site Restoration Plan, which must remain active until a facility is fully decommissioned.



Uniform Standards and Conditions (19 NYCRR 900-6):

NYSAGM Guidelines for Construction Mitigation: The uniform standards and conditions set forth in § 900-6.4(s) will be imposed upon each facility to ensure consistency with NYSAGM Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands and NYSAGM Guidelines for Agricultural Mitigation for Wind Power Projects.

Agricultural Monitor: The uniform standards and conditions set forth in § 900-6.4(s) require the hiring of an independent third-party agricultural monitor to oversee compliance with agricultural conditions and requirements.



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Existing Controls

DPS



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Article VII – Siting of Major Utility Transmission Facilities

- Article VII of the Public Service Law (PSL) and its implementing regulations, contained in 16 NYCRR Parts 85-88, require a finding that any proposed facility avoids or minimizes to the extent practicable any significant adverse environmental impact, represents the minimum adverse environmental impact, **avoids or minimizes to the extent practicable any significant adverse impact on active farming operations, represents a minimum adverse impact on active farming operations**, conforms to applicable State and local laws and regulations, and will serve the public interest, convenience, and necessity.
- In rendering a decision either granting or denying an application under Article VII, pursuant to PSL §126(1)(c), the Public Service Commission (Commission) is required to determine that the facility represents the minimum adverse environmental impact and “**other pertinent considerations including . . . the effect on agricultural lands. . .**”



Article VII – Siting of Major Utility Transmission Facilities

- The Commission is specifically required to determine, pursuant to PSL §126(1)(d), that the **proposed facility avoids or minimizes to the extent practicable any significant adverse impact on active farming operations that produce crops and livestock and livestock products**. Further, that the facility represents a minimum adverse impact on active farming operations that produce crops, livestock, and livestock products.
- Pursuant to PSL §126(1)(g), the Commission is required to find that proposed facilities conform to applicable state and local laws and regulations – with discretion on those that are unreasonably restrictive.
- In addition to the findings required by Article VII, PSL §124(1)(e) grants the Department of Agriculture and Markets (AGM) the statutory right to be a party to certification proceedings. By allowing AGM to be a party, AGM has the right to engage in discovery, present expert testimony, participate in evidentiary hearings, and participate in settlement negotiations.
- Commission precedent has developed typical conditions that are ordered for any certified facility for facilities proposed in agricultural areas.



Article 10 – Siting of Major Electric Generating Facilities - Article 10 of the PSL and its implementing regulations, contained in 16 NYCRR Part 1000-1002, require a finding that

- a) construction or operation of a major electric generating facility is a beneficial addition to or substitution for the electric generation capacity;
- b) the facility will serve the public interest;
- c) the adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable;
- d) if the facility results in or contributes to a significant and adverse disproportionate environmental impact the applicant will by the facility upon the local community for the duration that the certificate is issued to the maximum avoid, offset or minimize the impacts caused extent practicable using verifiable measures; and
- e) that the facility is designed to operate in compliance with applicable state and local laws and regulations

Article 10 – Siting of Major Electric Generating Facilities

- The Siting Board is required, pursuant to PSL §168(4), to consider the environmental impacts, the impact on community character, and other considerations deemed pertinent by the Siting Board.
- Similar to Article VII, PSL §166(1)(e) grants AGM the statutory right to be a party to Article 10 proceedings.
- Article 10 implementing regulations reflect the statutory considerations the Siting Board is required to make with respect to agricultural impacts. Exhibit 4 of the Article 10 application must include maps showing existing land uses in the applicable study area, zoning districts, and agricultural districts, among other land use information. (16 NYCRR §1001.4).
- Exhibit 22 of the Article 10 application include “[a]n analysis of the temporary and permanent impacts of the construction and operation of the facility and the interconnections on agricultural resources, including the acres of agricultural land temporarily impacted, the number of acres of agricultural land that will be permanently converted to nonagricultural use, and mitigation measures to minimize the impact to agricultural resources.” (16 NYCRR §1001.22(q))



Article 10 – Siting of Major Electric Generating Facilities

- Similar to Article VII proceedings, there are no standard conditions encoded in statute or regulation. As Article 10 has developed, typical conditions have been developed through Siting Board precedent. With respect to agricultural considerations, this includes conditions requiring adherence with the AGM guidelines entitled *Guidelines for Agricultural Mitigation for Wind Power Projects or Guidelines for Solar Energy Projects – Construction Mitigation or Agricultural Lands* as well as filings regarding a project’s compliance with the applicable guidelines; requiring remediation of agricultural lands; monitoring of agricultural areas either through a dedicated Agricultural Monitor or an Environmental Monitor qualified to carry out agricultural monitoring; and requirements for consultation with agricultural producers during construction.
- In addition to these typical conditions, the project may be modified either through settlement negotiations or as the Siting Board deems appropriate in light of agricultural concerns. This could include layout changes such as location shifts or elimination of components to avoid impacts to prime soils.



Strategy Development - Discussion and Recommendations




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Control Category	Topic	Discussion Points
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Applied Research / Demonstrations

1. Further research related to Dual /Co-utilization of agricultural production and renewable energy projects.

- A. Document case studies from other States.
- B. Encourage the development of pilot projects as a minimization of impacts when accompanied by applied research.
- C. Direct funding to applied research and demonstration projects.
- D. Foster the development of standards and best management practices for agricultural dual / co-utilization (forage, row crops, pasture, etc.)

Control Category	Topic	Discussion Points
<p>Design Options</p> <p>Financial Incentives / Disincentives</p>	<p>2. Potential loss of leased agricultural lands impacting farm operations.</p> <p>Increasing rental rates for agricultural lands.</p>	<p>A. Encourage Dual Use / Co-utilization (forage, row crops, pasture, etc)</p> <p>B. Allow continued Agricultural Assessment on acres utilized to minimize impacts to agricultural production through dual use / co-utilization.</p>
		

**Control
Category**

Topic

Discussion Points

Planning

3. State level working lands management plan.

A. Development of a Statewide Farmland Protection Plan – Similar to process as NYS Open Space Plan.



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Control Category	Topic	Discussion Points
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Financial Incentives / Disincentives

4. Mitigation Fee Collection

- A. Fee escalator for counties that are hosting multiple renewable energy projects.
- B. Consider spreading agricultural mitigation payments over the project life cycle on an annual basis.



Control Category	Topic	Discussion Points
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Financial Incentives / Disincentives

5. Mitigation Fee Disbursal

- A. Sharing agricultural mitigation fees with impacted counties to advance farmland protection plan action items.
- B. AGM and NYSERDA to oversee fees for securing perpetual conservation easements on farms targeting prime agricultural lands in disproportionately impacted communities.
- C. Put funding into soil conservation projects on farms.



Control Category	Topic	Discussion Points
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Siting Control

6. Potential, cumulative impacts of siting renewable energy projects on agricultural lands

- A. Initiate a study to determine the potential benefits / unintended consequences as well as the potential scale of a statutory cap for solar siting / development on farmland by region, county or other. Assess impact on pursuit of CLCPA.
- B. Add the recently developed MSG 1-4 GIS layers to the State’s GIS Clearinghouse to promote dissemination and consider a process for uploading as-built GIS shapefiles for projects that have reached commercial operation.



Control Category	Topic	Discussion Points
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Planning	7. Local Farmland protection plans have not been updated to reflect siting of renewable energy facilities.	<p>A. Statutory amendment of NYS AML 25AAA §325 to allow a County Plan to be updated more frequently than every 10 years, and §324-a to allow Municipal Plans to be similarly updated to address emerging issues, such as the siting of renewable energy facilities within local farmland protection plans.</p>  
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Control Category	Topic	Discussion Points
Design Options	<p>8. Consideration of habitat and ecosystem services that may be provided within solar arrays post construction to investigate whether there is a benefit that could minimize impacts to productive agricultural lands</p>	<p>A. Study conservation benefits post-construction as they pertain to habitat within existing solar arrays.</p> <p>B. Encourage pilot projects to evaluate potential to establish habitat for Threatened and Endangered Species within arrays and siting features that may improve or reduce opportunities for habitat.</p> <p>C. Should studies determine an opportunity for array areas to serve as meaningful habitat, look at potential applications for project developers to employ and methods to offset agricultural impacts.</p>



Control Category	Topic	Discussion Points
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Tools	<p>9. NYSERDA’s Model local law to minimize adverse impacts to active and productive agricultural lands.</p>	<ul style="list-style-type: none"> A. Update and review the model solar local law for municipal governments, as necessary, to provide increased and appropriate measures for protection of agricultural lands. B. Administer county wide workshops on the model solar local law to educate local officials on available resources and provide best practice guidance. C. Continue to provide direct technical assistance to municipalities as they adopt local laws to encourage responsible development while maintaining active and productive agricultural lands.
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Control Category	Topic	Discussion Points
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Tools	10. Pre- Screening for Natural Resource Impacts	A. Utilize Smart Solar Siting Scorecard for solicitations involving Renewable Energy Certificate (REC) Agreements to the maximum extent practicable.
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Control Category	Topic	Discussion Points
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Plan Implementation

11. Advancement of locally identified county agricultural and farmland protection plan action items.

Secure appropriations in the annual state budget to activate NYS AML 25-AAAA, which authorizes AGM Commissioner to provide State financial assistance to County Agricultural and Farmland Protection Boards to implement actions identified in County and Municipal Agricultural and Farmland Protection Plans (AFPP), to further siting of renewable energy projects.



Wrap Up and Next Steps



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Adjourn - Next meeting:

March, 2022

Date To Be Determined



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