


**THIS IS A TWO-SIDED DOCUMENT**

 <p><b>NEW YORK</b> STATE OF OPPORTUNITY.</p> <p><b>Adirondack Park Agency</b></p> <p>P.O. Box 99, 1133 NYS Route 86 Ray Brook, New York 12977 Tel: (518) 891-4050 www.apa.ny.gov</p>	<p><b>DRAFT</b> APA Permit <b>2022-0266</b></p>
<p>In the Matter of the Application of</p> <p><b>NY 789 TARBELL HILL, LLC, PETER ZELINSKI, KATHRYN ZELINSKI and JUDSON ZELINSKI</b> <b>Permittees</b></p> <p>for a permit pursuant to § 809 of the Adirondack Park Agency Act and 9 NYCRR Part 578</p>	<p>Date Issued: <b>XXXX</b></p> <p>To the County Clerk: Please index this permit in the grantor index under the following names:</p> <ol style="list-style-type: none"><li><b>1. NY 789 Tarbell Hill, LLC</b></li><li><b>2. Peter P. Zelinski</b></li><li><b>3. Kathryn M. Zelinski</b></li><li><b>4. Judson P. Zelinski</b></li></ol>

**SUMMARY AND AUTHORIZATION**

This permit authorizes a subdivision by lease and construction of a solar generation facility in an area classified Low Intensity Use on the Adirondack Park Land Use and Development Plan Map in the Town of Moriah, Essex County.

This authorization shall expire unless recorded in the Essex County Clerk's Office within 60 days of issuance of a signed and notarized permit. The signed and notarized permit shall be recorded in the names of all persons and entities listed above and in the names of all owners of record of any portion of the project site on the recordation date.

The project shall not be undertaken or continued unless the project authorized herein is in existence within five years of the date the permit is recorded in the County Clerk's Office. The Agency will consider the project in existence when the solar generation facility has been constructed.

The project shall be undertaken in compliance with all conditions stated herein. Failure to comply with this permit is a violation and may subject the permittee, successors, and assigns to civil penalties and other legal proceedings.

This permit does not convey any right to trespass upon the lands or interfere with the riparian rights of others in order to undertake the authorized project, nor does it authorize the impairment of any easement, right, title, or interest in real or personal property.

Nothing contained in this permit shall be construed to satisfy any legal obligations of the permittee to comply with all applicable laws and regulations or to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional, or local.

## **PROJECT SITE**

The project site is 100± acres of land in an area classified Low Intensity Use on the Adirondack Park Land Use and Development Plan Map and identified as Tax Map Section 97.13, Block 1, Parcel 25.100. The site is located on the north side of Tarbell Hill Road (County Route 42) and the west side Dugway Road (County Route 4) in the Town of Moriah, Essex County. The project site is owned by Peter P. Zelinski, Kathryn M. Zelinski, and Judson P. Zelinski, as described in a deed recorded October 1, 2020, in the Essex County Clerk's Office under Instrument Number 2020-3974.

The project site contains approximately 9 acres of deciduous swamp and emergent marsh value "2" wetlands associated with Stony Brook within the vicinity of the area to be leased for development. Stony Brook is a permanent stream classified Class C(T) by the NYS Department of Environmental Conservation. Additional wetlands not described herein or depicted on the Project Plans may be located adjacent to the project site.

The project site was previously approved for a solar generating facility by Agency Permit 2021-0033 and is the remaining land resulting from subdivisions authorized by Agency permits 90-368, 90-618, 92-23, 99-214, and 2002-128.

The project authorized by Agency Permit 2021-0033 is not in existence.

## **PROJECT DESCRIPTION**

The project as conditionally approved herein involves a subdivision by lease for the construction of a 5 MW photovoltaic solar generation facility within two separate fenced areas totaling 23 acres on approximately 31 acres of leased land. The solar generation facility involves installation of solar panel arrays and related infrastructure including new access roads, fencing, landscaping, and overhead utility connections.

The project is shown on the following plans and reports (Project Plans):

- Nine sheets of plans titled "Moriah CSG – New Energy Equity, LLC," prepared by C.T. Male Associates, dated November 17, 2022 (Site Plans);
- A stormwater pollution prevention plan titled "Moriah Community Solar Project, 789 Tarbell Hill Road," prepared by C.T. Male Associates, dated last revised October 14, 2022 (SWPPP);
- A Memo to New Energy Equity LLC titled "Visual Impact Analysis - Moriah Community Solar Array," prepared by EcoVue Consulting Services, Inc., dated September 22, 2022 (Visual Analysis);
- A fraction mitigation contingency plan for directional drilling, received by the Agency March 22, 2021 (Frac-Out Contingency Plan); and
- A document titled "Agreement Regarding Decommissioning of Solar Array," received by the Agency February 9, 2021 (Decommissioning Plan).

A reduced-scale copy of the Overall Site Plan for the project Shown on Sheet C-103 of the Site Plans is attached as a part of this permit for easy reference.

### **AGENCY JURISDICTION**

Pursuant to Section 809(2)(a) of the Adirondack Park Agency Act and Adirondack Park Agency regulations at 9 NYCRR Part 578, a permit is required from the Adirondack Park Agency prior to any subdivision involving wetlands in the Adirondack Park. Pursuant to Section 802(63) of the Adirondack Park Agency Act, the division of land by lease constitutes a subdivision.

Pursuant to Section 809(2)(a) of the Adirondack Park Agency Act, a permit is required from the Adirondack Park Agency prior to the establishment of a major public utility use on Low Intensity Use lands in the Adirondack Park.

### **CONDITIONS**

#### **THE PROJECT IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The project shall not be undertaken until this permit has been recorded in the Essex County Clerk's Office.
2. This permit is binding on the permittee, all present and future owners or lessees of the project site, and all persons undertaking all or a portion of the project, for as long as the solar generation facility remains on the site. Copies of this permit and the Project Plans shall be furnished by the permittee to all subsequent owners or lessees of the project site prior to sale or lease, and by the permittee and/or any subsequent owner or lessee to all persons undertaking any development activities authorized herein.
3. In addition to complying with all terms and conditions of this permit, all future activities on the project site shall be undertaken in compliance with the requirements of New York State's Adirondack Park Agency Act, Freshwater Wetlands Act, and the Adirondack Park Agency's implementing regulations [9 NYCRR §§ 570-588].
4. This permit amends and supersedes permits 90-368, 90-618, 92-23, 99-214, 2002-128, and 2021-0033 in relation to the project site. The terms and conditions of permits 90-368, 90-618, 92-23, 99-214, 2002-128, and 2021-0033 shall no longer apply to the project site.
5. All deeds conveying all or a portion of the lands subject to this permit shall contain references to this permit as follows: "The lands conveyed are subject to Adirondack Park Agency Permit 2022-0266, issued **XXXX**, the conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
6. Subject to the conditions stated herein, this permit authorizes a subdivision by lease as depicted on the Site Plans. Any subdivision of the project site not depicted on the Site Plans shall require prior written Agency authorization.
7. This permit authorizes the construction of a solar generation facility and related improvements in the location shown and as depicted in the Project Plans and Visual Analysis. Any change to the location, dimensions, or other aspect of the solar generation facility shall require prior written Agency authorization.

8. Installation of any lighting associated with the solar generation facility shall require prior written Agency authorization.
9. This permit authorizes the installation of signs as depicted and described on the Site Plans and Visual Analysis. Installation of any additional signs associated with the solar generation facility shall require prior written Agency authorization.
10. Within 200 feet of the Proposed Tree Clearing Limit Line shown on the Site Plans, no trees, shrubs, or other woody stemmed vegetation shall be cut, culled, trimmed, pruned, or otherwise removed or disturbed on the non-leased portion of the project site without prior written Agency authorization, except for the removal of dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard.
11. Removal of trees four inches or greater diameter at breast height on the project site shall occur only between November 1 and March 31.
12. All trees and other vegetation depicted in the Visual Analysis shall be planted and maintained as shown and described on Sheet C-106 of the Site Plans no later than the first spring or fall planting season after final grading related to the construction of the solar generation facility on the project site. Any of these trees or other vegetation that do not survive shall be replaced annually until established in a healthy growing condition. Any change to the proposed plantings or seed mixes used to re-vegetate the project site shall require prior written Agency authorization.
13. Mowing within the lease parcel boundaries shown on the Site Plans shall only occur between November 1 and May 1.
14. The application of any pesticides or herbicides within the lease parcel boundaries shall require prior written Agency authorization.
15. The undertaking of any activity involving wetlands on the project site shall require a new or amended permit.
16. The Frac-Out Contingency Plan shall be implemented immediately in the event that drilling fluids are released during the directional bore operations. Any change to the location of the proposed directional bore on the project site shall require prior written Agency authorization.
17. When brought from off-site, all equipment, including but not limited to trucks, excavators, tractors, etc., and hand excavation tools such as shovels, rakes, and picks, to be used on the project site shall be clean and free of soil, mud, or other similar material. If washed on the project site, equipment shall be washed in one location to prevent the distribution of propagules among different wash sites. All construction equipment and vehicles operating in areas that may contain existing invasive species shall be thoroughly cleaned prior to moving to other areas.
18. The project shall be undertaken in compliance with the SWPPP and Sheets C-501 and C-502 of the Site Plans.

19. Any change to the Point of Interconnection with the existing overhead utilities as shown on the Project Plans shall require prior written authorization.
20. The Agency shall be provided with color photographs showing the completed project within 30 days of project completion. Photographs shall be taken at the project site and from along Tarbell Hill Road and Dugway Road from Locations 5a, 6, 11, 12, 13, 14, and 15 of in the Visual Analysis. All photographs shall identify the date the picture was taken, the location of the photograph, and the lens size employed.
21. Except pursuant to written approval by the Agency, within one year of the solar generation facility ceasing to produce power, all infrastructure associated with the facility shall be removed and the site shall be restored to pre-development conditions at the owner's and/or operator's expense pursuant to the Decommissioning Plan.

### **CONCLUSIONS OF LAW**

The Agency has considered all statutory and regulatory criteria for project approval set forth in the Adirondack Park Agency Act, the Freshwater Wetlands Act and 9 NYCRR Part 578, and 9 NYCRR Part 574. The Agency hereby finds that the project authorized as conditioned herein:

- a. will be consistent with the land use and development plan;
- b. will be compatible with the character description and purposes, policies, and objectives of the Low Intensity Use land use area;
- c. will be consistent with the overall intensity guidelines for the Low Intensity Use land use area;
- d. will comply with the shoreline restrictions of § 806 of the Adirondack Park Agency Act;
- e. will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational, or open space resources of the Park or upon the ability of the public to provide supporting facilities and services made necessary by the project;
- f. will secure the natural benefits of wetlands associated with the project, consistent with the general welfare and beneficial economic, social, and agricultural development of the state; and
- g. will be compatible with preservation of the entire wetland and will not result in degradation or loss of any part of the wetland or its associated values.

PERMIT issued this      day  
of                              , 2023.

ADIRONDACK PARK AGENCY

BY: \_\_\_\_\_

John M. Burth  
Environmental Program Specialist 3 (EPS3)

STATE OF NEW YORK  
COUNTY OF ESSEX

On the      day of                              in the year 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared John M. Burth, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

