



Agenda Date: 10/9/24
Agenda Item: 8C

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE COMPETITIVE SOLAR)	ORDER
INCENTIVE (“CSI”) PROGRAM PURSUANT TO P.L.)	
2021, C. 169)	DOCKET NO. QO21101186
)	
IN THE MATTER OF NEXTGRID MANCHESTER)	
LANDFILL, LLC - APPLICATION FOR COMPETITIVE)	
SOLAR INCENTIVE PROGRAM TRANCHE 3)	DOCKET NO. QO24080622
ELIGIBILITY)	

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Daniel Serber, NextGrid Manchester Landfill, LLC

BY THE BOARD:

This Order concerns an application submitted by NextGrid Manchester Landfill, LLC, (“NextGrid” or “Applicant”) for conditional certification of Tranche 3 (Contaminated Sites and Landfills) eligibility under the Competitive Solar Incentive (“CSI”) Program, established by the Board’s December 7, 2022 Order,¹ pursuant to the Solar Act of 2021 (“Solar Act” or “Act”).² NextGrid seeks certification for eligibility to generate Solar Renewable Energy Certificate-IIs (“SREC-IIs”) for a proposed 5.2 megawatt³ (“MW”) solar electric power generation facility to be located at the Manchester Landfill site, Block 116, Lot 13 at 110 Sam Pitts Road (also known as 1501 NJ 70), Manchester Township, Ocean County, New Jersey 08759 (“Project”).

BACKGROUND

On July 9, 2021, Governor Murphy signed into law the Solar Act. The Act directed the Board to establish a new program to provide incentives for the deployment of at least 3,750 MW of new

¹ In re Competitive Solar Incentive (“CSI”) Program Pursuant to P.L. 2021, c.169 - Order Launching the CSI Program, BPU Docket No. QO21101186, Order dated December 7, 2022 (“CSI Order”).

² L. 2021, c. 169.

³ All megawatt values in this Order are in direct current, or “dc”.

solar power generation by 2026, through the mechanism of NJ SREC-IIs.⁴ NJ SREC-IIs represent the environmental value of the electricity produced by a solar electric power generation facility. The Act directed the Board to create both a solar facilities program for smaller projects, with administratively set incentive values, and a competitive solicitation process for awarding contracts for grid supply solar facilities and net metered solar facilities greater than five (5) MW. Among other changes, the Act also expanded the definition of compromised sites eligible for the siting of solar facilities to include “any currently contaminated portion of a property on which industrial or commercial operations were conducted and a discharge occurred, and its associated disturbed areas” and “a properly closed sanitary landfill facility and its associated disturbed areas.” N.J.S.A. 48:3-51.

Section 6 of the Act, codified at N.J.S.A. 48:3-119, also directed the Board to establish solar siting rules in consultation with New Jersey Department of Environmental Protection (“NJDEP”) and the Secretary of the New Jersey Department of Agriculture that apply to projects eligible to participate in the CSI Program. The Act lists a set of land use types that are not authorized for solar project siting unless the applicant files a waiver petition and receives approval from the Board to proceed. On September 18, 2023, the Board approved siting rules for CSI that were subsequently adopted and published in the New Jersey Register.⁵ In compliance with the Act, the Board’s rules require a petition to include documentation of “sufficient facts and circumstances” to demonstrate why siting a CSI-eligible project on a prohibited land use is in the public interest. N.J.A.C. 14:8-12.6(a). In such cases, the Board requires consultation with other State agencies, as appropriate, to determine if a project is in the public interest. Ibid.

On July 28, 2021, the Board voted to create the Successor Solar Incentive (“SuSI”) Program, which is divided into two (2) components: the Administratively Determined Incentive (“ADI”) Program and the CSI Program.⁶ Both the ADI and CSI Programs will provide one (1) NJ SREC-II for each megawatt-hour (“MWh”) of solar electricity produced from a qualifying facility.

The ADI Program, opened to new registrants on August 28, 2021, offers a fixed SREC-II incentive for net metered residential facilities, net metered non-residential facilities of five (5) MW or less, and community solar facilities. Incentive values are set administratively, following comprehensive modeling of costs and multiple rounds of stakeholder involvement.

⁴ This target reflects both New Jersey’s 2019 Energy Master Plan and Governor Murphy’s goal of achieving 100% clean energy by 2035. See 2019 New Jersey Energy Master Plan: Pathway to 2050, nj.gov, https://nj.gov/emp/docs/pdf/2020_NJBPU_EMP.pdf

⁵ 55 N.J.R. 2015(a).

⁶ In re a Solar Successor Incentive Program Pursuant to P.L. 2018, c.17, BPU Docket No. QO20020184, Order dated July 28, 2021.

By the CSI Order, the Board approved the establishment of the CSI Program. The CSI Program covers qualifying grid supply solar facilities - those selling into the wholesale markets - and net metered non-residential facilities greater than five (5) MW in size. The CSI Program awards SREC-IIs through a competitive solicitation with five separate market categories, or tranches:

- Tranche 1: Basic Grid Supply
- Tranche 2: Grid Supply on the Built Environment
- Tranche 3: Grid Supply on Contaminated Sites and Landfills⁷
- Tranche 4: Net Metered Non-residential Projects above 5 MW
- Tranche 5: Storage Paired with Grid Supply Solar

The first solicitation of the CSI Program opened for pre-qualification applications on February 1, 2023, and closed to bid submission on March 31, 2023. During the pre-qualification period, projects provided evidence that they met maturity requirements and specific tranche eligibility criteria; applications were administratively reviewed by the solicitation manager. Pre-qualified CSI projects then submitted a bid for an SREC-II award in their tranche, specified in dollars per MWh of solar electricity production; projects subsequently competed on bid price only. The Solar Act provides the Board the ability to establish confidential, pre-determined price caps for any or all tranches prior to the solicitation to protect ratepayers against excessive bids.⁸ On March 6, 2023, the Board established confidential price caps for each tranche for the first CSI Program solicitation.⁹

In the first solicitation, NextGrid submitted a pre-qualification package under Tranche 3 (Contaminated Sites and Landfills) for their Manchester Landfill project. The solar generation facility is proposed to be located on prohibited land in the Pinelands preservation area; therefore, as they had not previously secured a siting waiver, the project was not eligible to participate in the first solicitation. On March 30, 2023, the CSI Program Administrator delivered a letter to NextGrid that reiterated the requirement that any waivers must be obtained from the Board before a project may register to participate in a solicitation under the CSI Program.

On July 12, 2023, the Board declined to make any awards in the first solicitation as all SREC-II bids exceeded the price caps.¹⁰ In the same Order, the Board directed Board Staff (“Staff”) to conduct an analysis of market conditions impacting solar development in New Jersey prior to the second solicitation. The Board directed the next solicitation in the CSI Program to open on an expedited timeline.

By letter dated July 21, 2023, pursuant to N.J.A.C. 14:8-12.6, NextGrid filed a petition seeking a waiver of the Board’s siting prohibitions for CSI-eligible facilities in the Pinelands preservation area. N.J.A.C. 14:8-12.3(a)(2). The Board considered the information provided in the petition,

⁷ A “contaminated site and landfill” means (1) any currently contaminated portion of a property on which industrial or commercial operations were conducted and a discharge occurred, and its associated disturbed areas, where “discharge” means the same as the term is defined in section 23 of P.L.1993, c.139 (C.58:10B-1); or (2) a properly closed sanitary landfill facility and its associated disturbed areas. N.J.S.A. 48:3-51.

⁸ N.J.S.A. 48:3-117(d).

⁹ In re Competitive Solar Incentive (“CSI”) Program Pursuant to P.L. 2021, c. 169, Order Addressing Price Cap Determination, BPU Docket No. QO21101186, Order dated March 6, 2023.

¹⁰ In re Competitive Solar Incentive (“CSI”) Program Pursuant to P.L. 2021, c. 169, Order on the Outcome of the 2023 CSI Program Solicitation, BPU Docket No. QO21101186, Order dated July 12, 2023.

together with the support expressed by both NJDEP and the Pinelands Commission and found that sufficient evidence was provided to make the determination that the project is in the public interest. On January 10, 2024, the Board granted a land-use waiver to NextGrid for their Manchester Landfill project that would allow the project to move forward in the pre-qualification process for the second solicitation of the CSI Program.¹¹ The landfill is currently uncapped; NextGrid is proposing an earthen cap as part of the development.

The second solicitation opened on November 27, 2023, and closed on February 29, 2024. The Board received fourteen (14) submissions totaling 374.34 MW of solar generation capacity. Nine (9) projects totaling 339.96 MW were submitted in Tranche 1 (Basic Grid Supply), and five (5) projects totaling 34.38 MW were submitted in Tranche 3 (Contaminated Sites and Landfills). One (1) Tranche 1 project and one (1) Tranche 3 project also submitted bids for storage paired with solar electric generation in Tranche 5, totaling ninety-two (92) MWh. No bids were submitted in Tranche 2 (Grid Supply on the Built Environment) or Tranche 4 [Net Metered Projects >five (5) MW].

By Order dated April 17, 2024, the Board awarded the 5.2 MW NextGrid project, located at the Manchester Landfill site, Block 116, Lot 13 at 110 Sam Pitts Road (also known as 1501 NJ 70), Manchester Township, Ocean County, New Jersey, an SREC-II incentive of \$115/MWh in Tranche 3.¹² Pursuant to N.J.A.C. 14:8-11.5, projects that have received an SREC-II award under Tranche 3 (Contaminated Sites and Landfills) of the CSI Program must obtain conditional certification of eligibility from the Board and include documentation of that conditional certification as part of its registration package. The developer must apply for conditional certification using the Contaminated Sites and Landfills Eligibility Verification Form located on the Board's New Jersey Clean Energy Program website at www.njcleanenergy.com. Per the April 17 Order, the project was granted thirty (30) days after the effective date of the award Order to submit a completed registration packet to the Program Administrator, including a Contaminated Site or Landfill Eligibility Verification form and NJDEP Permit Readiness Checklist.

Project Description

On May 22, 2024, NextGrid submitted their initial CSI Program registration package, including the Contaminated Site or Landfill Eligibility Verification Form; a letter acknowledging receipt and notifying the Applicant of the Pending Certification for the project was issued on the same date. Staff transmitted a copy of the Eligibility Verification Form and NJDEP Permit Readiness Checklist to NJDEP on June 4, 2024.

The Applicant filed the Eligibility Verification Form with supporting documentation to enable the Board, in consultation with NJDEP, to determine whether the Project meets the requirements to participate in Tranche 3 of the CSI Program. NJDEP's Office of Permitting and Project Navigation ("OPPN") coordinated the review of NextGrid Manchester Landfill, LLC to determine any compliance issues at the site, required permits and approvals, and impacts to regulated areas that should be addressed prior to construction of the project. On August 7, 2024, NJDEP provided

¹¹ In re Petition of NextGrid Inc. for an Order Issuing a Waiver for the Development of a Solar Electricity Generation Facility in the New Jersey Pinelands Preservation Area Pursuant to the Competitive Solicitation Incentive Program Siting Requirements, BPU Docket No. QW23070456, Order dated January 10, 2024.

¹² In re the Competitive Solar Incentive ("CSI") Program Pursuant to P.L. 2021, c. 169 - Order on the Outcome of the Second Solicitation in the CSI Program, BPU Docket No. QO21101186, Order dated April 17, 2024 ("April 17 Order").

an advisory memorandum.¹³

NJDEP Memorandum

NJDEP offered comments on the following aspects of the project:

Watershed and Land Management

The site is associated with an issued Flood Hazard Applicability Determination and Flood Hazard Verification. NJDEP commented that all proposed activities should avoid or minimize impacts to these resources. Otherwise, any proposed impacts to areas regulated under flood hazard will require the appropriate permit authorizations prior to commencing regulated activities.

All impacts to Flood Hazard Area jurisdiction are regulated by NJDEP Division of Land Resource Protection (“DLRP”) and will require appropriate Flood Hazard Area permits. The site should have a landfill closure plan in place along with a remedial action work plan from a Licensed Site Remediation Professional (“LSRP”), before DLRP permits and/or waivers are issued. If the project is a “major development” and located within a regulated flood hazard area and/or riparian zone, compliance with the Stormwater Management Rules at N.J.A.C. 7:8 will be required.

The site is located within the Pinelands preservation area; therefore, NextGrid must contact the Pinelands Commission regarding jurisdiction. If the site falls under the jurisdiction of the Pinelands Commission, the Commission must review any required freshwater wetlands permit submissions. Pursuant to the Pinelands Protection Act, a Certificate of Filing, a Certificate of Completeness, or a resolution approving an application for public development, issued by the Pinelands Commission, must be submitted with any permit application. If the site falls under the jurisdiction of NJDEP, the appropriate freshwater wetland permit(s) will be required for proposed activities that will impact freshwater wetlands by creating a discharge of fill (stump and root removal).

Historic Preservation Office (“HPO”)

NJDEP advised that pursuant to Section 106 of the National Historic Preservation Act, the Historic Preservation Office reviews projects for their effects on historic resources when federal funding, licensing, or permitting is involved. Per the NJ register of Historic Places Act, the HPO reviews state, county & municipal undertakings on state listed resources. The HPO also reviews projects requiring Freshwater Wetlands, Waterfront Development, Upland Development, CAFRA and Highland Preservation Area Approval permits issued by the DLRP, as well as environmental assessments under Executive Order 215. NJDEP provided an HPO contact for any additional information.

Division of Fish and Wildlife

NJDEP, through its Fish and Wildlife Endangered & Nongame Species Program (“ENSP”), administers the Endangered and Nongame Species Conservation Act (“ENSCA”), which prohibits the taking of certain protected species. If the Manchester Landfill project is in the vicinity of such protected species, NextGrid must avoid disturbing them. NJDEP does not offer permits or other authorizations to disturb protected species. NextGrid should refer to NJDEP’s Landscape Project

¹³ Appendix A.

Map (v. 3.3) for areas where state endangered and threatened snake species and Arogos Skipper may be present due to revegetation of the Manchester Landfill.

NJDEP has offered avoidance and minimization practices to reduce the risk of adverse impacts to protected wildlife with regards to the Manchester Landfill project, which can be found under the Landfill Closure and Solar Array Project Area and Installation section of Appendix A.

Bureau of Solid Waste Permitting

The Manchester Landfill was operated after 1982 and has not been properly closed. The Township will need to submit and receive the Bureau's approval of a closure and post-closure plan ("Closure Plan") that is consistent with N.J.A.C. 7:26-2A.9(d) and (e) prior to commencement of any disruption/redevelopment activities. The Pinelands Commission must approve the proposed Closure Plan prior to the Bureau's issuance of any Closure and Post-Closure Plan approval. Through the Closure Plan, the Township may propose construction of a photovoltaic power-generating facility atop portions of the closed landfill. The Closure Plan must also include a financial plan consistent with N.J.A.C. 7:26-2A.9(f).

Office of Transactions and Public Land Administration

It does not appear this project will occur on or near Green Acres encumbered parkland. Since Green Acres does not have jurisdiction over the property, the Project will not result in a diversion or disposal of Green Acres parkland.

Bureau of NJ Pollutant Discharge Elimination System ("NJPDES") Stormwater Permitting

If more than one (1) acre will be disturbed, a general permit for Construction Activities, (5G3) from NJDEP Bureau Stormwater Permitting and Water Quality Management may be required.¹⁴

Bureau of Stationary Sources

Air Permitting

The applicant must review N.J.A.C. 7:27-8.2(c) for stationary permitting requirements, including air pollution permits for construction equipment or emergency generators that may remain on-site for over a year. Pursuant to N.J.A.C. 7:27-14 and 15, vehicles involved in the project must adhere to idling standards of less than three (3) minutes. Pursuant to N.J.A.C. 7:27-5.2, air pollution, including offsite odors harmful to human health or resulting in complaints, is prohibited. Pursuant to N.J.A.C. 7:27-5.2, dust emissions from construction activities must be controlled to prevent offsite impacts or material tracked onto the roadways. Pursuant to N.J.A.C. 7:27-8.2(c)21, an air permit may be required if a generator producing thirty-seven (37) kW, or more is used.

New Jersey Pinelands Commission

The Pinelands Commission has already received an application for the sand capping of Manchester Landfill and the installation of a solar energy facility. NextGrid has also submitted additional information to demonstrate that the proposed development is consistent with the applicable standards of the Pinelands Comprehensive Management Plan.

¹⁴ A 5.2 MW solar generation facility will result in disturbance of more than one (1) acre of land.

Conclusion

NJDEP notes that the comments provided are not indicative that NJDEP has made any decisions on whether the proposed project will be permitted. The applicant must comply with all other NJDEP rules and regulations and obtain any necessary permits as appropriate. Should the circumstances or conditions set forth in the information that was provided to the NJDEP change, the regulatory requirements and recommendations are subject to modification and may no longer hold true.

Permit Status

According to NextGrid's submitted Permit Readiness Checklist, NextGrid has already submitted a Landfill Closure and Post-Closure Plan to the Pinelands Commission and a Flood Hazard Area Verification for Riparian Zone Delineation to NJDEP. NextGrid has also initiated contact with the Division of Sustainable Waste Management and the Bureau of Solid Waste Permitting. NextGrid has been actively engaging with agencies to obtain the necessary permits and has historically received support from both NJDEP and Pinelands Commission, as evidenced by the Board land-use waiver they received on January 10, 2024.

DISCUSSION AND FINDINGS

At issue is the request by NextGrid to have its proposed Project be certified as eligible for SREC-IIs pursuant to N.J.A.C. 14:8-11.5(d)(2)(viii).

The Board **FINDS** that, as directed in the Board's April 17 Order and required at N.J.A.C. 14:8-11.5, the Applicant satisfied the initial registration requirements for a Tranche 3 project in the CSI Program. The Board **FINDS** that Staff transmitted the application discussed above to NJDEP for a review of eligible land use type and status of compliance issues at the site, required permits and approvals, and impacts to regulated areas that should be addressed prior to construction of the project on the proposed site.

Following a thorough review of the information submitted by the Applicant with their initial registration package, including the Contaminated Site or Landfill Eligibility Verification Form, site maps and NJDEP Permit Readiness Checklist, and NJDEP's findings, the Board **FINDS** that the Project is located on a landfill as defined in the Board's rules. The Board **FINDS** that the NJDEP memo does not identify any major, current compliance issues with the site. The Board **FURTHER FINDS** that the NJDEP memo identifies numerous permitting, approval and impact considerations that the Applicant will need to address in order to obtain full certification for the project.

The Board **FINDS** that should the circumstances or conditions forth in the information that was provided to the NJDEP change, the regulatory requirements and recommendations are subject to modification and may no longer hold true. The Board **FINDS** that the information provided by NJDEP is not indicative that NJDEP has made any decisions on whether the proposed project will be permitted.

The Board **FINDS** that the memorandum issued by NJDEP is not indicative of all permitting and approval requirements that the project must meet and that NJDEP determined that the Property owner will need to comply with State laws relevant to the property for the solar installation, as well as any other permits identified by NJDEP, prior to construction of the solar electric power

generation facility. The Board **FINDS** that in order to achieve full certification to generate SREC-IIs, the landfill project must first achieve properly closed status, in compliance with all appropriate NJDEP rules and regulations, prior to the solar facility achieving commercial operation.

The Board **FINDS** that provided these conditions are satisfied, the Applicant's 5.2 MW project will be eligible to generate SREC-IIs in the CSI Program as a landfill facility with associated disturbed area. The Board **ORDERS** that the Applicant shall document that the conditions for certification provided by the NJDEP, including but not limited to those considerations presented in the advisory memorandum, have been satisfied before full certification of the project's eligibility for SREC-IIs can issue.

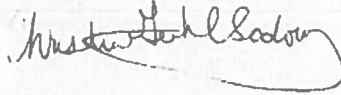
The Board **GRANTS** conditional certification of the Applicant's proposed Project. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that all NJDEP requirements have been satisfied.

In addition, to obtain full certification, the Board **DIRECTS** NextGrid to submit this Order with the final registration package within thirty (30) days of the effective date of this Order and to achieve commercial operation within thirty-six (36) months in accordance with N.J.A.C. 14:8-11.5(g)(3)(iii). The Board **DIRECTS** Staff to issue full certification to the project upon the Applicant's demonstration that all requirements for full certification – including but not limited to all NJDEP requirements – have been satisfied. After the Applicant receives full certification, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the project for purposes of SREC-II creation for a fifteen (15)-year Qualification Life.

The effective date of this Order is October 16, 2024.

DATED: October 9, 2024

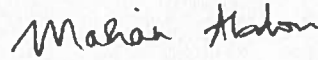
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BY:



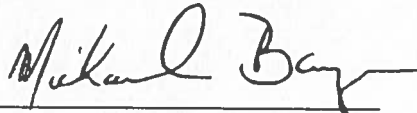
CHRISTINE GUHL-SADOVY
PRESIDENT



DR. ZENON CHRISTODOULOU
COMMISSIONER



MARIAN ABDOU
COMMISSIONER



MICHAEL BANGE
COMMISSIONER



ATTEST:

SHERRI L. GOLDEN
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

IN THE MATTER OF THE COMPETITIVE SOLAR INCENTIVE ("CSI") PROGRAM PURSUANT TO P.L. 2021, C. 169

IN THE MATTER OF NEXTGRID MANCHESTER LANDFILL, LLC - APPLICATION FOR COMPETITIVE SOLAR
INCENTIVE PROGRAM TRANCHE 3 ELIGIBILITY

DOCKET NOS. QO21101186 AND QO24080622

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Governor

TAHESHA L. WAY
Lt. Governor

SHAWN M. LaTOURETTE
Commissioner

MEMORANDUM

TO: Diane Watson
NJBPU Clean Energy Program

FROM: David Pepe, Director
NJDEP Office of Permitting and Project Navigation

Hannah Locke, Environmental Specialist
NJDEP Office of Permitting and Project Navigation

DATE: August 7, 2024

SUBJECT: Competitive Solar Incentive (CSI) Tranche 3 Review
Manchester Landfill Solar Project
110 Sam Pitts Road
Manchester Township, Ocean County
Block: 116 Lot: 13

Per Board Order, the New Jersey Board of Public Utilities (NJBPU) announced the opening of the second solicitation of the CSI Program. The CSI program structure has separate categories, or tranches, to ensure that a range of solar project types are able to participate. The New Jersey Department of Environmental Protection's (NJDEP) Office of Permitting and Project Navigation (OPPN) has been tasked with reviewing Tranche 3, grid supply projects on Contaminated Sites & Landfills that have been conditionally awarded SREC-II incentives by the NJBPU to determine any compliance issues at the site, required permits and approvals, and impacts to regulated areas that should be addressed prior to construction of the project.

In response to the request for a determination as to whether the proposal will have any adverse impacts to land resources, historical or cultural resources, threatened and endangered species and migratory birds, contaminated sites or landfills, or whether there are any impacts to Green Acres encumbered parkland held by the State, local government units and/or nonprofit organizations, the Department offers the following comments for NJBPU's consideration:

Watershed and Land Management

The site is associated with an issued Flood Hazard Applicability Determination and Flood Hazard Verification (PI# 1518-23-0002.1). Therefore, all proposed activities should avoid or minimize impacts to these resources. Otherwise, any proposed impacts to areas regulated under flood hazard will require the appropriate permit authorizations prior to commencing regulated activities.

Geographically, the site is located within the NJ Pinelands. Therefore, the agent shall contact the Pinelands Commission regarding jurisdiction. If the Pinelands Commission's the lead agency, they'll review any freshwater wetlands permit submissions should they be required. For an activity or project in the Pinelands Area as designated by Section 10(a) of the Pinelands Protection Act, N.J.S.A. 13:18-1 et seq., a Certificate of Filing, a Certificate of Completeness, or a resolution approving an application for public development, issued by the NJ Pinelands Commission shall be submitted with any permit application. If this information is not submitted, the application would appear administratively deficient, until provided and assuming all other application information's complete.

If NJDEP is the lead agency, all impacts to freshwater wetlands which create a discharge of fill (stump and root removal), as a result of the proposed activities, the appropriate freshwater wetland permit(s) will be required. All impacts to freshwater wetland transition areas are not regulated by NJDEP Division of Land Resource Protection (DLRP) under N.J.A.C. 7:7A-2.5.

Regardless of agency, all impacts to Flood Hazard Area jurisdiction (i.e. riparian zones and flood hazard areas), shall be regulated by NJDEP DLRP and if impacted will require the appropriate Flood Hazard Area Permits.

The site should have a landfill closure plan in place along with a remedial action work plan from a LSRP, before DLRP permits and/or waivers are issued.

If the project is a "major development" and located within a regulated flood hazard area and/or riparian zone; compliance with the Stormwater Management Rules at N.J.A.C. 7:8 will be required.

If you have any question regarding freshwater wetlands, please contact Brett Kosowski at Brett.Kosowski@dep.nj.gov.

If you have questions regarding flood hazard or stormwater, please contact Andre Thompson at Andre.Thompson@dep.nj.gov.

Historic Preservation Office

Pursuant to Section 106 of the National Historic Preservation Act, the HPO reviews projects for their effects on historic resources when federal funding, licensing, or permitting is involved. Per the NJ register of Historic Places Act, the HPO reviews state, county & municipal undertakings on state listed resources. The HPO also reviews projects requiring Freshwater Wetlands, Waterfront Development, Upland Development, CAFRA and Highland Preservation Area Approval permits issued by the State of New Jersey's Division of Land Resource Protection, as well as environmental assessments under Executive Order 215.

If you have any questions, please contact Meghan Baratta at Meghan.Baratta@dep.nj.gov.

New Jersey Fish and Wildlife

Endangered and Non-Game Species Program (ENSP)

NJDEP, through its Fish and Wildlife Endangered & Nongame Species Program (ENSP), administers the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq. (ENSCA), which prohibits the *take* of certain protected species. *Take* includes actions that harass, hunt, capture, kill, or attempt to harass, hunt, capture, or kill wildlife. Importantly, the NJDEP does not authorize the take of State or federally protected species. This means that persons planning or conducting activities in the vicinity of endangered, threatened, or nongame wildlife must avoid disturbing these protected species because, depending on its severity, a disturbance could constitute take in violation of ENSCA, even if the disturbance is unintended or incidental. A person found to have violated ENSCA may be liable to a penalty of up to

\$25,000, or if found guilty of knowingly having violated ENSCA, the penalty can be up to \$50,000 per day that a violation is ongoing.

NJDEP cannot shield a person conducting activities in the vicinity of endangered, threatened, or nongame wildlife from potential ENSCA violation(s) because NJDEP does not offer permits or other authorizations to disturb protected species. NJDEP offers avoidance and minimization practices that, if observed, may reduce the risk of adverse impacts to protected wildlife when conducting activities in the vicinity of protected species. These practices, discussed in more detail below, include, but are not limited to:

1. Identify the presence, nature, and extent of protected species;
2. Avoid any activities that may cause the take of a protected species;
3. Observe timing restrictions to avoid disturbance;
4. Observe area restrictions to avoid disturbance;
5. Actively monitor for potential disturbance; and
6. Adaptively manage activities to minimize disturbance.

Users of this guidance should be aware that [certain activities on land or in the water are regulated](#) by NJDEP and may require advanced NJDEP review and authorization. Users may consult the NJDEP Division of Watershed Protection and Restoration concerning potentially regulated activities.

NJDEP's Landscape Project Map (v. 3.3) values the area surrounding the project parcel for state endangered and threatened snake species (timber rattlesnake, cornsnake, and northern pinesnake) and Arogos Skipper. Since the landfill has revegetated, it is likely these species now inhabit the landfill for various life stages and life history requirements.

Landfill Closure and Solar Array Project Area and Installation

1. Landfill Closure

- a. In recent years, it was discovered that endangered and threatened snake species, including timber rattlesnakes, are capable of and have been documented colonizing landfills that had been (per more current/modern landfill action terminology) "closed" via soil intermediate or temporary cover for the purpose of overwintering (i.e., hibernacula). Such sites are difficult to identify visually given the dense vegetation that has often grown on site. As such, to reduce the risk of harm to overwintering snakes and/or entombing them and thereby, violating ENSCA:
 - i. Optimally, conduct landfill closure activities from May 16 – September 30 when snakes are less likely to be concealed in on-site, subsurface pockets **and** deploy an ENSP-approved venomous snake monitor to search for and relocate snakes (and turtles) from the project area.
 - ii. Minimally, deploy ENSP-approved venomous snake monitor(s) during all activities year-round to collect overwintering and injured snakes discovered during excavations and transport them to the approved wildlife rehabilitator (*see 2.b below*), and relocate seasonally-active snakes (and turtles) from the project area.

2. Construction and Installation

- a. Reptiles:
 - i. From May 16 – September 30, maintain an exclusion fence around the footprint of all equipment storage and staging areas. Fence shall be five-feet high above grade with a minimum 6" sunk below grade, heavy duty silt fence or equivalent, pulled taught with posts set on the interior/storage side of the fence.
 - ii. Avoid vehicle and machinery access and/or equipment or staging areas in vegetated areas.

- iii. Deploy ENSP-approved venomous snake monitor(s):
 - 1. From March 15 – November 30, deploy one ENSP-approved venomous snake monitor each day of any on-site activities to search for and remove reptiles and amphibians from harm’s way. Any injured reptiles should be safely secured and transferred to Woodlands Wildlife Refuge, Pittstown, NJ (Hunterdon County), for treatment and released near their capture location when deemed ready for release.
 - 2. All fenced areas should be monitored daily for reptiles and amphibians and the fence must be inspected and repaired the same day damage is observed and maintained until project completion and removal.
 - 3. All material stockpiles and vehicle/machinery engines and wheel wells should be inspected by an ENSP-approved venomous snake monitor each morning prior to the commencement of work.
 - b. Arogos Skipper (and other pollinating insects):
 - i. Avoid mowing and vegetation disturbance between April 1-September 30th to avoid negative impacts to Arogos Skipper and other species of pollinating insects.
 - c. Bats:
 - i. Long-eared bats may use on-site trees for roosting. Please consult with, Sarah Crestol, USFWS, NJ Office (Sarah.Crestol@fws.gov; 609-382-5271) regarding timing and tree-size restrictions on tree felling and trimming.
- 3. Restoration and Maintenance
 - a. As prescribed within the NJ Statute, N.J.S.A. 13:1B-15.178, “Standards for use of pollinator-friendly native plant species in grid supply solar facilities, Best Practices, May 2022” (Pollinator Standards), restoration and maintenance of solar array properties shall include:
 - i. Restoration: Use native pollinator seed mixes. For this location, the applicant should plant a combination of native warm season grasses and pollinator-friendly mix of plant species suitable for pollinating insects (and native birds).
 - ii. Maintenance of vegetation: Please refer to the Pollinator Standards for complete guidance. In general:
 - 1. When first establishing the grasses and pollinator plants, mow the site to a height of 4-6-inches prior to April 1 ahead of the first growing season.
 - 2. Once native grasses and pollinator plants are established (and after completion of the solar array construction), mow on a 2-3-year rotation prior to April 1 annually.
 - 3. *Note: If mowing is necessary April 1 – November 15, please deploy an ENSP-approved venomous snake monitor to precede machinery each day of mowing (or other vegetative maintenance activities) to reduce the risk of *take* under ENSCA.
- 4. Soil erosion and sediment control products (if employed)
 - a. Use 100% bio-degradable SESC products (i.e., products made of 100% natural material with netting made of natural plant fibers unaltered by synthetic materials) where they will satisfy the performance standards outlined by the Department of Agriculture, State Soil Conservation Committee in the most current version of *The Standards for Soil Erosion and Sediment Control in New Jersey* (“NJ Performance Standards” which can be found at <https://www.nj.gov/agriculture/divisions/anr/nrc/njerosion.html>). When possible, avoid the use of SESC products that incorporate plastic or other synthetically-made netting, including those claiming to be photo-, oxo-, UV-degradable, and others as these products have demonstrated to ensnare wildlife, particularly snakes, resulting in unauthorized incidental take of nongame species protected by ENSCA (N.J.S.A. 23:2A-1-13). In addition, such products do not degrade but rather break apart leaving plastic fragments,

balls of matted plastic, and microplastics in the environment causing long-term risks to wildlife.

- i. If “temporary” SESC products with plastic/synthetic netting are used to meet the NJ Performance Standards, they must be removed within 6-months of installation.
- ii. If permanent SESC products with plastic/synthetic netting are used to fulfill the NJ Performance Standards, the plastic/synthetic netting must have a rectangular aperture and if available, movable joints (not fixed/welded).

If you have any questions, please contact Joe Corleto at Joseph.Corleto@dep.nj.gov.

Bureau of Solid Waste Permitting

The Township of Manchester Landfill was operated after 1982 and was/is not properly closed. The Township will need to submit and receive the Bureau’s approval of a closure and post-closure plan (“Closure Plan”) that is consistent with N.J.A.C. 7:26-2A.9(d) and (e) prior to commencement of any disruption/redevelopment activities. Through the Closure Plan, the Township may propose construction of a photovoltaic power-generating facility atop portions of the closed landfill. The Closure Plan must also include a financial plan consistent with N.J.A.C. 7:26-2A.9(f).

The Pinelands Commission must approve the proposed Closure Plan prior to the Bureau’s issuance of any Closure and Post-Closure Plan Approval.

If you have any questions, please contact Ross Hull at Ross.Hull@dep.nj.gov.

Office of Transactions and Public Land Administration

It does not appear this project will occur on or near Green Acres encumbered parkland. Therefore, because Green Acres does not have jurisdiction over the property the project will not result in a diversion or disposal of Green Acres parkland.

If you have any questions, please contact Kevin Appelget at Kevin.Appelget@dep.nj.gov.

NJPDES Stormwater

If more than one acre will be disturbed, a general permit for Construction Activities, (5G3) may be required. The permit application process is available online at <https://dep.nj.gov/njpdess-stormwater/industrial-stormwater-program/general-permits/5g3/>.

If you have any questions, please contact Dan Kuti at Daniel.Kuti@dep.nj.gov.

Air Permitting

The applicant should review the requirements of N.J.A.C. 7:27-8.2(c) 1-22 for stationary permitting requirements. This includes but is not limited to, construction equipment-stationary construction equipment or emergency generators, may require air pollution permits if it is located on the site for longer than one year N.J.A.C. 7:27-8.2(d)15.

- There are general permits for boilers and emergency generators (<https://www.state.nj.us/dep/aqpp/gp.html>) if the units can meet the prescribed requirement in the general permits.

Idling Vehicles- any vehicles involved on the project must adhere to the idling standards (less than 3 minutes) in N.J.A.C. 7:27-14 and 15.

Air pollution including odors that are detectable offsite that are injurious to human health or would result in citizen complaints are prohibited. N.J.A.C. 7:27-5.2.

Fugitive Dust - dust emissions either windblown or generated from construction activities should be controlled to prevent offsite impacts or material tracked onto the roadways. N.J.A.C. 7:27-5.2.

An Air permit may be needed if a generator producing 37 KW or greater will be used for the project (N.J.A.C. 7:27-8.2(c)21).

If you have any questions, please contact Danny Wong at Danny.Wong@dep.nj.gov.

New Jersey Pinelands Commission

The Pinelands Commission has received an application for the sand capping of the landfill and the installation of a solar energy facility. Additionally, the applicant has submitted additional information in an attempt to demonstrate that the proposed development is consistent with the applicable standards of the Pinelands Comprehensive Management Plan.

If you have any questions, please contact Ernie Deman at Ernest.Deman@pinelands.nj.gov.

The comments provided on behalf of the NJDEP are not indicative that the Department has made any decisions on whether the proposed project will be permitted. The applicant must comply with all other Department rules and regulations and obtain any necessary permits as appropriate.

Should circumstances or conditions become other than as set forth in the information that was provided to the NJDEP, the regulatory requirements and recommendations are subject to change and may no longer hold true. Thank you for providing the New Jersey Department of Environmental Protection the opportunity to review the proposed solar project at the Manchester Township Landfill. Should you have any questions or need additional information, please contact Hannah Locke with the Office of Permitting and Project Navigation at Hannah.Locke@dep.nj.gov.

Sincerely,



David Pepe, Director