

STAFF DRAFT – OCTOBER 7, 2021 – NOT APPROVED BY AGENCY
THIS IS A TWO-SIDED DOCUMENT

 <p>NEW YORK STATE OF OPPORTUNITY.</p> <p>Adirondack Park Agency</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>DRAFT APA Permit 2020-0157</p>
<p>In the Matter of the Application of</p> <p>ELP TICONDEROGA SOLAR, LLC, KATHLEEN M. DOERING, ERIC RAFFERTY, and NATIONAL GRID Permittees</p> <p>for a permit pursuant to § 809 of the Adirondack Park Agency Act and 9 NYCRR Part 578</p>	<p>Date Issued: XXXX</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">1. ELP Ticonderoga Solar, LLC2. Kathleen M. Doering3. Eric Rafferty4. National Grid

SUMMARY AND AUTHORIZATION

This permit authorizes a subdivision by lease and major public utility use (i.e., solar generation facility and transformer station) in an area classified Moderate Intensity Use on the Adirondack Park Land Use and Development Plan Map in the Town of Ticonderoga, 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 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 permittees 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 a 293.69±-acre parcel of land located on Veterans Road (a/k/a Johnson Farm Road) and NY State Route 9N in the Town of Ticonderoga, Essex County, in an area classified Moderate Intensity Use on the Adirondack Park Land Use and Development Plan Map. The site includes the following:

- Tax Map Section 139.4, Block 1, Parcel 1.110 (254.99± acres, for the solar generation facility), as described in a deed from Richard Doering and Kathleen M. Doering to Kathleen M. Doering, dated November 20, 1990, and recorded December 5, 1990 in the Essex County Clerk's Office in Book 981 at Page 48;
- Tax Map Section 139.4, Block 1, Parcel 2 (36.8± acres, for utility infrastructure), as described in a deed from Ticonderoga Realty Company, Inc. to Eric Rafferty, dated May 17, 2010, and recorded May 25, 2010 in the Essex County Clerk's Office in Book 1637 at Page 324 as Instrument Number 2010-1998;
- Tax Map Section 139.4, Block 1, Parcel 47 (1.2± acres), as described in a deed from Eric Rafferty to ELP Ticonderoga Solar, LLC, dated September 23, 2020 and recorded October 5, 2020 in the Essex County Clerk's Office in Book 192 at Page 314; and
- A 0.7±-acre portion of Tax Map Section 139.4, Block 1, Parcel 17 (112.40± acres), as described in a deed from John Q. Porter and Minnie Porter to New York Power and Light Corporation, dated December 31, 1928, and recorded January 21, 1929 in the Essex County Clerk's Office in Book 192 at Page 314.

A Memorandum of Option for Transmission and Access Easement dated July 5, 2019 between Eric Rafferty (owner of Parcel 2) and ELP Ticonderoga Solar, LLC, was recorded February 19, 2020 in the Essex County Clerk's Office in Book 1981 at Page 37 as Instrument Number 2020-680.

The project site contains a wetland complex associated with Five Mile Creek, a permanent and classified stream. The wetland complex has an emergent marsh/scrub shrub swamp covertype and a value rating of "2" pursuant to 9 NYCRR Part 578.

Parcel 1.110 is improved by various barns and sheds constructed in 1940 and 1995. Parcel 1.110 contains a small cemetery.

PROJECT DESCRIPTION

The project as conditionally approved herein involves installation of a 20 MW solar facility to be sited on approximately 100 acres of a 255-acre property. The proposal includes installation of approximately 46,000 585-watt (or equivalent) solar photovoltaic (PV) panels. The solar panels will be attached to a single-axis tracker racking system and secured into the ground by driven posts (maximum structure height of 10 feet). The entire solar array will be enclosed by a 7-foot-tall wire mesh fence. The DC power

produced by the solar panels will be converted to AC utility grade power using central inverters, located on equipment pads throughout the array. The project also involves a new connection to National Grid's Ticonderoga-Republic #2 115kV line located 1,450± feet east of the solar array, construction of a transformer station near NY State Route 9N between the array and the 115kV line, and installation of an underground AC line through wetlands to connect the solar array to the transformer station.

The project also involves a two-lot subdivision of Parcel 1.110 (254.99± acres) into a solar lease area (115± acres) and the remaining land (140± acres).

The project site contains road frontage on both Veterans Road and NY State Route 9N. Existing access to the project site is along an existing un-improved road from Veterans Road, which will be used, improved, and extended as part of this project. New access from NY State Route 9N will be developed to the proposed transformer station.

The project will involve the loss of 12,034 square feet (0.276± acres) of wetlands, from installation of the transformer station, culverts, and post-construction stormwater controls, specifically stone check dams, and the temporary disturbance of an additional 1,904 square feet (0.004± acres) of wetlands, from installation of utility trenches and post-construction stormwater controls, specifically vegetated swales. 2.76± acres of wetland and 0.26± acres of upland buffer will be enhanced as mitigation for this loss, as described and depicted in the Wetland Mitigation Plan described below.

All site work including any ground intrusive activities will be undertaken in compliance with the "Excavation Work Plan, ELP Ticonderoga Solar, LLC," prepared by Hanson Van Vleet, PLLC, and dated June 4, 2021.

Parcels 2 and 47 were created in a two-lot subdivision in 2020. As this subdivision involved wetlands, it appears that an Agency permit was required for its undertaking. Agency records indicate that no permit was obtained. Compliance with the requirements of Condition 7 of this permit will resolve this matter for Agency purposes. The project is shown on the following maps, plans, and reports:

- "Map of Proposed Improvements and Lease Area prepared for East Light Partners," prepared by Darrah Land Surveying, PLLC and dated September 27, 2021 (Lease Area Plan);
- 29 sheets of plans titled "Solar Field Layout for ELP Ticonderoga Solar," prepared by Environmental Design Partnership, LLP and last dated August 31, 2021 (Project Plans), depicting existing conditions, proposed site development and grading, erosion and sediment control, landscaping, wetland impacts and mitigation, and detail drawings;
- a report titled "Stormwater Analysis ELP Ticonderoga Solar, LLC," prepared by Environmental Design Partnership, LLP dated July 2020 and revised July 2021 (Stormwater Plan);
- a report titled "Wetland and Upland Buffer Enhancement Plan," prepared by Quenzer Environmental, LLC and dated August 20, 2021 (Wetland Mitigation Plan);
- a report titled "ELP Ticonderoga Solar Facility Decommissioning Plan," prepared by East Light Partners, and dated November 2020 (Decommissioning Plan); and

- a visual analysis consisting of an “ELP Ticonderoga Solar Project, Project Visibility Map,” prepared by Visual Environments for East Light Partners and dated July 26, 2021 and “ELP Ticonderoga Solar Project, Key Observation Point (KOP)” maps, photographs, and photo simulations dated October 1, 2020, October 21, 2020, and July 27, 2021 (Visual Analysis).

A reduced-scale copy of the “Overall Site Plan” (Sheet 2 of the Project Plans), “Wetland Impacts Plan” (Sheet 23 of the Project Plans), “APA Wetland Mitigation Plan” (Sheet 24 of the Project Plans), and the “Landscaping Plan” (sheets 25 and 26 of the Project Plans) are attached as a part of this permit for reference.

AGENCY JURISDICTION

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 Moderate Intensity Use lands in the Adirondack Park.

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 deposit of fill in a wetland in the Adirondack Park.

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.

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 permittees, 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 or the lease is in effect. Copies of this permit and Lease Area Plan, Project Plans, Stormwater Plan, Wetland Mitigation Plan, Decommissioning Plan, and Visual Analysis shall be furnished by the permittees to all subsequent owners or lessees of the project site prior to sale or lease, and by the permittees 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 Agency Permit 1993-0375 and Agency Permit 1987-0245 in relation to the project site. The terms and conditions of Permits 1993-0375 (for a commercial trucking operation no longer in existence) and 1987-0245 (for a subdivision that was never undertaken) 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 2020-0157, issued **XXXX**, the conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
6. This permit authorizes a two-lot subdivision by lease as depicted on the Lease Area Plan. Any subdivision of the project site not depicted on the Lease Area Plan shall require prior written Agency authorization.
7. Within 90 days of recording this permit, a new deed shall be filed in the Essex County Clerk's office describing Parcel 2 and Parcel 47 as a single, un-divided lot.
8. This permit authorizes the construction of a major public utility use (i.e., solar generation facility, transformer station, and related improvements) in the location shown and as depicted on the Project Plans and Visual Analysis. Any change to the location, dimensions, or other aspect of the major public utility use shall require prior written Agency authorization.
9. Any change to the Point of Interconnection with the existing overhead utilities as shown on the Project Plans shall require prior written authorization.
10. The project shall be undertaken in compliance with the Stormwater Plan.
11. The project shall be undertaken in compliance with the Erosion and Sediment Control Plans contained within the Project Plans.
12. 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. All construction equipment and vehicles operating on this project site shall be thoroughly cleaned prior to moving off-site.
13. Installation of any lighting associated with the major public utility use shall require prior written Agency authorization.

14. All signs associated with the major public utility use on the project site shall comply with the Agency's "Standards for Signs Associated with Projects" [9 NYCRR Part 570, Appendix Q-3]. The Notice and Warning signs shown on the Project Plans are less than 2 square feet in area and comply with this condition.
15. On Parcel 1.110 and outside of the fence line shown on the Project Plans, no trees, shrubs, or other woody stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed on the project site without prior written Agency authorization, except for a) trees within the limits of selective trimming and b) dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard.
16. On Parcel 1.110 and within 50 feet of the wetland immediately south of the array area, no trees, shrubs, or other woody stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed without prior written Agency authorization, except for a) hand removal of trees greater than 30 feet in height and b) dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard.
17. On Parcel 1.110 and within 50 feet of the cemetery shown on the Project Plans, no trees, shrubs, or other woody stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed without prior written Agency authorization, except for dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard. Prior to any tree clearing within 200 feet of the cemetery, temporary fencing and signage shall be installed to mark the 50-foot buffer around the cemetery, as shown on the Project Plans.
18. On Parcel 2 and outside of the silt fence surrounding the transformer station shown on the Project Plans, no trees, shrubs, or other woody stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed without prior written Agency authorization, except for dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard.
19. Between April 1 and October 31, no trees shall be removed or disturbed on the project site without prior written Agency authorization.
20. All trees, shrubs, and seed mixes shall be planted and maintained as described and depicted on the Landscaping Plan contained within the Project Plans, and as shown in the Visual Analysis. Trees and shrubs shall be planted no later than the first spring or fall planting season after final grading related to construction of the major public utility use on the project site. Trees and shrubs that do not survive shall be replaced annually until established in a healthy growing condition. Any change to the proposed plantings or seed mixes shall require prior written Agency authorization.
21. Between May 1 and October 31, no mowing shall occur within the lease parcel boundaries of the project site. No grubbing or mowing shall occur outside of the fence line and within the limits of selective trimming at any time.

22. The application of any pesticides or herbicides within the lease parcel boundaries of the project site shall require prior written Agency authorization.
23. Other than activities authorized herein, the undertaking of any activity involving wetlands on the project site shall require a new or amended permit.
24. Wetland mitigation shall be undertaken in compliance with the Wetland Mitigation Plan. The mitigation shall be completed no later than 60 days after the wetland fill has been placed for the transformer station.
25. A wetland mitigation monitoring report, in accordance with the post-construction monitoring protocol outlined in the Wetland Mitigation Plan, shall be submitted to the Agency no later than 60 days after implementation of the plan and a full mitigation report shall be submitted to the Agency no later than 24 months after implementation of the plan. After review of the monitoring report and a site investigation, if necessary, Agency staff will determine whether the wetland mitigation is successful. If not, corrective action shall be taken as directed by the Agency until the wetland mitigation goals are met. If additional monitoring is determined by the Agency to be necessary, it shall be submitted to the Agency annually until the mitigation is deemed successful.
26. Prior to any directional drilling on the project site, the permittee shall submit a Frac-Out Contingency Plan for Agency review and written authorization.
27. 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 NY State Route 9N and Veterans Road from the same locations and with the same lens sizes in the Visual Analysis. All photographs shall be taken on a clear day and identify the date the picture was taken, the location of the photograph, and the lens size employed.
28. 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 Moderate Intensity Use land use area;
- c. will be consistent with the overall intensity guidelines for the Moderate 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 result in minimal degradation or destruction of the wetland or its associated values, and is the only alternative which reasonably can accomplish the applicant's objectives.

PERMIT issued this day
of , 2021.

ADIRONDACK PARK AGENCY

BY: _____
Robert J. Lore
Deputy Director, Regulatory Programs

STATE OF NEW YORK
COUNTY OF ESSEX

On the day of in the year 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert J. Lore, 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.

Notary Public