State Environmental Quality Review (SEQR)
FINDINGS STATEMENT
November 10, 2022

The New York State Department of Environmental Conservation (NYSDEC) is required to consider the relevant environmental impacts, facts, and conclusions disclosed in the Generic Environmental Impact Statement (GEIS) and Supplemental Environmental Impact Statement (SEIS), collectively the Environmental Impact Statements (EIS), in its Findings Statement. Under Environmental Conservation Law (ECL) § 8-0109, agencies are required to choose an alternative which, consistent with social, economic, and other essential considerations, to the maximum extent practicable, minimizes or avoids adverse environmental effects by incorporating as conditions to the decision those mitigation measures that were identified as practicable. The stated purpose of the Project is to support New York State in achieving its renewable energy goals by providing additional port infrastructure, building space, cargo, and wharf capacity necessary for the manufacturing and distribution of wind turbine components.

Pursuant to Article 8 - State Environmental Quality Review Act (SEQR) of the ECL and Title 6 of the New York Codes, Rules, and Regulations (6 NYCRR) Part 617, NYSDEC makes the following Findings.

Name of Action: Port of Albany Expansion Project - Marmen-Welcon Tower Manufacturing Plant

Location: Beacon Island, Town of Bethlehem, and 700 Smith Boulevard, City of Albany, Albany County, NY

Project Sponsor: Albany Port District Commission

Lead Agency for the Generic Environmental Impact Statement (GEIS): Town of Bethlehem Planning Board

Lead Agency for the Supplemental Environmental Impact Statement (SEIS): Town of Bethlehem Planning Board

Description of Action:

The Albany Port District Commission (APDC) proposes to develop an 81.6-acre site (Beacon Island) at River Road (State Road 144) in the Town of Bethlehem, south of the Normans Kill channel, immediately between existing port facilities and Bethlehem Energy Center on the west side of the Hudson River; 4.5 acres on the adjoining property owned by National Grid; and a 14.7-acre property located at 700 Smith Boulevard in the City of Albany (collectively, the “Project Site”). The Port of Albany Expansion Project -Marmen-Welcon Tower Manufacturing Plant (Project) would serve as an offshore wind (OSW) tower manufacturing and shipping facility.

Project elements include construction of five warehouse buildings totaling 626,014 square feet (SF); a 500-foot-long by 93-foot-wide new wharf and associated dredging activities along the western bank of the Hudson River; a new 3-span bridge over the Normans Kill; employee

surface parking on adjoining land owned by National Grid; site utilities, wastewater treatment facility, internal roadway infrastructure, offsite road improvements and rail access improvements.

State Environmental Quality Review (SEQR) Process Chronology:

GEIS

December 4, 2018	Lead Agency Coordination
October 22, 2018	Full Environmental Assessment Form Submitted
March 5, 2019	Revised Draft Scoping Document Accepted
April 2, 2022	Final Scoping Document Issued
August 6, 2019	Draft Generic Environmental Impact Statement Accepted
September 3, 2019	Noticed Public Hearing
November 19, 2019	Amended Positive Declaration Based on Public Comment
December 17, 2019	Supplemental Draft Generic Environmental Impact Statement Accepted
January 6, 2020	Public Meeting Held
May 5, 2020	Final Generic Environmental Impact Statement Issued
June 2, 2020	Lead Agency Findings Issued

SEIS

June 30, 2021	Environmental Assessment Form Submitted
July 1, 2021	Final Scoping Document Issued
July 6, 2021	Lead Agency Coordination
November 16, 2021	Supplemental Draft Environmental Impact Statement Accepted
December 7, 2021	Noticed Public Hearing
December 21, 2021	Public Information Meeting Held
March 1, 2022	Supplemental Final Environmental Impact Statement Issued
March 15, 2022	Lead Agency Findings Issued

NYSDEC Jurisdictions:

NYSDEC ID	Description of NYSDEC Permits	Statutory and Regulatory Authority
4-0122-00322/00002	Excavation or placement of fill in navigable waters (EF)	ECL Article 15 6 NYCRR Part 608
4-0122-00322/00003	Water Quality Certification (WQ)	Clean Water Act Section 401 6 NYCRR Parts 608 and 621
4-0122-00322/00005	Incidental Take (ETS)	ECL Article 11 6 NYCRR Part 182
4-0122-00322/00006	Air State Facility (ASF)	ECL Article 19 6 NYCRR Part 201
4-0122-00322/00007	SPDES P/C/I Discharge to Surface Waters	ECL Article 17 6 NYCRR Part 750
GP-01-15-002	SPDES for Stormwater Discharges	ECL Article 17 6 NYCRR Part 750
GP-0-17-004	SPDES Multi Sector General Permit (MSGP)	ECL Article 17 6 NYCRR Part 750
Registration # 01L12211	Landfill Reclamation Registration	ECL Article 27 6 NYCRR Part 363

Facts and Conclusions in the GEIS, SEIS, Lead Agency Findings, and Supporting Documents Relied Upon to Support the Decision:

In preparing this Findings Statement, NYSDEC has considered the GEIS and SEIS, and Lead Agency Findings prepared by the Town of Bethlehem for the Proposed Action. This Findings Statement is limited to the related NYSDEC jurisdictions identified in the table above. NYSDEC has concluded that the Project has been designed, and where necessary, revised to avoid, minimize, or mitigate to the maximum extent practicable, adverse environmental impacts potentially associated with the Project.

Environmental impacts have been satisfactorily addressed as follows:

Land

Impacts on land, including topsoil, geology, and topography, were evaluated in Sections 3.1 of the GEIS, SEIS, and the Lead Agency Findings, respectively.

The 14.7-acre 700 Smith Boulevard site is currently vacant but was previously developed and used by Atlantic Steel Corporation as a rail yard and for metal recycling. Due to the presence of contaminants, particularly Polychlorinated Biphenyls (PCBs), the site is in the State Superfund Program (NYSDEC Site No. 401080(P)) and is subject to the requirements of NYSDEC *Order on Consent and Administrative Settlement* (Index No. CO 4-20200424-56). The 700 Smith Boulevard site is also subject to U.S. Environmental Protection Agency's (EPA's) January 29, 2021 approval of the *Risk-Based Cleanup and Disposal of Polychlorinated Biphenyl*

Remediation Waste plan. As noted in Appendix A4 of the Supplemental Draft Environmental Impact Statement (SDEIS), remediation includes capping the entire site with Recycled Asphalt Concrete (RAC) as a requirement of the Site Management Plan prepared by CHA Consulting (original draft dated March 2020). The Site Management Plan was developed in accordance with 6 NYCRR Part 375, Division of Remediation Technical Guidance for Site investigation and Remediation (DER-10). The Site Management Plan includes protocols for monitoring, sampling, and analysis during excavation work and site work; recommendations for the installation of vapor barrier systems beneath the proposed building; and contingency plans. Should the RAC cap be penetrated, soils will be managed pursuant to the Site Management Plan and any further requirements from NYSDEC and EPA. Provided that APDC fully complies with the final NYSDEC-approved Site Management Plan, NYSDEC's *Order on Consent and Administrative Settlement* and EPA requirements, the Project will minimize adverse environmental impacts on land to the maximum extent practicable.

The 4.4-acre National Grid site is currently utilized as an energy corridor with overhead transmission lines and two (2) buried gas lines. Periodic mowing is conducted to maintain access to the gas lines. The site ranges from 12-14 feet in elevation, is largely comprised of emergent wetlands, and is in a floodplain. Construction of the 2.5-acre parking lot on the National Grid site will alter the topography of the site as well as create 2.2-acres of impervious surface.

The 81.6-acre Beacon Island site (formerly known as Island Creek and Cabbage Island) is bordered by the Normans Kill to the north and the Hudson River to the east. The Beacon Island site was previously used for disposal of coal combustion residuals from 1952 until 1970 by Niagara Mohawk according to the draft Feasibility Survey of Waste Disposal Alternatives for Albany Steam Station, prepared by the New York State Department of Public Service in March 1980 (the 1980 Feasibility Study). The 1980 Feasibility Study indicates that approximately two million tons of ash were disposed on-site. According to the Soil Management Plan (ATL Report No. AT5596CE-05-10-20) prepared for the Beacon Island site, ash-impacted soils are present at the site in a widespread condition, and predominantly observed on the west side of the site. As of 1970, the site was required by New York State Department of Health (NYSDOH) regulations to cover coal combustion residuals with at least two (2) feet of suitable cover material (Public Health Law Part 19 Refuse Disposal). Until the 1980s, the site also contained railroad tracks operated by Canadian Pacific Railroad. The railroad was used to transport coal to the power plant currently owned by Public Service Enterprise Group (PSEG) known as the Bethlehem Energy Center, located approximately 3 miles south of the Project Site. The railroad tracks traversed the Normans Kill until the railroad bridge collapsed in 2009. Remnants of the railroad, bridge abutments and ballast still remain on site.

Impacts to the Beacon Island site include land clearing, excavation, levelling, surcharging, paving, and structure construction on the site for the Project as well as construction for a new vehicular bridge over the Normans Kill. This work will create a large area of impervious surface and will substantially alter the characteristics of the site. Minimization measures include implementation of Soil Management Plan (developed by Atlantic Testing Laboratories and included in Appendix A2 of the SDEIS) which contains protocols to control erosion, turbidity, and dust. Additionally, due to the presence of coal ash, the Soil Management Plan addresses protocols for monitoring, sampling and analysis of coal combustion residuals during excavation and site work. Through the submission of a Landfill Reclamation Registration application to NYSDEC pursuant to 6 NYCRR 363-11, the APDC has indicated that approximately 15,000

cubic yards of coal combustion residual impacted soils are expected to be disturbed during project construction but will ultimately be reclaimed through the capping of the landfilled coal ash by the proposed site development (i.e., construction of impervious areas and structures). The Port received a validated Landfill Reclamation Registration from NYSDEC on October 28, 2022 which acknowledges the Port's application and requirements to comply with 6 NYCRR Part 360 regulations. To address the potential for air impacts resulting from the excavation of coal ash, a Community Air Monitoring Plan (CAMP) was prepared pursuant to NYSDEC DER-10 as further discussed in the "Air" section below.

Construction related impacts will be mitigated through appropriate erosion and sediment controls as described within the Stormwater Pollution Prevention Plans (SWPPPs) which were designed for the Project in accordance with the NYSDEC New York State Standards and Specifications for Erosion and Sediment Control. Additionally, post-construction stormwater management controls were designed as required in the NYSDEC Stormwater Management Design Manual to address water quality and quantity management as further discussed in the "Drainage Design Report" in Appendix J of the DGEIS. The SWPPPs for the Beacon Island Site and the 700 Smith Boulevard site were reviewed and approved by the Town of Bethlehem and City of Albany with the Town and City issuing a Municipal Separate Storm Sewer System (MS4) SWPPP Acceptance Forms on August 10, 2022 and October 6, 2022, respectively. The Project Sponsor must gain coverage under General Permit GP-0-20-001 prior to any soil disturbances.

Based on the facts above, NYSDEC finds that impacts on land will be mitigated by the Project's adherence to the approved plans, including but not limited to, the Site Management Plans, CAMP, SWPPPs and Drainage Design Report.

Water Resources

Impacts to water resources, including surface waters, floodplains, groundwater, water service (potable and fire protection) and sanitary sewer were evaluated in Sections 3.3, 3.4, 3.8, 3.9, and 3.10 of the GEIS, SEIS and the Lead Agency Findings, respectively.

Surface Water

Surface water impacts are discussed in Section 3.3 of the GEIS, SEIS, and Lead Agency Findings. Activities that will cause impacts to surface waters include alteration and grading of the shoreline; dredging to facilitate construction of the wharf; bed and bank modifications of the Normans Kill for bridge construction; installation of water withdrawal point for a fire suppression system; and installation of a discharge pipe on the banks of the Hudson River from the wastewater treatment plant (WWTP) as further discussed in the "Sanitary Sewer" section below.

Approximately 75,100 cubic yards (CY) of sediment will be dredged from the Hudson River to a depth of 32 feet below the plane of mean low water (MLW), with approximately two (2) feet of allowable over-dredge, to 34 feet MLW. The area of dredging in the Hudson River is approximately 2.72 acres (114,127 SF). Dredging could introduce suspended sediments and turbidity. Minimization measures include the use of turbidity curtains, environmental (clamshell) bucket and dredge material placement on a scow. Dredge material will be allowed to settle in the scow before the water is decanted and discharged back into the Hudson River. Water quality monitoring will be required in NYSDEC's Article 15 Protection of Waters permit for the Project to ensure that authorized activity complies with New York State Water Quality Standards.

Measures to minimize impacts to surface water include the design of a smaller wharf than was contemplated in the GEIS, a revised bridge design to eliminate a center pier in the Normans Kill, maintaining a riparian buffer along the Hudson River shoreline, and implementation of a Dredge Material Management Plan, which includes a Dewatering Plan, to comply with New York State Water Quality Standards. Construction of the bridge over the Normans Kill will use nets, tarps, and/or pans during construction of the bridge deck and removal of any debris that falls into the water. A Normans Kill Work Plan will be required by NYSDEC's Article 15 Protection of Waters permit. NYSDEC will need to review and approve the finalized design plans and methods; procedures for removal of remnant materials and piers; construction access means and methods; and a dewatering plan, to ensure impacts to the Normans Kill are minimized to the maximum extent practicable.

Based on the facts above, NYSDEC finds that impact to surface waters have been minimized to the greatest extent practicable through the design of the project and impacts to surface waters will be minimized by adhering to conditions in NYSDEC's Article 15 Protection of Waters permit.

Floodplains and Floodways

Impacts to floodplains and floodways are discussed in Section 3.4 of the GEIS, SEIS, and Lead Agency Findings. Most of the Project is mapped within the 100-year floodplain of the Hudson River based on the most current Federal Emergency Management Agency (FEMA) map (Map No. 36001C0307D, effective March 16, 2015). Accordingly, the Project will be designed such that all building lowest floor elevations are at the lowest possible engineered elevation of 20.3 feet, providing a minimum elevation of 2.3 feet above the current FEMA 100-year base flood elevation and 1.3-feet above the NYSDEC "Low Projection" of climate related sea-level rise to year 2100. In addition, the DGEIS looked at sea level rise over time because of climate change and found that the project's floodplain design standards will meet or exceed floodplain development requirements and building codes as discussed in the "Climate Change Risks" section below.

Based on the facts above, NYSDEC finds that impacts to floodplains and floodways have been sufficiently addressed.

Groundwater

Section 3.5 of the GEIS indicates that shallow groundwater was observed at depths ranging from approximately 1.5 to 13.7 feet below existing grade at the Beacon Island site. The SDEIS further clarifies that, "groundwater is estimated to exist between six (6) to 16 feet below ground surface (bgs), and the apparent direction of shallow groundwater flow is generally to the southeast towards the Hudson River."

Given the landfilled coal ash on the Beacon Island site, a Soil Management Plan (ATL Report No. AT5596CE-05-10-20) was prepared to summarize procedures and management of groundwater during construction activities. According to the Soil Management Plan, temporary monitoring wells were installed for collection of groundwater samples to characterize the potential groundwater contamination at the site. The groundwater samples were analyzed for volatile organic compounds (VOCs), semi-VOC, cyanide, pesticides, PCBs, and target compound list (TCL) metals. According to the Soil Management Plan, "[w]ith the exception of

metals, target compounds for the referenced analytical parameters were non-detect" for the groundwater samples.

To avoid and minimize impacts to groundwater during construction, the Soil Management Plan specifies that if there is a significant groundwater inflow in a zone of ash-impacted soil, a vacuum truck may be used to remove infiltrated groundwater or a frac tank may be used for on-site treatment and discharge or temporary storage prior to transfer and disposal off-site. Additionally, NYSDEC's Article 15 Protection of Waters permit will require that additional groundwater monitoring wells be established to monitor for potential contaminant migration resulting from construction activities over the coal ash landfill. The monitoring wells will need to be installed prior to soil surcharging activities so that baseline conditions can be established. Once soil surcharging commences, groundwater monitoring will need to be conducted monthly until construction activities are completed. Monitoring will continue post-construction until NYSDEC determines it can be discontinued based on review of sampling results.

Based on the facts above, NYSDEC finds that impacts to groundwater will be minimized by adhering to the Soil Management Plan and conditions in NYSDEC's Article 15 Protection of Waters permit.

Water Supply

Impacts to water supply, including water service (potable and fire protection) are discussed in Section 3.9 of the GEIS, SEIS, and Lead Agency Findings respectively. There are no anticipated impacts from the 700 Smith Boulevard site (Building E) as it will connect to the Albany water distribution system through an existing 12 inch main. The City Water Department has indicated it can handle the capacity for domestic and fire protection demands.

Construction of the Marmen-Welcon Manufacturing Plant on Beacon Island will significantly increase the demand for both domestic water and water for fire protection. McFarland Johnson, Inc. determined that the Marmen-Welcon manufacturing plant domestic demand for Buildings A – D is 20.5 gallons per minute (gpm) and the fire protection demand is 2,000 gpm. The Town of Bethlehem's Department of Public Works conducted an evaluation of water distribution hydraulics, and it was determined the distribution system can provide domestic demand but providing fire protection would require significant Town wide improvements. Water supply for fire protection would need to be sourced from the Hudson River using two vertical shaft turbine pumps over a wet well pit. One pump will have sufficient capacity while the second will act as redundancy.

Coordination between the Town Department of Public Works and Engineering Department, Town Code Enforcement Officer, Selkirk Fire District, MJ Engineering, and the Town Planning Department resulted in several measures that were agreed to with the Project Sponsor. This includes all fire protection (building sprinklers and hydrants) will be served by two vertical shaft turbine pumps over a wet well pit that will draw water from the Hudson River; all Domestic and fire protection waterlines within the Project Site will be privately constructed, owned, and maintained and water during construction would be supplied temporarily by the contractor(s).

Sanitary Sewer

Impacts from servicing the 700 Smith Boulevard site and Beacon Island site for sanitary sewer are discussed in Section 3.10 in the GEIS, SEIS, and Lead Agency Findings.

The Project proposes to connect the 700 Smith Boulevard site to existing sewer infrastructure owned and maintained by Albany County Water Purification District. The facility on this site is expected to generate approximately 1,110 gallons per day (gpd) of liquid waste. The site will connect to the same sewer main that was utilized on the site with previous development. There are no anticipated impacts from this site as the purification plant can handle the added capacity.

Buildings A through D on the Beacon Island site will utilize a WWTP for sanitary waste. APDC applied for a SPDES permit for the proposed WWTP. As a part of SPDES permit application, APDC is demonstrating compliance with 6 NYCRR Part 750-2.10(a). Following its review of APDC's SPDES permit application and the relevant public comments on the draft SPDES permit, NYSDEC would issue a SPDES permit that includes conditions necessary to ensure compliance with all relevant regulatory requirements for the Project's discharge to surface waters. Provided that APDC complies with the terms of such SPDES permit issued by NYSDEC, then the Project will minimize or avoid adverse environmental impacts from wastewater discharges to the maximum extent practicable.

Coastal Consistency

Pursuant to New York State coastal policy regulations (19 NYCRR Part 600), NYSDEC is required to submit information on the Project to the local government responsible for the Local Waterfront Revitalization Program (LWRP) and consider the proposal's consistency with the LWRP. NYSDEC sent coordination letters to the City of Albany and the Town of Bethlehem on November 5, 2021. No response was received from the City of Albany. Additionally, no response was received from the Town of Bethlehem, however, the Town stated in its Findings that, "[t]he Proposed Action is consistent with the Town's adopted Comprehensive Plan and Local Waterfront Revitalization Program ("LWRP") by focusing future industrial and water-related uses to this area of Town."

NYSDEC finds that the Project is consistent with the applicable State coastal policies set forth in 19 NYCRR 600.5, and the applicable policies of the City of Albany and Town of Bethlehem LWRPs. NYSDEC certifies that the Project will not substantially hinder the achievement of any of the policies and purposes of Article 42 of the Executive Law, the Waterfront Revitalization of Coastal Areas and Inland Waterways Act, and whenever practicable will advance one or more of such policies.

Air

Air quality impacts are discussed in Section 3.6, of the GEIS, SEIS, and the Lead Agency Findings, respectively and Appendix E2 of the SEIS. There are additional minimization measures introduced in the SDEIS and Supplemental Final Environmental Impact Statement (SFEIS) discussed below.

The Project is designed to produce 150 towers or 100 towers and 150 transition pieces per year. The facilities, primarily Buildings A-D, will contain infrastructure and activities that will be

sources for emissions. Sources include indoor oxy cutting, descaling and metal blasting activities, welding stations, paint booths, and gas-fuel backup generators. Vehicular transportation of materials within the Beacon Island site as well as to Building E within the 700 Smith Boulevard site will also be a source of emissions. Anticipated potential emissions include VOC and certain hazardous air pollutants (HAP), as well as particulates (PM10, PM2.5) from process manufacturing related operations. In addition, there will be criteria contaminant emissions (NOx, CO, VOC, SO2, Pb, PM10, PM2.5, Greenhouse Gas (GHG), and HAP) associated with miscellaneous site operations (e.g., mobile sources) that involve fuel combustion.

The Project will implement minimization and mitigative measures to address impacts to air, including both construction and operational measures. Construction will utilize dust suppression and its effectiveness will be measured with a CAMP, which requires the installation of air monitors and regular reporting to New York State Department of Health (NYSDOH). According to the final CAMP approved by NYSDOH on October 28, 2022, coal ash is the primary contaminant of concern and therefore, continuous real time monitoring will be required for all ground intrusive activities and handling of soils. PM10 and PM 2.5 monitors have been established on site and if particulate levels and/or total VOCs exceed identified thresholds, response actions could include additional dust suppression, halting work and taking corrective actions, per the requirements of the CAMP.

Operational measures include adherence to compound thresholds per air quality regulations; air monitoring; and new technology to control specific emissions. The Project proposes the use of paint booths that will utilize recuperative thermal oxidizer to control VOCs as well as dust suppression/particulate controls on abrasive blast equipment and paint booths. These will be required as part of the issued ASF permit.

For Project operation and for construction of emission sources, an Air State Facility (ASF) will be required. Pursuant to 6 NYCRR Part 201-5.1(b), APDC must have an issued ASF permit from NYSDEC prior to commencement of construction of the relevant emission sources that are part of the Project. Construction for purposes of the ASF permit includes installation of building supports and foundations of the emission sources (6 NYCRR Part 201-2.1(b)(9)). APDC applied for an ASF permit for the emission sources and as part of an ASF permit application, APDC is demonstrating compliance with the Part 201 regulations. Following its review of APDC's ASF permit application and the relevant public comments on the draft ASF permit, NYSDEC would issue an ASF permit that includes conditions necessary to ensure compliance with all relevant air regulatory requirements for the Project's emission sources. Provided that APDC complies with the terms of such ASF permit issued by NYSDEC, the Project will minimize or avoid adverse environmental impacts from the air emissions associated with the Project's emission sources to the maximum extent practicable.

Climate Change

Greenhouse Gas Emissions

An evaluation and quantification of Project's GHG emissions is outlined in Section 3.6 of the SFEIS and Appendix E2 Section 1.4.6.3. Construction and operation of the Project will result in GHG emissions. The primary sources of GHG emissions are the recuperative thermal oxidizers, miscellaneous natural gas-fired equipment, air make-up

units (AMUs), emergency generators, and the indirect emissions associated with the extraction, production, and transmission of natural gas to power these sources. These have been evaluated in Appendix E2 of the SDEIS, Air Emission Analysis conducted by Proactive Environmental Solutions, including impacts to the nearby disadvantaged community[1] of Ezra Prentice. Minimization and mitigative measures related to co-pollutant emissions are detailed in the above section under "Air".

As required by the Climate Leadership and Community Protection Act (CLCPA or Climate Act), agencies including NYSDEC must consider GHG emissions in air permit and other authorizations. In particular, Section 7(2) of the Climate Act requires that agencies, including NYSDEC, consider whether administrative decisions, including the issuance of relevant permits, are consistent with or would interfere with the attainment of the Statewide GHG emission limits. Section 1.4.6.3 in Appendix E2 details an air analysis that was conducted in compliance with CLCPA accounting techniques.

The purpose of the Project is to support New York State's target in the Climate Act, Chapter 106 of the Laws of 2019 to produce 9 gigawatts of offshore wind energy by 2035.[2] Such offshore wind energy generation will ultimately decrease Statewide GHG emissions, as required by the Climate Act.[3] Additionally, the Port of Albany is an existing facility that can support the need for more renewable energy generation. Ultimately, the Project supports the Climate Act's larger state directive for renewable energy generation and reductions of Statewide GHG emissions. Thus, although construction and operation of the Project will result in some GHG emissions, the purpose of the l Project is to support offshore wind renewable energy generation requirements as set forth in the Climate Act. Therefore, NYSDEC's decision to issue relevant permits for the Project is consistent with the Statewide GHG emission limits, as required by the Climate Act.

NYSDEC finds that the minimization and mitigation measures outlined in the below Section entitled "Environmental Justice" – including designing ingress and egress of truck traffic to avoid the Ezra Prentice communities - will limit the impact of GHG and co-pollutant emissions from mobile sources on disadvantaged communities.

Climate Change Risks

Pursuant to the Section 17-b of the New York State Community Risk and Resiliency Act (CRRA),[4] NYSDEC has evaluated the Project based on consideration of climate change risks, including sea level rise, tropical and extra-tropical cyclones, storm surges, flooding, wind, changes in average and peak temperatures, changes in average and peak precipitation, public health impacts, and impacts on species, and other natural resources. NYSDEC has found that the Project will not have a significant adverse impact in consideration of these climate risks. Evaluation of the Project is discussed in SEIS Section 3.4.

As part of the evaluation, SEIS Section 3.4 discusses that a climate risk for the Project is the potential for flooding after flood events. In addition to flooding, the SEIS analyzed sea level rise pursuant to CRRA and consistent with NYSDEC's State sea level rise projections as

[1] See CLCPA § 7(3); ECL § 75-0111. https://climate.ny.gov/Our-Climate-Act/Disadvantaged-Communities-Criteria
[2] See Public Service Law § 66-p(5).
[3] See ECL § 75-0107(1).
[4] Chapter 355 of the Laws of 2014, as amended by the Climate Act.

established in 6 NYCRR Part 490. The majority of the supplemental Project Site (Beacon Island and National Grid sites) and the proposed building at 700 Smith Boulevard are within the floodplain based on the Federal Emergency Management Agency (FEMA) Special Flood Hazard Area and 100-year floodplain.

To mitigate climate related flood risks, the Project has designed structures to be above the floodplain and projected sea level rise. All buildings will be designed so that the finished floor elevation will be above the base flood elevation. Additionally, the Normans Kill bridge's lowest roadway elevation will be above 2 feet above the 100-year flood elevation and 1.3 feet above projected sea level rise for 2100 based on the Draft NYS Flood Risk Management Guidance for CRRA. The proposed WWTP (described in the Final Generic Environmental Impact Statement (FGEIS) Section 3.10 will be designed and installed to exceed the NYSDEC DRAFT New York State Flood Risk Management Guidance for Implementation of the Community Risk and Resiliency Act.[5] WWTP will be designed and constructed to be resilient and operable at flood elevation of 22.1 feet (BFE of 18 feet, plus the 50 year-medium projected sea level rise of 2.1 feet, plus 2 feet of freeboard). A mobilization plan will be developed to identify outdoor storage of potential pollutants and describe how to move mobile equipment in current Port District Areas prior to a flow event. Further, a Floodplain Development Permit application will need to be submitted to the Town of Bethlehem Building Division to comply with floodplain design standards that meet or exceed floodplain development requirements and building codes as pursuant to Town Code Chapter 69-Flood Damage Prevention.

Based on this evaluation, NYSDEC finds that the Project is in compliance with Section 17-b of CRRA.

Environmental Justice

Impacts to environmental justice communities are analyzed and discussed in Section 3.20 of the GEIS, SEIS, and Lead Agency Findings, respectively. Additionally, Appendix E2 of the SDEIS contains GHG emissions data as it pertains to impacts to Ezra Prentice Homes, 0.4 miles northwest of the Project. This community is within a mapped potential environmental justice area as well as considered a disadvantaged community.

NYSDEC has reviewed the Project in compliance with the provisions of Section 7(3) of the CLCPA. Pursuant to CLCPA Section 7(3), in considering and issuing permitting and other administrative decisions, NYSDEC "shall not disproportionately burden disadvantaged communities." Moreover, NYSDEC is required to prioritize the reduction of GHG emissions and co-pollutants in these communities.

While the Climate Justice Working Group (CJWG) established under the Climate Act (Section 75-0111 of the ECL has not yet finalized criteria for the identification of disadvantaged communities pursuant to the Climate Act, a map of draft disadvantaged communities is currently available for public comment[6]. Until the criteria and maps are finalized, the draft disadvantaged

[5] A Final version of the New York State Flood Risk Management Guidance for Implementation of the Community Risk and Resiliency Act is available at: https://www.dec.ny.gov/docs/administration_pdf/crrafloodriskmgmtgdnc.pdf

[6] Available at https://climate.ny.gov/Our-Climate-Act/Disadvantaged-Communities-Criteria (last visited October 22, 2022).

communities map published by the CJWG may be utilized at this time for purposes of addressing the requirements of Section 7(3) of the Climate Act.

Here, a review of the draft disadvantaged communities map indicates that the Project is near the draft disadvantaged community of Ezra Prentice. Therefore, to ensure compliance with the requirements of Section 7(3), NYSDEC has assessed whether the proposed Project disproportionately burdens the surrounding disadvantaged community.

The Project has minimized burden to the surrounding disadvantaged community with respect to construction and operation by designing ingress and egress of truck traffic to avoid the Ezra Prentice community. There will be no added truck traffic to South Pearl Street through the Ezra Prentice Community and all truck traffic will be routed through the existing Port District, reducing impact from fuel emissions. Additionally, any construction work requiring changes to roadways will not have noticeable impact pedestrian or cycling activities.

Ezra Prentice Homes is also within a potential environmental justice area as defined by NYSDEC Commissioner Policy-29 (CP-29). As part of the policy NYSDEC must consider environmental justice in their review of major Projects for non-delegated permits. This includes providing guidance to the Project Sponsor on drafting and implementing a Public Participation Plan (PPP) to provide the public of the impacted communities information on the Project and how to participate in the review of the Project. Minimum requirements for a PPP are the identification of stakeholders; distributing information on the Project including the review process and doing so in an accessible manner (multiple languages, multiple mode of distribution, etc.); host public information hearings, and provide a report to NYSDEC detailing progress, concerns raised, resolved and outstanding issues, etc. The Project Sponsor has prepared and implemented a PPP in consultation with NYSDEC that is consistent with CP-29.

Plants and Animals

Impacts to plants and animals are evaluated in Section 3.2, of the GEIS, SEIS, and Lead Agency Findings, respectively.

There may be impacts to freshwater mussels from the Project. Subsequent to the FEIS being prepared, a survey was conducted by Biodrawversity in June 2020 within the dredge limits of the Project in the Hudson River, *Leptodea fragilis*, a ranked S2S3[7] species was identified and relic shells of *Anodonta implicata,* a S1S2 species, was also identified. No live protected mussels were identified in the Normans Kill. Mitigation for mussel species will require a relocation and transplant/ mitigation plan to be developed with NYSDEC consultation for approval. It is anticipated that there will be no significant adverse impacts to freshwater mussels.

There are no expected impacts to rare, threatened, or endangered plant species as the Project Site does not have suitable habitat or does not have any individuals of those species present. Additionally, there are no expected impacts to bald eagles as there no active bald eagle nests within the vicinity of the Project Site. NYSDEC is aware of a historic eagle nest on the Project

[7] Imperiled mussels include those mussels that are listed by NYS as Endangered or Threatened and that are ranked by New York Natural Heritage Program as Critically Imperiled or Imperiled (S1, S1S2, S2, and S2S3) in New York State.

Site, but a site visit confirmed it is within a downed tree and had no evidence of occupancy. Further, there are no expected impacts to the northern long-eared bat as there are no known roosts within or in vicinity of the Project Site. Should any bat be observed flying out of a tree that has been cut work will cease immediately and NYSDEC will be contacted for guidance.

However, the Project will have direct impacts to federally and state endangered Atlantic sturgeon (*Acipenser oxyrinchus*) and shortnose sturgeon (*Acipenser brevirostrum*) from dredging that will occur during construction, resulting in a take of essential habitat.

Atlantic Sturgeon and Shortnose Sturgeon

The Project will result in the permanent loss of 0.76 acres of essential sturgeon habitat through habitat conversion associated with the construction of the wharf and associated dredging. The project is in vicinity of known shortnose sturgeon spawning habitat and direct impacts will be on habitat that is essential for foraging, rearing, and migration for both shortnose and Atlantic sturgeon. Impacts will also occur in areas less than 10 feet in depth that will be converted to riprap or permanently shaded by wharf construction.

In addition to the permanent habitat loss, the Project will result in the temporary disturbance of 1.96 acres of essential sturgeon habitat through the dredging of previously unimpacted river bottom associated with initial construction. Maintenance dredging is expected once every 10 years resulting in an annualized sturgeon impact of approximately 0.20 acres.

This habitat impact will be offset through completion of the Net Conservation Benefit Project (NCBP) which will satisfy the requirements of ECL § 11-0535 and 6 NYCRR Part 182. The NCBP will create 1.0 acres of benthic habitat at Schodack Island State Park by converting habitat that is currently upland into habitat that can be used by sturgeon. The goal is to restore the habitat to the way it was prior to dredge and fill operations from commercial navigation on the Hudson River, to be self-sustaining, and beneficial to sturgeon. Further, an implementation agreement has been signed by the Project Sponsor. This agreement commits the Project Sponsor to a funding schedule in support of this NCBP. The NCBP will be incorporated into the larger Schodack Island Restoration Project that will be developed by NYS Office of Parks, Recreation, and Historic Preservation (OPRHP) and NYSDEC.

Additional minimization and mitigative measures for sturgeon include confining all in-water work areas for wharf construction and dredging within the confines of a weighted turbidity curtain to isolate work areas and prevent potential entry of fish and other marine species. Dredging would be conducted only between September 1 through December 31 to minimize habitat and direct impacts to Atlantic and shortnose sturgeon. To minimize suspended sediments, dredging will utilize clamshell bucket and dredge material placed on barges in such a way to minimize turbidity. For wharf construction, steel casing for the drilled shaft foundations and sheet pile wall components will be installed via vibratory methods which is less impactful than impact hammering. Permit conditions will be incorporated into NYSDEC permit approvals for the Project which will require the use of best management practices to avoid and minimize impacts to Atlantic and shortnose sturgeon.

Submerged Aquatic Vegetation

There are potential impacts to submerged aquatic vegetation (SAV) from the construction of the new wharf and associated dredging. There were three SAV beds identified, with only one bed to potentially be impacted. While the project has been designed to minimize impact to SAV to the extent practicable, it is estimated that 0.21 acre will be impacted. According to the SDEIS, the SAV bed will be transplanted as described in a plan that will be developed by a qualified consultant licensed by NYSDEC. Any methodology changes from the plan shall be made in consultation with USACE and NYSDEC. Additionally monitoring reports will be submitted to USACE and NYSDEC for comment after transplantation. To minimize impacts to the remaining SAV beds, in-water construction will utilize floating turbidity curtains, and staked turbidity barriers and/or silt-fence will be installed. Additionally, as discussed above, the NCBP for sturgeon will also have the potential to create conditions suitable for SAV establishment.

NYSDEC finds that although impacts to sturgeon and SAV are unavoidable, the proposed minimization and mitigation measures will address the identified impacts to Plants and Animals.

Aesthetic/Visual Resources

Project impacts on visual and aesthetic resources are evaluated in Section 3.12 of the GEIS, SEIS and Lead Agency Findings, respectively, and Appendix M of the FGEIS.

The Project involves permanent alteration of the 700 Smith Boulevard and Beacon Island sites. The 700 Smith Boulevard site was previously an industrial development that is now vacant. Construction of the facility is consistent with the current industrial use and character of the area. Therefore, there are no anticipated significant visual impacts to the 700 Smith Boulevard site.

The Project includes permanent alterations to the Beacon Island site to support warehousing, transportation, and staging of offshore wind transition pieces. Impacts include the construction 75-foot to 110-foot buildings, including smokestack heights and staging of transition pieces. A visual impact assessment report (Appendix M of the DGEIS) was developed, and sensitive receptors were identified within the area of visual effect. These are the southern end of Port Street looking south at the Project; the northwestern property line where the grade between NYS Route 144 and the site is flattest; the southwest entrance point to the Project; the residence(s) on Glenmont Road where the existing vegetation allows a view of the Hudson Valley; and the view from the Hudson River, including Papscanee Island. These receptors either have some forms of obstruction or screening of the Project or only offer the views of the Project in limited capacities excepting the view from the Hudson River where the Project will be visible.

Minimization for visual impacts ensuring construction and operations lighting is full cut off and dark sky compliant and maintaining 2,000 linear feet of vegetative buffer along the Hudson River shoreline. This buffer will be approximately 55 feet to 115 feet wide and will be subject to a deed restriction to be protected in perpetuity. Within this buffer area the proposed vegetation to remain will have a width that ranges from 30 feet to 70 feet wide. Additionally, transition pieces will be staged behind the buffer and warehouse building colors will be chosen to blend into the existing environment. Additionally, this buffer reduces the visual impact to greatest extent practicable from the Hudson River, including Papscanee Island, which is a valuable cultural resource for the Stockbridge Munsee Community (SMC). Consultation concerning

[correct term for indigenous nations] is discussed further below under “Cultural and Historic Resources

The Project will have unavoidable impacts to these aesthetic and visual resource receptors resulting from the manufacturing and staging of offshore wind turbine transition pieces. Due to the size of the offshore wind components, it is not possible to entirely screen these structures from all possible observation points, particularly from recreational and commercial users of the Hudson River.

As stated in the Division of Environmental Permits Policy DEP 00-2, Assessing and Mitigating Visual and Aesthetic Impacts, dated December 2019, SEQR requires that impacts found to be significant must be avoided or minimized to the maximum extent practicable consistent with social, economic, and other essential considerations [see 6 NYCRR Part 617.11(d)(5)]. This sometimes means that adverse aesthetic impacts may occur even after all known avoidance and mitigation strategies are employed.

NYSDEC finds that although the aesthetic and visual resource impacts are unavoidable, the proposed minimization and mitigation measures will address the identified impacts to aesthetic and visual resource receptors.

Cultural and Historic Resources

Impacts to cultural and historic resources are discussed in SFEIS Section 3.11. The 700 Smith Boulevard site and the National Grid property have previously been developed and exist in an industrial and commercial areas. These sites are not expected to have any impacts to archeological, cultural, or historic resources. The Beacon Island site is located across the Hudson River from Papscanee Island, a National Register eligible site.

The Project has been reviewed by New York State Office of Parks, Recreation and Historic Preservation (OPRHP) pursuant to Section 106 of the Federal Historic Preservation Act. In a letter dated March 25, 2022, OPRHP determined that the Project will have no adverse impact on properties in or eligible for inclusion in the State and National Registers of Historic Places.

Pursuant to NYSDEC’s Policy on Contact, Cooperation and Consultation with Indian Nations (CP-42), representatives from the Stockbridge-Munsee Community (SMC) were notified about the Project and the SEQR process. Consultation with the SMC was conducted separately with the U.S. Army Corps of Engineers through their Section 106 consultation process. In a letter dated March 2, 2022 the SMC Tribal Historic Preservation Officer (THPO) issued a letter of no adverse effect.

Noise

Noise impacts are discussed in Sections 3.11, 3.20 and 5 of the GEIS, SEIS, and Lead Agency Findings, respectively. Subsequent to the GEIS being prepared, a Full Noise Assessment was conducted to evaluated noise potential noise impacts to Papscanee Island Nature Preserve from the Project Area. The Noise Assessment can be found in Appendix DD of the SFEIS.

The Project was evaluated in accordance with the NYSDEC Program Policy document, Assessing and Mitigating Noise Impacts, revised February 2001 (DEP-00-1). Potential impacts

include increased noise from the development and operation of manufacturing, assembly, and staging operations at the Beacon Island site. Impacts to Papscanee Island to the east of the site across the Hudson River were assessed via an ambient noise monitoring survey and noise impact Projections conducted by Proactive Environmental Solutions (Appendix DD of the SFEIS). This assessment concluded that there would be no perceptible difference in noise Projected for the operation of the Project due to attenuation from existing noise and distance from the Project to closest receptor.

Construction activities for the Project, including the National Grid property and 700 Smith Boulevard site were determined by the Lead Agency to comply with the Town of Bethlehem's Local Law No. 5-2009 (Town Code Chapter 81) noise requirements as well as abide by the City of Albany and Town of Bethlehem's Town Code §81-5 regarding construction noise and hours of operation.

Certification of Findings to Approve/ Undertake

Having considered the GEIS, SEIS, Lead Agency Findings, and having considered the preceding written facts and conclusions relied upon to meet the requirements of 6 NYCRR 617.11, this Statement of Findings certifies that:

1. The requirements of 6 NYCRR Part 617 have been met:

2. Consistent with social, economic, and other essential considerations from among the reasonable alternatives available, the action is the one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

3. This action is consistent with the applicable policies of Article 42 of the Executive Law, as implemented by 19 NYCRR 600.

4. This action will achieve a balance between the protection of the environment and the need to accommodate social and economic considerations.

NYS Department of Environmental Conservation
Division of Environmental Permits
625 Broadway, Floor 4
Albany, NY 12233

Karen M. Gaidasz	
Signature of Responsible Official	**Name of Responsible Official**
Offshore Wind Section Chief	November 10, 2022
Title of Responsible Official	**Date**