



**Flat Creek Solar Project  
Towns of Canajoharie and Root, Montgomery County  
Permit Application No. 23-00054**

**Surface Waters Jurisdictional Determination  
July 1, 2024**

Pursuant to § 900-1.3(f)(2), Flat Creek Solar NY LLC provided an updated draft surface waters delineation report entitled “Wetland and Stream Delineation Report”, dated May 2024, as well as associated photographs and GIS shapefiles received May 21, 2024 for the proposed Flat Creek Solar Project located in Montgomery County, New York.

Pursuant to § 900-1.3(f)(4), the Office of Renewable Energy Siting (the Office or ORES), in consultation with the New York State Department of Environmental Conservation (NYSDEC), hereby provides Attachment A. The information provided in Attachment A will be necessary for developing Exhibit 13 (§900-2.14) in support of an application to the Office for a major renewable energy facility.

Please note that this determination only applies to major renewable energy facilities as defined by Section 94-c of New York Executive Law and 19 NYCRR Part 900. This determination does not cover other projects, nor does it cover determinations under other applicable federal, state, or local jurisdictions, such as the Army Corps of Engineer’s regulatory program under Section 404 of the Clean Water Act. If the Applicant has not already done so, the Office recommends the Applicant request a meeting with the US Army Corp of Engineers as soon as possible regarding their potential regulatory jurisdiction over surface waters onsite.

This determination is valid for a period of five years from the date of this letter. After five years, determinations and delineations will be considered expired and subject to change until a new determination or delineation is conducted and the Office extends this determination or issues a new jurisdictional determination.

As a reminder, with respect to both wetlands and waterbodies, the Applicant must first provide a written explanation of how the Facility design avoids impacts to identified natural resources (Exhibit 13 Water Resources and Aquatic Ecology, 19 NYCRR §900-2.14(b)(5)) (Exhibit 14 Wetlands, 19 NYCRR §900-2.15(e)). For impacts that cannot be avoided, the Applicant must then provide a written explanation of all efforts taken to minimize impacts of the proposed Facility to the relevant identified natural resources (Exhibit 13 Water Resources and Aquatic Ecology, see e.g., 19 NYCRR §900-2.14(b)(6) and (c)) (Exhibit 14 Wetlands, 19 NYCRR §900-2.15(f)).

For impacts which cannot be avoided or minimized, the Applicant must provide the Office with sufficient information to determine whether impact(s) will be mitigated to the maximum extent practicable. While final details concerning proposed mitigation measures can be deferred to the required pre-construction mitigation plan for each resource area (Exhibit 13 Water Resources and Aquatic Ecology, 19 NYCRR §900-2.14(b)(7) and Exhibit 14 Wetlands, 19 NYCRR §900-

2.15(g)), a sufficient showing of proposed mitigation measures is required at the application stage for the Office, in consultation with NYSDEC, to make the required determinations in Executive Law 94-c.

Please also include in Exhibit 13 an overview of the Office's jurisdictional determination issued in compliance with 19 NYCRR §900-1.3(e), including a summary table showing the total linear feet of NYS-regulated streams and the acreages of NYS-regulated 50' stream buffers within the Facility area and areas to be disturbed by construction, including interconnections.

CC:    NYSDEC

**Attachment A**

Office of Renewable Energy Siting

Water specific jurisdictional determinations for surface waters identified in the draft wetland and waterbodies delineation report

Stream Delineation ID <sup>1</sup>	Flow Char./ Stream Type <sup>2</sup>	Stream Name	NYS Stream Class	Waterbody Identification Number (WIN)	Protected Stream (ECL 15-0501) (Yes/No)	Navigable Water (ECL 15-505) (Yes/No)	Stream Order (1 or >1)	Description of minor adjustments from draft delineation report, if any.
S-EES-03	Perennial	Flat Creek	C	H-240-102	No	Yes	>1	
S-RDS-06	Perennial	East Creek	C	H-240-102-6	No	Yes	>1	

<sup>1</sup> ID assigned by applicant in draft wetland delineation report.