

SUNRISE WIND LLC
SUNRISE WIND NEW YORK CABLE PROJECT

EXHIBIT 7
LOCAL ORDINANCES

PREPARED PURSUANT TO 16 NYCRR § 86.8

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Acronyms and Abbreviations

AC	alternating current
Applicant	Sunrise Wind LLC
CFR	Code of Federal Regulations
CGA	Compatible Growth Area
County	Suffolk County
CPA	Core Preservation Area
dBa	A-weighted decibels
DC	direct current
EM&CP	Environmental Management & Construction Plan
Energy Code	State Energy Conservation Construction Code
FAR	floor area ratio
ft	feet
ha	hectares(s)
HDD	horizontal directional drilling
ICW	intracoastal waterway
ICW HDD	intracoastal waterway horizontal directional drilling
km	kilometer(s)
kV	kilovolt(s)
LIPA	Loong Island Power Authority
m	meter(s)
m ²	square meter(s)
MHWL	mean high water line
mi	mile(s)
mph	miles per hour
MS4	municipal separate storm sewer system

NEC	National Electric Code
NESC	National Electric Safety Code
NFPA	National Fire Protection Association
NOAA	National Oceanic and Atmospheric Administration
NOAA Fisheries	National Oceanic and Atmospheric Administration National Marine Fisheries Service
NPDES	National Pollutant Discharge Elimination System
NPS	National Park Service
NYCRR	New York Codes, Rules and Regulations
NYS	New York State
NYSDEC	New York State Department of Environmental Conservation
NYECL	New York Environmental Conservation Law
NYSERDA	New York State Energy Research and Development Authority
NYSDOS	New York State Department of State
NYSPSC	New York State Public Service Commission
OCS	Outer Continental Shelf
OnCS-DC	Onshore Converter Station-Direct Current
OREC	Offshore Wind Renewable Energy Certificate
OSHA	Occupational Safety and Health Administration
Project	Sunrise Wind New York Cable Project
PSL	New York Public Service Law
ROW	right-of-way
SEQRA	State Environmental Quality Review Act
SMO	Stormwater Management Officer
SPDES	State Pollutant Discharge Elimination System
sq ft	square feet
SRWEC	Sunrise Wind Export Cable

SRWEC–NYS	Sunrise Wind Export Cable–New York State
SRWF	Sunrise Wind Farm
SWPPP	Stormwater Pollution Prevention Plan
Town	Town of Brookhaven
Town Code	Town of Brookhaven Town Code
TJB	transition joint bay
Uniform Code	New York State Fire Prevention and Building Code
US	United States
USACE	United States Army Corps of Engineers
USCG	United States Coast Guard

EXHIBIT 7: LOCAL ORDINANCES

In accordance with New York Public Service Law (PSL) § 122 and 16 New York Codes, Rules and Regulations (NYCRR) § 86.8, this exhibit includes a list of all local ordinances, laws, resolutions, regulations, standards, and other requirements applicable to the Project, together with a statement that the location of the Project as proposed conforms to all such local legal provisions, except those the Applicant requests that the New York State Public Service Commission (NYSPSC) refuse to apply because, as applied to the Project, such local legal provisions are unreasonably restrictive in view of the existing technology, factors of costs or economics, or the needs of consumers.

7.1 INTRODUCTION

Sunrise Wind LLC (Sunrise Wind or the Applicant), a 50/50 joint venture between Orsted North America Inc. (Orsted NA) and Eversource Investment LLC (Eversource), proposes to construct, operate, and maintain the Sunrise Wind New York Cable Project (the Project). Sunrise Wind executed a 25-year Offshore Wind Renewable Energy Certificate (OREC) contract related to the Sunrise Wind Farm (SRWF) and the Project with the New York State Energy Research and Development Authority (NYSERDA) in October 2019. The Project will deliver power from the SRWF, located in federal waters on the Outer Continental Shelf (OCS), to the existing electrical grid in New York (NYS). The Project includes offshore and onshore components within NYS that are subject to PSL Article VII review and will interconnect at the existing Holbrook Substation, which is owned and operated by the Long Island Power Authority (LIPA).

Specifically, power from the SRWF will be delivered to the existing mainland electric grid via distinct Project segments: the submarine segment of the export cable (SRWEC), which will be located in both federal and NYS waters (the NYS portion of the cable referred to as the SRWEC–NYS); the terrestrial underground segment of the transmission cable (Onshore Transmission Cable); the new Onshore Converter Station (OnCS–DC); and the underground segment of the interconnection cable (Onshore Interconnection Cable). The Onshore Transmission Cable, the OnCS–DC, and Onshore Interconnection Cable (collectively, the Onshore Facilities) are all located in the Town of Brookhaven, Suffolk County, New York.

The Project's components are generally defined into two categories:

- SRWEC–NYS
 - One direct current (DC) submarine export cable bundle (320 kilovolt [kV]) up to 6.2 miles (mi) (10 kilometers [km]) in length in NYS waters and up to 1,575 feet (ft) (480 meters [m])

located onshore (*i.e.*, above the Mean High Water Line [MHWL], as defined by the United States [US] Army Corps of Engineers [USACE] [33 Code Federal Regulations (CFR) 329]) and underground, up to the transition joint bays (TJBs).

- Onshore Facilities

- One DC underground transmission circuit (320 kV) (referred to as the Onshore Transmission Cable) up to 17.5 mi (28.2 km) in length within existing roadway right-of-way (ROW), TJBs, and concrete and/or direct buried joint bays and associated components;
- One OnCS–DC that will transform the Project voltage to 138 kV alternating current (AC);
- Two AC underground circuits (138 kV) up to 1 mi (1.6 km) in length (referred to as the Onshore Interconnection Cable), which will connect the new OnCS–DC to the existing Holbrook Substation; and
- Fiber optic cables co-located with both the Onshore Transmission Cable and Onshore Interconnection Cable.

Please refer to Exhibit 2: Location of Facilities for more detailed information about the Project's components.

This exhibit was prepared to address the requirements of 16 NYCRR § 86.8. The Project will be located in the following jurisdictions (each, a Locality): (1) County of Suffolk, and (2) Town of Brookhaven, Suffolk County.

This Exhibit 7 identifies, for each Locality, the substantive legal provision (*i.e.*, ordinance, law, resolution, regulation, standard, and requirement) potentially applicable to the Project (collectively, the Local Ordinances). The Applicant will comply with the substantive requirements of the Local Ordinances, except for those the Applicant identified in this Exhibit 7 as unreasonably restrictive in view of: (i) existing technology, (ii) factors of cost or economics, or (iii) the needs of consumers and for which the Applicant requests that the NYSPSC refuse to apply. This Exhibit 7 contains statements of justification in support of the Applicant's request that the NYSPSC not apply those substantive Local Ordinances identified as unreasonably restrictive.

Due to the preemptive effect of PSL § 130, all procedural requirements to obtain any local approval, consent, permit, certificate, or other conditions for the construction and operation of the Project do not apply.

7.1.1 Local Ordinance Summary Table

Table 7.1-1 below lists every substantive Local Ordinance potentially applicable to the Project, as well as identifies the substantive Local Ordinances that the Applicant requests that the NYSPSC not apply, in whole or in part.

Table 7.1-1. Local Ordinance Summary Table

Ordinance	Applicant Will Comply or Request NYSPSC Relief
Suffolk County	
<i>County Administrative Local Laws</i>	
Chapter 245 – Utility Easements	Requests Partial NYSPSC Refusal to Comply
Chapter 433 – Dumping and Littering	Will Comply
Chapter 446 – Environmental Protection	Will Comply
Chapter 618 – Noise	Requests Partial NYSPSC Refusal to Comply
Chapter 639 – Parking, Off Street	Requests Partial NYSPSC Refusal to Comply*
Chapter 643 – Parks and Parks Facilities	Requests Partial NYSPSC Refusal to Comply*
Chapter 717 – Scaffolds	Will Comply
Chapter 759 – Storm Sewers	Will Comply*
Chapter 763 – Stormwater Management	Will Comply
Chapter 948 – Article V: Highway Work Fees	Will Comply*
Town of Brookhaven	
<i>Town Code</i>	
Chapter 8 – Bay and Harbor Bottoms	Requests Partial NYSPSC Refusal to Comply*
Chapter 9 – Beaches	Will Comply*
Chapter 13 – Boat Control	Requests Partial NYSPSC Refusal to Comply
Chapter 16 – Building Construction Administration	Will Comply*
Chapter 16A – Electrical Code	Requests Partial NYSPSC Refusal to Comply
Chapter 30 – Fire Prevention	Will Comply*
Chapter 33 – Flood Damage Prevention	Requests Partial NYSPSC Refusal to Comply*
Chapter 35 – Grading	Requests Partial NYSPSC Refusal to Comply*
Chapter 38 – Highways	Will Comply*
Chapter 45 – Sanitation	Will Comply
Chapter 46 – Recycling	Will Comply
Chapter 50 – Noise	Requests Partial NYSPSC Refusal to Comply
Chapter 53 – Sand and Gravel Pits; Excavation; Removal of Topsoil	Requests Partial NYSPSC Refusal to Comply*
Chapter 57 – Shellfish	Requests Partial NYSPSC Refusal to Comply
Chapter 57A – Signs	Will Comply*
Chapter 70 – Tree Preservation	Will Comply*
Chapter 72 – Trees and Debris, Disposition of	Will Comply
Chapter 75 – Vegetation on Beach Areas	Requests Partial NYSPSC Refusal to Comply*

Ordinance	Applicant Will Comply or Request NYSPSC Relief
Chapter 76 – Coastal Erosion Hazard Areas	Requests Partial NYSPSC Refusal to Comply*
Chapter 78 – Water Resources	Requests Partial NYSPSC Refusal to Comply*
Chapter 80 – Critical Environmental Areas; SEQRA Implementation	Will Comply*
Chapter 81 – Wetlands and Waterways	Requests Partial NYSPSC Refusal to Comply*
<i>Chapter 85 – Zoning</i>	
Article X – Zoning Districts; Map; General Regulations	Requests Partial NYSPSC Refusal to Comply
Article II – Building Permits and Certificates of Occupancy	Will Comply*
Article V – Board of Zoning Appeals	Will Comply*
Article VIII – Planning Board	Will Comply*
Article XIV – Residence Districts	Requests Partial NYSPSC Refusal to Comply
Article XVIII – Great South Beach in Fire Island National Seashore	Requests Partial NYSPSC Refusal to Comply*
Article XXII – Industrial Districts	Requests Partial NYSPSC Refusal to Comply
Article XXV – Wetland Overlay District	Requests Partial NYSPSC Refusal to Comply
Article XXV – Central Pine Barrens Overlay District	Requests Partial NYSPSC Refusal to Comply
Article XXXIV – Land Development Standards	Requests Partial NYSPSC Refusal to Comply
Chapter 86 – Stormwater Management and Erosion Control	Will Comply*
Chapter 86A – Prohibition of Illicit Discharges and Connections to the Town of Brookhaven Municipal Separate Storm Sewer System	Will Comply*
<i>Local Laws</i>	
Local Law 26 of 2019	Requests Partial NYSPSC Refusal to Comply
NOTES: *PSL § 130 preempts need to secure any local approval, consent, permit, certificate, or other conditions for the construction and operation of the Project.	

7.2 SUFFOLK COUNTY

The Applicant has identified the following provisions of the Suffolk County Administrative Local Laws as applicable or potentially applicable to the construction and operation of the Project.

7.2.1 Chapter 245 – Utility Easements

This chapter establishes policies of the County with respect to granting utility easements on parkland and other County-owned open spaces (§ 245-2). It requires that the Suffolk County Board of Trustees of Parks, Recreation and Conservation be the initiating unit for State Environmental Quality Review Act (SEQRA) review of proposed utility easements within lands acquired by the County for park, open space, nature preserve, farmland, bird sanctuary, historic trust or other environmentally sensitive purposes (§ 245-2). This chapter requires that any utility easement proposed within applicable County-owned lands be reviewed by the Suffolk County Board of Trustees of Parks, Recreation and Conservation and that said Board issue a recommendation to the County Legislature with respect to granting the requested utility easement (§ 245-3). As part of its review, the Suffolk County Board of Trustees of Parks, Recreation and

Conservation is required to hold a public hearing and consider local input regarding local master plans, comprehensive plans or laws (§ 245-4).

The County has advised that the Applicant will be granted leasehold interests in County Parkland and not easement interests. Accordingly, this chapter is not anticipated to be applicable to the Applicant. To the extent it may become applicable, however, the Applicant notes that the requirement to obtain the Suffolk County Board of Trustees of Parks, Recreation and Conservation's recommendation of approval from said Board pursuant to § 245-3 is preempted by PSL § 130. The Applicant further requests a waiver of the regulations contained in § 245-2 to not require SEQRA review by the Suffolk County Board of Trustees of Parks, Recreation and Conservation since the environmental review of the Project will be conducted by the NYSPSC. The Applicant also requests waiver of the requirement to hold a Public Hearing before the Suffolk County Board of Trustees of Parks, Recreation and Conservation pursuant to § 245-4 since the public will be involved in the review of the Project via the NYSPSC's Article VII process.

7.2.2 Chapter 433 – Dumping and Littering

This chapter prohibits dumping and littering on Suffolk County-owned properties and ROW (§ 433-1). This chapter also prohibits dumping and littering in the Long Island Pine Barrens Preserve, Central Pine Barrens Area, Core Preservation Area (CPA), or Compatible Growth Area (CGA) (§ 433-6).

The Applicant will comply with the substantive provisions of this chapter.

7.2.3 Chapter 446 – Environmental Protection

This chapter forbids dumping or placement of anything containing invasive nonnative aquatic animal or an invasive nonnative aquatic plant in any river, stream, lake, pond, wetland, or stormwater drain (§ 446-3). Further, this chapter prohibits known sales, transportation, distribution, and propagation to any person located within Suffolk County, or to anyone making a purchase from within Suffolk County, of any invasive species as listed on the “Do Not Sell List” (§ 446-11 [A]).

The Applicant will comply with the applicable substantive provisions of this chapter.

7.2.4 Chapter 618 – Noise

This chapter prohibits excessive or unreasonable noise and noise pollution and establishes noise standards in § 618-3 for all noise created upon a County ROW or other County property. The law precludes decibel (dBA) pressure levels at property lines of abutting residential properties at or above 65 dBA from 7:00 a.m. to 10:00 p.m. and 50 dBA from 10:00 p.m. to 7:00 a.m., as well as 65 dBA for abutting commercial properties and 70 dBA for abutting industrial properties (§ 618-4). The chapter exempts construction activity between 7:00 a.m. and 6:00 p.m. during weekdays, exclusive of legal holidays (§ 618-

5 [B] [3]). Construction can occur on weekends provided it is emergency work or the dBA restrictions of § 618-4 are met.

The Applicant requests a waiver of the regulations contained in § 618-5 (B) (3). Continuous construction may be required for certain portions of the Project (a) for safety reasons, (b) to protect life and/or property, or (c) to protect the structural integrity of certain Project construction features (e.g., a bore hole or to prevent damage to or loss of a bore hole). For example, installation of the landfall horizontal directional drilling (HDD) conduit (the Landfall HDD) and pulling the SRWEC-NYS cable through the HDD conduit to the TJB at Smith Point County Park must be performed on a continuous basis to maintain the integrity of the installation. The intracoastal waterway HDD (ICW HDD) must also be performed on a continuous basis. Thus, as a result of existing technology and for the safety of both workers and County residents, the NYSPSC should refuse to apply this requirement. Once operational, the OnCS-DC will comply with the substantive requirements of this Chapter.

7.2.5 Chapter 639 – Parking, Off Street

This chapter restricts where vehicles can park, stop, and stand on County property, exclusive of County highway ROW and County-owned parkland. This chapter restricts vehicles operating on County property to a maximum speed of 15 miles per hour (mph) (§ 639-2). Further, parking, standing, and stopping are limited to those portions of County properties where it is approved by the County Commissioner of Buildings and Grounds. (§ 639-3 [A]). The chapter also prohibits parking on County property between sunset and sunrise unless specifically authorized by the County Commissioner of Buildings and Grounds (§ 639-14). This chapter does not apply to County-owned property specifically designated as a park or parks and lands under the jurisdiction of the Department of Parks, Recreation and Conservation (§ 639-16).

The requirement to obtain authorizations from the County Commissioner of Buildings and Grounds are preempted by PSL § 130. In addition, Applicant requests a waiver of § 639-14. Parking for vehicles on County property may need to occur between sunset and sunrise for certain portions of the Project (a) for safety reasons, (b) to protect life and/or property or (c) to protect the structural integrity of certain Project construction features (e.g., a bore hole or to prevent damage to or loss of a bore hole). The Applicant also requests a waiver of § 639-3 (A) due to existing technology and factors of cost or economics. More specifically, it may be necessary for vehicles to transverse and park on portions of County property not designated for vehicle driving and/or parking in connection with constructing the Project. All such activities, however, will be done in coordination with the County. The Applicant will otherwise comply with the chapter and the parking restrictions of the County Commissioner of Buildings and Grounds.

7.2.6 Chapter 643 – Parks and Park Facilities

This chapter governs the use of County parks and park facilities. Among numerous other prohibitions, this chapter prohibits acts that run, cut, carry away, pull up, dig, fell, bore, chop, saw, chip, pick, move, sever, climb, molest, take, break, deface, destroy, set fire to, burn, scorch, carve, paint, mark, or in any manner interfere with, tamper, mutilate, misuse, disturb, or damage any tree, shrub, plant, grass, flower, or any specimen of floral or faunal life except when specifically authorized by the Commissioner of the Suffolk County Department of Parks, Recreation and Conservation for scientific, educational, or other purpose (§ 643-4 [A] [16]). The chapter also restricts driving and parking of vehicles to areas specifically designated for use by the Commissioner of the Suffolk County Department of Parks, Recreation and Conservation (§ 643-8 [B]).

The requirement to obtain authorizations from the Commissioner of the Suffolk County Department of Parks, Recreation and Conservation are preempted by PSL § 130. In addition, the Applicant requests a waiver of § 643-4 (A) (16) due to existing technology and factors of cost or economics for the clearing and other interference with existing vegetation that will be necessary to construct the Project. All such interference with existing vegetation will be limited to the minimum extent necessary. The Applicant also requests a waiver of § 643-8 (B) for the same reasons since it may be necessary for vehicles to transverse portions of County parkland not designated for vehicle driving and/or parking in furtherance of constructing the Project. All such activities, however, will be done in coordination with the Suffolk County Department of Parks, Recreation and Conservation. The Applicant will otherwise comply with the chapter.

7.2.7 Chapter 717 – Scaffolds

This chapter requires that a certificate of completion be granted to any individual that erects scaffolding in Suffolk County and submitted to the Suffolk County Commissioner of the Department of Public Works (§ 717-3). The chapter expressly exempts employees of public utilities from the certificate requirements if such employees using scaffolding have been trained, pursuant to the United States Department of Labor's Occupational Safety and Health Administration (OSHA) requirements, to be able to recognize the hazards associated with the type of supported scaffold being used, and to understand the procedures to control such hazards (§ 717-4 [B]). All non-exempt individuals and corporations are required to comply with the training requirements contained in § 717-5, which includes a 32 hour OSHA training program/course and an eight hour refresher program if the 32 hour OSHA training program was completed more than two years prior to the submission of the certificate of completion to the Suffolk County Commissioner of the Department of Public Works.

The certificate requirement is preempted by PSL § 130. The Applicant requests waiver of compliance with § 717-5 as any scaffolding work will be performed in accordance with OSHA standards.

7.2.8 Chapter 759 – Storm Sewers

This chapter regulates discharges and connections to the County's storm sewer system (§ 759-1). It shall be unlawful to cause, or engage in any activity that reasonably may be expected to cause an illicit discharge into the municipal storm sewer system or to make any illicit connection to the municipal system (§ 759-3 [A], [B]). The chapter expressly exempts some discharges from the prohibition, including discharges pursuant to a State Pollutant Discharge Elimination System (SPDES) Permit or similar approval from the New York State Department of Environmental Conservation (NYSDEC) or a National Pollutant Discharge Elimination System (NPDES) Permit (§ 759-5 [D]). In addition, the chapter also expressly permits certain discharges into the storm sewer system, including the following: water line flushing or other potable water sources, landscape irrigation or existing diverted stream flows, rising groundwater, uncontaminated groundwater infiltration to storm drains, uncontaminated pumped groundwater, uncontaminated foundation or footing drains and air-conditioning condensate (§ 759-5 [A]). In the event of illicit discharges, the provisions require that efforts be undertaken to ensure the discovery, containment, abatement, and cleanup thereof, as well as the notification of the Commissioner of the Department of Public Works as soon as reasonably practical (§ 759-4 [A]-[B]). Finally, if an illicit discharge occurs, the discharger must maintain on-site written records of the discharge and the remediation actions taken, which must be maintained for three years (§ 759-4 [C]).

The Applicant will apply for a Water Quality Certificate under the federal Clean Water Act as part of the PSL Article VII certification process. In addition, Applicant will submit a Notice of Intent to the NYSDEC seeking coverage under NYSDEC's SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-20-001) prior to commencement of Project construction. The appropriate Municipal Separate Storm Sewer System (MS4) approval of a Stormwater Pollution Prevention Plan (SWPPP) will be a condition of coverage under the aforementioned General Permit. The Project's Environmental Management and Construction Plan (EM&CP) will address stormwater management, temporary soil erosion and sediment controls, construction dewatering and Project spill prevention and control measures. These measures will be set forth in the EM&CP and the accepted SWPPP for the Project, which will be included as either an appendix to the EM&CP or incorporated in the text thereof by reference.

7.2.9 Chapter 763 – Dumping and Littering

This chapter prohibits dumping and littering on Suffolk County-owned, operated or maintained recharge basin (§ 763-4).

The Applicant will comply with the substantive provisions of this chapter.

7.2.10 Chapter 948 – Article V: Highway Work Fees

This chapter authorizes the Suffolk County Department of Public Works to charge fees in connection with the issuance of highway work permits for the construction, reconstruction, maintenance, or improvements done on County roads or County road ROWs (§ 948-13). Highway work permits are required from the County Department of Public Works pursuant to its authority under § 136 of the New York Highway Law for any underground or above ground improvements the County Department of Public Works deems necessary along County-owned ROWs.

The requirement to obtain a highway work permit for the construction of the Project from the County Department of Public Works is preempted by PSL § 130.

7.3 TOWN OF BROOKHAVEN

The Applicant has identified the following provisions of the Town of Brookhaven Town Code (Town Code) and other local laws not incorporated into the Town Code as applicable or potentially applicable to the construction and operation of the Project.

7.3.1 Chapter 8 – Bay and Harbor Bottoms

This chapter requires an applicant to obtain a permit from the Town Division of Environmental Protection before placing a mooring under any underwater lands in the Town, as well as before an applicant may tie or secure any boat, vessel, barge, scow, raft, float, or any other object to any mooring (§ 8-3 [A] and [B]). Such an application requires, among other things, submission of a written application, a navigation chart showing the location of the mooring and a hold harmless affidavit to the Town (§ 8-4 [A] - [G]). Mooring permits are restricted, with installation limited to between March 1 and November 30 unless the Director of the Division of Environmental Protection finds just cause to issue a permit without a seasonal restriction pursuant to § 8-7. This chapter expressly exempts temporary moorings installed to facilitate work on projects for which a valid wetlands and waterways permit has been issued by the Town Division of Environmental Protection.

The requirements of this chapter to obtain authorizations, permits, consents, or approvals set forth in § 8-3 (A) and (B) and § 8-4 are preempted by PSL § 130. The Applicant will comply with the substantive prohibitions set forth in § 8-3 of the Town Code. The Applicant, however, requests that the NYSPSC refuse to apply the restrictions of § 8-6 limiting the months in which moorings may be installed due to existing technology and factors of cost or economics. More specifically, the Applicant may need to install moorings between December 1 and February 28 because certain improvements in and around the Town waterways are contemplated to occur between Labor Day and the following Memorial Day.

7.3.2 Chapter 9 – Beaches

This chapter restricts the use of motor vehicles on the Great South Beach/Fire Island without the necessary permits and approvals from the Town Clerk. It only allows the grants of permits to operate commercial vehicles equipped with a tow cable, fire extinguisher, jack, jack board, shovel, tire gauge, first aid kit, spare tire, and flashlight (§§ 9-3 and 9-4). Except where a speed limit to the contrary is posted on the Great South Beach/Fire Island, vehicles can operate at no more than 30 mph (§ 9-8). Vehicles owned or operated by public utilities subject to the jurisdiction of the NYSPSC are expressly exempt from the requirements of this chapter (§ 9-16 [D]). The chapter also prohibits the operation of motor vehicles on the Great South Beach/Fire Island in a manner that disturbs, endangers, harasses, harms, pursues, or kills any endangered species of bird (§ 9-29 [A]).

The Applicant requests waiver of §§ 9-3 and 9-4 to permit the operation of motor vehicles on the Great South Beach/Fire Island. Nevertheless, Applicant intends to comply with the speed limit restrictions of this chapter during construction and operation of the Project and will not operate its motor vehicles in a manner that could threaten or kill endangered species of birds. Time-of-year restrictions for certain work activities such as HDD conduit stringing will be employed to the extent feasible to avoid direct impacts to endangered bird species during construction of the Landfall HDD. HDD conduit stringing is anticipated to occur between October and March, outside of the nesting period for endangered bird species (April through August). In addition, the requirements to obtain permits to use motor vehicles on the Great South Beach/Fire Island, which are set forth in § 9-4(A)-(B), are preempted by PSL § 130.

7.3.3 Chapter 13 – Boat Control

This chapter regulates the use of boats or vessels in Town waters. Boats and vessels are broadly defined as including “every description of watercraft or other contrivance used on or capable of being used as a means of transportation in water” (§ 13-3). Pursuant to § 13-5, boats and vessels are restricted to a maximum speed of 12 mph in any channel and a speed of 5 mph within 100 ft (30.5 m) of any area designated as a boat basin, marina, harbor, river, stream, creek, or bathing area, or an anchored or moored vessel. All boats and vessels must operate with a muffler affixed to the engine’s exhaust, among other operating regulations (§ 13-6). The chapter further restricts the operation of boat engines for the purpose of charging batteries, running auxiliary equipment or testing (*i.e.*, prohibited between 10:00 p.m. and 7:00 a.m.) (§ 13-11). Finally, the Chapter prohibits the mooring of any boat or vessel in any channel except at the edges thereof, and in no case closer than 50 ft (15.2 m) to channel markers or so as to interfere with the full use of the channel by others (§ 13-12).

The Applicant intends to comply with the substantive provisions and restrictions of this chapter during construction and operation of the Project. However, the Applicant requests that the NYSPSC refuse to

apply the muffler restriction of § 13-6, the limitation of the hours of operation of boat engines contained in § 13-11, and the prohibition of improper mooring found in § 13-12 due to existing technology and factors of cost or economics. More specifically, certain construction processes and/or activities could be needed in the course of constructing the Project within the Town that could potentially make compliance with this local requirement technically impossible or impracticable from a cost and economics perspective.

7.3.4 Chapter 16 – Building Construction Administration

This chapter provides for the administration and enforcement of the Uniform Code and Energy Code (§ 16-1). This chapter also requires building permits to be secured for any work that will construct, alter, remove, demolish, or maintain, or to allow, commence, or continue to maintain the alteration, removal, or demolition of a wall, structure, plumbing, building, or any part thereof (§ 16-3 [A]).

Neither the Uniform Code nor Energy Code applies to the Project. Neither contains any substantive provisions applicable to transmission facilities that are not buildings or affixed to buildings as a building appurtenance, such as structures, conductors, or switching stations. To the extent that the Uniform Code or Energy Code are interpreted to encompass the OnCS-DC, PSL § 130 preempts the need for Applicant to secure a building permit for the OnCS-DC. Nevertheless, the Applicant will comply with the substantive provisions of applicable building and fire prevention codes while designing and constructing the Project.

7.3.5 Chapter 16A – Electrical Code

This chapter provides for the administration and enforcement of the National Electrical Code (NEC), also known as “National Fire Protection Association Code 70,” as specified in the Uniform Code (§ 16A-3). It also requires that all electrical work be inspected by inspectors deemed qualified by the Town Board. (§ 16A-4).

The Uniform Code does not contain any substantive provisions applicable to transmission facilities that are not buildings, such as structures, conductors, or switching stations. Further, the NEC expressly exempts any installation by an electric utility pursuant to a written agreement either designated or recognized by the NYSPSC or similar authority, as well as on land owned or leased by an electric utility and within rights-of-way or easements legally obtained by an electric utility. Accordingly, the substantive provision of the NEC and, thus, Chapter 16A do not apply to the Applicant. The Applicant request waiver of § 16A-4 requiring the work be inspected by Town Board qualified inspectors since the work will be performed under the jurisdiction of the NYSPSC.

7.3.6 Chapter 30 – Fire Prevention

This chapter, known as the Fire Prevention Local Law of the Town of Brookhaven, adopts and uses the standards and codes relating to the prevention of fires published by the National Fire Protection Association (NFPA) with the exception of NFPA Code 1, Fire Prevention, and NFPA Code 5000, Building Construction (§ 30-21). The provisions of this chapter also require general precautions against fire, including the handling and storage of combustible materials (§§ 30-35 and 37). This chapter provides that all gas, electric-arc, or flammable liquid welding or cutting requires a permit (§§ 30-125-126). Further, this chapter repeats the Electrical Code requirements found elsewhere in the Town Code that provide that all electrical installations be done in accordance with the NEC (§ 30-129 [A]). The electrical systems requirements, however, expressly exempt “installations or equipment employed by a railway, electrical or communication utility in the exercise of its function as a utility and located outdoors” (§ 30-128).

PSL § 130 preempts the need for the Applicant to secure a fire prevention permit. Nevertheless, the Applicant will comply with the substantive provisions of applicable building and fire prevention codes while designing and constructing the Project.

7.3.7 Chapter 33 – Flood Damage Prevention

The purpose of this chapter is to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by requiring that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction, as well as control the alteration of waterways and natural barriers that are involved in the accommodation of floodwaters and control the filling, grading, dredging, and other development that may increase erosion or flood damages (§ 33-1 [B]). This law applies to all areas of special flood hazard (100-year floodplain, Zone A, AE, AH, AO, A1-A30, A99, V, VO, VE, or V1-V30) within the jurisdiction of the Town (§ 33-3(B)). As applicable to the Project, Smith Point County Park and the bay frontage are in the VE zone, while Smith Point Marina and portions of the William Floyd Parkway are in the AE zone.

Pursuant to this chapter, a Floodplain Development Permit is required from the Town's Chief Building Inspector for all construction and other development to be undertaken in areas of special flood hazard. (§§ 33-4 [A]-[B]).

The requirements to obtain a Floodplain Development Permit set forth in §§ 33-4 (A)-(B) are preempted by PSL § 130. While portions of the SRWEC-NYS and Onshore Transmission Cable are in the 100-year floodplain, they will be located wholly underground upon completion of construction and will be designed and constructed such that they will not be vulnerable to floods, nor will they increase erosion or flood

damages to surrounding properties. The OnCS-DC and Onshore Interconnection Cable are located outside of the 100-year floodplain.

7.3.8 Chapter 35 – Grading

This chapter regulates the regrading of land throughout the Town in order to prevent irreparable damage to the Town's natural resource and guard against wind and water erosion (§ 35-1). This chapter requires that either Planning Board approval be granted for regrading through the submission of a site plan or a building permit application (§§ 35-3 and 35-4). The standards for grading approval are set forth in Town Code § 35-3 (A)-(I).

The requirements to obtain Planning Board approval set forth in §§ 35-3 and 35-4 are preempted by PSL § 130. In addition, to the extent applicable, the Applicant requests that the NYSPSC refuse to apply the restriction found in § 35-3 (D) to allow the finished grade of the Applicant's improvements to be below the finished grade of the property because the improvements contemplated by the Project will be primarily located underground. Nevertheless, the Applicant intends to comply with the substantive provisions and restrictions of this chapter during construction of the Project.

7.3.9 Chapter 38 – Highways

In accordance with §§ 38-1(A) and 38-3, this chapter requires the consent, authority, and supervision of the Town Superintendent of Highways to disturb, open, or tear up any sidewalks or road, excavate under the surface of a Town highway, as well as to modify or change the line or height of any curb in any Town highway. Based on the foregoing Town Code sections, the Town requires applicants to obtain a Highway Work Permit from the Town Highway Department in connection with the excavation and trenching of and beneath Town-owned ROWs.

Further, §§ 38-1.1 and 38-3 of the chapter prohibit the Town Superintendent of Highways from granting authorization to disturb or excavate any sidewalk, street, or highway unless the applicant furnishes a sufficient indemnity or performance bond as a guaranty for replacing what is to be disturbed. The approval of the Superintendent of Highways as to the amount, form, manner of execution, and sufficiency of surety or sureties is required and must be endorsed on the surety bond. Once prepared, the surety bond must be filed in the Town Clerk's office.

Although the requirement to obtain a written authorization under §§ 38-1.1 and 38-3 of the Town Code is preempted by PSL § 130, the Applicant will comply with the substantive requirements of § 38-3, including the requirement to provide a certified check or bond as a guaranty for replacing the portions of the Town ROWs impacted. The Applicant will coordinate all activities within Town-owned ROWs with the Town Superintendent of Highways.

7.3.10 Chapter 45 – Sanitation

This chapter, known as the Sanitary Code of the Town of Brookhaven, sets forth unlawful activities relating to solid waste, such as the prohibition of depositing solid waste outside areas designated for such waste. Further, the chapter requires that any person owning, occupying, or in control of private property shall cut, trim, or remove brush, grass, or weeds, and eliminate fire hazards and health hazards, upon said property. (§ 45-4 [E]).

The Applicant will comply with the substantive requirements of this law.

7.3.11 Chapter 46 – Recycling

The Town of Brookhaven Recycling Law requires all commercial, industrial, and institutional establishments to source separate and arrange for the collection for recycling of newspaper, high-grade paper, corrugated cardboard, glass containers, plastic containers, and cans generated by food and beverage service establishments, as well as vegetative yard waste (§ 46-9). The Town of Brookhaven Recycling Law precludes the collection of solid waste that has not been sorted in accordance with the requirements of the chapter.

The Applicant will comply with the substantive requirements of this law.

7.3.12 Chapter 50 – Noise

This chapter prohibits excessive or unreasonable noise and noise pollution, and establishes noise standards (§ 50-6 [B] [1]-[7]), including operating standing motor vehicles or any auxiliary equipment attached thereto between the hours of 8:00 p.m. to 8:00 a.m., when on a public road or public space within 150 ft (45.7 m) of a residential area, loading and unloading (including trash and recycling pickup, from 10:00 p.m. to 7:00 a.m. when it can create a noise disturbance in a residential area), and for construction work between the hours of 6:00 p.m. to 7:00 a.m. during weekdays, as well as all weekends and holidays. This chapter precludes dBA pressure levels at property lines of abutting residential properties at or above 65 dBA from 7:00 a.m. to 10:00 p.m. and 50 dBA from 10:00 p.m. to 7:00 a.m., as well as 65 dBA for abutting commercial properties and 75 dBA for abutting industrial properties (Chapter 50, Attachment 1, Table I).

The Applicant requests a waiver of § 50-6 (C) (7) and Chapter 50, Attachment 1, Table I as continuous construction may be required for certain portions of the Project (a) for safety reasons, (b) to protect life and/or property, or (c) to protect the structural integrity of certain Project construction features (e.g., a bore hole or to prevent damage to or loss of a bore hole). For example, installation of the Landfall HDD and pulling the SRWEC-NYS cable through the HDD conduit to the TJB at Smith Point County Park must be performed on a continuous basis to maintain the integrity of the installation.. The ICW HDD as well as

other trenchless crossing locations must also be performed on a continuous basis. Thus, as a result of existing technology and for the safety of both workers and Town residents, the NYSPSC should refuse to apply this requirement. Once operational, the OnCS-DC will comply with the substantive requirements of this Chapter.

7.3.13 Chapter 53 – Sand and Gravel Pits; Excavation; Removal of Topsoil

This chapter regulates the removal of sand, gravel stone, or other materials from a site in connection with the residential, commercial, or industrial development of property. Pursuant to this chapter, all land use applications, including the removal of excess material, other than for construction of roads, recharge basins, drainage structures, sanitary systems, drywells, foundations, or pools, requires use variance approval from the Board of Zoning Appeals (§ 53-3 [D]). Prior to removing excess material, the Town requires the posting of a bond to restore the property to the pre-removal state (§ 53-5). Moreover, the chapter strictly prohibits removals of excess materials in sensitive environmental areas, which are defined as including wetlands, wild and scenic rivers, and critical environmental areas (§ 53-5 [D] [1]). Town Code § 53-3 (D) (3) prohibits the removal of excess materials where the vertical separation between the water table and the lowest proposed elevation is less than 15 ft (4.6 m). Finally, § 53-3 (D) (4), precludes the removal of vegetation within the lot line setbacks applicable under the zoning of the premises, and in no case within 50 ft (15.2 m) of the premise's lot lines.

The requirement to obtain use variance approval set forth in § 53-3 (D) is preempted by PSL § 130. The Applicant will provide all required bonds to restore the premises. The Applicant, however, requests that the NYSPSC refuse to apply the restriction found in § 53-3 (D) (1) since removal of excess materials is required in order to complete the Project in sensitive environmental areas proximate and/or beneath the Atlantic Ocean, Great South Bay, Carmans River, Yaphank Creek and tidal and/or freshwater wetlands. The Applicant also requests that the NYSPSC refuse to apply the restriction found in § 53-3(D) (3) since portions of the Project will be within 15 ft (4.6 m) of the water table, while other portions are reasonably anticipated to be located in watertight structures in groundwater, making compliance with this local requirement for the Project technically impossible or impracticable from a cost and economics perspective. The Applicant also requests that the NYSPSC refuse to apply the restriction found in § 53-3 (D) (4) since certain construction processes and/or activities may make compliance with this local requirement technically impossible or impracticable from a cost and economics perspective.

7.3.14 Chapter 57 – Shellfish

This law makes it unlawful for any person to interfere with or otherwise disturb shellfish possessed, planted, or cultivated by another (§ 57-18 [A]).

The Applicant intends to comply with the substantive provisions and restrictions of this chapter during construction and operation of the Project. However, the Applicant requests that the NYSPSC refuse to apply the restriction found in § 57-18 (A) prohibiting the interference with or otherwise disturbing shellfish possessed, planted, or cultivated by another because certain construction processes and/or activities could be needed in the course of constructing the Project within the Town that could potentially make compliance with this local requirement technically impossible or impracticable from a cost and economics perspective. The Applicant will coordinate activities in shellfish areas with the Town, NYSDEC, New York State Department of State (NYSDOS), National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries [previously NMFS]) and local shell fishermen to minimize potential impacts during construction of the Project. The Applicant will implement a communication plan during construction to inform mariners and fishermen of construction activities, vessel movements, and how construction activities may affect the area. Communication will be facilitated through maintaining a Project website, the Applicant's Fisheries Liaison, submitting local notices to mariners and vessel float plans, and coordinating with the United States Coast Guard (USCG).

7.3.15 Chapter 57A – Signs Permitted in all Districts

The provisions of this chapter establish the standards for any signs erected in the Town. This chapter permits signs erected at the direction of a government agency with respect to a specific danger and contractor signs, measuring no more than 6 ft (1.8 m) in area, during construction (§ 57A-3). No other signs relative to the Project will be permitted in the residential zones outside of Fire Island. All other signs in the Town require a permit from the Town's Chief Building Inspector (§ 57A-19). While the L Industrial 1 zone, in which a portion of the Project and the OnCS-DC is located, allows for ground signs measuring no more than 18 square feet (sq ft) (1.6 square meter [m²]) per sign face and 9 ft (2.7 m) in height from ground level, the restrictions require that that a building be on-site in connection with a ground sign (§ 57A-8 [B]).

The need to secure a sign permit from the Town's Chief Building Inspector pursuant to Town Code § 57A-19 is preempted by PSL § 130. To the extent that any signs are required for the construction and/or operation of the Project, the Applicant will comply with the relevant substantive provisions.

7.3.16 Chapter 70 – Tree Preservation

This chapter regulates the destruction and removal of trees (§ 70-1). Pursuant to the chapter, a permit from the Town Planning Board is required to destroy or remove any tree upon a parcel in excess of two acres or any commercial or industrial zoned parcels of land (§§ 70-3 and 70-6). The provisions for issuing a permit for destroying or removing a tree are contained in § 70-6 and require the submission of an application stating the purposes of the tree removal and plans showing all tree removal from the

project site. The ordinance exempts certain activities from the permit requirements, including any person doing business as a public utility subject to the jurisdiction of the NYSPSC. Such persons are permitted to trim, prune, or alter any tree that may otherwise be lawfully altered by such persons, to the minimum extent necessary, to such person to repair existing utility services (§ 70-4 [B]). The Town also precludes the removal of landmarked trees, except under rare circumstances involving life and safety (§ 70-8 [E]).

The requirements to obtain a permit set forth in §§ 70-3 and 70-6(A)-(E) are preempted by PSL § 130.

The Applicant requests that the NYSPSC refuse to apply the restriction found in § 70-6 requiring the preparation of tree removal plans because compliance with this local requirement may make the Project impracticable from a cost and economics perspective.

7.3.17 Chapter 72 – Trees and Debris, Disposition of

This law makes it unlawful for any person to bury trees, tree branches, and other debris, as well as use unacceptable fill on property located within the Town (§ 72-1).

The Applicant will comply with the substantive requirements.

7.3.18 Chapter 75 – Vegetation on Beach Areas

This chapter makes it unlawful for any person to remove or destroy any grass or actual growth of vegetation whatsoever from any lands in the Town on the Great South Beach without a permit from the Town's Chief Building Inspector (§ 75-4).

The requirements to obtain permit set forth in § 75-5(A)-(G) are preempted by PSL § 130. The Applicant requests that the NYSPSC refuse to apply the restriction found in § 75-4 prohibiting the removal or destruction of any grass or actual growth of vegetation in the Town on the Great South Beach because such activities could be needed in the course of constructing the Project within the Town, and compliance with this local requirement may make the Project technically impossible or impracticable from a cost and economics perspective.

7.3.19 Chapter 76 – Coastal Erosion Hazard Areas

Pursuant to the New York Coastal Erosion Hazard Areas Law and the regulations promulgated therein at 6 NYCRR Part 505, NYSDEC is authorized to identify and map coastal erosion hazard areas in NYS and to prohibit or control certain regulated activities or land disturbance within the same. The Town has been granted approval by NYSDEC to regulate the Coastal Erosion Hazard Areas in the Township, which it regulates pursuant to Chapter 76 of the Town Code (§ 76-1 [A]).

The application for a Coastal Erosion Management Permit must be filed with the Town's Division of Environmental Protection (§ 76-5 [H]). The determination of the Director of the Division of Environmental

Protection is subject to appeal to the Coastal Erosion Hazard Board of Review, which is comprised of the Town Zoning Board of Appeals (§ 76-9 [A]). The Coastal Erosion Hazard Board of Review is authorized to affirm, modify, and/or annul any order; hear, and decide appeals on the Director's interpretation; and to affirm the requirement, decision, or determination of the Director by written decision after a public hearing (§ 76-9 [A]).

The chapter includes detailed prohibitions of activities in Coastal Erosion Hazard Areas. Town Code §§ 76-4 (A) (1)-(2) and (B) (1)-(2) preclude excavation, grading, mining, or dredging that is reasonably anticipated to result in the diminution of erosion protection afforded by existing features and construction of new structure(s) in the near-shore and beach areas. Similarly, §§ 76-4 (C) (1), 76-4 (C) (3), 76-4 (D) (1), and 76-4 (D) (3) prohibits the excavation, grading, or mining and construction of new structure(s) in primary dune or bluff areas. Further, §§ 76-4 (C) (2) and 76-4 (D) (2) preclude unauthorized vehicular traffic in primary dune or bluff areas, while § 76-4 (D) (4) prohibits the disturbance of soil(s) that may be reasonably anticipated to result in the redirection of surface water runoff over a bluff face. Finally, §§ 76-4 (A) (3), 76-4 (B) (4), 76-4 (C) (5), and 76-4 (D) (6) preclude all activities not otherwise permitted by Chapter 76.

The requirements to obtain a Coastal Erosion Management Permit set forth in § 76-5 (A)-(K) are preempted by PSL § 130. In addition, the Applicant requests that the NYSPSC refuse to apply the following restrictions found in this Chapter due to existing technology and factors of cost or economics, specifically: §§ 76-4 (A) (1)-(3), (B) (1)-(2) and (4), 76-4 (C) (1)-(3) and (5), and 76-4 (D) (1)-(3) and (6), because such activities could be needed in the course of constructing the Project within the Town. While the Applicant is utilizing HDD to cross beneath dunes, bluffs and the beach to avoid permanent disturbances, some temporary impacts are anticipated to coastal resources due to the required pipe stringing along the beach during the construction process.

7.3.20 Chapter 78 – Water Resources

This chapter makes it unlawful for any person to remove subterranean waters located within the Town without first having obtained a permit from the Town Trustees and the Town Board (§ 78-3). It further requires that any removal of subterranean waters not diminish or harm the supply of subterranean waters to the detriment of the residents and property owners of the Town (§ 78-6 [B]).

The requirements to obtain a permit from the Town Trustees and the Town Board set forth in §§ 78-5 (A)-(C) and 78-6 (A)-(B) are preempted by PSL § 130. The Applicant intends to comply with the substantive provisions and restrictions of this chapter during construction and operation of the Project; however, the Applicant requests that the NYSPSC refuse to apply the restriction found in § 78-3 prohibiting the

removal of subterranean waters located within the Town because certain construction processes and/or activities could be needed in the course of constructing the Project within the Town that could potentially make compliance with this local requirement technically impossible or impracticable from a cost and economics perspective.

7.3.21 Chapter 80 – Critical Environmental Areas; SEQRA Implementation

This chapter creates critical environmental areas in the Town, including the “South Shore Critical Environmental Area,” which encompasses the Town’s south shore lands, with the exception of Fire Island (§ 80-2 [A] and Chapter 80, Exhibit A [A-4]), as well as the “Central Pine Barrens Critical Environmental Area,” (§ 80-2 [A] and Chapter 80, Exhibit A [A-3]). The chapter also provides the procedures for the designation of lead agencies under SEQRA (§ 80-2 [B]-[C]). Further, the provisions of Chapter 80 define what constitutes a Type I and Type II action pursuant to Town procedures for implementation of SEQRA. (§§ 80-3 and 80-4). The Town requires that the potential impacts of a Type I or unlisted action on a Town designated Critical Environmental Area must be reviewed by the reviewing Agency to determine the significance (§ 80-4 [C]).

The underlying Town approvals that the above noted review requirements are imposed upon by this chapter are preempted by PSL § 130.

7.3.22 Chapter 81 – Wetland and Waterways

This chapter provides for the protection, preservation, and conservation of tidal and freshwater wetlands within Town boundaries by establishing a permit system with regard to regulated activities in freshwater wetlands and adjacent areas and by establishing the procedures and standards for the processing of such permit applications. Unless exempted by Town Code § 81-5, pursuant to Town Code § 81-4, no development of any structures or clearing of vegetation may occur within 150 ft (45.7 m) of any wetlands or waterway without a permit from the Town. The Town sets forth a wetlands permit procedure requiring an application to the Division of Environmental Protection (§ 81-6). In addition to a wetlands permit, the Town requires that a building permit from the Town Building Department be issued before proceeding in accordance with the work authorized by the wetlands permit (§ 81-20 [A]). The Town defines activities that are incompatible with granting a wetlands permit, including, but not limited to, excavation of a tidal or freshwater wetland, clearing, or excavation of natural vegetation/soils within 25 ft (7.6 m) of the landward boundary of a tidal or freshwater wetland or water body, as well as the construction of any structure, other than docks, structural, and nonstructural shore protection devices, seaward of the apparent high watermark of any shoreline (§ 81-7 [A]). Further, the ordinance prohibits the construction of new structures and the clearing of natural vegetation within 20 ft (6.1 m) of the landward edge of all

wetlands that occur along the Carmans River (§ 81-7 [B] [1]). Finally, the Town requires that new commercial structures provide a 100 ft (30.5 m) buffer zone to wetlands (§ 81-14 [E] [1]).

The need to secure a Town wetlands permit and building permit to construct the Project within 150 ft (45.7 m) of the edge of wetlands, as mapped by the NYSDEC, or the Atlantic Ocean, Great South Bay, Carmans River, and Yaphank Creek is preempted by PSL § 130. The Applicant requests that the NYSPSC refuse to apply the restriction found in §§ 81-7 (A) (1)-(3) and (5)-(7) and 81-7 (B) (1) prohibiting clearings and improvements in the wetland jurisdictional areas and other areas proximate to tidal wetlands because the Project involves the development of underwater lands seaward of the apparent high watermark of the Smith Point County Park and Smith Point Marina shorelines, HDD beneath wetlands and Town waterways and traversing the Carmans River by certain construction processes and/or activities that make compliance with this local requirement technically impossible or impracticable from a cost and economics perspective. The Applicant also requests that the NYSPSC refuse to apply the restriction found in § 81-14 (E) (1), since the Applicant will not be acquiring land rights sufficient to comply with the buffer standard making compliance with this local requirement technically impossible.

7.3.23 Chapter 85 – Zoning

Article X – Zoning Districts; Map; General Regulations

All proposed facilities in the Town of Brookhaven are located in the Residential District (RD), A 1 Residence District (A1), A 5 Residence District (A5), Light Industrial 1 District (L1), and unzoned ROWs and underwater lands. All underwater lands in the Town are zoned A1 unless specifically zoned otherwise (§ 85-136 [B]). In addition, all unzoned land in the Town is included in the A1 zone (§ 85-136 [C]). Portions of the transmission line within lots that have within their property boundaries either freshwater or saltwater wetlands or are adjacent to or contain within their property boundaries a regulated water body are also within the Town's Wetland Overlay zoning district (§ 85-624). Moreover, the portions of the transmission line within the Central Pine Barrens Area created pursuant to Article 57 of the New York Environmental Conservation Law (NYECL), the Long Island Pine Barrens Maritime Reserve Act are within the Town's Central Pine Barrens overlay district (§ 85-719 [A] [1]-[4]).

The RD district expressly allows for public utilities on all land not owned by the Town upon the receipt of a special permit from the Town Board of Zoning Appeals (§ 85-378 [D] [1] [a]). Public utility facilities are prohibited uses in the A1 and A5 District (§§ 85-190 [A], [C], [D], 85-197 [A] [1], and 85-239 [A] [1] [a]), as well as the L1 District (§§ 85-560-565), since they are not expressly permitted in the zones (§ 85-137 [A]). The Wetland Overlay district does not restrict uses (§§ 85-621-627). The Central Pine Barrens Area district restricts uses to those permitted in the CPA, specifically "nondevelopment" activities, certain residential and agricultural uses and uses that have received hardship exemption from the Pine Barrens

Commission (§§ 85-721 [A] [1]-[2]). “Nondevelopment” activities include improvements, maintenance, or other work by a utility undertaken in the interest of public health, safety, or welfare, so long as the same is consistent with the goals and objectives of the Long Island Pine Barrens Protection Act (§ 85-720 [A] [f]).

PSL § 130 preempts the need for a special use permit for the Project. The Applicant requests that the NYSPSC refuse to apply the prohibition against the installation of public utility facilities in the RD, A1, A5 and L1 districts because of existing technology and factors of cost and economics and will request a CPA hardship exemption from the Central Pine Barrens Joint Planning & Policy Commission based on compelling public need for the portion of the Project that will traverse the CPA. For example, technology does not exist to allow the Project to avoid the impacted districts in the Town. Transmission and interconnection facilities are necessary to transmit electricity generated by the SRWF to the electrical grid. This specifically requires delivering electricity from the offshore wind farm to existing onshore electrical transmission facilities associated with the Project (i.e., the Holbrook Substation). The Onshore Transmission Cable was sited to minimize impacts to land uses and environmental resources to the extent practicable during construction. Construction of the Onshore Transmission Cable will involve conventional, trenching, and excavation and trenchless construction methods in certain areas to further minimize and/or avoid sensitive resources such as wetlands, waterways and the Central Pine Barrens. The operation of the Onshore Transmission Cable and Onshore Interconnection Cable will not require rezoning of existing land uses, as the cables will be located entirely underground, within existing disturbed roadway, railroad and utility ROWs and no ongoing land disturbance is expected following cable installation. The OnCS–DC will also not require rezoning of existing land uses as it is consistent with land uses on adjacent properties.

Article II – Building Permits and Certificates of Occupancy

This Article requires all structures constructed in the Town to receive a building permit from the Town's Chief Building Inspector before commencing construction (§ 85-12 [A]) and receive a certificate of occupancy from the Town's Chief Building Inspector before commencing use of structure (§ 85-15 [A]).

PSL § 130 preempts the need for the building permit and certificate of occupancy approvals required by this Article for the Project.

Article V – Board of Zoning Appeals

This Article grants the Town Board of Zoning Appeals the right to grant, among other things, special permit (§ 85-57 [A]), area variances, and use variance approvals (§ 85-57 [C]). The RD district allows for public utilities on all land not owned by the Town after obtaining a special permit from the Town Board of

Zoning Appeals (§ 85-378 [D] [1] [a]). The Town Zoning Board of Appeals hears recommendations from an advisory committee of Fire Island residents in connection with such special permit requests (§ 85-378 [D] [2]), as well as area and use variances (§ 85-383 [A] [4]). Further, the Town Board of Zoning Appeals refers these applications to the Superintendent of the Fire Island National Seashore Park for review and input pursuant to 36 CFR § 28.13.

PSL § 130 preempts the need for special use permit and/or area and use variance approvals for the Project.

Article VIII – Planning Board

Site plan approval is required from the Town Planning Board “in all zoning districts for all buildings and structures or land use...” (§ 85-113 [A]). As part of a site plan application, § 85-113 (E) requires the Town Planning Board to consider the following elements in its review process: ingress to and egress from all public highways to the premises, subject to the approval of the appropriate municipal agencies having jurisdiction of such highways; the traffic pattern within the premises; the location and placement of parking spaces; parking areas; loading areas and spaces; curbs, sidewalks, and access driveways as may be required under Chapter 85, or by any municipal agency; all drainage facilities; grading; lights; the placement of signs on the premises; the location and dimensions of all existing and proposed structures upon the site; open spaces; landscaping; screening; architectural features; all other physical features and improvements; the impact of the proposed use on adjacent land and land uses; and such other elements as may be reasonably related to the health, safety, and general welfare of the community.

PSL § 130 preempts the need for site plan approval for the Project.

Article XIV – Residence Districts

Attachment 1 of Chapter 85 provides the Residential Districts: Table of Dimensional Regulations within each Residential District defined within Article XIV (as relevant here, the A1 and A5 districts). The applicable provisions appear to be the minimum lot area (40,000 sq ft [3,716 m²] in A1 and 200,000 sq ft [18,580.6 m²] in A5), minimum front yard setback (50 ft [15.2 m] in A1 and 70 ft [21.3 m] in A5), minimum side yard setback (25 ft [7.6 m] in A1 and 35 ft [10.7 m] in A5), minimum total side yard setback (75 ft [22.9 m] in A1 and 85 ft [25.9 m] in A5), minimum rear yard setback (60 ft [18.3 m] in A1 and 80 ft [24.3 m] in A5), maximum total building area (15 percent of lot in A1 and 6 percent of lot in A5) and minimum road frontage (175 ft [53.3 m] at a point 50 ft [15.2 m] back of the street line in A1 and 300 ft [91.4 m] at a point 70 ft [21.3 m] back of the street line in A5). Further, § 85-176 (A) restricts the maximum structure size in the A1 zone to 15,000 sq ft (1,393.5 m²) and 30,000 sq ft (2,787.0 m²) in the A5 zoning district. Fences are also limited in Residential Districts by § 85-190 (B) (4), which are generally limited to no greater than 4 ft (1.2

m) in height. Any portion of a fence within 30 ft (9.1 m) of an intersection, cannot exceed 2.5 ft (0.8 m) in height (§ 85-190 [B] [4]). Finally, accessory structures in the Residential Districts are subject to the following limitations: maximum height (18 ft [5.5 m] in the A1 and A5), minimum setback from street (70 ft [21.3 m] in A1 and 80 ft [24.4 m] in A5) and maximum lot coverage of required rear yard (25 percent in A1 and 12.5 percent in A5).

The Applicant requests that the NYSPSC refuse to apply the minimum lot area, maximum structure size, maximum total building area, minimum rear yard, minimum front yard, minimum side yard, minimum total side yard, minimum accessory structure setback, maximum accessory structure height, maximum accessory structure lot coverage of rear yard, fence height restriction, and minimum road frontage provision restrictions because the Project consists of an underground transmission system within an existing ROW, public parks, or on utility-owned property, and the configuration of the structures within the Project's ROW will be a function of the optimal width, length, clearance, and reliability criteria, as well as safety and other governing requirements (i.e., National Electrical Safety Code [NESC]), regardless of the size of effected lots, their road frontages and the maximum size of the structures housing the underground transmission line and because compliance with this local requirement would be technically impossible or impracticable from a cost and economics perspective. To that end, and for example, to the extent a fence needs to be installed, that fence height will be selected based on NESC specifications. As noted above, the Applicant also requests that the NYSPSC refuse to apply the prohibition against the installation of public utility facilities in the A1 and A5 districts because existing technology and factors of cost and economics do not allow Applicant to avoid the impacted districts in the Town.

Article XVIII – Great South Beach in Fire Island National Seashore

This article applies to all land within the Fire Island National Seashore (the Seashore) in unincorporated portions of the Town (§ 85-376 [A]). The article requires that a building permit be issued by the Town's Chief Building Inspector for all new structures and provides special criteria for the issuance of such permits (§ 85-377 [F]). This criteria includes, in relevant part, limiting the grant of all building permits to areas west of Smith Point County Park (§ 85-377 [F] [2]).

Under the article, land in the Seashore is divided into several zoning designations that only exist in the Seashore. As indicated above, the only zoning district applicable here is the RD. In turn, this article provides certain additional zoning restrictions within the RD. For example, the bulk area criteria for the RD district is contained in § 85-381. The only applicable provisions appear to be the maximum lot area coverage (35 percent) (§ 85-381 [D] [1]), minimum front yard (20 ft [6.1 m]) (§ 85-381 [E]), minimum side yard (12 ft [3.7 m]) (§ 85-381 [F]), minimum total combined side yards (30 ft [9.1 m]) (§ 85-381 [F]), minimum rear yard (20 ft [6.1 m]) (§ 85-381 [G]), average setback line of existing structures in the vicinity

(§ 85-381 [H]), maximum building height (28 ft [8.5 m]) (§ 85-381 [C] [1]), maximum accessory structure height (14 ft [4.3 m]) (§ 85-381 [C] [2]), minimum lot area and road frontage (4,000 sq ft [371.6 m²]) and 40 ft [12.2 m]) (§ 85-381 [D] [1] [2] [a]), fences (§ 85-381 [I]), and the sign restrictions limiting all signs to no more than one sign measuring no greater than 1 sq ft (0.09 m²) (§ 85-381 [J] [1] [a]).

PSL § 130 preempts the need for the building permit required by this Article for the Project. The Applicant requests that the NYSPSC refuse to apply the limitation prohibiting development east of the boundary line of Smith Point County Park since underground facilities will be located within the Park and because compliance with this local requirement would be technically impossible or impracticable from a cost and economics perspective. The Applicant further requests that the NYSPSC refuse to apply the sign limitations as signs may be necessary to warn residents of potential risks to health and safety related to the Project during its construction and operation. The Applicant will coordinate the placement of signs with the Town, County and National Parks Service (NPS). The Applicant also requests that the NYSPSC refuse to apply the minimum lot area, maximum lot area coverage, minimum front yard, minimum side yard, minimum total combined side yards, minimum rear yard, average setback line of existing structures in the vicinity, fence height restrictions, and minimum road frontage provisions restrictions because the Project consists of an underground transmission system within an existing ROW, public parks or on utility-owned property, and the configuration of the structures within the Project's ROW will be a function of the optimal width, length, clearance, and reliability criteria, as well as safety and other governing requirements (i.e., NESC), regardless of the size of effected lots, their road frontages and the maximum size of the structures housing the underground transmission line and because compliance with this local requirement would be technically impossible or impracticable from a cost and economics perspective. To that end, and for example, to the extent a fence needs to be installed, that fence height will be selected based on NESC specifications. The Applicant will otherwise comply with the substantive requirements of this Article.

Article XXII – Industrial Districts

This Article provides the development limitations within the L1 zone. The applicable provisions are the minimum lot area (40,000 sq ft [3,716.1 m²]) (§ 85-567 [A] [1]), minimum road frontage (100 ft [30.5 m]) (§ 85-567 [B] [1]), minimum front yard (50 ft [15.2 m] or, if 5 acres [2.0 hectares (ha)] or greater, 100 ft [30.5 m]) (§ 85-567 [C] [1]-[2]), minimum side yard (10 ft [3.0 m] or, if 5 acres [2.0 ha] or greater, 50 ft [15.2 m]) (§ 85-567 [D] [1] and [3]), minimum total combined side yards (30 ft [9.1 m]) (§ 85-567 [D] [1]), minimum rear yard (50 ft [15.2 m]) (§ 85-567 [E] [1]), maximum permitted floor area ratio (FAR) (35 percent or, if within a designated hydrogeological sensitive zone, 30 percent) (§ 85-567 [F] [1]-[2]) and maximum height of 50 ft (15.2 m) or 3 stories (§ 85-567 [G] [1]).

The Applicant requests that the NYSPSC refuse to apply the minimum lot area, maximum FAR, minimum front yard, minimum side yard, minimum total combined side yards, minimum rear yard and minimum road frontage provisions restrictions because the Project consists of an underground transmission system within an existing ROW, public parks, or on utility-owned property, and the configuration of the structures within the Project's ROW will be a function of the optimal width, length, clearance, and reliability criteria, as well as safety and other governing requirements (i.e., NESC), regardless of the size of effected lots, their road frontages, and the maximum size of the structures housing the underground transmission line and because compliance with this local requirement would be technically impossible or impracticable from a cost and economics perspective. Further, the Applicant requests a waiver of the height restriction for the NYSPSC-approved Project for safety and other requirements and because compliance with this local requirement would be technically impossible or impracticable from a cost and economics perspective.

Article XXV – Wetland Overlay District

A project that is within lots that have within their property boundaries either freshwater or saltwater wetlands or are adjacent to or contain within their property boundaries a regulated water body are also subject to the supplemental regulations of the Town's Wetland Overlay district (§ 85-624). The provisions of this article require buffers in accordance with Chapter 81 of the Town Code (§ 85-624) and prohibit the clearing, grading, dumping, filling, or construction of a primary structure within a designated wetland (§ 85-627 [A]).

As noted above, the Applicant is requesting that the NYSPSC refuse to apply the buffer provisions in Chapter 81, as well as the prohibition of construction within a mapped wetland. Here, the Applicant requests that the substantive provisions of this Article not be applied by the NYSPSC since the Project involves HDD beneath wetlands and since the Applicant will not be acquiring land rights sufficient to comply with the buffer standard, which make compliance with this local requirement technically impossible or impracticable from a cost and economics perspective.

Article XXV – Central Pine Barrens Overlay District

A project within the Central Pine Barrens Area created pursuant to Article 57 of the NYECL are subject to the supplemental regulations contain within the Town's Central Pine Barrens Overlay district provisions (§ 85-719 [A] [1]-[4]). This article establishes the Town's development regulations for development within the CPA and CGA of the Central Pine Barrens located within the Town. § 85-723 of the Article further provides strict standards for development within the Central Pine Barrens Overlay district. The standards of § 85-723 include sanitary design restrictions; providing non-disturbance buffers in accordance with Chapter 81; compliance with the NYS Wild, Scenic and Recreational Rivers Act, where applicable;

retention of all stormwater runoff on-site unless surplus capacity exists in an off-site drainage system; and no clearing except in accordance with § 5.2 of the Central Pine Barrens Comprehensive Land Use Plan discussion below.

The Applicant will request a CPA hardship exemption from the Central Pine Barrens Joint Planning & Policy Commission based on compelling public need for the portion of the Project that will traverse the CPA, which, as noted above with respect to Article X, will render the Project a permitted “nondevelopment” activity under the Town Code once granted. The Project consists of an underground transmission system within an existing ROW, public parks, or on utility-owned property and will traverse Central Pine Barrens overlay district. Construction of the Onshore Transmission Cable will involve conventional, trenching, and excavation and trenchless construction methods in certain areas to further minimize and/or avoid sensitive resources such as wetlands, waterways and the Central Pine Barrens. The operation of the Onshore Transmission Cable and Onshore Interconnection Cable will not require rezoning of existing land uses, as the cables will be located entirely underground, within existing disturbed roadway, railroad and utility ROWs and no ongoing land disturbance is expected following cable installation. While the Applicant will attempt to comply with the substantive provisions of this Article to the maximum extent feasible, the Applicant also requests that the NYSPSC refuse to apply the buffer provisions in Chapter 81 that are incorporated into this Article by §§ 85-723 (C) (1)-(2) for the reasons noted above with respect to Chapter 81 and because the Project consists of an underground transmission system within an existing ROW, public parks, or on utility-owned property, and the configuration of the structures within the Project’s ROW will be a function of the optimal width, length, clearance, and reliability criteria, as well as safety requirements and because compliance with this local requirement would be technically impossible or impracticable from a cost and economics perspective. Further, the Applicant requests that the NYSPSC not apply the natural vegetation clearing limitations restricting the percentage of the land permitted to be cleared and the limiting of the clearing of land in the CPA as provided in §§ 85-723 (E) (1) (a)-(c) and Article 85, Figure 5-1 since the removal of protected vegetation may be needed in the course of constructing the Project within the Town, and compliance with this local requirement may make the Project technically impossible or impracticable from a cost and economics perspective.

Article XXXIV – Land Development Standards

Minimal Natural Area/Landscaping Requirements

§ 85-843 (A) establishes the minimum natural area and landscaping requirements for all properties in the Town. For all commercial sites, a minimum of 20 percent of the site must be landscaped or natural area (§ 85-843 [A] [1]), with 50 percent of such landscaping/natural area provided in the front yard of the

site (§ 85-843 [A] [2]). A minimum of 15 ft [4.6 m] of landscaped or natural area shall be maintained along all street frontages (§ 85-843 [A] [4]). Further, street trees are required to be planted and/or maintained adjacent to all road frontages in accordance with Town standards in an amount equal to 30 ft [9.1 m] on center (§ 85-843 [A] [3]). All landscaped, buffer, and natural areas must be irrigated (§ 85-843 [A] [9]) and drought-tolerant native and adapted species and/or water-conserving plants and methods must be utilized for landscaped and buffer areas to reduce irrigation demands, in accordance with Town standards (§ 85-843 [A] [11]). Finally, all parking areas shall be screened from view with a hedge, berm, and/or decorative wall or fence (§ 85-843 [A] [7]).

As to onsite landscaping, irrigation, and street trees required by §§ 85-843 (A) (1), 85-843(A)(2), 85-843 (A) (3), 85-843 (A) (4), 85-843 (A) (9), and 85-843 (A) (11), the Applicant requests that the NYSPSC refuse to apply this requirement because compliance with this local requirement would be technically impossible or impracticable from a cost and economics perspective. It will also be unnecessary and impractical to install the same within existing public parks, which will be restored to their natural condition above ground. Further, no parking is proposed. Accordingly, no screening will be required for the same.

Parking Requirements

The article also regulates the Town's parking requirements. The parking requirement is at the discretion of the Town Planning Board (§ 85-849 [G]). The Code also requires loading stalls based on the overall size of a building or structure in accordance with the schedule below:

<u>Structure Floor Area (sq ft)</u>	<u>Loading Spaces Required</u>
Under 8,000	1
8,000 to 25,000	2
25,000 to 40,000	3
40,000 to 100,000	4
100,000 to 125,000	5
Each additional 200,000	1

Further, § 85-855 (B) (1) prohibits parking commercial vehicles on residential streets. The same, however, is allowed if the commercial vehicle weighs less than 10,000 pounds or the commercial vehicle is owned by public utilities for the maintenance, repair, and construction of public utility facilities.

The Applicant is seeking a waiver of the following provisions: §§ 85-849, 85-850, 85-852, and 85-854 since no permanent parking or loading spaces are required to maintain a transmission line and the OnCS–DC and because compliance with this local requirement would be technically impossible or impracticable from a cost and economics perspective. Further, the Applicant is requesting a waiver of §

85-855 (B) (1) to allow commercial vehicles to park on residential streets during the construction and maintenance of the Project during operations since vehicles not owned by a public utility are anticipated to be required.

Lighting Requirements

§§ 85-862 through 871 set forth the lighting standards for all exterior lighting within the Town. Lighting is reviewed in connection with any application submitted to any board, department, division, or agency of the Town (§ 85-869 [A]).

The requirement to obtain permits and approvals for which lighting would be reviewed by the Town for the Project are preempted by PSL § 130. Since lighting may be required for the construction of the Project, the Applicant requests that the NYSPSC waive the restriction under § 85-867 (A) (2) that the maximum illuminance at or beyond the property line that adjoins a residential parcel or public ROW may not exceed 0.05 footcandle horizontal on the ground or 0.05 footcandle vertical measured at a 5-ft (1.5-m) height above the ground since the same is infeasible given the dimensions of the ROW where the Project will be installed. While, in general, yard lighting at the OnCS-DC will be minimal at night and compliant with NYS and local requirements, lighting in excess of that permitted by § 85-867 (A) (2) will be necessary when maintenance and other work is occurring there at. Accordingly, the Applicant requests that the NYSPSC refuse to apply § 85-867 (A) (2) and because compliance with this local requirement would be technically impossible or impracticable from a cost and economics perspective.

Waterfront Lot Requirements

§ 85-881 prohibits the issuance of a building permit for any structure located on a freshwater or tidal wetland, as defined by the Wetlands Law of the Town, until the applicant has complied with all the provisions of Chapter 81 and has obtained a wetlands permit where necessary.

As noted above, the requirement to obtain building and wetland permits are preempted by PSL § 130. Further, the Applicant will be seeking waivers of certain provisions contained within Chapter 81 as discussed herein.

Construction Site Trailers or Mobile Structures

This article further permits the use of temporary mobile structures or trailers for large-scale development projects, when located on the approved development site, for use exclusively as a field office (§ 85-889 [B]). The receipt of a foundation permit or a building permit is a prerequisite for allowing a construction site trailer (§ 85-889 [B] [2]). The siting of a construction site trailer also requires Planning Board site plan approval (§ 85-889 [C]). Once Planning Board approval and the building permit or

foundation permit for the improvement contemplated are issued, the Town's Chief Building Inspector may grant a permit for the temporary construction site trailer (§ 85-889 [D]).

The requirement to obtain a temporary construction site trailer permit is preempted by PSL § 130.

7.3.24 Chapter 86 – Stormwater Management and Erosion Control

This chapter establishes minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction (§ 86-1). More specifically, stormwater management requirements and controls must meet the minimum measures four and five of the NYSDEC SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer System (MS4) (Permit Number GP-0-10-002 or as amended or revised) (§ 86-1 [B] [1]). Additionally, land development activities must conform to the substantive requirements of the NYSDEC SPDES General Permit for Construction Activities (Permit Number GP-0-10-001 or as amended or revised) (§ 86-1 [B] [2]). The chapter applies to all land development activities that disturb more than 1 acre (0.4 ha) or more or part of a larger common plan of development (§§ 86-3 [A]-[B]). No application for land development activity can receive final approval until the Stormwater Management Officer (SMO) approves the SWPPP prepared in accordance with the specifications in this chapter (§ 86-6 [A] [2]).

As noted above, the Applicant will apply for a Water Quality Certificate under the federal Clean Water Act as part of the PSL Article VII certification process. In addition, Applicant will submit a Notice of Intent to the NYSDEC seeking coverage under NYSDEC's SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-20-001) prior to commencement of Project construction. The MS4's approval of a SWPPP will be a condition of coverage under the aforementioned General Permit. The Project's EM&CP will address stormwater management, temporary soil erosion and sediment controls, and Project spill prevention and control measures. These measures will be set forth in the EM&CP and the accepted SWPPP for the Project, which will be included as either an appendix to the EM&CP or incorporated in the text thereof by reference.

7.3.25 Chapter 86A – Prohibition of Illicit Discharges and Connections to Town of Brookhaven Municipal Separate Storm Sewer System

This chapter regulates non-stormwater discharges to the MS4 (§ 86A-1). It also precludes the diversion of stormwater runoff, natural drainage, or any means of stormwater conveyance from private property to other private or public real property (§ 86A-5 [A]). The chapter expressly exempts some discharges from the prohibition, including discharges pursuant to a SPDES permit or similar approval from the NYSDEC and the following, when approved in writing by the Town SMO, water line flushing or other potable water sources, landscape irrigation or existing diverted stream flows, rising groundwater, uncontaminated

groundwater infiltration to storm drains, uncontaminated pumped groundwater, uncontaminated foundation or footing drains, air-conditioning condensate, irrigation water, springs, natural riparian habitat or wetland flows, and any other water source not containing pollutants (§ 86A-5 [C] [1]-[4]). Further, § 86A-6 prohibits illegal connections to the MS4 system. Finally, in the event of impermissible discharges, the provisions require that efforts be undertaken to ensure the discovery, containment, and cleanup thereof, as well as immediate notification of the NYSDEC, in the event of release of hazardous materials, or the SMO the next business day in the event of the release of non-hazardous materials (§ 86A-12).

The Applicant will apply for a Water Quality Certificate under the federal Clean Water Act as part of the PSL Article VII certification process. In addition, the Applicant will submit a Notice of Intent to the NYSDEC seeking coverage under NYSDEC's SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-20-001) prior to commencement of Project construction. The MS4's approval of a SWPPP will be a condition of coverage under the aforementioned General Permit. The Project's EM&CP will address stormwater management, temporary soil erosion and sediment controls, and Project spill prevention and control measures. These measures will be set forth in the EM&CP and the accepted SWPPP for the Project, which will be included as either an appendix to the EM&CP or incorporated in the text thereof by reference.

7.3.26 Local Law 26 of 2019

This local law amends Chapter 53 of the Town Code in order to permit the removal of topsoil for construction purposes.

The amendment does not affect the Applicant's compliance with Chapter 53 as noted above.

REFERENCES

Central Pine Barrens Comprehensive Land Use Plan. Accessed October 2020.

https://pb.state.ny.us/assets/1/6/CLUP_Vol_1_11-21-2012wamend.pdf.

County of Suffolk, Administrative Local Laws. Accessed October 2020. <https://ecode360.com/SU0867>.

Town of Brookhaven Local Laws. Accessed October 2020.

https://locallaws.dos.ny.gov/sites/default/files/drop_laws_here/ECMMDIS_appid_DOS20200114060011/Content/09021343802a69eb.pdf.

Town of Brookhaven, Town Code. Accessed October 2020. <https://ecode360.com/BR0012>.
