

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 4

1130 North Westcott Road, Schenectady, NY 12306-2014

P: (518) 357-2069 | F: (518) 357-2460

www.dec.ny.gov

May 5, 2022

Letter Transmitted Electronically

Greg Gibbons, Borrego Solar Systems Inc.
5005 Texas Street Suite 400
San Diego, CA 92108
gigibbons@borregosolar.com

RE: **Article 24 Freshwater Wetlands**
Section 401 Water Quality Certification
DEC #4-0130-00348
Facility: Krumkill Solar
Towns of Guilderland and New Scotland
Albany County

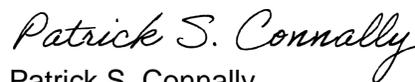
Dear Greg Gibbons:

The permit that you applied for is enclosed. Please read it carefully and note the conditions that are included. It is valid for only those activities authorized and is effective May 6, 2022 and will expire on May 5, 2026. Work beyond the scope of the permit and the approved project plans may be considered a violation and subject to appropriate enforcement action.

Please be advised that the Uniform Procedures Regulations (6 NYCRR Part 621) provide that an applicant may request a public hearing if a permit is denied or contains conditions which are unacceptable to them. Any such request must be made in writing within 30 calendar days of the date of permit issuance and must be addressed to the Regional Permit Administrator at the letterhead address. A copy should also be sent to the Chief Administrative Law Judge at NYSDEC, 625 Broadway, 1st Floor, Albany, NY 12233 1550.

Also note that this permit does not eliminate the need to obtain any other federal, state or local permits or approvals that may be required for this project. If you need additional time to complete the project, you may request a permit extension. Please reference the above DEC number, include an explanation why additional time is required and the anticipated completion date. Please feel free to contact me by telephone at (518) 357-2455 or by e-mail at patrick.connally@dec.ny.gov if you have any questions or concerns.

Sincerely,



Patrick S. Connally
Environmental Analyst 1

Enclosures: Permit
cc (by email): M. Osterhout, OSPA Engineering
NYSDEC R4 BEH
A. Labatore USACOE
T. of Guilderland
T. of New Scotland



Department of
Environmental
Conservation



PERMIT
Under the Environmental Conservation Law (ECL)

Permittee and Facility Information

Permit Issued To:
BORREGO SOLAR SYSTEMS INC
5005 TEXAS ST STE 400
SAN DIEGO, CA 92108
(978) 221-3101

Facility:
Krumkill Solar
Krumkill Rd
Guilderland, NY

Facility Location: in GUILDERLAND in ALBANY COUNTY

Facility Principal Reference Point: NYTM-E: 593.55 NYTM-N: 4724.789
Latitude: 42°40'11.6" Longitude: 73°51'30.1"

Authorized Activity: The project involves 1,279 square feet of fill within the regulated 100-foot adjacent area of New York State Freshwater Wetland A-8, a Class 2 wetland; to allow for construction of an access road associated with the development of an 8.84 MW solar array.

Permit Authorizations

Freshwater Wetlands - Under Article 24

Permit ID 4-0130-00348/00001

New Permit

Effective Date: 5/6/2022

Expiration Date: 5/5/2026

Water Quality Certification - Under Section 401 - Clean Water Act

Permit ID 4-0130-00348/00002

New Permit

Effective Date: 5/6/2022

Expiration Date: 5/5/2026

NYSDEC Approval

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.

Permit Administrator: KATE KORNAK, Regional Permit Administrator

Address: NYSDEC Region 4 Headquarters
1130 N Westcott Rd
Schenectady, NY 12306

Authorized Signature: _____ Date: 5 / 5 / 2022



Distribution List

M. Osterhout, OSPA Engineering
NYSDEC R4 BEH
A. Labatore USACOE
T. of Guilderland
T. of New Scotland

Permit Components

NATURAL RESOURCE PERMIT CONDITIONS
WATER QUALITY CERTIFICATION SPECIFIC CONDITION
GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS
NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Permit Attachments

Facility Location Map
2021.04.07 Wetland Delineation
2021.04.20 ACOE WL Impacts

NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following Permits: FRESHWATER WETLANDS; WATER QUALITY CERTIFICATION

1. Conformance With Plans All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans were prepared by include the following:

- An 11-page set of plans titled "Site Use Permit Set, 6120 Johnston Rd Rear, Guilderland, NY 12084, 8,840 KWAC STC Rated Solar Electric System," prepared by OSPA Engineering Services P.C., dated October 28, 2019 with a last revision date of August 24, 2021 (2021.04.21 Engineered Plans);
- 1 Plan sheet titled "C-1.0 Existing Conditions Plan," Prepared by OSPA Engineering Services P.C., with a last revision date of November 20, 2020 (2021.04.07 Wetland Delineation); and
- A 2 page submission dated April 30, 2021 and prepared by OSPA Engineering Services P.C. (2021.04.20 ACOE WL Impacts).



2. Minimize Impacts to Wetlands All work must be performed in a manner which minimizes adverse impacts to wetlands, wildlife, water quality and natural resources.

3. No Grading or Filling Out of Approved Areas No grading or filling in wetland or corresponding adjacent area other than what is specified in approved project proposal.

4. Erosion Controls Necessary erosion control measures, i.e., straw bales, silt fencing, etc., are to be placed on the downslope edge of any disturbed area. This sediment barrier is to be put in place before any disturbance of the ground occurs and is to be maintained in good and functional condition until thick vegetative cover is established.

5. Construction Activity All construction activity, including operation of machinery, excavation, filling, grading, clearing of vegetation, disposal of waste, street paving and stockpiling of material must take place within the project site as depicted on the project plans referenced by this permit. Construction activity is prohibited within areas to be left in a natural condition or areas not designated by the subject permit.

6. Invasive Species To prevent the unintentional introduction or spread of invasive species, all construction equipment used for the project shall be cleaned of mud, seeds, vegetation, roots, rhizomes, etc. and other debris before entering any approved construction areas within the state-regulated freshwater wetland, its 100-foot adjacent area, or within 50 feet of a protected stream's bed or banks. If invasive plant species are found already established on the site, equipment shall be thoroughly cleaned before exiting the construction site. All invasive plant species must be disposed of at a regulated Waste Facility, or treated by a process that destroys all propagules. A list of invasive plant species can be found at the following Department webpage:
http://www.dec.ny.gov/docs/lands_forests_pdf/isprohibitedplants2.pdf.

7. Disposal of Invasive Species All excavated material containing Japanese knotweed (*Polygonum cuspidatum*), multiflora rose (*Rosa multiflora*), or wild parsnip (*Pastinaca sativa*) must be placed in a suitable upland area a minimum of 100 feet from the waterbody or wetland or flood plain where it can be buried 5 to 6 feet below the surface or trucked to a landfill. Extreme caution should be taken to avoid the spread of these species throughout the duration of the project.

8. Removal of Project Materials Any demolition debris, excess construction materials, and/or excess excavated materials shall be immediately and completely disposed of on an approved upland site more than 100 feet from any regulated freshwater wetland. These materials shall be suitably stabilized so as not to re-enter any water body, wetland, or wetland adjacent area.

9. Equipment Operation Equipment operation in the active channel is prohibited.

10. Turbidity There shall be no discernible change in turbidity. The water below a stream work site



shall remain as clear as the flowing water above the stream work site.

11. Post Construction Photographs Within 30 days of completion of construction of the work authorized by this permit, the permittee shall submit at least 3 color photographs of the project, taken from different angles, to [Patrick Connally] at patrick.connally@dec.ny.gov.

12. Precautions Against Contamination of Waters All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

13. State Not Liable for Damage The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

14. State May Order Removal or Alteration of Work If future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.

15. State May Require Site Restoration If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may lawfully require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

1. Water Quality Certification The authorized project, as conditioned pursuant to the Certificate, complies with Section 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act, as amended and as implemented by the limitations, standards, and criteria of state statutory and regulatory requirements set forth in 6 NYCRR Section 608.9(a). The authorized project, as conditioned, will also comply with applicable New York State water quality standards, including but not limited to effluent limitations, best usages and thermal discharge criteria, as applicable, as set forth in 6 NYCRR Parts 701, 702, 703, and 704.



GENERAL CONDITIONS - Apply to ALL Authorized Permits:

1. Facility Inspection by The Department The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. Relationship of this Permit to Other Department Orders and Determinations Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. Applications For Permit Renewals, Modifications or Transfers The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator
NYSDEC Region 4 Headquarters
1130 N Westcott Rd
Schenectady, NY12306

4. Submission of Renewal Application The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Freshwater Wetlands, Water Quality Certification.

5. Permit Modifications, Suspensions and Revocations by the Department The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions,



relevant technology or applicable law or regulations since the issuance of the existing permit;

- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. Permit Transfer Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit

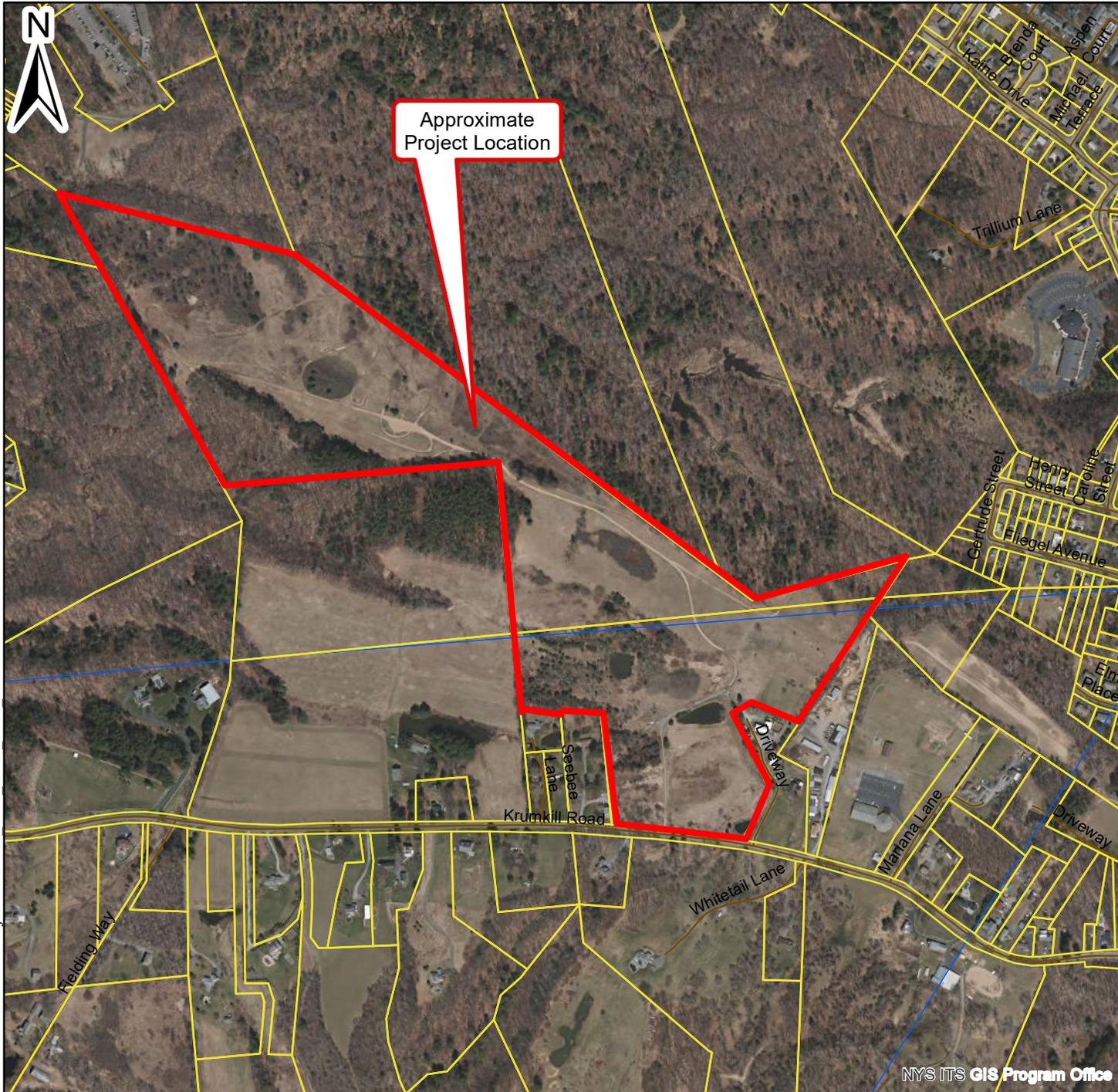
The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

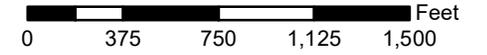
This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.



NYS RESOURCES MAP

Borrego Solar - Krumkill Site
6120 Johnston Road Rear
Towns of Guilderland and New
Scotland
Albany County

May 5, 2022



1 inch equals 750 feet

NYS ITS GIS Program Office



Department of
Environmental
Conservation

Disclaimer: This map was prepared by Region 4 NYSDEC Division of Environmental Permits using the most current data available. It is deemed accurate but is not guaranteed. NYSDEC is not responsible for any inaccuracies in the data and does not necessarily endorse any interpretations or products derived from the data. This map may contain information that is considered sensitive and therefore the distribution of this map is strictly prohibited. Additional resources may be present but not depicted on this map.

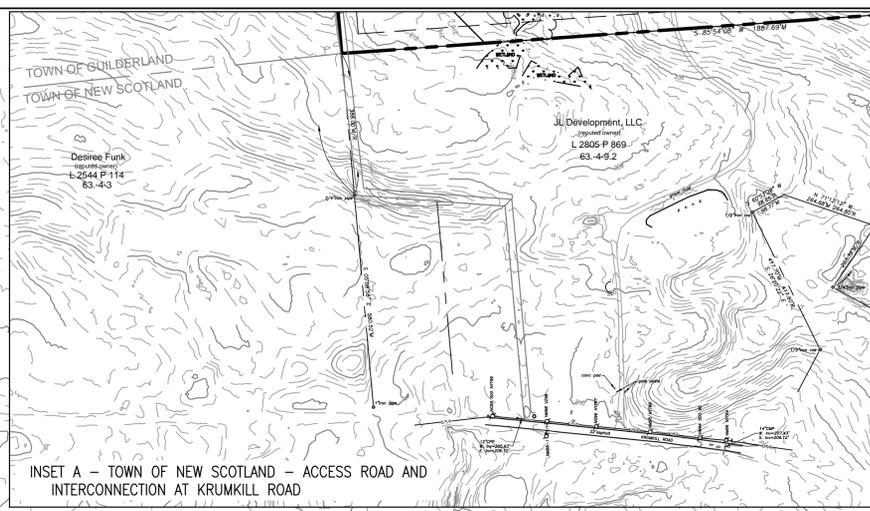
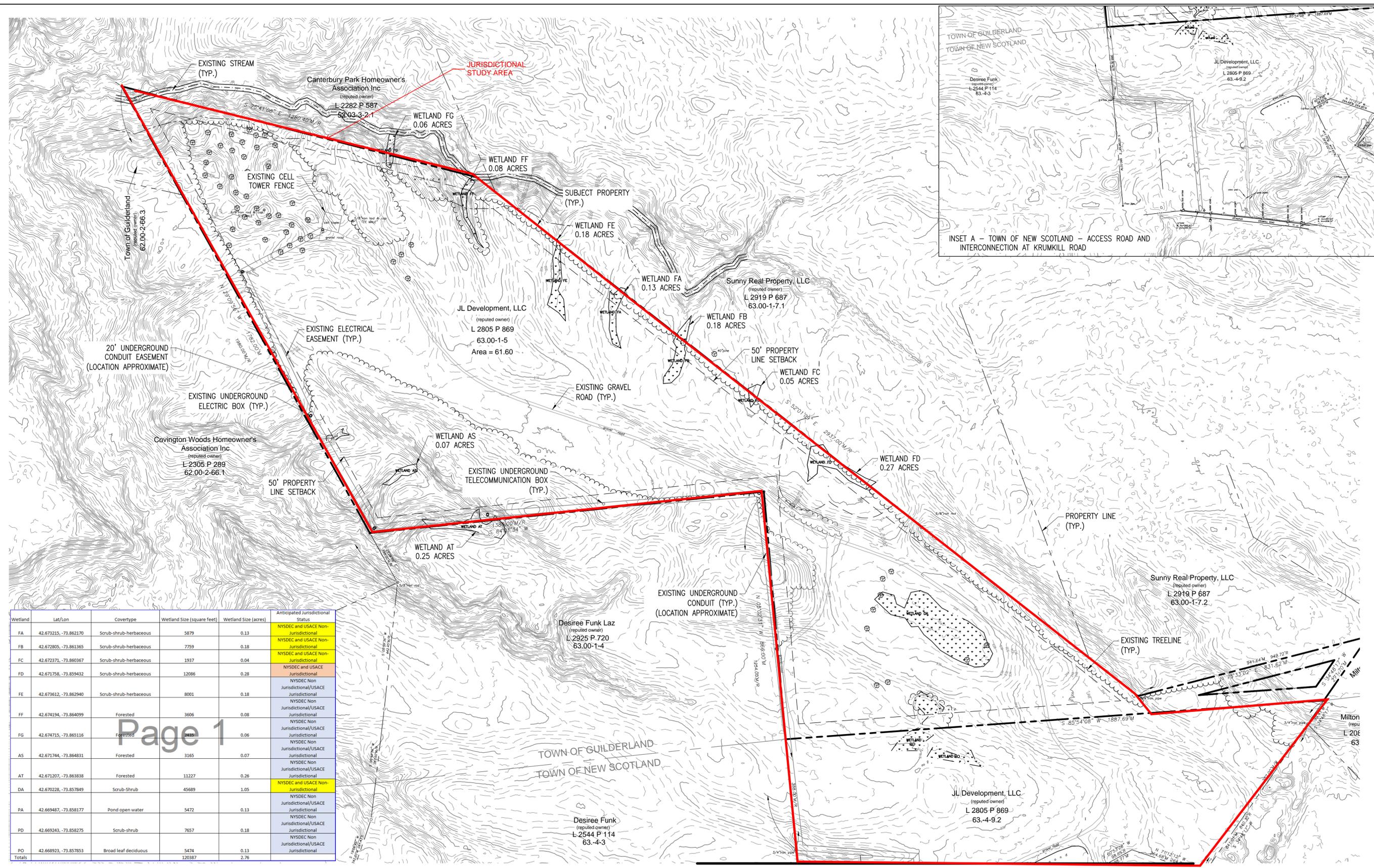
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NOT FOR CONSTRUCTION

SITE USE PERMIT SET
 KRUMKILL ROAD
 6120 JOHNSTON RD REAR, SLINGERLANDS, NY 12159

PROJECT NUMBER: 908-1597

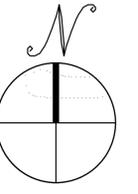
REV	DATE	DRAWN	CHECKED	RELEASE LEVEL
03/27/20	DC	GG	GG	PRELIMINARY DESIGN REVIEW
05/27/20	DC	GG	GG	SITE USE PERMIT APPLICATION
08/31/20	DC	GG	GG	NYSDEC/USACE JOINT SUBMISSION
10/27/20	DC	GG	GG	PER TOWN COMMENTS
11/29/20	DC	GG	GG	TREE CLEARING REVISION



Wetland	Lat/Lon	Covertype	Wetland Size (square feet)	Wetland Size (acres)	Anticipated Jurisdictional Status
FA	42.673215, -73.862170	Scrub-shrub-herbaceous	5879	0.13	NYSDEC and USACE Non-Jurisdictional
FB	42.672805, -73.861365	Scrub-shrub-herbaceous	7759	0.18	NYSDEC and USACE Non-Jurisdictional
FC	42.672371, -73.860367	Scrub-shrub-herbaceous	1937	0.04	NYSDEC and USACE Non-Jurisdictional
FD	42.671758, -73.859432	Scrub-shrub-herbaceous	12086	0.28	NYSDEC and USACE Jurisdictional
FE	42.673612, -73.862940	Scrub-shrub-herbaceous	8001	0.18	NYSDEC Non-Jurisdictional/USACE Jurisdictional
FF	42.674194, -73.864099	Forested	3606	0.08	NYSDEC Non-Jurisdictional/USACE Jurisdictional
FG	42.674715, -73.865116	Forested	2438	0.06	NYSDEC Non-Jurisdictional/USACE Jurisdictional
AS	42.671744, -73.864831	Forested	3165	0.07	NYSDEC Non-Jurisdictional/USACE Jurisdictional
AT	42.671207, -73.863838	Forested	11227	0.26	NYSDEC Non-Jurisdictional/USACE Jurisdictional
DA	42.670228, -73.857849	Scrub-Shrub	45689	1.05	NYSDEC and USACE Non-Jurisdictional
PA	42.669487, -73.858177	Pond open water	5472	0.13	NYSDEC Non-Jurisdictional/USACE Jurisdictional
PD	42.669243, -73.858275	Scrub-shrub	7657	0.18	NYSDEC Non-Jurisdictional/USACE Jurisdictional
PO	42.668923, -73.857853	Broad leaf deciduous	5474	0.13	NYSDEC Non-Jurisdictional/USACE Jurisdictional
Totals			120387	2.76	

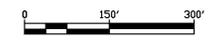
Page 1

SEE 'INSERT A' FOR POINT OF INTERCONNECTION AT KRUMKILL ROAD



EXISTING CONDITIONS PLAN

SCALE: 1" = 150'



- NOTE:
1. WETLAND DELINEATION IN TOWN OF GUILDERLAND PERFORMED BY OSPA ENGINEERING SERVICES, P.C. ON OCTOBER 25th AND OCTOBER 28th, 2019.
 2. BOUNDARY AND TOPOGRAPHICAL SURVEY PERFORMED BY LAWSON SURVEYING AND MAPPING ON FEBRUARY 13th, 2020.

LEGEND

	PROPERTY LINE
	SUBJECT PROPERTY LINE
	WETLANDS

THIS DOCUMENT IS PROVIDED BY BORREGO SOLAR SYSTEMS, INC. TO FACILITATE THE SALE AND INSTALLATION OF A SOLAR POWER SYSTEM FROM BORREGO SOLAR SYSTEMS, INC. REPRODUCTION, RELEASE OR UTILIZATION FOR ANY OTHER PURPOSE, WITHOUT PRIOR WRITTEN CONSENT IS STRICTLY PROHIBITED.



NOT FOR CONSTRUCTION

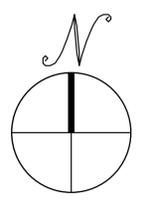
SITE USE PERMIT SET
KRUMKILL ROAD
6120 JOHNSTON RD REAR, SLINGERLANDS, NY 12159

PROJECT NUMBER:
 908-1597

REV	DATE	DRAWN	CHECKED	RELEASE LEVEL
08/31/20	DC	GG	GG	NYSDEC/USACE JOINT SUBMISSION
10/27/20	DC	GG	GG	PER TOWN COMMENTS
11/20/20	DC	GG	GG	TREE CLEARING REVISION
02/18/21	DC	GG	GG	STORMWATER REVISION
02/25/21	DC	GG	GG	STORMWATER REVISION
03/01/21	DC	GG	GG	ZONING BOARD SUBMISSION
04/20/21	DC	GG	GG	TOWN OF NEW SCOTLAND SUBMISSION

SCALES STATED ON DRAWINGS ARE VALID ONLY WHEN PLOTTED ASH 9" X 36"

C-4.0
 EROSION AND SEDIMENT CONTROL PLAN



WETLAND IMPACT

SCALE: 1" = 30'
 0 153' 305'

LEGEND

	PROPERTY LINE
	SUBJECT PROPERTY LINE
	PROPERTY LINE SETBACK
	WETLANDS
	SILT FENCE
	MULCH TUBE