

# Breaking Down the Barriers

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TO SITING RENEWABLE ENERGY  
IN NEW YORK STATE



## RECOMMENDATIONS REPORT



## INTRODUCTION

Addressing climate change by shifting to renewable forms of energy production is more important than ever. With each passing year, the effects of climate change are felt with more intensity. Each of the last five years broke records as the hottest years to date.<sup>1</sup> These effects are already impacting New York; seven counties in the state have already reached 2.0° C higher than pre-industrial levels.<sup>2</sup> Similarly, sea level rise in New York is happening at close to twice the observed global rate, with New York's coastline already experiencing nearly a foot of rise since 1900.<sup>3</sup>

Recognizing this growing threat, New York State has been a leader in encouraging renewable forms of energy. In 2004, the state adopted a Renewable Portfolio Standard that called for the production of 25% of the state's electricity from renewables by 2030, and in 2016 it adopted a Clean Energy Standard which increases this percentage to 50%. Most significantly, in 2019 the state passed the landmark Climate Leadership and Community Protection Act (CLCPA), which seeks to dramatically reduce statewide greenhouse gas emissions and significantly increase the amount of the state's electricity coming from renewable energy sources.

<sup>1</sup> See Climate Central, "The 10 Hottest Global Years on Record," <https://www.climatecentral.org/gallery/graphics/the-10-hottest-global-years-on-record> (noting that average temperatures between 2014 and 2018 all exceeded 1.75° F above pre-industrial periods, with 2015-17 averaging temperatures above 2.0° F).

<sup>2</sup> "2° C: Beyond the Limit." Washington Post, <https://www.washingtonpost.com/graphics/2019/national/climate-environment/climate-change-america/>

<sup>3</sup> Dept. of Environmental Conservation, "Impacts of Climate Change in New York," <https://www.dec.ny.gov/energy/94702.html>.

<sup>4</sup> To reach the net-zero standard, up to 15% of reductions may be accounted for through carbon offsets.



The CLCPA establishes the country's most ambitious climate targets to date. Among other things, the law requires:

- Net zero greenhouse gas emissions across the economy by 2050,<sup>4</sup> with emissions reductions of at least 85% and an interim target of 40% emissions reductions from 1990 levels by 2030
- 70% of the state's electricity to come from renewable energy sources by 2030 and 100% of the electricity to be emissions-free by 2040
- 9,000 MW of offshore wind to be installed by 2035
- 6,000 MW of distributed solar energy to be installed by 2025
- 3,000 MW of energy storage capacity to be installed by 2030



Long Island Roundtable, March 2019

These ambitious clean energy targets are necessary to reduce greenhouse gas emissions at the pace necessary to avoid the worst effects of climate change. In 2017, only 28% of in-state electricity generation came from renewable sources. This means that meeting these targets will require a dramatic increase of renewable energy sited and operational in New York.<sup>5</sup> And with goals of achieving a carbon neutral economy, there will be increased demands for clean electricity to support clean transportation, clean heating and cooling and other sectors of the economy. A previous paper in this series, *Breaking Down the Barriers to Siting Renewable Energy in New York State*, provides background concerning the challenges related to siting large-scale renewable projects in New York and offers preliminary suggestions for solving them.<sup>6</sup>

This paper provides a summary of the issues detailed in the *Breaking Down the Barriers* paper. It also includes findings from our four stakeholder roundtables held across the state in Long Island, Albany, Buffalo and Syracuse, and lays out a list of recommended actions that focus on 1) streamlining the Article 10 process and 2) improving outreach and engagement with local communities to increase support for both Article 10 and SEQRA renewable energy projects.

<sup>5</sup> For example, in 2017 only 28% of the state's in-state electricity generation came from renewable sources, and most of this was in the form of hydro-electricity. However, to meet the Clean Energy Standard's current 50 by 30 goal, the state needs an additional 29,200 gigawatt hours of renewable energy by 2030, and this amount will undoubtedly increase when the CES is raised to achieve 70 by 30 and to be emissions free by 2040. See NYISO, 2018 *Power Trends* 30 (2018).

<sup>6</sup> This paper is available at <https://nyclef.org/wp-content/uploads/2019/02/renewable-siting-white-paper.pdf>.

## SUMMARY OF *Breaking Down the Barriers to Siting Renewable Energy in New York State*

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### *Current Siting Process for Large-Scale Renewables*

Under existing state law, electric generating facilities over 25 MW are subject to the Article 10 process administered by the Department of Public Service (DPS), while facilities under this threshold are subject to the State Environmental Quality Review Act (SEQRA). The Power Act of 2011 re-established the Article 10 process and was intended to establish a simplified regulatory process. However, the reinstated Article 10 process has resulted in significant delays and only three approved projects—the Cassadaga Wind Project and the recently approved Eight Point Wind and Baron Winds projects. Currently, dozens of projects either are in the queue or have withdrawn their applications.

Offshore wind and community solar projects face different siting issues. Offshore wind is complicated by the need to site the turbines themselves as well as transmission lines and on-land interconnection points. This is compounded by the fact that oceans are subject to federal jurisdiction beyond the first three miles offshore and ultimately the federal government determines the areas where these facilities can be sited. Community solar projects under SEQRA, on the other hand, are considerably influenced by local zoning laws; depending on a particular local law, siting a community solar project can range from relatively easy to nearly impossible.

### *Challenges to Siting Large-Scale Renewables*

In addition to navigating the Article 10 and SEQRA processes, other challenges to siting large-scale renewable facilities include navigating restrictive or outdated local laws, limited access to existing transmission infrastructure, and potential conflicts with farmland and fisheries. Local laws that are intended or otherwise designed to prevent renewable energy development can pose significant obstacles. Limited access to the transmission grid, limited substation capacity, and the interconnection process itself are also serious challenges. Finally, a number of issues can arise when siting facilities on farmland, in certain habitats, or, in the case of offshore wind, in potential fishing areas, which can be difficult to reconcile.

### *Preliminary Recommendations*

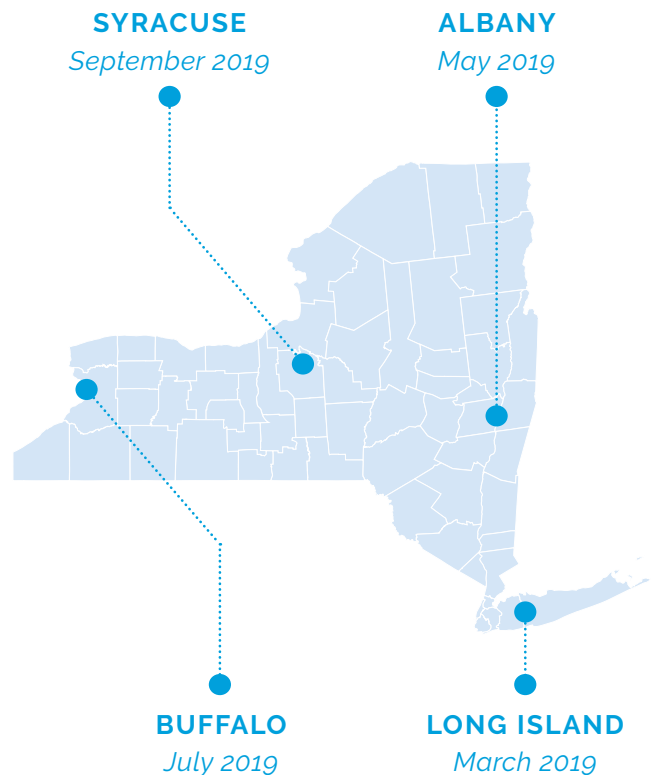
*Breaking Down the Barriers* made several preliminary recommendations for improving the current siting process, including: improving the Article 10 process; encouraging appropriate planning for large-scale projects; improving community involvement and engagement; increasing public education efforts on the economic benefits of renewable energy; and encouraging developers and local communities to explore options for host community benefits and revenue sharing.

These recommendations have been revised and incorporated as appropriate into the following list of siting recommendations.



## RECOMMENDATIONS LEARNED FROM THE STAKEHOLDER ROUNDTABLES

Over the course of seven months in 2019, the New York League of Conservation Voters Education Fund held a series of four stakeholder roundtables across the state, in Long Island, the Capital Region, Western New York, and Central New York, to discuss local and state siting issues and solutions in more detail. These meetings focused heavily on group discussion between a range of local and regionally appropriate stakeholders, including representatives from the state, local governments, utility companies, renewable energy developers, environmental organizations, energy advocates, regional planning groups, the legal field, and more. Discussions at each roundtable covered many topics, but largely focused on two key areas: improving community outreach and engagement for renewable energy projects; and streamlining the Article 10 process.



Buffalo Roundtable, July 2019

### *Improving Community Outreach & Engagement*

Proactive community engagement for all renewable energy projects—including largescale projects going through Article 10 as well as projects going through SEQRA—ranked as one of the most important recommendations offered at the roundtables. Early and proactive community outreach from many parties is essential for the siting of both largescale Article 10 and SEQRA projects.

Although Article 10 allows the Siting Board to waive local laws deemed unreasonably burdensome, the state has been reluctant to use such powers; however in the recently approved Baron Winds project, at least one local law was waived. Either way, local buy-in on a project is essential. Renewable developers interested in establishing a relationship with a potential host community must engage as early as possible. Developers are not the only parties responsible for engaging early with local communities, and they may not always be the best messenger as they have a profit motive to advance a project. For this reason, state representatives, environmental groups, utility companies, and local leaders and spokespeople should be engaged early-on in the siting process. Early engagement helps quell general fears about renewable energy, educate parties about the siting process, establish clarity about a developer's plans, get ahead of any misinformation or opposition, and allows projects to be adjusted to reflect local preferences and concerns.

Lastly, creativity in local benefits, such as host benefit agreements that provide funds or energy to local fire departments, parks, or schools, could also help gain support from sectors of a community that might otherwise remain neutral.

### *Streamlining Article 10*

With respect to Article 10, stakeholders frequently brought up frustrations with the overall slowness of the process, the lack of coordination and communication between the different state agencies involved—the state Department of Public Service (DPS), the state Department of Environmental Conservation (DEC), and when involving farmland, the state Department of

## **ROUNDTABLE RECAP: SPEAKERS & MODERATORS**

### *Long Island Roundtable, March 2019*

Joe Martens, *Offshore Wind Alliance*

Neal Lewis, *The Sustainability Institute at  
Molloy College*

Jessica Price, *The Nature Conservancy*

Jim Parmelee, *PSEG*

Adrienne Esposito, *Citizens Campaign for  
the Environment*

### *Capital Region Roundtable, May 2019*

Betta Broad, *New Yorkers for Clean Power*

Vernon Benjamin, *Town of Saugerties*

Jim Muscato, *Young Sommer LLP*

Eric Miller, *Invenergy*

Anne Reynolds, *ACE-NY*

### *Western New York Roundtable, July 2019*

Ellen Banks, *Sierra Club*

Bonnie Lawrence, *Erie County Department of  
Environment & Planning*

Neil Habig, *Apex Clean Energy*

Kevin Kohlstedt, *Cypress Creek Renewables*

David P. Flynn, *Phillips Lytle LLP*

### *Central New York Roundtable, September 2019*

Ethan Winter, *Cypress Creek Renewables*

Chris Carrick, *Central New York Regional  
Planning & Development Board*

John Lacey, *Mower*

Marguerite Wells, *Invenergy*

Rhea Jezer, *Energy21 LTD*

Brenda Colella, *Barclay Damon LLP*

Agriculture and Markets (DAM), the lack of early engagement between the Siting Board and the developer on project specifics, the perception that local communities are excluded from the process, and the fact that all relevant agencies are understaffed to handle the significant increase in applications that have already come in and will continue to be submitted due to the mandates of the CLCPA.

## RECOMMENDATIONS

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The recommendations below are not exhaustive. They attempt to address challenges with getting renewable energy projects sited in the context of the new legislative requirements under the Climate Leadership and Community Protection Act and the urgency of addressing the climate crisis by transitioning to cleaner energy production. These recommendations build on the work of environmental and energy advocates, including The Nature Conservancy, Alliance for Clean Energy New York, New Yorkers for Clean Power, Scenic Hudson, the Sierra Club, and others to find solutions that balance specific community concerns with the environmental and economic benefits of renewable energy development. The recommendations represent the attempt to identify ways all New Yorkers can benefit from the state's transition to clean energy.

### *Legislative and Regulatory Recommendations*

#### **1) Exclude payments in lieu of taxes (PILOTs) or other funds received from renewable energy projects from the 2% property tax cap.**

- This would provide local communities with the flexibility and freedom to negotiate creative benefit agreements with developers to support

locally important projects or programs without having to raise taxes.

#### **2) Establish a mitigation fund or bank to address impacts on the environment, including threatened and endangered species, and sensitive habitats.**

- To address concerns over the impacts a project would have on a particular species or habitat, establish species and habitat protection programs funded by project developers and managed by an appropriate and qualified third party, such as the Natural Heritage Trust or Audubon, so that any environmental impacts are mitigated or otherwise offset by conservation projects in a comprehensive and thoughtful way as opposed to on a project by project basis.

#### **3) Audit regulations to streamline the process.**

- Now that three projects have moved through the Article 10 process, DPS and DEC should audit the Article 10 regulations and update them when appropriate to make them more efficient, including establishing standardized conditions, such as for noise and decommissioning, so that major concerns and risks are addressed, but balanced with the need to accelerate the speed at which projects move through the process.

#### **4) Amend the wetland delineation range from 500 feet to 100 feet.**

- Under Article 24 of the Environmental Conservation Law, projects that are within 100 feet of a mapped wetland are subject to regulation. Making this change in Public Service regulations would align the standards for protecting wetlands with other state wetland development projects.

#### **5) Ensure local appointments are made to the Siting Board.**

- The state legislature—the Speaker of the Assembly and the Temporary President of the Senate—



Syracuse Roundtable, September 2019

should approve local appointments to the Siting Board to ensure local voices are heard. Despite the allotted two positions for local representation, the legislature has often not approved local representatives within the time frame required by the law.

- Currently, if the legislature fails to approve local representatives to the siting board within 30 days, the Governor must appoint the local representative. Amend the law so that the local executive or supervisor can approve local representatives to the siting board if the legislature fails to act in time.

#### *Budgetary Recommendations*

#### **6) Provide \$1 million for a neutral party to provide support and planning to local municipalities.**

- The state should allocate \$1 million for New York's nine Regional Planning Councils or Development Boards to provide technical support and planning related to renewable energy siting for municipalities in their region.

#### **7) Develop local Community Climate Action Plans or climate change task forces to help lay groundwork early-on in communities.**

- Build off NYSERDA's technical assistance programs to incentivize local communities to be proactive

about renewable energy planning.

- Provide incentives for developers to advance projects in communities that already support renewable energy, for instance, as Climate Smart or Clean Energy Communities.

#### **8) Establish creative incentives.**

- The state should offer incentives to host communities through existing state programs, such as the Regional Economic Development Council grants, to encourage communities to welcome renewable energy projects.

#### **9) Increase agencies staffing.**

- Staff at the Departments of Public Service (DPS), Environmental Conservation (DEC), and Agriculture & Markets (DAM) should be increased to mirror the increase in renewable energy siting applications in recent years as well as to prepare for the increased needs of renewable energy projects to achieve the mandates set in the Climate Leadership and Community Protection Act.
- While Governor Cuomo provided much needed staff to DPS in 2019 that will help address the backlog of applications, DEC and DAM are involved agencies who have seen increased workload from both Article 10 and SEQR projects and



no additional staffing to undertake the work.

- The state should hire or designate an interagency staff member tasked with coordinating communication between DPS and DEC to ensure the efficiency of the siting process.

### *Programmatic Recommendations*

#### **10) Increase support for local government intervenors.**

- Currently, the presiding examiner is required to allocate at least 50% of intervenor funds for potential awards to local governments. Other eligible local parties may receive up to 50%.
- The presiding examiner should consider using their discretion to allocate more funds to local governments, who represent the residents of the effected community. Greater support would ensure they have the technical support needed to make sound decisions.

#### **11) Be proactive with community engagement.**

- Conduct a public education campaign about benefits of renewable energy including job benefits and any local reduction in energy needs or prices.
- Bring local community leaders into the process as early as possible.

- Highlight success stories from other projects featuring officials and residents from those communities.
- Continue to hold public forums to increase transparency and open engagement throughout the process.

#### **12) Establish guidance for what constitutes unreasonably burdensome.**

- DPS should provide more clarity or guidance to developers and local representatives on what constitutes unreasonable with regard to local laws that restrict a proposed renewable energy project.
- For example, in the recently approved Baron Winds project, a local law that limits construction projects during weekend hours was waived due to the other impacts this would cause to project completion and to nearby communities that also host the project. Guidance on the factors that led to this decision and others should be issued so that all parties can prepare and plan accordingly.

#### **13) Improve communication between developers and siting board agencies.**

- The Siting Board should engage with developers on the substance of a project earlier in the process so that concerns are raised and addressed sooner.



Albany Roundtable, May 2019



## CONCLUSION

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New York State is leading the nation in its commitment to clean energy. Momentum is growing in all sectors for cleaner energy that benefits our climate, our air quality, and our economy. Two contracts to build major offshore wind projects have been awarded and three largescale renewable projects have been approved under Article 10. But to achieve the ambitious goals set by the Governor and Legislature of 70% renewable energy by 2030 and 100% clean energy by 2040, we will require a significant and immediate ramping up of the deployment of these projects.

Now is the time for all stakeholders to get involved and engaged in this effort to green New York's economy and energy sector. Our series of roundtables began these cross sector conversations and helped build our recommendations, which include legislative, regulatory, budgetary, and programmatic strategies for how New York State can transition more quickly and efficiently to renewable energy. In the coming months, NYLCVEF and our sister organization New York League of Conservation Voters, will work with partners to develop programmatic and advocacy strategies for these recommendations.



For more than 25 years, the New York League of Conservation Voters Education Fund (NYLCVEF) has educated and engaged New Yorkers on environmental policy issues. Our programs equip New Yorkers with the resources they need to be informed voters and to hold our elected leaders accountable. Together with a broad network of partners, NYLCVEF addresses New York's most pressing environmental challenges, including combating climate change, protecting public health, and safeguarding our air and water quality. Learn more at [www.nylcvef.org](http://www.nylcvef.org).

NYLCV and NYLCVEF would like to thank all of our roundtable hosts, presenters, and moderators. We also want to thank Cullen Howe for preparing an initial draft of these recommendations, and the Alliance for Clean Energy New York (ACE-NY) for their help and contributions.

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