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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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Director

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June 3, 2021

Alicia Higgs
Office of General Counsel
State Corporation Commission
1300 E. Main Street
Richmond, Virginia 23219

**RE: Application of Axton Solar, LLC, A Nominal 201.1 MW Solar Generating Facility,
Henry and Pittsylvania Counties, PUR-2021-00085**

Dear Ms. Higgs;

In accordance with the Department of Environmental Quality-State Corporation Commission *Memorandum of Agreement Regarding Wetland Impact Consultation* (July 2003), we have reviewed the information submitted by Axton Solar, LLC (here after, Axton) regarding potential wetland impacts on the above referenced project. Axton consists of approximately 2,393 acres in western Pittsylvania County and eastern Henry County, of which, approximately 1,759 acres will be used for the solar facility. The Project will be constructed across approximately 13 noncontiguous areas including 21 privately owned parcels in Henry County and 16 privately owned parcels in Pittsylvania County. The Henry County portion of the Project site consists of approximately 1,203 acres of privately-owned property. The Pittsylvania County portion of the Project site consists of approximately 1,190 acres of privately-owned property.

Summary of Findings

A wetland delineation was completed to determine whether jurisdictional wetlands or waters of the U.S. are present at the Project site (see Attachment B). Based on field studies completed, jurisdictional wetlands or other waters of the U.S. are present within the Project site. Depending on the type and amount of impacts per ongoing site engineering design, a Section 404 Permit may be required by the U.S. Army Corps of Engineers ("USACE") and/or a Section 401 Permit or Certification issued by the Virginia DEQ. Potential impacts to jurisdictional wetlands or waters of the U.S. would likely be limited to electrical collection lines and road crossings for construction and maintenance vehicles. The amount of impacts will not be known until final design of the Proposed Project has been completed, and the wetland delineation is confirmed by the USACE. The Proposed Project will most likely be seeking a Nationwide Permit; the 401 certification will be part of this permit. The Project is not anticipated to have any significant impact on wetlands and waters of the U.S. with issuance of a 401 certification from the USACE.

According to the report, grading associated with construction and the long-term maintenance will influence stormwater flow across the site. Depending on site grading characteristics, runoff will continue to spread but may also be directed to defined pathways. As such, there is potential for erosion if the soil is left disturbed after grading. The Proposed Project will disturb more than one acre of land during construction and is therefore required to obtain a Virginia Pollutant Discharge Elimination System (VPDES) Construction General Permit and adhere to applicable stormwater regulations. DEQ, Pittsylvania and Henry County will regulate storm water discharges from the project site during construction and operation activities. Stormwater discharges during construction of the Project will be addressed through a general permit for construction storm water discharges, as well as implementation of an Erosion and Sediment Control Plan and a Storm Water Pollution Prevention Plan ("SWPPP") as required by Pittsylvania County, Henry County and the DEQ. Storm water control measures will include Best Management Practices ("BMPs") such as retention, extended detention, and low impact design ("LID"). BMPs will be designed and implemented in accordance with the requirements of the Virginia Stormwater BMP Clearinghouse. LID is expected to be implemented by conserving and limiting use of natural resources, minimizing concentrated runoff, allowing water to percolate and directing runoff to natural areas. During the construction process turbidity levels will be controlled with the use of silt fences and phasing to limit disturbed areas for extended periods of time. Any applicable storm water permit requirements will be imposed through a general permit.

Water Quality and Wetlands. Measures such as but not limited to Best Management Practices (BMPs) must be taken to avoid and minimize impacts to surface waters during construction activities, including potential water quality impacts resulting from construction site runoff. The disturbance of land and surface waters, which include wetlands, open water, and streams, may require prior approval by DEQ; the U.S. Army Corps of Engineers; the Virginia Marine Resources Commission (VMRC); and/or local government wetlands boards (generally in the northern and piedmont regions of Virginia). The Army Corps of Engineers and DEQ work in conjunction to provide official confirmation of whether there are federal and/or state jurisdictional surface waters that may be impacted by the proposed project. VMRC provides its own review to determine its agency jurisdiction. Review of National Wetland Inventory maps or topographic maps for locating wetlands, open waters, or streams may not be sufficient; there may need to be a site-specific review by a qualified professional. If construction activities will occur in or along any streams (perennial, intermittent, or ephemeral), open water or wetlands, the applicant should contact the DEQ - VWP manager at our Blue Ridge Regional Office to determine the need for any permits prior to commencing work that could impact surface waters. DEQ's permit need decisions neither replace nor supersede requirements set forth by other local, state, federal, and Tribal laws, nor eliminate the need to obtain additional permits, approvals, consultations, or authorizations as required by law before proposed activities may commence.

Recommendations and Potential Permits

DEQ offers the following recommendations:

1. Prior to commencing project work, all surface waters on the project site should be delineated by a qualified professional and verified by the U.S. Army Corps of Engineers (the Corps) for federal jurisdictional waters and by DEQ for state jurisdictional waters.
2. Wetland and stream impacts should be avoided and minimized to the maximum extent practicable.

3. If the scope of the project changes, additional review will be necessary by one or more offices in the Commonwealth's Secretariat of Natural Resources and/or the Corps.
4. At a minimum, any required compensation for impacts to State Waters, including the compensation for permanent conversion of forested wetlands to emergent wetlands, should be in accordance with all applicable state regulations and laws. Consider mitigating impacts to forested or converted wetlands by establishing new forested wetlands within the impacted watershed.
5. Any temporary impacts to surface waters associated with this project should be restored to pre-existing conditions.
6. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species, which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.
7. Erosion and sedimentation controls should be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls should be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls should remain in place until the area is stabilized and should then be removed. Any exposed slopes and streambanks should be stabilized immediately upon completion of work in each permitted area. All denuded areas should be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
8. No machinery may enter surface waters, unless authorized by a Virginia Water Protection (VWP) individual permit, general permit, or general permit coverage.
9. Heavy equipment in temporarily impacted surface waters should be placed on mats, geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum extent practicable. Equipment and materials should be removed immediately upon completion of work.
10. Activities should be conducted in accordance with any Time-of-Year restriction(s) as recommended by the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, or the Virginia Marine Resources Commission. The permittee should retain a copy of the agency correspondence concerning the Time-of-Year restriction(s), or the lack thereof, for the duration of the construction phase of the project.
11. All construction, construction access, and demolition activities associated with this project should be accomplished in a manner that minimizes construction materials or waste materials from entering surface waters, unless authorized by a Virginia Water Protection (VWP) individual permit, general permit, or general permit coverage. Wet, excess, or waste concrete should be prohibited from entering surface waters.
12. Herbicides used in or around any surface water should be approved for aquatic use by the United States Environmental Protection Agency (EPA) or the U.S. Fish & Wildlife Service. These herbicides should be applied according to label directions by a licensed herbicide applicator. A non-petroleum based surfactant should be used in or around any surface waters.

Permits:

Based on DEQ's review of the SCC application dated April 28, 2021, VADEQ is unable to determine whether a permit will be necessary. The proposed project may require a Virginia Water Protection (VWP)

individual permit or general permit coverage. Should wetlands or streams be identified during the PJD, then the applicant may submit a Joint Permit Application (JPA) in accordance with form instructions for further evaluation and final permit need determination by DEQ.

Should you have any questions, please don't hesitate to contact me at 804-698-4007 or at michelle.henicheck@deq.virginia.gov.

Sincerely,

Michelle Henicheck

Michelle Henicheck, PWS
Senior Wetland Ecologist
Office of Wetlands & Stream Protection

Cc: Jay Roberts, DEQ - BRRO
Bettina Sullivan, DEQ - Office of Environmental Review