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**Board of Public Utilities**  
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CLEAN ENERGY

ORDER

IN THE MATTER OF THE IMPLEMENTATION OF <u>L. 2012, C. 24</u> , THE SOLAR ACT OF 2012	)	DOCKET NO. EO12090832V
	)	
IN THE MATTER OF THE IMPLEMENTATION OF <u>L. 2012, C. 24</u> , N.J.S.A. 48:3-87(T) – A PROCEEDING TO ESTABLISH A PROGRAM TO PROVIDE SRECS TO CERTIFIED BROWNFIELD, HISTORIC FILL AND LANDFILL FACILITIES	)	DOCKET NO. EO12090862V
	)	
KDC SOLAR RUTHERFORD EAST, LLC RUTHERFORD LANDFILL	)	DOCKET NO. QO18091001

**Party of Record:**

**Joshua Smith**, KDC Solar Rutherford, LLC

BY THE BOARD:

This Order concerns an application by KDC Solar Rutherford East, LLC (“KDC Solar Rutherford East” or “Applicant”) for certification pursuant to P.L. 2012, c. 24 (“Solar Act”), codified at N.J.S.A. 48:3-87(t) (“Subsection (t)”). KDC Solar Rutherford East seeks certification for eligibility to generate Solar Renewable Energy Certificates (“SRECs”) for a 5.81 MWdc solar electric generation facility proposed to be constructed on sixteen (16) acres that are part of the thirty-eight (38) acres comprising the Rutherford East Landfill (“Rutherford Landfill”), which is owned by Kingsland Development Urban Renewal, LLC and located in the Borough of Rutherford, Bergen County, New Jersey. KDC Solar Rutherford East alleges that the proposed site is a properly closed sanitary landfill facility as defined in the Solar Act.

**BACKGROUND**

On July 23, 2012, the Solar Act was signed into law. The Solar Act amends certain aspects of the statute governing generation, interconnection, and financing of renewable energy. Among other actions, the Solar Act requires the New Jersey Board of Public Utilities (“Board”) to conduct

proceedings to establish new standards and to develop new programs to implement the statute's directives. By Order dated October 10, 2012, the Board directed Board Staff ("Staff") to initiate proceedings and convene a public stakeholder process to fulfill the directives of the Solar Act.<sup>1</sup>

The Solar Act – specifically, Subsection (t) – provides that:

No more than 180 days after [July 23, 2012], the board shall, in consultation with the Department of Environmental Protection and the New Jersey Economic Development Authority, and, after notice and opportunity for public comment and public hearing, complete a proceeding to establish a program to provide SRECs to owners of solar electric power generation facility projects certified by the board, in consultation with the Department of Environmental Protection, as being located on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility. . . . Projects certified under this subsection shall be considered "connected to the distribution system" [and] shall not require such designation by the board[.]

[N.J.S.A. 48:3-87(t).]

The Solar Act defines the terms "brownfield," "area of historic fill," and "properly closed sanitary landfill facility." A "brownfield" is "any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant." N.J.S.A. 48:3-51. "Historic fill" is "generally large volumes of non-indigenous material, no matter what date they were placed on the site, used to raise the topographic elevation of a site . . . ." Ibid. A "properly closed sanitary landfill facility" means "a sanitary landfill facility, or a portion of a sanitary landfill facility, for which performance is complete with respect to all activities associated with the design, installation, purchase, or construction of all measures, structures, or equipment required by the Department of Environmental Protection. . . ." Ibid.

Toward implementing the October 10, 2012 Order, Staff met with staff of the New Jersey Economic Development Authority and the New Jersey Department of Environmental Protection ("NJDEP" or "Department"). On November 9, 2012, consistent with the requirements of the Solar Act, the Board held a public hearing presided over by Commissioner Joseph L. Fiordaliso. In addition, the public was invited to submit written comments through November 23, 2012.

In an Order dated January 24, 2013, the Board approved Staff's proposed process for certifying solar generation projects as being located on brownfields, areas of historic fill, and properly closed

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<sup>1</sup> I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012; I/M/O the Implementation of L.2012, C.24, N.J.S.A 48:3-87(d)(3)(b) – A Proceeding to Investigate Approaches to Mitigate Solar Development Volatility; I/M/O the Implementation of L.2012, C.24, N.J.S.A 48:3-87(e)(4) – Net Metering Aggregation Standards; I/M/O the Implementation of L.2012, C.24, N.J.S.A 48:3-87(Q), (R) and (S) – Proceedings to Establish the Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System; I/M/O the Implementation of L.2012, C.24, N.J.S.A 48:3-87(T) – A Proceeding to Establish a Program to Provide Solar Renewable Energy Certificates to Certified Brownfield, Historic Fill and Landfill Facilities; and I/M/O the Implementation of L.2012, C.24, N.J.S.A 48:3-87(W) – A Proceeding to Consider the Need for a Program to Provide a Financial Incentive to Supplement Solar Renewable Energy Certificates for Net Metered Projects Greater than Three Megawatts; 2012 N.J. PUC LEXIS 286 (Oct. 10, 2012).

sanitary landfill facilities.<sup>2</sup> The certification process for projects seeking approval pursuant to Subsection (t) provides three (3) potential recommendations from Staff to the Board: full certification, conditional certification, or denial of certification. Conditional certification may be granted for projects located on sites which NJDEP has determined require further remedial action or, in the case of properly closed sanitary landfill facilities, additional protective measures, and full certification may be granted for projects located on sites for which NJDEP has determined no further remedial or protective action is necessary. The process incorporates the expertise of the NJDEP to confirm a potential project's land use classification for eligibility and to account for the state of remediation of the project site. 2013 N.J. PUC LEXIS 27 at 31-33.

The January 24, 2013 Order states that certification would be limited to those areas delineated by NJDEP. In compliance with this directive, applicants are required to delineate the precise section(s) of the location where the solar facility is proposed to be sited, and NJDEP reviews this material in making its recommendation.

The Board found that an application for solar projects located on brownfields, areas of historic fill, or properly closed sanitary landfill facilities was necessary to initiate the certification process and directed Staff to work with NJDEP to develop an application. Id. at 33. On or about April 10, 2013, Staff distributed, via the public renewable energy stakeholder email distribution list and posted to the NJCEP and BPU websites, a Subsection (t) application form.

Projects certified under Subsection (t) of the Solar Act are subject to all of the Board's rules; the statutory language exempts such projects from the need for further Board designation as "connected to the distribution system" but does not remove any of the Board's oversight authority. For example, projects must comply with the rules at N.J.A.C. 14:8-2.4 and applicable Board orders concerning registration with the SREC Registration Program ("SRP"). The size and location of the subject project will then be reflected in the public reporting of solar development pipeline data.

On May 23, 2018, Governor Murphy signed P.L. 2018, c. 17 ("Clean Energy Act"), which requires the Board to close the SRP once the Board has determined that 5.1% of the total kilowatt-hours sold in New Jersey have been generated by SREC-eligible solar generation installations ("5.1% Milestone"). The Clean Energy Act also sets the SREC term as ten years. Pursuant to the Clean Energy Act and Board Orders dated October 29, 2018<sup>3</sup> and February 27, 2019,<sup>4</sup> a proposed solar electric generation facility that submits a Subsection (t) application after October 29, 2018 is eligible to receive a ten-year SREC term, provided that the project achieves commercial operation prior to the Board's closure of the SREC program upon attainment of the state's 5.1% solar milestone and is otherwise in compliance with applicable law.

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<sup>2</sup> I/M/O the Implementation of L. 2012, c. 24, The Solar Act of 2012; I/M/O the Implementation of L.2012, c.24, N.J.S.A 48:3-87(T) – A Proceeding to Establish a Program to Provide SRECS to Certified Brownfield, Historic Fill and Landfill Facilities; and I/M/O the Implementation of L.2012, c.24, N.J.S.A 48:3-87(U) – A Proceeding to Establish a Registration Program for Solar Power Generation Facilities, 2013 N.J. PUC LEXIS 27 (Jan. 24, 2013).

<sup>3</sup> I/M/O the Modification of the Solar Renewable Portfolio Standard and Solar Alternative Compliance Payment Schedules and the Reduction of the Qualification Life for Solar Renewable Energy Certificates for Solar Facilities, 2018 N.J. PUC LEXIS 251 (Oct. 29, 2018).

<sup>4</sup> I/M/O the Modification of the Solar Renewable Portfolio Standard and Solar Alternative Compliance Payment Schedules and the Reduction of the Qualification Life for Solar Renewable Energy Certificates for Solar Facilities, 2019 N.J. PUC LEXIS 20 (Feb. 27, 2019).

**STAFF RECOMMENDATIONS**

**Project Description**

As stated above, at issue is the request by KDC Solar Rutherford East that its proposed solar facility, to be located in the Borough of Rutherford, New Jersey, be certified as eligible for SRECs pursuant to Subsection (t). On September 13, 2018, KDC Solar Rutherford East filed an application with supporting documentation to enable a NJDEP determination as to whether the proposed site is a properly closed sanitary landfill facility. On June 25, 2019, NJDEP received a copy of the resolution authorizing the sale of property from the New Jersey Sports and Exposition Authority to Kingsland Development Urban Renewal, LLC (“Kingsland Development”). NJDEP reviewed the application and resolution and supplied an advisory memorandum to Staff on March 2, 2020 on the land use classification and the closure or remediation status of the proposed site. On the basis of NJDEP’s determination, the information certified by KDC Solar Rutherford East in its application, and the January 24, 2013 Order, Staff recommends that the Board grant conditional certification, as explained further below.

Developer	Docket Number	Project Designation	Location / Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MWdc)	EDC
KDC Solar Rutherford East, LLC	QO18091001	Rutherford Landfill	Block 220, Lots 14 and 15.03 Haul Road Rutherford, NJ 07071	Bergen	Landfill	5.81	PSE&G

**KDC Solar Rutherford East, LLC – Rutherford Landfill – Docket No. QO18091001**

As noted above, on September 13, 2018, KDC Solar Rutherford East submitted its application to the Board to have its project certified as being located on a properly closed sanitary landfill facility pursuant to Subsection (t) of the Solar Act. Applicant’s 5.81 MWdc project is proposed to be located on sixteen (16) acres that is part of the 38.08 acres comprising the Rutherford Landfill, which is owned by the New Jersey Sports and Exposition Authority and located at Block 220, Lots 14 and 15.03 at Haul Road in the Borough of Rutherford, Bergen County, New Jersey.

Staff forwarded the application to NJDEP for review and a recommendation as described above. NJDEP noted that the Kingsland Park Sanitary Landfill, Avon Landfill, and Rutherford East Landfill are part of a project once referred to as EnCap. NJDEP further noted that, in early 2009, American Home Assurance (“AHA”) took over the closure of these landfills after EnCap dissolved. NJDEP stated that its Site Remediation Program’s Publicly Funded Response Element used the State contract for quality assurance purposes.<sup>5</sup> As confirmed by NJDEP, the Rutherford Landfill was properly closed pursuant to solid waste regulations. NJDEP issued the closure plan approval to AHA for the Rutherford Landfill on February 9, 2011 and approved the professional engineer’s as-built certification of closure on December 20, 2012.

<sup>5</sup> As part of EnCap’s due diligence after it was selected as the developer of this site, it began investigating the environmental conditions at the project site, and EnCAP entered into a Memorandum of Agreement with NJDEP on March 20, 2000 (which was later amended on June 5, 2001), agreeing to conduct the remediation and closure of four landfills at the EnCap site: Avon, Rutherford, Lyndhurst and Kingsland. Thereafter EnCap dissolved, and American Home Assurance stepped into the shoes of EnCap.

NJDEP noted that the solar installation will constitute the construction of improvements on a closed landfill pursuant to the law, and, accordingly, the property owner will need to obtain an approval from NJDEP for modification to the closure and post-closure plan, as well as any permits identified by NJDEP, and approval from any other applicable state or federal agency. NJDEP stated that, for example, the property owner may need to ensure compliance and obtain any relevant approvals from the NJSEA, which retains zoning and planning jurisdiction over properties within the Meadowlands District, as set forth at N.J.S.A. 5:10A-11(e) and (f).<sup>6</sup> NJDEP stated that approval for construction of improvements on the closed landfill needs to address impacts on the environmental controls in place at the site, such as the protection/re-establishment of the final cap/cover, leachate collection, gas collection and storm water collection systems, settlement, slope stability, and control of erosion, in addition to ongoing maintenance and monitoring during the post-closure period. Consistent with the above requirements, NJDEP noted that the property owner and operator of the solar facility should ensure that all future operations continue to protect the integrity of the cap.

NJDEP stated that, in order to obtain full certification, Applicant must, by the time full certification is sought:

1. Complete the proper maintenance and mowing of the landfill cap/site;
2. Assess the condition of the venting system and complete the proper maintenance;
3. Complete monitoring/sampling of the passive vents to measure emissions as required by the past permits for the Rutherford Landfill;
4. Conduct fence line monitoring for hydrogen sulfide (“H<sub>2</sub>S”) as required; and
5. Obtain air permits as required under N.J.A.C. 7:27-8 and/or N.J.A.C. 7:27-22, as applicable. The Kingsland Landfill has an approved Title V Operating Permit, and it has been determined that common control exists over the contiguous Avon and Rutherford Landfills. The existence of common control and methane emissions of over 100 tons per year will require that a Title V Operating Permit is obtained for the site as a whole, encompassing all of the landfills as defined by “facility” pursuant to N.J.A.C. 7:27-22.1.

Based on the information provided in the application and NJDEP’s determination that the proposed solar array, as rendered in the “Rutherford East Landfill Proposed Solar Panel Layout” submitted as part of the application and attached hereto as Exhibit A, is located on a “properly closed sanitary landfill facility” under the Solar Act, Staff recommends that the Board grant conditional certification of the proposed project.

### **FINDINGS AND CONCLUSIONS**

The Board **FINDS** that, as required by Subsection (t), Staff transmitted the application discussed above to NJDEP for a determination of eligible land use type and status of remediation on the proposed site. NJDEP determined that the solar array proposed for Block 220, Lots 14 and 15.03 at Haul Road in the Borough of Rutherford, Bergen County, New Jersey is located on land meeting the Solar Act’s definition of a “properly closed sanitary landfill facility.” To be eligible for the creation of SRECs, the entire solar array must be placed solely within the sixteen (16) acres depicted in Exhibit A. Based on information provided by NJDEP, the Board **FINDS** that the

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<sup>6</sup> NJDEP noted in its memo to the BPU that, on February 5, 2015, the New Jersey State Legislature consolidated the New Jersey Meadowlands Commission with the NJSEA under the Hackensack Meadowlands Agency Consolidation Act (N.J.S.A. 5:10A-1 through N.J.S.A. 5:10A-68).

Rutherford Landfill project is located on land meeting the definition of a “properly closed sanitary landfill facility.”

The Board also **FINDS** that NJDEP determined that the property owner will need to obtain an approval from NJDEP’s Division of Solid and Hazardous Waste for construction of improvements on the closed landfill, as well as any permits identified by NJDEP, approval from any other applicable state or federal agency, and, if applicable, approval from the NJSEA prior to construction of the solar electric power generation facility. The Board also **FINDS** that approval for construction of improvements on the closed landfill must address “impacts on the environmental controls in place at the site, such as the protection/re-establishment of the final cap/cover, leachate collection, gas collection and storm water collection systems, settlement, slope stability, and control of erosion, in addition to ongoing maintenance and monitoring during the post-closure period.” The property owner and operator of the solar facility should ensure that all future operations continue to protect the integrity of the cap on the Rutherford Landfill. In addition, the property owner must complete to NJDEP’s satisfaction the five requirements for full certification outlined above.

The Board **FINDS** that NJDEP’s requirements must be addressed and thus **GRANTS** conditional certification of Applicant’s proposed solar electric generation facility, to be located on sixteen (16) acres at Rutherford Landfill at Block 220, Lots 14 and 15.03 at Haul Road in the Borough of Rutherford, Bergen County, New Jersey, with an array size not to exceed 5.81 MWdc. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that there are no outstanding requirements under the Closure and Post-Closure Plan Approval and that all NJDEP or other state or federal requirements have been satisfied.


In addition, to obtain full certification, the Board **DIRECTS** KDC Solar Rutherford East to submit an initial SRP registration package within fourteen (14) days of the effective date of this order, in accordance with N.J.A.C. 14:8-2.4(c) and to complete construction within two (2) years in accordance with N.J.A.C. 14:8-4(c), (i). The Board **DIRECTS** Staff to issue full certification to the project upon the Applicant's demonstration that all requirements for full certification – including all NJDEP requirements and all SRP requirements at N.J.A.C. 14:8-2.4 – have been satisfied. After the Applicant has received full certification, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the project for purposes of SREC creation for a fifteen-year Qualification Life.

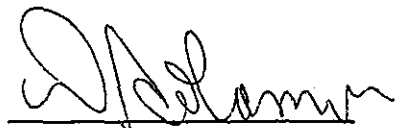
This Order is issued in reliance on the information certified in the application and does not grant any rights in connection with construction of the proposed project beyond certification under Subsection (t), provided that the facilities are constructed in accordance with NJDEP requirements, the plans as represented in the application, and the SRP registration.

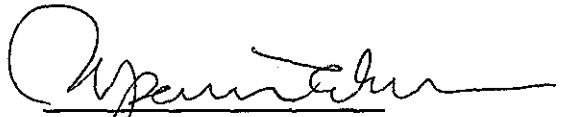
This Order shall be effective on March 19, 2019.

DATED: 3/9/20

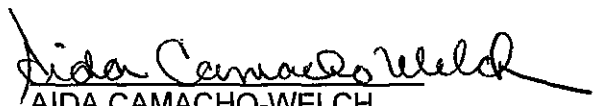
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AIDA CAMACHO-WELCH  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
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In the Matter of the Implementation of L. 2012, c. 24, the Solar Act of 2012;  
In the Matter of the Implementation of L. 2012, c. 24, N.J.S.A. 48:3-87(t) – A Proceeding to  
Establish a Program to Provide SRECs to Certified Brownfields, Historic Fill and Landfill  
Facilities; KDC Solar Rutherford East, LLC – Rutherford Landfill

Docket Nos. EO12090832V, EO12090862V, and QO18091001

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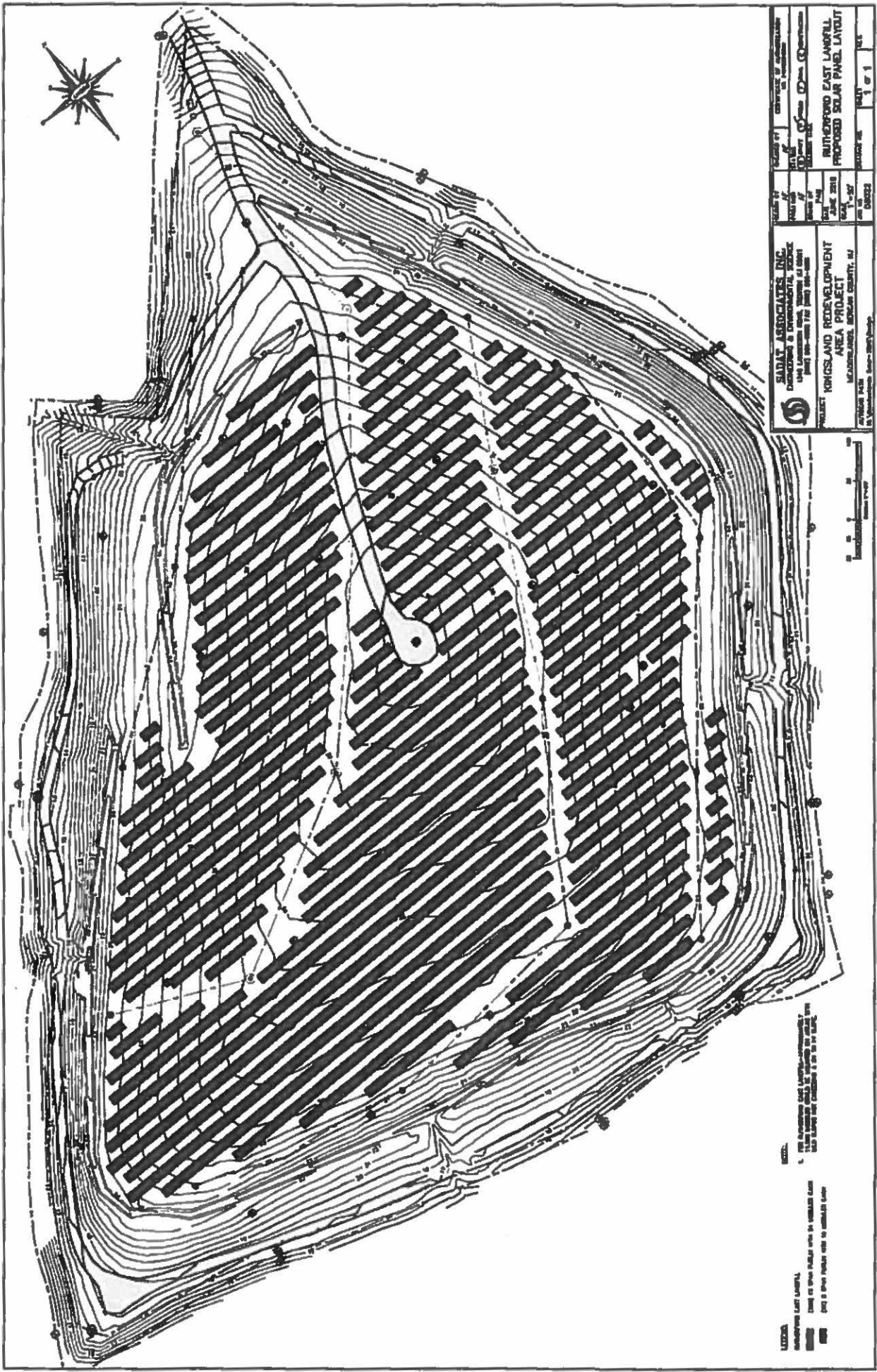
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	PROJECT: <b>ROTHSCHILD REDEVELOPMENT AREA PROJECT</b> CLIENT: <b>NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION</b> DRAWING NO.: <b>1000-001</b> DATE: <b>06/20/08</b> SCALE: <b>AS SHOWN</b>	SHEET NO.: <b>1</b> OF <b>1</b> DATE: <b>06/20/08</b>



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