

**RESOLUTION CONFIRMING SEQR DETERMINATION
PLUG POWER, INC. PROJECT**

A special meeting of the Albany County Industrial Development Agency (the “Agency”) was convened in public session via videoconference in Room 740 at 112 State Street in the City of Albany, Albany County, New York on April 13, 2022 at 5:30 o’clock p.m., local time.

The meeting was called to order by the Chairman of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

Hon. William M. Clay	Chairman
Michael Paparian	Treasurer/Member
Marlene McTigue	Secretary/Member
Anton Dreslin	Member
Paul M. Engel, Jr.	Member
Travon T. Jackson	Member
Douglas Roether	Member

Each of the members present participated in the meeting either in person or remotely pursuant to the signing into law on September 2, 2021 of Chapter 417 of the Laws of 2021, as amended on January 14, 2022.

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

William Murphy	Chief Executive Officer
Allen F. Maikels, CPA	Chief Financial Officer
Leslie Butcher	Executive Assistant
Walter J. Forman, Esq.	Agency Counsel
A. Joseph Scott, III, Esq.	Special Counsel

The following resolution was offered by _____, seconded by _____, to wit:

Resolution No. 0422-____

**RESOLUTION CONCURRING IN THE DETERMINATION BY TOWN OF
BETHLEHEM PLANNING BOARD, AS LEAD AGENCY FOR THE
ENVIRONMENTAL REVIEW OF THE PLUG POWER, INC. PROPOSED PROJECT.**

WHEREAS, Albany County Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 178 of the 1975 Laws of New York, as amended, constituting Section 903-b of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, warehousing, research, commercial and industrial facilities, among others, for the purpose of promoting, attracting and developing

economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, in March 2022, Plug Power, Inc., a business corporation organized and existing under the laws of the State of Delaware (the “Company”) presented an application (the “Application”) to the Agency, a copy of which Application is on file at the office of the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project consisting of the following: (A) the acquisition and installation of certain machinery, equipment and other tangible personal property including, without limitation, tenant improvement and finish (collectively, the “Equipment”) and the undertaking of various tenant and interior fit-up and other improvements (collectively, the “Improvements”) (the Equipment and the Improvements being collectively referred to as the “Project Facility”) to the buildings containing in the aggregate approximately 350,000 square feet of space (collectively, the “Facility”) to be located on parcels of land located at 125 Vista Boulevard (Tax Map Number: 74.00-1-29.1) in the Town of Bethlehem and off New Scotland Road (Tax Map Number: 73.-2-27) in the Town of New Scotland, Albany County, New York (collectively, the “Land”), the Land and the Facility to be owned by Vista Real Estate Development LLC (the “Developer”) and leased by the Developer to the Company to be used by the Company as a manufacturing/commercial/industrial facility for commercial, manufacturing, and warehouse space and related uses; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes (the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on March 23, 2022 (the “Public Hearing Resolution”), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Chairman of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the “Public Hearing”) to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be posted on a bulletin board located at Bethlehem Town Hall located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York, (C) caused notice of the Public Hearing to be published in the Times Union, a newspaper of general circulation available to the residents of the Town of Bethlehem and the Town of New Scotland, Albany County, New York, (D) conducted the Public Hearing at the Bethlehem Town Hall located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York, and (E) prepared a report of the Public Hearing (the “Report”) which fairly summarized the views presented at said public hearing and distributed same to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), (A) the Agency has been informed that (1) the Town of

Bethlehem Planning Board (the “Planning Board”) was designated to act as “lead agency” with respect to a larger project (the “Vista Real Estate Development LLC Project”) in which this Project is a part of, and (2) the Planning Board issued a Determination of Non Significance on January 4, 2022 (the “Negative Declaration”), attached hereto as Exhibit A, with respect to the Vista Real Estate Development LLC Project, determining that the acquisition, construction and installation of the Project Facility was a “Type 1” action (as such quoted term is defined in SEQRA) but that the Vista Real Estate Development LLC Project constitutes an action which would not have a significant impact on the environment and, therefore, did not require preparation of a Draft Environmental Impact Statement; and (B) by resolution adopted by the members of the Agency on February 9, 2022 (the “Vista Real Estate Development LLC SEQR Resolution”), the Agency adopted the findings of the Town Board with respect to the Vista Real Estate Development LLC Project; and

WHEREAS, the Project is included in the Vista Real Estate Development LLC Project; and

WHEREAS, the Agency is an “involved agency” with respect to the Vista Real Estate Development LLC Project and the Agency now desires to (A) concur in the determination by the Planning Board, as “lead agency” with respect to the Vista Real Estate Development LLC Project, (B) acknowledge receipt of a copy of the Negative Declaration, and (C) indicate whether the Agency has any information to suggest that the Planning Board was incorrect in determining that the Vista Real Estate Development LLC Project will not have a “significant effect on the environment” pursuant to SEQRA and, therefore, that no environmental impact statement need be prepared with respect to the Project, as part of the Vista Real Estate Development LLC Project;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency has received copies of, and has reviewed, the Application and the Negative Declaration (collectively, the “Reviewed Documents”) and, based upon said Reviewed Documents, the Agency hereby ratifies and concurs in the designation of the Planning Board as “lead agency” with respect to the Vista Real Estate Development LLC Project under SEQRA (as such quoted term is defined in SEQRA).

Section 2. The Agency hereby determines that the Agency has no information to suggest that the Planning Board was incorrect in determining that the Vista Real Estate Development LLC Project will not have a “significant effect on the environment” pursuant to the SEQRA and, therefore, that environmental impact statement need not be prepared with respect to the Project, as part of the Vista Real Estate Development LLC Project (as such quoted phrase is used in SEQRA).

Section 3. The members of the Agency are hereby directed to notify the Planning Board of the concurrence by the Agency that the Planning Board shall be the “lead agency” with respect to the Project, and to further indicate to the Planning Board that the Agency has no information to suggest that the Planning Board was incorrect in its determinations contained in the Negative Declaration.

Section 4. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Hon. William M. Clay	VOTING	_____
Michael Paparian	VOTING	_____
Marlene McTigue	VOTING	_____
Anton Dreslin	VOTING	_____
Paul M. Engel, Jr.	VOTING	_____
Travon T. Jackson	VOTING	_____
Douglas Roether	VOTING	_____

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

I, the undersigned Secretary of Albany County Industrial Development Agency (the “Agency”), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on April 13, 2022 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Chapter 417 of the Laws of 2021 (the “2021 Laws”), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given; and (D) there was a quorum of the members of the Agency, either in person or attending remotely in accordance with the 2021 Laws, throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this ____ day of April, 2022.

Secretary

(SEAL)

EXHIBIT A
NEGATIVE DECLARATION
- SEE ATTACHED -

**PLANNING BOARD
TOWN OF BETHLEHEM
ALBANY COUNTY, NEW YORK**

**SEQR RESOLUTION
DETERMINATION OF SIGNIFICANCE / NEGATIVE DECLARATION
SITE PLAN AND SUBDIVISION APPLICATION**

**VISTA DEVELOPMENT GROUP, LLC
350,000 SQ.FT. TECHNOLOGY BASED BUSINESS PROJECT
125 VISTA BOULEVARD, SLINGERLANDS – TOWNS OF BETHLEHEM AND NEW SCOTLAND**

- WHEREAS, Vista Development Group, LLC (owner/applicant) has submitted to the Town of Bethlehem Planning Board an application for Site Plan and Subdivision Approval, for a proposal to construct a 350,000 SF warehouse, manufacturing, technology based business and office space to be occupied by Plug Power Inc. at 125 Vista Boulevard (“the Project”). Plug Power will relocate and expand its GenDrive fuel cell assembly operations at the site, and;
- WHEREAS, the Project is located within both the Town of Bethlehem and Town of New Scotland on 39.15-acres of land. Approximately 24.51 acres of the project are located in the Town of Bethlehem, and approximately 14.64 acres of the project are located in the Town of New Scotland. In addition to the buildings, site improvements include off-street parking, stormwater management areas, access drives, hydrogen pad, and nature trail. In both the Town of Bethlehem and Town of New Scotland the site is located in a Mixed Economic Development Zoning District, where a warehouse, manufacturing, and office space is a permitted use subject to site plan review by the Planning Board. Vista Development Group, LLC has also submitted a site plan and subdivision application to the Town of New Scotland, and;
- WHEREAS, the subdivision application consists of the following lots and their new acreage in the Vista Tech Campus in the Town of Bethlehem: 21 Vista Blvd. – +/-97.81 acres; 125 Vista Blvd. – +/- 24.51 acres (including 1.9 acre parking lot area); 126 Vista Blvd. – +/-10 acres; 60 Vista Blvd. – +/-18.44 acres; 50 Vista Blvd. (new lot split from 60 Vista Blvd.) – +/-32.77 acres. The subdivision in the Town of New Scotland consists of the subdivision of an approx. +/- 126 acre parcel as follows: Lot 1 (Plug Power) – +/-14.64 acres; Lot 2 – +/-6.19 acres; and Lot 3 – +/-106.15 acres, and;
- WHEREAS, the Planning Board has received a Full Environmental Assessment Form (“FEAF”) for the project with Part I completed by the applicant, and;
- WHEREAS, the State Environmental Quality Review Act (SEQRA) regulations found at 6 NYCRR Part 617.3(a) require that no agency shall carry out, fund, or approve an action until it has complied with the requirements of SEQRA, and;
- WHEREAS, 6 NYCRR 617.6(a) requires that when an agency receives an application for approval of an action it must: (1) determine whether the action is subject to SEQRA, (2) determine whether the action involves a federal agency, (3) determine whether other agencies are involved, (4) make a preliminary classification of the action, (5) determine whether a short or full EAF will be used to determine the significance of the action, and (6) determine whether the action is located in an Agricultural District, and;
- WHEREAS, the Planning Board by Resolution dated November 16, 2021 determined the proposed action to be classified as a “Type I” action and conducted a coordinated review with other

involved and interested agencies. None of those agencies objected to the Planning Board acting as the SEQRA lead agency for this action. Specifically, the Bethlehem Planning Board received letters from the New Scotland Planning Board, dated November 18, 2021, and the Bethlehem Zoning Board of Appeals, dated December 16, 2021, agreeing to the Bethlehem Planning Board's desire to serve as Lead Agency, and;

WHEREAS, the Planning Board has independently reviewed and considered the site plan and subdivision applications, the full Environmental Assessment Form (EAF) and supporting materials submitted by the applicant, and comments on the application provided by the Bethlehem Town Department of Economic Development and Planning, the Town Engineering Division, and Town Designated Engineer (CHA), and Town of New Scotland Planning Board.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board hereby declares and confirms that it is Lead Agency with respect to SEQR review of the Project at 125 Vista Blvd. for subdivision of the property and site plan approval of the project, and that said applications shall be classified as a "Type 1" action pursuant to SEQR; and,

BE IT FURTHER RESOLVED, that based upon its review of the project and the FEAF, review of the proposal by Town Engineering and Planning staff, and comparison with the Criteria for Determining Significance found at 6 NYCRR Section 617.7(c), the Planning Board hereby finds that the site plan and subdivision application associated with the Project to construct a 350,000 SF warehouse, manufacturing, and office space constitutes an action which will not have a significant impact on the environment and, therefore, does not require preparation of a Draft Environmental Impact Statement; and,

BE IT FURTHER RESOLVED, that this determination is based upon the following facts and conclusions:

1. The site of the proposed action is located in a Mixed Economic Development zoning district, which allows the proposed use subject to site plan approval by the Planning Board. The project site is located in the existing Vista Technology Campus and the proposed land use is compatible with the use of surrounding properties. The proposal constitutes a primary use as identified in Zoning Law 128-37 B.(1).
2. The site is more popularly known as Vista Technology Campus, which received Master Plan approval by the Town Board on July 11, 2007 for the development of approximately 1.4 million square feet of building space.
3. In accordance with the SEQRA regulations set forth in 6 NYCRR Section 617.4 and 617.5, the Bethlehem Town Board adopted a resolution designating the Vista Technology Campus as a Type I action on December 28, 2005. Also by resolution adopted on December 28, 2005, the Town Board expressed its intent to be the Lead Agency for this action and conducted a coordinated review with all known involved and interested agencies. None of those agencies objected to the Town Board acting as the SEQRA Lead Agency for this action. As a result, the Town of Bethlehem Town Board designated itself as the SEQRA Lead Agency for this action and on February 22, 2006 issued a positive declaration per the provisions of SEQR and required the preparation of an Environmental Impact Statement (EIS). On December 27, 2006 the Town Board accepted the Draft Environmental Impact Statement (DEIS) as complete which commenced a forty (40) day comment period which included a public

information meeting on January 17, 2007 and a Town Board public hearing on January 24, 2007. Written comments on the DEIS were accepted through February 5, 2007. On May 9, 2007 the Town Board declared the Final Environmental Impact Statement (FEIS) as complete and on May 29, 2007 adopted the SEQR Findings Statement for the project.

4. Town Staff, CHA (serving as Town Designated Engineer), and the Planning Board evaluated the site plan and subdivision applications and supporting materials for consistency with the 2007 SEQR Findings Statement to determine if there were any new or different impacts and, if so, what mitigation would be required, if any. The Planning Board finds that the Project is in conformance with the Findings Statement issued by the Town Board on May 29, 2007 (since the circumstances surrounding the findings have not substantially changed); and therefore, no significant adverse environmental impacts will occur.
5. The SEQR Findings Statement for the Vista Technology Campus required an after traffic study to document the effects of the Slingerlands Bypass opening and the addition of Stage I traffic on the affected intersections, prior to progressing Stage II development. Stage I traffic (development) is representative of 739,420 square feet of building space. To date 107,500 square feet have been developed with an additional 31,000 square feet (SF) development partially built (former Monolith site at 85 Vista Blvd) and another project has been proposed at 9,000 square feet (medical office at 15 Vista Blvd. – appeared at October DPC meeting but no site plan application submitted). With this project at 350,000 square feet and the other development mentioned above, the total development to date would be 497,500 square feet, allowing for an additional 241,920 square feet of developable space in Stage I. Based on square feet of building space there is no further traffic mitigation action necessary until Stage I development (739,420 square feet) has been completed.

VHB (applicant's traffic engineering consultant) provided trip generation data and analysis in a supplemental traffic review letter, dated December 13, 2021. The Town's traffic engineering consultant, CHA, in correspondence dated December 16, 2021, concluded: "the analysis shows that the project will generate 46 vehicle trips during the weekday AM and PM peak hours of adjacent street traffic. We agree with this assessment. This is significantly lower than the traffic generation considered for this element of the Stage 1 development, as noted by VHB. Based on the shift schedules presented in the analysis, the peak trip generation of the site will occur between 6 pm and 7 pm, when 317 Shift 3 employees enter and 317 Shift 1 employees leave. Allowing for the same considerations of absenteeism, transit and rideshare trips as noted by VHB, this indicates that the trip generation during the peak hour of the site will be 271 enter trips and 271 exit trips. Based on the proposed shift schedule of operations, the peak site trip generation will occur after the peak hour of existing traffic on the roadway network. This proposed schedule makes efficient use of the surrounding roadway network capacity. A review of traffic volume data from NYSDOT's Traffic Data Viewer shows that the two-way traffic volume on NY Route 85 during the PM shift change (between 6 pm and 7 pm) is 35% lower than the volume during the PM peak traffic hour (a difference of 630 vehicles per hour). Based on these considerations, we agree with the VHB assessment and conclusions that the traffic generated by the project is consistent with the original Stage 1 development plan for the Tech Park and that no additional traffic analysis is required for this project."

6. A parking demand assessment was conducted by VHB, and documented in letter correspondence, dated December 13, 2021. The assessment assumes a 10% transit/rideshare credit that would not result in a parked vehicle at the site.

A letter from the Capital District Transportation Authority (CDTA), dated December 21, 2021, states that CDTA has coordinated with Plug Power and Columbia Development Group to develop a working ridership, service, and infrastructure plan that will provide transit to Plug Power. New bus service will take the form of extending CDTA Routes #13 and #18 to the site. Plug Power and CDTA have entered into a Universal Access Agreement that will allow all employees at the Vista facility to ride any CDTA bus route fare-free. The site plan shows the location of a bus stop and shelter, cut-out for layover area, and sidewalk connection from the bus stop to building entrance. The applicant is responsible for constructing these transit improvements.

Further, should there be a need for additional parking, the site plan shows 58 parking spaces as "banked" that could be striped for future use at the rear of the site.

Internal sidewalks and connections to sidewalks along Vista Blvd. are provided on the site plans.

7. Access is provided from the existing Vista Boulevard, a town owned roadway. Vista Boulevard will be extended to the Town of New Scotland line, where the road will convert to a private internal access drive. Access easements will be provided to allow future access to adjacent parcels to the private drive being constructed in New Scotland.
8. The site is served by existing public water service. A back flow prevention device, to protect the municipal water line from possible contamination, will be added to the water lateral as part of this project.
9. A fire flow analysis was conducted to determine the required fire flow for the site. The Town is required to comply with the 2020 Fire Code of New York State, which is administered and enforced by the Town Building Department. Section 507.3 of the Fire Code addresses the required fire flow at buildings and site. The approved method that was used to determine the needed fire flow was the NFPA 13 Standard for Installation of Sprinkler Systems. RBM Guardian Fire Protection prepared a fire flow demand calculation, dated December 23, 2021, that determined a fire flow of approximately 1,350 gallons per minute (gpm) was needed. Utilizing the Town's water system model, Town Engineering Division staff, determined that there was sufficient water available at the site to meet the needed fire flow. Domestic water demands were also considered in this assessment reflecting 17gpm. This determination is documented in Engineering Division memo, dated January 4, 2022.
10. The Slingerlands Fire District (SFD) reviewed the Project site plans. The applicant has addressed the SFD comments by providing two hydrants on the west (rear) side of the building and looping the waterline.
11. The site is served by public sanitary sewer facilities and will connect to the system. The applicant agrees to pay its "fair share" of necessary off site sewer improvements. The "fair share" is based on the findings of the "Slingerlands Sewer Study", dated May 2007 by Barton & Loguidice and incorporated in the Final Environmental Impact Statement (FEIS) and SEQR Findings Statement for the Vista project. The "fair share" for offsite sewer improvements for the Vista Technology Campus is \$736,000.00. The applicant

agrees to pay a mitigation fee towards these improvements in the amount of \$1.25 per square foot. No approvals by the Department of Health are needed.

12. The Project includes a natural trail network within the Vista Technology Campus. The natural trail addresses the mitigation required in the SEQR Findings Statement for the Vista Technology Campus. Maintenance and development of the Vista Technology Campus Nature Trail is the responsibility of Vista Development Group, LLC. Signage will include trail markers and trail head signs that will provide general direction and location of trails and trail heads. The trail will generally be constructed of a five foot wide three inch deep section of wood chip material. Sections of the trail may be constructed from other materials (gravel surface). Where practicable a two foot wide natural buffer will be established and maintained as needed. Maintenance will take place between April 1st - November 15th. The trail design standards are consistent with the previous sections of the nature trail constructed and approved at the Vista Campus.
13. Adequate provision has been made for the collection and discharge of storm water from the site. Project plans include construction of an on-site storm water management system, which includes a series of catch basins and storm pipe to collect storm water runoff, and convey it to on-site storm water treatment facilities. These facilities consist of dry swales, bioretention to meet water quality and run-off reduction with overflow ponds and underground storage to meet peak flow mitigation requirements.
14. The applicant has submitted a Draft Storm Water Pollution Prevention Plan (SWPPP), and Stormwater Management Report, prepared by Hershberg & Hershberg, dated December 8, 2021. The SWPPP and storm water management design have been reviewed by the Town Designated Engineer (TDE) for compliance with the New York State Stormwater Management Design Manual.
15. A Geotechnical Engineering Report, dated December 23, 2021, was prepared by Terracon Consultants – NY, Inc. to present subsurface exploration findings, and geotechnical recommendations concerning earthwork and the design and construction of foundations, floor slabs and pavements for the Project. Zoning Law 128-49 restricts construction and land disturbance activities within a zone 1 vertical on 5 horizontal (1V:5H) from the toe of slope for slopes 20 feet or greater in height. A waiver from this requirement may be granted based upon geotechnical engineering reports acceptable to the Town Engineer. The site plans as currently configured include stormwater management features, pavement and retaining walls beyond the stipulated setback lines in some instances (per the December 23, 2021 plan set). The Report concluded/recommended the following:
 - a. Construction and land disturbance activities proposed within this zone (1V:5H) depicted on the December 23, 2021 plan set would not result in a slope failure or a danger to human health, welfare or property. The conclusion considered a minimum safety factor in the range of 1.3 to 1.5. If additional areas within the zone are to be disturbed that were not included in the report, further analysis will be required.
 - b. A continuous clay liner be formed at the stormwater basin locations to limit infiltration potential.

- c. No water shall be allowed to outlet over the existing slopes either through outfalls or emergency spillways. Outfalls must be extended to the toe of the slope or to existing water courses.

The applicant is required to follow all recommendations identified in the Geotechnical Report.

- 16. The applicant submitted a sound study of the Project, dated December 17, 2021, prepared by VHB. The project will introduce stationary and mobile sources of noise including 27 roof top units, a hydrogen pad on the north side of the building with a compressor, storage vessels, cryogenic liquid pumps, and a hydrogen tank, and traffic on Vista Blvd. associated with employees and trucks accessing the facility. The Vista EIS identified noise-sensitive receptors in the area around the project to include residences such as those on Middlesex Drive, Lynch Road, Maher Road, Couse Lane, Stockbridge Rd in the Town of Bethlehem, and Font Grove Road and Pauly Lane in the Town of New Scotland. The closest receptors are approximately ½-mile or more from the project. Ambient daytime sound levels at these receptors range from 42 to 49 dBA (Leq) and nighttime sound levels are generally 30 to 35 dBA (Leq).

The NYSDEC Guidelines for Assessing Operational Noise Impact and Mitigation provides guidance on the methods to assess potential noise impact and avoid or reduce adverse impacts. The Guidelines limits operational noise from the development based on the potential to increase existing ambient sound levels. The Vista EIS determined that an increase in noise of 6 dBA above ambient would constitute a noise impact. The Town of Bethlehem noise ordinance limits operational noise to 65 dBA and the Town of New Scotland noise ordinance does not have a quantitative limit.

Sound from the proposed development would be 18.3 to 27.3 dBA at the nearest receptors which would result in future nighttime noise levels from 30.3 to 31.9 dBA. Sound levels would increase up to 1.9 dBA at night. Since operational sound would increase less than 6 dBA and would be well below 65 dBA, it would be below the NYSDEC noise policy and local ordinance noise limits. Based on the sound study results, there will be no significant adverse noise impact and no need for mitigation. These findings are consistent with the Vista EIS.

- 17. The VHB sound study also considered construction noise. Construction of the Project would include sound generated as part of the different phases of construction including site clearing, excavation, superstructure, and paving. The construction equipment would typically include excavators, dump trucks, concrete trucks, and cranes. The maximum sound level of these types of construction equipment is approximately 85 dBA at 50 feet. With the closest receptors approximately ½-mile away, construction noise levels would generally be in the low 40's dBA or less. Construction of the proposed development would typically occur during the daytime hours in compliance with local ordinances. Therefore, there will be no construction noise impact and no need for noise control measures.

The Vista EIS identified construction activity work periods to minimize construction noise impacts. Construction activity will generally be from 6:00 am to 5:00pm, 5 days a week (Monday through Friday). Additional work hours will generally be limited to 5:00pm to 7:00pm Monday through Friday and 8:00am to 7:00pm on Saturday. These time frames are consistent with the Town of Bethlehem noise ordinance.

18. The Vista EIS conducted a Visual Impact Analysis for the entire Vista Technology Campus, in accordance with NYSDEC Program Policy Dep-00-2 Assessing and Mitigating Visual Impacts. Sensitive receptor sites, including John Boyd Thatcher State Park, were identified and the visibility of the Campus from these sites were evaluated. Based upon the analysis, it was determined that the majority of the receptor sites identified are at or beyond a distance of five miles from the Campus. Pursuant to NYSDEC Program Policy, sites over 5 miles away are received as background by the human eye. Beyond 5 miles, most activities are not a point of interest to the casual observer, and are indistinguishable from their surroundings. The John Boyd Thatcher State Park was identified as being located approximately 6 miles to the west of the Campus with limited visibility. The Vista Findings Statement identified no mitigation measures for buildings in the campus, except that service elements such as loading/delivery areas, etc. shall be located in the side or rear yards of buildings and have minimal visual exposure. The Project has sited loading areas to the side and rear of buildings and provided a landscape plan to minimize visual exposure.

The applicant submitted a visual impact assessment letter, dated December 31, 2021, prepared by Saratoga Associates, which provided the following findings: "Although modified to consolidate a portion of the development area into a single footprint, the design of the proposed Plug Power Facility is highly consistent with the Project Concept Plan evaluated in the 2006 DEIS (Vista) and the 2015 Vista Technology Park Master Development Plan. Considering the overall footprint area of the proposed Plug Power Facility is smaller and the maximum building height is lower than the Project Concept Plan evaluated in the 2006 DEIS, the DEIS conclusions concerning potential Facility visibility from scenic resources remain valid; "No Significant Adverse Impacts are Anticipated".

19. An Air Permitting Evaluation, dated December 14, 2021, was prepared by Trinity Consultants to evaluate the Project's manufacturing processes and supporting equipment that are air emissions sources to determine if the facility will require an air permit or registration to be issued by NYSDEC. Air emission sources include natural gas fired heating units, forklifts and potentially other powered equipment, hydrogen and nitrogen emissions, various supporting activities to the manufacturing process – including quality assurance laboratory activities and maintenance and cleaning activities, and diesel fuel storage tank. The evaluation concludes that the Project will operate only air emissions sources that are exempt from permitting pursuant to 6CRR-NY Part 201.
20. A Wetland and Biological Assessment Report, dated November 24, 2021, prepared by Ingalls conducted a redelineation of wetland boundaries in the area of the Project, which generally included the land area west of the Vista roundabout at the end of Vista Boulevard (approx. +/- 49 acres). A total of 7 wetlands (V, VV, U, F, G, Z, ZZ) comprising 1.82 acres of federally regulated wetlands and 9 streams equaling +/- 2,525 LF were identified in the redelineation area. The report notes that the delineation revealed conditions and wetland boundaries similar to a 2008 ACOE jurisdictional determination.

The Project will not impact the identified wetlands or streams. Wetland G and Intermittent Stream G, located in the Town of New Scotland, will be crossed for a private drive through the placement of a bottomless arched culvert (BAC). The BAC will be installed along with the footers completely outside (spanning) the wetlands boundary as well as outside the Ordinary High Water Mark of the stream located within the wetlands.

21. The Wetland and Biological Assessment Report, prepared by Ingalls, reviewed the site for the presence of threatened and endangered species. The report concludes that a total of one (1) species was identified to potentially inhabit the project site. The USFWS Information, Planning, and Conservation System (IPaC) Map identifies the Northern Long-eared Bat (*Myotis septentrionalis*) as an endangered species that has the potential of inhabiting the proposed project site. The potential for the Northern Long-eared Bat to exist on-site is very minimal due to the devastating population effects caused by the white-nosed syndrome. Northern Long-eared Bats hibernate in caves and mines from October through April. Summer foraging habitat typically consists of wooded or semi-wooded riparian areas. Maternity colonies are typically within hollow trees or under the loose bark of dead or dying trees with exfoliating bark, often exposed to direct sunlight. As there are no mines or caves on or near the subject site, there is no potential for hibernacula to exist on-site. Typically, maternity colonies are found in Shagbark Hickory, or occasionally, dead Black Locust trees. If any tree clearing is required, it is suggested that the trees be cleared between November 1 and March 31 as this is the accepted tree clearing window for areas with potential bat presence. If all tree removal is done within this window, no permitting will be required.
22. The Project will use and store bulk hydrogen and nitrogen at the site in aboveground storage tanks, these are gases which do not represent any hazard to groundwater or soils. Further, a diesel storage tank will also be located on the site. NYSDEC bulk storage permits will be required.
23. The Vista EIS included a Cultural Resource Survey. As identified in the Survey, the proposed site is located adjacent to the Christian LaGrange Farm Site. During construction this site will be protected with the placement of high visibility fencing along the property line that separates this from project site.
24. Town Department of Economic Development and Planning and Division of Engineering review of the project Site Plan and the Town's environmental inventory files did not identify any other environmentally sensitive characteristics of the site or areas requiring further study.

BE IT FURTHER RESOLVED,

that this Determination of Significance shall be considered a Negative Declaration made pursuant to Article 8 of the Environmental Conservation Law; and,

BE IT FURTHER RESOLVED,

that the Town Department of Economic Development and Planning is hereby authorized to file any and all appropriate notices so that the intent of this Resolution is carried out.

On a motion by Gianna Aiezza, seconded by Scott Lewendon, and by a vote of five (5) for, zero (0) against, zero (0) abstained, and zero (0) absent, this RESOLUTION was adopted on January 4, 2022.