



SOMERSET SOLAR, LLC

MATTER NO. 22-00026

§900-2.25 Exhibit 24 Revised

Local Laws and Ordinances

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Appendix 24-A. Town of Somerset Zoning Ordinance, including Solar Law
Appendix 24-B. Town of Somerset Local Law Consultation Letters

ACRONYM LIST

§	Section
AES	The AES Corporation, Inc.
Building Code	New York State Uniform Fire Prevention and Building Code
CLCPA	Climate Leadership and Community Protection Act
dBA	A-weighted decibels
DC	direct current
Energy Code	New York State Energy Conservation Construction Code
ECMP	Environmental Compliance and Monitoring Plan
LCCs	Land Capability Classifications
MW	megawatt
NYCRR	New York Codes, Rules and Regulations
NRCS	Natural Resources Conservation Service (NRCS)
NYSAGM	New York State Department of Agriculture and Markets
ORES	Office of Renewable Energy Siting
PFA	per- and polyfluoroalkyl substances
PUD	Planned Unit Development
ROW	right-of-way
Solar Law	Town of Somerset Solar Energy Systems Law
Town	Town of Somerset
WAF	waterfront assessment form
WHO	World Health Organization
USCs	Uniform Standards and Conditions
USDA	United States Department of Agriculture

GLOSSARY TERMS

Applicant	Somerset Solar, LLC, a subsidiary of The AES Corporation, Inc. (AES), the entity seeking a siting permit for the Facility Site from the Office of Renewable Energy Siting (ORES) under Section (§) 94-c of the New York State Executive Law.
Application	Application under §94-c of the New York State Executive Law for review by the ORES for a Siting Permit.
Facility	The proposed components to be constructed for the collection and distribution of energy for the Somerset Solar Facility, which includes solar arrays, inverters, electric collection lines, and the collection substation.
Facility Site	The limit of disturbance (LOD) that will be utilized for construction and operation of the Facility, which totals about 700 acres on the Project Parcels in the Town of Somerset, Niagara County, New York (Figure 2-1).
Project Parcels	The parcels that are currently under agreement with the Applicant and Landowner, totaling about 1,784 acres in the Town of Somerset, Niagara County, New York, on which the Facility Site will be sited (Figure 3-1).
Project Site	The acreage of the Project Parcels under agreement between the Applicant and the Landowner, consisting of approximately 1,396 acres, in which the Applicant has performed diligence, surveys and assessments in support of Facility design and layout.

EXHIBIT 24 LOCAL LAWS AND ORDINANCES

This exhibit addresses the requirements specified in 19 New York Codes, Rules and Regulations (NYCRR) Section (§) 900-2.25 regarding local laws and ordinances.

Somerset Solar, LLC (the Applicant) has designed the Facility in a manner which is respectful of the interests of the host community. Consistency with local laws and ordinances has been achieved to the maximum extent practicable. The Applicant intends to operate the Facility and establish themselves as a long-term respected member of the local community and therefore has designed the Facility as a ‘good neighbor’. This commitment has been implemented through ongoing stakeholder engagement and responsiveness in the Facility design. Prior to completing this Application, the Applicant has conducted outreach and consultation efforts with the Town of Somerset (Town) regarding the local requirements applicable to the Facility.

The Facility has also been designed to comply with 19 NYCRR §900-2.25 and the Uniform Standards and Conditions (USCs). The §94-c regulations requires that applicants consult with local municipalities to determine what local substantive requirements apply to a project and whether design changes to a project can obviate the need to request the Office of Renewable Energy Siting (ORES) elect to not apply those requirements. Outreach to the municipal stakeholders has included presentations to Town of Somerset, including Town Board members, as well as other public presentations designed to introduce the Applicant and the Facility to the community, providing Facility-specific information to the Town of Somerset and discussions regarding applicability of and compliance with local laws and ordinances.

In early stages of community engagement in March 2021, the Applicant represented the Facility as a potential ‘buildable area’ envelope which highlighted all potential viable lands within participating parcels. As the Applicant performed further diligence and refined the Facility design, a Facility draft site plan with detailed components was publicly presented to stakeholders on June 16, 2021 via a Virtual Open House, at a Virtual Community Meeting on December 15, 2021 with the host community, and available on the Facility’s website (<https://www.aes.com/somerset-solar-project>). The Facility draft site plan incorporated various components of stakeholder feedback received up until that point in the development including results from outreach with the Town for agreement on substantive and procedural requirements. Presentation materials and a log of all consultations is located in Appendices 2-C and Appendix 2-D, respectively.

The Applicant has researched potentially applicable local ordinances, laws, resolutions, regulations, standards and other requirements of a substantive nature required for the

construction or operation of the proposed Facility as a Utility-Scale Solar Energy System. On January 21, 2022, The Applicant submitted a letter to the Town identifying substantive provisions of the Town's Solar Energy Systems Law (Solar Law), which was in draft form and not formally adopted at that time, as well as the Town's proposed revisions to the Solar Law. On July 22, 2022 the Applicant sent a follow-up letter to the Town of Somerset to consult with them regarding the information required by §900-1.3 of the §94-c Regulations. This letter (Appendix 24-B) outlined the applicable local ordinances, laws, resolutions, regulations, standards and other requirements of a substantive nature required for the construction and operation of the Facility, including a review of the Town's revised Solar Law that was formally adopted in March 2022 ("2022 Solar Law"). The letter discussed relevant portions of the Town Ordinance and Solar Law for which the Facility will be in compliance with, as well as identification of those provisions for which the Applicant may need to seek waivers. The Town did not provide written responses to either the January 21 or July 22 letters (the "Letters"). However, the Town Supervisor, in conjunction with counsel and the Town's consultant participated in two teleconference calls with the Applicant on August 10, 2022, and August 31, 2022, regarding substantive local laws. The Town acknowledged receipt of the Letters. The Town did not advise the Applicant that there were any additional local substantive requirements not identified in the letters or consultations. The Applicant and the Town discussed the substantive local law provisions identified in the Letters as possible provisions that the Applicant would request ORES not apply. The Town advised the Applicant of certain provisions with which it would like to see the Facility comply. There was no follow-up written communications after the teleconference calls nor were the meetings transcribed.

Through an iterative process, the Applicant designed the Facility in a manner to comply with local provisions to the maximum extent practicable taking into account the Town's comments. However, there remain certain local substantive provisions with which the Facility cannot comply. For example, the Town suggested that the Project be designed so that all components would be located north of NYS Route 18/Lake Road. As explained below, due to constraints, such as availability of suitable land, it was not possible to locate Facility components north of NYS Route 18/Lake Road and certain parcels of land to the south were required. However, the Applicant designed the Project to use only land under the control of Somerset Operating Company and Terroir Development LLC. Provisions with which the Project cannot comply are addressed in Section C below.

Outreach continues in accordance with §94-c requirements. The Applicant is also working with the Town of Somerset, and Niagara County with the intention of executing a payment in lieu of taxes agreement prior to construction of the Facility.

24(a) Substantive Requirements

This section identifies the local ordinances, laws, resolutions, regulations, standards, and other requirements applicable to the construction or operation of the proposed Facility that are of a substantive nature.

The proposed Facility is located within the Town of Somerset, Niagara County, New York. In addition to the Town of Somerset's general zoning law, per the Town's Solar Law, the Facility falls within the permitting requirements for Tier 4 Solar Energy Systems, which also include the requirements of Tier 3 Solar Energy Systems. The following local law requirements are applicable to the Facility:¹

- Part II, General Legislation
 - Chapter 96 Excavations (Exhibit 5)
 - Chapter 104 Flood Damage Prevention
 - Article V Construction Standards
 - Chapter 118 Infrastructure Preservation Law
 - Chapter 131 Noise (Exhibit 7)
 - §131-3 Prohibited Acts (Preempted by Town Solar Law)
 - Chapter 191 Vehicles and Traffic
 - Article II Traffic Regulations
- Part II, General Legislation, Zoning, Article VI Establishing of Zones
 - Chapter 205 Zoning (Appendix 24-A²)
 - §205-10 Preservation of natural features
 - §205-11 Regulations Applicable to all Zones
 - §205-11(P)(1)-(4): Fences
 - § 205-11(Y): Exterior Walls

¹ All section references are based on the Somerset Town Code available on ecode360 available at: <https://ecode360.com/SO1409>. Section numbering may differ on adopted code provisions filed with the NYS Department of State, such as the 2022 Solar Law.

² The complete Town of Somerset Zoning Code is accessible at: [Town of Somerset, NY Table of Contents \(ecode360.com\)](https://ecode360.com/SO1409)

- Part II, General Legislation, Zoning, Article XXII Solar Energy Systems (Appendix 24-A³)
 - §205-106.1(D) Applicability
 - §205-110 Permitting Requirements for Tier 3 Solar Energy Systems
 - §205-110(A)
 - §205-110.A.1
 - §205-110.C.2 Drainage (Figure 15-7)
 - §205-110.C.4 Vehicular paths (Appendix 5-A)
 - §205-110.C.5 Signage
 - §205-110.C.6 Glare/Glint (Appendix 8-A, Attachment 8, Appendix A)
 - §205-110.C.7 Lighting
 - §205-110.C.8 Noise
 - §205-110.C.9 Tree cutting
 - §205-110.D Decommissioning
 - §205-110.F Safety; applications shall include a safety plan (Appendix 6-B)
 - §205-110.G Environmental and cultural resources
 - §205-112 Special Use Permit Standards
 - §205-112.A.1 Lot size
 - §205-112.A.2 Setbacks
 - §205-112.A.3 Height
 - §205-112.A.4 Fencing requirements
 - §205-112.A.5 Screening and visibility
 - §205-112.A.6 Agricultural resources
 - §205-112.A.7 Noise
 - §205-112.A.8 Hazardous materials
 - §205-113 Permitting Requirements for Tier 4 Solar Energy Systems
 - §205-113.A
 - §205-113.D.1 Agricultural resources

³ The complete Town of Somerset Zoning Code is available at: [Town of Somerset, NY Table of Contents \(ecode360.com\)](https://www.ecode360.com)

- §205-113.D.2 Waterfront protection, agricultural/agri-tourism, land of statewide importance and environmentally sensitive areas of the Town as denoted on Comprehensive Plan Vision Map
- §205-115 Safety
 - §205-115.A
 - §205-115.B
- §205-116 Permit Time Frame, Maintenance, Abandonment and Fees
 - §205-116.E
 - §205-116.F

The location of the Facility as proposed conforms to all such local substantive requirements, except any that the Applicant requests that the Office elect not to apply.

The following provisions from the Town of Somerset Code were identified by the Office in the Notice of Incomplete Application as potentially substantive. As explained, however, the provisions are not applicable to the Facility.

- Chapter 114 Highway Construction Standards
 - Pursuant to §114-1 of the Somerset Town Code, “Highways” are defined to include “streets, alleys, roads and roadways that are proposed for dedication to the Town.” The Applicant does not intend to dedicate any of these to the Town and, accordingly, this section is inapplicable.
- Chapter 171 Subdivision of Land

Response: The Facility does not involve the subdivision of land. This Chapter of the Town Zoning Code is inapplicable.
- Chapter 197 Waterfront Consistency
 - Pursuant to Chapter 197 of the Somerset Town Code, “whenever an action is proposed to be approved, funded or undertaken in the Town's waterfront area, a waterfront assessment form (WAF) shall be prepared Applicants shall file the WAF with the appropriate municipal agency.” WAFs are then reviewed by the proper agency for consistency with policies set forth in §197-4.c. After review, the municipal agency will render a decision. Submission of a WAF is procedural and preempted by 94-c. There are no substantive requirements in Chapter

197. Application Exhibit 3 contains an analysis of the Facility's consistency with state and local waterfront policies.

- Chapter 205 Zoning

Response: Each specific provision under Chapter 205 that is applicable to the Facility is discussed herein.

- § 205-110.C.3 Groundwater and Wells

Response: Section 205-110.C.3 lists the information required in an application to the Town of Somerset for a special use permit to construct a Tier 3 Solar Energy System. As part of the special use permit application, the applicant must identify the groundwater conditions in the area and all public and private wells within 1,000 feet of the site. The requirement to obtain a special use permit is preempted by the 94-c process. Accordingly, this provision is inapplicable. Note that the Applicant has identified groundwater conditions in the area and all public and private wells within 1,000 feet of the Facility in the 94-c Application.

- § 205-110.E Maintenance Plan

Response: Section 205-110 requires that an applicant for a special use permit from the Town for a Tier 3 Solar Energy System provide a maintenance plan for all leased and owned lands, including setbacks and buffers. The requirement to obtain a special use permit is preempted by the 94-c process. Accordingly, this provision is inapplicable.

- §205-111 Site Plan Requirements

Response: Pursuant to §205-111, for any solar energy system requiring a special use permit, site plan approval shall be required. This is a procedural requirement preempted by 94-c. The following information is required in a site plan application, and, to the extent the requirement is not substantive, is also preempted by 94-c:

- §205-111.A: *A plan illustrating property lines and physical features, including roads, for the project site.*

Response: This is not a substantive requirement by merely part of the site plan application.

- §205-111.B: *Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.*

Response: This is not a substantive requirement by merely part of the site plan application.

- §205-111.C: *A one- or three-line electrical diagram detailing the solar energy system layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.*

Response: This is not a substantive requirement by merely part of the site plan application.

- §205-111.D: *A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.*

Response: This is not a substantive requirement by merely part of the site plan application.

- §205-111.E: *Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the solar energy system. Such information of the final system installer shall be submitted prior to the issuance of building permit.*

Response: This is not a substantive requirement by merely part of the site plan application.

- §205-111.F: *Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the solar energy system.*

Response: This is not a substantive requirement by merely part of the site plan application.

- §205-111.G: *Zoning district designation for the parcel(s) of land comprising the project site.*

Response: This is not a substantive requirement by merely part of the site plan application.

- §205-111.H: *Property operation and maintenance plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep (especially the landscaped areas used for screening), such as mowing and trimming (or other methodologies).*

Response: This is not a substantive requirement by merely part of the site plan application.

- §205-111.I: *Erosion and sediment control and stormwater management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.*

Response: This is not a substantive requirement by merely part of the site plan application.

- §205-111.J: *Engineering documents must be signed and sealed by a New York State (NYS) licensed professional engineer or New York State registered architect.*

Response: This is not a substantive requirement by merely part of the site plan application.

- §205-111.L: *A landscape plan in accordance with the special use permit requirements of this article.*

Response: This is not a substantive requirement by merely part of the site plan application.

- §205-111.M: *An overall project location map (illustrating surrounding properties within 1,000 feet) illustrating zoning (including any overlays), land use, environmental features and structures.*

Response: This is not a substantive requirement by merely part of the site plan application.

- §205-111.N: *Application fees. All applications for Tier 3 (and Tier 4) solar energy systems shall include the appropriate fees as set by the Somerset Town Board.*

Response: This is not a substantive requirement by merely part of the site plan application.

- § 205-112.B Solar Energy System Liability Insurance

Response: This is a procedural requirement.

- § 205-113 Permitting Requirements for Tier 4 Solar Energy Systems

- § 205-113.B - Article XV of Chapter 205 of Town Code not applicable to Tier 4 solar systems.
Response: There are no substantive requirements in this provision.
- § 205-113.C - Requires Host Community Agreement
Response: This is a procedural requirement.
- § 205-116 – Provisions related to special use permit and site plan approval
Response: The Applicant is not required to obtain a special use permit or site plan approval. Accordingly, provisions related to enforcement of a special use permit are inapplicable.
- § 205-116.B – Inspections
Response: Provisions states that building inspector may inspect project for compliance with special use permit requirements or conditions. The Applicant will not have a special use permit.
- § 205-116.C – Construction Inspections
Response: Relates to special use permit holder and inspections related to building permit. The Applicant need not obtain a special use permit or building permit.
- § 205-116.D – General Complaint Process
Response: This provision states that building inspector can issue a stop order at any time for any violations of a special permit or building permit. The Applicant need not obtain a special use permit or building permit.
- § 205-116.G: Determination of Abandonment or Inoperability
Response: This provision is procedural and addresses Town procedure for determining abandonment or inoperability. Filing of a decommissioning plan is part of the special use permit process and therefore procedural and preempted by 94-c. Removal of the system will be in accordance with the decommissioning plan filed in the 94-c proceeding.
- § 205-116.H: Utilization of Bond in Accordance with Decommissioning Plan
Response: This provision does not contain a substantive requirement. Nevertheless, the Town will be able to utilize security

posted by the Applicant for removal of the Project as set forth in the Decommissioning Plan filed in the 94-c proceeding.

- § 205-116.I: Application and Annual Fees

Response: The Applicant is not required to obtain a special use permit so associated fees are inapplicable.

- § 205-116.J: Compliance with Town Infrastructure Preservation Law

As discussed elsewhere in this Exhibit 24, the Town's Infrastructure Preservation Law is inapplicable to the Project. This law provides that Town highways, roadways, or rights-of-way should not be traveled on or traversed by any truck, vehicle, trailer, or equipment with a combined weight in excess of 14,000 pounds without a permit from the Town. The requirement to obtain a permit is procedural and preempted by 94-c. Regardless, the Applicant will not utilize any Town highway, roadway or right-of-way during construction.

- § 205-116.K: Notification to Implement Decommissioning Plan

Response: The requirement to file a decommissioning plan with the Town is procedural and preempted by 94-c.

24(b) Substantive Requirements Applicable to Interconnections in Public Rights of Way

No water service connections, water wells, sanitary sewer connections, storm sewer features, or on-site wastewater systems are proposed for the Facility. Accordingly, there are no substantive requirements in the local laws or regulations for the interconnection to or use of water, sewer, or telecommunication lines in public rights of way that are applicable to the Facility.

24(c) Local Substantive Requirements Applicant Requests ORES Not Apply

Executive Law §94-c expressly preempts local procedural requirements, such as permits and approvals which would otherwise be required by the host municipalities for construction and operation of the Facility (e.g., site plan review, special use permit, building permit).

The Office may elect to not apply, in whole or in part, any substantive local law or ordinance which would otherwise be applicable if it makes a finding that it is unreasonably burdensome in view of the Climate Leadership and Community Protection Act (CLCPA) targets and the environmental benefits of the proposed Facility. Although it is the Applicant's intent and desire to comply with all substantive local laws and ordinances, there are some substantive provisions of the local zoning

ordinances that the Applicant has demonstrated are simply unworkable for the Facility and are unreasonably burdensome under the statute and regulations, either because they preclude construction of the Facility entirely, thereby minimizing the Facility's environmental benefits, or, if applied to the Facility, would cause a more significant impact on the community or the environment than if the requirement were not applied.

As noted above, the Applicant has generally designed the Facility to comply with local laws and has made design changes to the proposed Facility to bring it into compliance with the substantive provisions of the Towns' local laws. The Facility has been designed within the leased land available to adequately apply the §94-c setback requirements (Figure 24-3), with siting of Facility components in a manner that maximizes previously disturbed lands and useable open space, with a focus on minimizing environmental impacts to wetlands and stream resources.

For the provisions discussed below the Applicant determined that compliance with these provisions would be impracticable and could result in significant costs for no actual benefit to the community and potentially jeopardize the anticipated host community benefit, appear to conflict with the Town's Vision Map and Zoning Law, or that are considered unreasonably burdensome in view of the New York State's CLCPA.

For each local substantive requirement identified by the Applicant, a statement of justification is provided. The statements of justification demonstrate the degree of burden caused by the requirement, why the burden should not reasonably be borne by the Applicant, that the request cannot reasonably be obviated by design changes to the Facility, that the request is the minimum necessary, and that the adverse impacts of granting the request are mitigated to the maximum extent practicable consistent with applicable requirements set forth in the Office's regulations.

For requests grounded in the existing technology, the Applicant shows that there are technological limitations (including governmentally imposed technological limitations) related to necessary Facility component bulk, height, process or materials that make compliance by the Applicant technically impossible, impractical or otherwise unreasonable. For requests grounded in factors of costs or economics (likely involving economic modeling), that Applicant shows that the costs to consumers associated with applying the identified local substantive requirements would outweigh the benefits of applying such provisions. For requests grounded in the needs of consumers, the Applicant shows that the needs of consumers for the Facility outweigh the impacts on the community that would result from refusal to apply the identified local substantive requirements.

Exhibits 6, 17 and 18 of the Application are incorporated by reference and provide an extensive overview of the Facility's environmental benefits, consistency with state energy policy, and contribution toward the CLCPA mandates; those discussions are incorporated by reference here to support waiver of the below provisions.

Overall, the Applicant submits that the below provisions are unreasonably burdensome in view of the CLCPA targets and environmental benefits of the proposed Facility—some provisions would threaten the feasibility of the Facility, while others impose additional costs which are unnecessary and out of step with State standards. By contrast, the burdens imposed on the community if a waiver were granted for these provisions are minor to nonexistent, as described more fully below. For these reasons, ORES should grant the waivers requested herein.

The Applicant seeks waiver of the following eight (8) sections of the Town of Somerset code. Each numbered request corresponds to the waiver request below.

§ 205-110 - Permitting Requirements for Tier 3 Solar System

1. § 205-110(A): Waterfront Development
2. § 205-110(A)(1): Zoning District Restrictions
3. §205-110(D)(3)(a): Decommissioning Security

§ 205-112 – Special Use Permit Standards

4. §205-112 (A)(2): Setbacks
5. § 205-112(A)(8): Hazardous Materials

§ 205-113 – Permitting Requirements for Tier 4 Solar Energy System

6. §205-113(A): Permitting Requirements for Tier 4 Solar Energy Systems
7. § 205-113(D)(1): Agricultural Lands
8. § 205-113(D)(2): Waterfront Protection

Note that on July 18, 2023, the Applicant requested the Town’s interpretation of its local laws in an attempt to resolve ambiguities. As of the date of this response, the Applicant has not received a response from the Town. Accordingly, the Applicant maintains its requests for waiver.

Also note that under the Somerset Code provides that Tier 4 systems are subject to the same requirements as Tier 3 systems unless the Tier 4 requirement differs from or is more stringent than the Tier 3 requirement. Somerset Code § 205-113(D) states “...Tier 4 systems are very large systems that have a potential to significantly impact on the Town of Somerset, its citizens, the character, and the economy of the community. Therefore, the Tier 4 systems shall require the following additional (in addition to those in the Tier 3 level) submittals and requirements, ***or include revisions to Tier 3 requirements....***” Based on the italicized language, the Applicant is not seeking waiver of Tier 3 requirements with which it cannot comply if there is a Tier 4 requirement imposing the same, but more stringent standards. For example, with respect to Tier 3 Solar Systems, the Somerset Code § 205-112(A)(6)(1) states “[a]ny Tier 3 solar energy system shall not be permitted on any property, lot, parcel that contains 50% or more land classified as prime farmland soils or farmland soils of statewide importance.” Compare § 205-113(D)(1) regarding Tier 4 Solar Systems which states, “[a]ny Tier 4 solar energy system shall not be permitted on any agricultural property, lot or parcel that contains 25% or more land classified as prime farmland or farmland of statewide importance.” Because the Tier 4 requirements is more stringent than the Tier 3 requirement, the Applicant is seeking waiver of only the Tier 4 requirement.

Town of Somerset Ordinances

1. § 205-110(A): *Waterfront Development*⁴

“Tier 3 solar energy systems are primarily intended to collect energy for off-site distribution, consumption, and energy markets and by the Town’s definition are large solar energy projects that can have a significant impact on the Town. Tier 3 Solar Energy Systems shall not be installed in environmentally sensitive areas, such as flood plains, wetlands and watershed protection areas as designated by the Town, County or other Agency, ***waterfront areas*** of the Town and wood lots or in areas of important soils and tourism related facilities. Specifically, Tier 3 systems are not allowed in Waterfront Protection, Agriculture/Agro-tourism and

⁴ The Somerset Facility is a Tier 4 solar energy system as defined in the Somerset Zoning Code. Pursuant to Zoning Code § 205-113, all Tier 4 Solar Energy Systems are also subject to Tier 3 requirements.

Environmentally Sensitive areas of the Town as denoted on the Vision Map of the Town of Somerset Comprehensive Plan (on file at the Town).” [Emphasis supplied]

The Facility cannot be designed to comply with this requirement insofar as it limits the location of solar energy systems to outside of “waterfront areas.” The Applicant seeks limited relief from this restriction. The term “waterfront areas” is not defined. Pursuant to the Town’s 2022 Solar Law, the Facility is a permitted use in the PUD District which is entirely on the waterfront.⁵ As discussed below, these restrictions in the provision are unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the proposed Facility and could be interpreted to effectively preclude solar development within the undefined waterfront area of the Town.

As noted above, on January 21, 2022, the Applicant submitted a letter to the Town identifying substantive provisions of the Town’s Solar Energy Systems Law (Solar Law), which was in draft form and not formally adopted at that time, as well as the Town’s proposed revisions to the Solar Law. On July 22, 2022 the Applicant sent a follow-up letter to the Town of Somerset to consult with them regarding the information required by §900-1.3 of the §94-c Regulations. In both letters, the Applicant identified the ambiguity in this provision and requested a written interpretation from the Town – no written interpretation was received. Recently, the Applicant also sent a letter to counsel for the Town of Somerset on July 18, 2023, requesting an interpretation of this provision. As of the date of the Applicant’s response to the Office’s first Notice of Incomplete Application, the Town has not responded to the Applicant’s request. Accordingly, the Applicant has no recourse to seek waiver of this provision.

The provision states, in relevant part, that “Tier 3 Solar Energy Systems shall not be installed in environmentally sensitive areas, such as flood plains, wetlands and watershed protection areas as designated by the Town, Niagara County or other Agency, **waterfront areas** of the Town and wood lots or in areas of important soils and tourism related facilities.” [Emphasis supplied]. The term “waterfront area,” identified in this provision, is not defined in the Solar Law. A vague, subjective standard of “waterfront area” is simply unworkable. Again, by definition, an unenforceable standard is unreasonably burdensome and the ORES should not apply this restriction for this reason alone.

⁵ Note that pursuant to the 2022 Solar Law, “[t]his article shall take precedence over any inconsistent provision of the Zoning Law of the Town of Somerset.” Accordingly, no further relief from the general zoning code with respect to permissible uses is required.

Regardless, the prohibition on solar development in “waterfront areas” contradicts § 205-113 (Tier 4 Solar Energy Systems) which restricts solar development to Industrial and General Industry Zoning Districts and PUD, which would include (not exclude) the Somerset Generating Site. In addition, prohibiting solar development in along the waterfront is contrary to the Town’s Vision Map (see Appendix 3-A, Map 9 [page 66] of Comprehensive Plan) which identifies the Somerset Generating Site, where the Facility is proposed to be located, as Industrial/Business, “Shovel Ready” Business Area, Multiple Use, and Mixed Use – Ag / Ag Support Business. Based on the Vision Map, almost all of the land designated as Industrial is in the waterfront area at and near the Somerset Generating Site.

If the definition of “waterfront area” is taken from other Town code provisions, a waiver is still required. “Waterfront Area,” is defined in Town Code §197-3, with respect to Waterfront Consistency, as “[t]he waterfront revitalization area delineated in the Town’s Local Waterfront Revitalization Program.” The Local Waterfront Revitalization Program, in turn, defines “revitalization area” as “all of the land area along the Lake Ontario shoreline.” Accordingly, this provision would effectively preclude any solar development along any land bordering Lake Ontario, such as the PUD District which includes the former Somerset Generating Site and parcels behind the Babcock house. Again, the Solar Law (§205-110[A][1]) contradicts this interpretation and provides that “[a]ll Tier 3 solar energy systems are permitted through the issuance of a special use permit within the Industrial, General Industry Zoning Districts, and Planned Unit Development Districts.” These areas represent the majority of the land proposed for the solar Facility and are on the waterfront of Lake Ontario. Accordingly, limited waiver of this restriction remains necessary.

Because the provision could be interpreted to effectively preclude development in the waterfront area, it is unreasonably burdensome. This provision limits solar development to PUD and Industrial Districts. The PUD District is on the waterfront and the Industrial District is too small and otherwise unsuitable for solar development due to a predominance of wetlands.

As shown in Figure 3-8, the majority of the Industrial District extends north to south and essentially encompasses the parcel of land containing the railroad tracks formerly used to deliver coal to the Somerset Coal Generating plant. Figure 14-1, Maps 1, 8, 9, 12 and 13, show the predominance of wetlands on each side of the railroad tracks on this parcel. According to the Wetland Delineation Report (Appendix 14-A), wetland WA-7 was a 28.61-acre palustrine forested wetland located on the west side of the north-south railroad located centrally in the Project Area. The wetland was an

extension of an NWI-mapped wetland located at the southern end of the delineated feature. The wetland connected to wetland WB-19 through culverts running through the railroad track and potentially to wetland W-13 to the west. The source of wetland hydrology was primarily surface runoff. Dominant vegetation included pussy willow, eastern cottonwood, box elder, timothy grass (*Phleum pratense*), and reed canary grass. Hydric soil conditions met the requirements of a depleted matrix starting at 0 inches and continued for 20 inches. This wetland was classified as USACE-jurisdictional due to having a hydrological connection to a WOTUS (Fish Creek and an unnamed tributary) and was classified as State -jurisdictional as it was over 12.4 acres in size. Wetland WB-19 was a 52.79-acre palustrine forested wetland located on the opposite side of the north-south railroad as Wetland WA-7. The wetland was an extension of an NWI-mapped wetland located at the southern end of the delineated feature. The wetland also extended offsite to the west, potentially connecting to Wetland WB-18. The source of wetland hydrology was primarily surface runoff. Dominant vegetation included black willow (*Salix nigra*), eastern cottonwood, silky dogwood, and reed canary grass. Hydric soil conditions met the requirements of a depleted matrix starting at 0 inches and continued for 20 inches. This wetland was classified as potentially USACE-jurisdictional due to having a hydrological connection to a WOTUS. This wetland was classified as State -jurisdictional as it was over 12.4 acres in size. Accordingly, it was determined that this parcel of land was not suitable for solar development.

A small portion of the Industrial District is also located to the west of the Babcock House and outside the Facility Area. This portion of the Industrial District is agricultural land and not large enough to accommodate Facility components. Moreover, this land is not under the control of Somerset Operating Company or Terroir and removed from the existing coal generating plant. Use of this land would spread the footprint of the Facility. As the Applicant has stated, their intent is to only utilize the parcels under ownership of these two landowners. To utilize this small portion of the Industrial District, the Applicant would need to approach non-participating owners of this land and negotiate appropriate agreements, which is not guaranteed.

Importantly, solar is not a permissible use in Agricultural District, which basically represents the remainder of the Town. Since solar cannot be developed in waterfront areas or the Agricultural District, this provision effectively precludes large-scale solar development within the Town.

Although not controlling, an Order issued by the New York State Board on Electric Generation Siting and the Environment is instructive. According to the Siting Board's recent Order in the *Hecate Greene* (Case 17-F-0619) proceeding, "[t]he Siting Board must balance the interests of the local community and the interests of the State's renewable energy goals and the benefits that

will accrue to ratepayers.” In *Hecate Greene*, The Town of Coxsackie’s Solar Energy Collection Systems law (Solar Law) limits utility-scale solar generation facilities to the commercial and industrial districts. The Applicant requested waiver of a local law because the Rural Residential Zoning District, in which the Facility would be located, only allowed for agricultural uses, low-density residential development, and limited rural commercial and institutional uses. In waiving the local zoning restrictions, the Siting Board stated, “we must... consider the positive contributions the renewable Facility will have on the State, how it will help achieve the goals of the Legislature in establishing renewable energy thresholds for the purpose of reducing greenhouse gas emissions in an effort to combat climate change and its adverse impacts. Achieving these renewable energy goals will benefit all ratepayers.”

The Siting Board reasoned that “to apply the local zoning law would eliminate the Facility’s construction.” Although the Facility did not conform to the zoning law, the Siting Board, after thoroughly reviewing the record, found that “the Facility will minimize environmental impacts to the maximum extent practicable” and that “permanent impacts to agricultural lands are limited and such lands may be returned to agricultural use at the end of the Facility’s useful life.” The Siting Board further took into consideration the Applicant’s efforts to work with the Municipalities and to address and mitigate the visual concerns of the Municipalities.

Although not explicitly stating such, the Office has relied on similar arguments granting waiver of such restrictive provisions (see, e.g., Matter # 21-02104: Bear Ridge Solar, LLC; Exhibit 24 [DMM 36]; Draft Permit Section 4.a.1 [DMM 47]).

The request is also the minimum necessary for Facility construction. Solar is a permissible use in the PUD District which is in the “waterfront area.” The Applicant is only asking ORES to waive this provision to the extent necessary to resolve any ambiguity and allow this provision to be read consistently with its other parts.

The degree of burden caused by the requirement is substantial. Because it effectively precludes solar development within the Town, the burden is essentially abandonment of the Facility. This burden (*i.e.*, abandonment of the Facility) should not reasonably be borne by the Applicant, the Applicant has devoted significant time and resources to develop a facility that minimizes potential impacts and maximizes the use of previously industrial land on which the Somerset Generating Site was sited.

Here, the needs of consumers outweigh the impacts on the community that would result from refusal to apply the identified local substantive requirements. A waiver of this provision outweighs

the impacts on the community because the majority of the Facility is being sited on the site of a former coal plant, where a data center has been constructed, and utilizes, to the maximum extent practicable, land within the Industrial and PUD zoning districts, consistent with this provision. If a waiver is not granted the Project will likely not proceed as it is situated in the waterfront area which would frustrate the State's renewable goals to the detriment of its residents.

Moreover, . State policy favors utilization of repurposed sites for renewable development. ORES's own regulations provide for expedited treatment of projects shown to be on repurposed sites, including existing or abandoned commercial or industrial use property, brownfields, landfills, dormant electric generating or other previously disturbed locations.

Because a restrictive reading of this provision would result in the Facility not being constructed, the request cannot reasonably be obviated by design changes to the Facility. As discussed above, land available to the Applicant has been utilized to maximum extent practicable. Moreover, the majority of the Town of Somerset outside the "waterfront area" is zoned Agricultural and does not permit siting of large-scale solar.

"Waterfront Protection Area" Restriction

"Tier 3 solar energy systems are primarily intended to collect energy for off-site distribution, consumption, and energy markets and by the Town's definition are large solar energy projects that can have a significant impact on the Town. Tier 3 Solar Energy Systems shall not be installed in environmentally sensitive areas, such as flood plains, wetlands and watershed protection areas as designated by the Town, County or other Agency, waterfront areas of the Town and wood lots or in areas of important soils and tourism related facilities. Specifically, Tier 3 systems are not allowed in ***Waterfront Protection***, Agriculture/Agro-tourism and Environmentally Sensitive areas of the Town as denoted on the Vision Map of the Town of Somerset Comprehensive Plan (on file at the Town)." [Emphasis supplied]

The provision further states that "... Tier 3 systems are not allowed in ***Waterfront Protection***, Agriculture / Agro-tourism and Environmentally Sensitive areas of the Town as denoted on the Vision Map of the Town of Somerset Comprehensive Plan (on file at the Town)." As shown on Figure 24-4, which overlays the Facility on the Town's Vision Map, the western edge of the Waterfront Protection Area slightly overlaps the Multiple Use Site Expansion Area in the northeast portion of the Facility Site (see Figure 24-4 – Town of Somerset Comprehensive Plan Vision Map). A small amount of Facility components is located in the Multiple Use Site Expansion Area ("MUSEA Overlap Area") (See Figure 24-4).

As noted above, on January 21, 2022, the Applicant submitted a letter to the Town identifying substantive provisions of the Town's Solar Energy Systems Law (Solar Law), which was in draft form and not formally adopted at that time, as well as the Town's proposed revisions to the Solar Law. On July 22, 2022 the Applicant sent a follow-up letter to the Town of Somerset to consult with them regarding the information required by §900-1.3 of the §94-c Regulations. In both letters, the Applicant identified the ambiguity in this provision and requested a written interpretation from the Town – no written interpretation was received. Recently, the Applicant also sent a letter to counsel for the Town of Somerset on July 18, 2023, requesting an interpretation of this provision. As of the date of the Applicant's response to the Office's first Notice of Incomplete Application, the Town has not responded to the Applicant's request. Accordingly, the Applicant has no recourse to seek waiver of this provision.

The Applicant requests that the Office elect not to apply this provision only to the extent that it does not allow solar systems in this small portion of the Multiple Use Site Expansion Area (MUSEA Overlap Area). The "Waterfront Protection" area restriction creates an ambiguity. As noted above, solar is a permissible use within the PUD District. The Multiple Use Site Expansion Area is within the PUD District. Accordingly, the provision both states that solar is permissible in this location and that it is not. The Applicant requests that the Office elect not to apply the provision insofar as it does not allow solar placement in that part of the Waterfront Protection Area that overlaps the PUD District – an area constituting only approximately 18 acres. Thus, the Applicant's waiver is the minimum necessary to allow Facility construction.

Through an iterative process, the Applicant has designed the Facility to adhere to local zoning and mitigate and/or minimize impacts to the maximum extent practicable. As part of this process, the Applicant has utilized all available areas within the former coal plant and also within the PUD District.

As discussed in greater detail above with respect to "waterfront area" prohibition in this same provision, the Industrial District is not suitable for development. As shown in Figure 3-8, the majority of the Industrial District extends north to south and essentially encompasses the parcel of land containing the railroad tracks formerly used to deliver coal to the Somerset Coal Generating plant. The Wetland Delineation Report (Figure 14-1, Maps 1, 8, 9, 12 and 13) demonstrates the predominance of wetlands on each side of the railroad tracks on this parcel. Accordingly, it was determined that this parcel of land was not suitable for solar development. As also discussed above, the small portion of the Industrial District to the west of the Facility Site is also unsuitable and not available for solar development.

Were the Applicant precluded from placing Facility components in the MUSEA Overlap Area, it would be required to locate Facility components in the Town's Agricultural District. In this case, potential impacts including visual, wetland, noise, displacement of agricultural uses, could increase whereas placement in the PUD District has already been evaluated and approved by the Town through zoning. None of these impacts would occur if Facility components were permitted in the MUSEA Overlap Area.

The degree of burden caused by the requirement, is that the Applicant would be required to move Facility components into the Agricultural District. Although the Applicant has additional land under control in the Agricultural District just south of the PUD District and New York State (NYS) Route 18/Lake Road (Figure 15-1), this land has already been evaluated and determined to be not suitable for siting Facility components. Somerset Operating Company, LLC has ownership of majority of Parcel 8.00-1-1.11, and as part of early stage planning surveys and data collection, the Applicant determined this parcel was not suitable for development due to the large expanse of delineated wetlands that comprise a majority of parcel (see Figure 14-1 for wetland delineation data and Figure 3-7 Maps 10, 14, and 18 for the parcel details). Therefore, the Applicant would be required to procure additional land from other landowners to maintain the current planned Facility capacity.

The burden should not reasonably be borne by the Applicant, the Applicant does not believe that the Town intended to keep solar components entirely outside of the Waterfront Protection area. This belief is based on the specific allowance for solar in the PUD. It would be unduly burdensome for the Applicant to acquire additional land outside the PUD, and within the Agricultural Zoning District, perform the necessary studies, and make the necessary changes to the Application, especially given the likelihood that this is just an oversight in the Town code.

The request cannot reasonably be obviated by design changes to the Facility. As noted above, the Applicant does not have any additional land under its control suitable for solar placement. Moreover, the Applicant has utilized all land within the PUD District and there is no available space for additional components considering that a data center is also proposed in the PUD District. As noted above, the small amount of land in the Town's Industrial District is not suitable for solar development because it is mostly covered by wetlands.

Here, the needs of consumers outweigh the impacts on the community that would result from refusal to apply the identified local substantive requirements. A waiver of this provision outweighs the impacts on the community because the majority of the Facility is being sited on the site of a former coal plant, where a data center has been constructed, and utilizes, to the maximum extent

practicable, land within the Industrial and PUD zoning districts, consistent with this provision. If a waiver is not granted, the Project, if it proceeds, would be substantially reduced in size lessening the Project's contribution to the State's renewable goals. Moreover, . State policy favors utilization of repurposed sites for renewable development. ORES's own regulations provide for expedited treatment of projects shown to be on repurposed sites, including existing or abandoned commercial or industrial use property, brownfields, landfills, dormant electric generating or other previously disturbed locations. As also discussed above, relocating Facility components would require acquisition of additional agricultural land from current non-participating landowners, as remaining land under control of Somerset Generating is not suitable for development due to existence of wetlands.

2. § 205-110(A)(1) - Zoning District Restrictions

“All Tier 3 solar energy systems are permitted through the issuance of a special use permit within the Industrial, General Industry Zoning Districts, and Planned Unit Development Districts (as restricted above), and subject to site plan application requirements set forth in this Section. In order to ensure that the benefits of the community solar resource are available to the entire community, the Town of Somerset requires the applicant to enter into a Solar Energy System Host Community Agreement with the Town of Somerset.”

The relevant part of the provision states “[a]ll Tier 3 solar energy systems are permitted through the issuance of a special use permit within the Industrial, General Industry Zoning Districts, and PUD Districts (as restricted above), and subject to site plan application requirements set forth in this Section.” The Facility is proposed to be located in the PUD and Agricultural Districts. The Applicant requests that the Office elect not to apply this part of the provision to the extent it does not permit placement of solar facility components in the Town of Somerset's Agricultural District.

The requirement that utility scale solar energy systems are only permissible in Industrial, General Industry and PUD Districts within the Town of Somerset is unreasonably burdensome in view of CLCPA targets and the environmental benefits of the proposed Facility. As noted above, the State of New York has stressed both the need to construct significant additional renewables, and the importance of siting those new generation assets in locations with reliable access to the existing electrical grid, avoiding the need to construct large new major transmission lines at significant additional cost to ratepayers. It is critical, then, that ORES does not allow municipalities to bar solar development on open, undeveloped lands adjacent to existing transmission infrastructure.

Solar development is not allowed in the Agricultural Zoning District which, outside the site of the Somerset Generating Site, comprises the majority of the Town of Somerset as illustrated in the

Town of Somerset Existing Zoning Map (Appendix 3-A, Map 6 (page 63) of Town Comprehensive Plan).

The Applicant examined land within the Industrial District and determined that it is not suitable for panel placement (see discussion in point 1, above, with respect to Somerset Code § 205-110(A)). Elevated railroad tracks, formerly used to transport coal to the former power plant, have effectively created wetlands throughout the parcels zoned Industrial. Accordingly, under this provision, the Applicant is limited to developing the Facility on land within the PUD District. However, the remaining amount of land within the PUD District is insufficient to develop the Facility. Through an iterative design process, the Applicant has utilized all land available within the PUD. Land within the PUD District is also being used for construction of a data center, is otherwise not suitable for solar development (e.g., wetlands) or was not offered to the Applicant by the current owner. All land currently proposed for development is owned by Somerset Operating Company or Terroir. The remaining land within the PUD District is unavailable due to landowner restrictions, and the existing data center.

Land within the PUD is also unavailable due to species avoidance and mitigation measures. Northern harrier consisted of 19 observations, ranging from one to three individuals per sighting, all of which were observed in the vicinity of the solid waste landfill (Solid Waste Disposal Area [SWDA] I; see Figure 3-11, Map 6 and 7). Project Site. The noted behavior of each sighting was documented and included multiple observations of harriers foraging over the SWDA I landfill. Accordingly, SWDA I was not considered for placement of Project components. Because SWDA I is now located outside the Project Site and will not be impacted by construction activities, with the exception of short-term noise impacts that will occur during active construction periods, no impacts are anticipated to occur.

In addition, consultation with ORES indicated that the Project is located within 0.25 mile of a known bald eagle nest. As sited, the Project is unlikely to impact this species or disturb the active nest, as the Facility has been designed to avoid a greater than 660-foot buffer around the nest (an approximate 1,200-foot distance between nest and limit of disturbance is provided), and forestland located between the Facility Site and the nest will be retained to provide a visual buffer throughout construction and operation. Further utilization of land within the PUD area could encroach upon the 660-foot buffer and create potential impacts.

Moreover, this result cannot be obviated by design changes. As noted above, the Applicant examined the parcels within the Industrial District for Facility placement and, as discussed above, determined this land was not suitable. In addition, the Applicant has utilized as much of the land

within the PUD District as is available and suitable for Facility components. Accordingly, it is necessary that land south of NYS Route 18/Lake Road within the Agricultural District be utilized in order to develop the Facility.

All land south of NYS Route 18/Lake Road on which the Facility will be located is currently owned by the landowners of the former coal generating plant. There is no other suitable land under similar control available to the Applicant.

To satisfy the Town's requirements and fit the Facility entirely within the PUD District, the Facility would need to be reduced to approximately 100 megawatt (MW).

The Applicant's request to allow siting of the Facility in Agricultural District is the only option to construct the Facility and the minimum necessary capacity. The Facility has been designed to minimize environmental impacts to the maximum extent practicable and there are no permanent impacts to agricultural lands such lands may be returned to agricultural use at the end of the Facility's useful life. See Exhibit 2 (a)(1); Exhibit 4(c); Exhibit 9 (a)(1); Exhibit 11(c), 11(f); Exhibit 12(d); Exhibit 14(e), 14(f); Exhibit 15(a)(9). In addition, as discussed in Exhibit 8, the Applicant requested that the Town of Somerset provide input on any Visual Impact Analysis prepared in order to address and mitigate visual concerns. For these reasons, the Office should elect not to apply the Town of Somerset's zoning requirements.

The degree of burden caused by the requirement is that the Applicant would be required to limit solar development to available and suitable land within the PUD District. If this were the case, the size of the Facility would, as noted above, be decreased by 25 MW. A decrease of even this amount of MW can be fatal to a project with total capacity in the 100 MW range, such as Somerset.

The burden should not reasonably be borne by the Applicant. Limiting the Facility to the PUD District would, as noted above, substantially reduce the size of the Facility and threaten the Facility's economic viability. The Applicant has spent a substantial amount of time and money to develop the Facility utilizing, to the maximum extent practicable, a brownfield site.

The request cannot reasonably be obviated by design changes to the Facility. As discussed above, there is no additional land available in the PUD District suitable or available for placement of solar components. To maintain the planned capacity, it is necessary that parcels within the Agricultural District be utilized.

Here, the needs of consumers outweigh the impacts on the community that would result from refusal to apply the identified local substantive requirements. A waiver of this provision outweighs the impacts on the community because the majority of the Facility is being sited on the site of a

former coal plant, where a data center has been constructed, and utilizes, to the maximum extent practicable, land within the Industrial and PUD zoning districts, consistent with this provision. If a waiver is not granted, the Project, if it proceeds, would be substantially reduced in size lessening the Project's contribution to the State's renewable goals.

3. §205-110(D)(3)(a): Decommissioning

"The deposit, executions, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town Attorney and/or engineer and approved by the Town Board, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be 125% of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of 2% annually for the life of the Solar Energy System. The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the Solar Energy System. This security amount shall be reviewed periodically and updated/renewed as necessary (determined at the time of the first security agreement). This "security" shall be in place prior to the start of construction."

The requirement to file a decommissioning plan is procedural and supplanted by the §94-c process. A decommissioning and restoration plan has been prepared for the Facility and is included Appendix 23-A. In addition, to the extent that this provision's requirement that security be posted in an amount equal to 125 percent (%) of the decommissioning costs (with a 2% escalator) is considered substantive; the Applicant respectfully requests waiver as this requirement is unreasonably burdensome in light of CLCPA targets. ORES' regulations require that the Applicant post security in an amount equal to 115% of decommissioning costs, an amount sufficient to guarantee removal of the system and site restoration. Amounts greater than this is unnecessary impacts project economics and including amounts anticipated to benefit local communities through host community agreements. Exhibit 23 contains a description of the security to be posted by the Applicant for decommissioning of the Facility.

Moreover, this requirement does not allow for salvage value. Components of solar facilities have resale value and may be sold in the wholesale market. Salvage materials involved in solar projects (steel, copper, silicon), have historically trended upward and these materials have been reused, reclaimed, or re-purposed for years. There is no evidence to suggest that these materials will not be salvageable at the time of decommissioning, and accounting for scrap value of materials is a standard decommissioning practice across the country. These materials are relatively easy to decommission, meaning the cost to decommission the materials and obtain value is not an impediment to realizing their value.

Here, the Gross Decommissioning Costs are [REDACTED] [REDACTED] [REDACTED] [REDACTED]. The net decommissioning cost for the Facility is [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] accounting for salvage) and, therefore the contingency is [REDACTED]. Thus, the Applicant will be required to obtain a letter of credit or similar financial security mechanism totaling over [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] and pay the costs of maintaining that security over the life of the Facility—this is already a significant expense.

Utilizing the Town of Somerset’s provision, the amount of decommissioning security increases substantially from [REDACTED] [REDACTED]. Moreover, the Applicant is required by the regulations (19 NYCRR §900-10.2(b)) to update the letters of credit every fifth year specifying changes (due to inflation or other cost increases) to the structure of the letters of credit (or other financial assurance approved by the ORES). The Somerset law would require that this amount be increased by 2% annually to account for inflation—even if actual costs decrease over the Facility’s lifespan. This added cost is substantial, and it is wholly unnecessary for a solar project. Over the 35-year Facility life, escalating the decommissioning security 2% results in approximately [REDACTED] [REDACTED] annually and over an additional [REDACTED] [REDACTED] over the 35-year life of the Facility.

Unlike a wind facility which must be removed using specialized equipment, such as cranes, disassembly and removal of PV modules is fairly straightforward. Moreover, the Applicant’s decommissioning estimate is conservative, and includes all overhead, contractor margin, expenses, fees, transportation, equipment, and labor to restore the Facility to the most practical extent back to predevelopment conditions, with a 15% contingency to cover unforeseen expenses. Thus, there is no basis for a higher contingency percentage, which will only serve to add unreasonable and unnecessary cost to the Facility over its lifespan.

ORES has determined that “a 15% contingency is reasonable based on careful consideration of the best practices for siting renewable energy projects.” There is no basis to require more for this Facility. Moreover, the Applicant will already be required to periodically review decommissioning costs and adjust the financial security to reflect inflation and cost increases—

thus, the concept of inflation adjustment is already built into the Applicant's required review process, and the additional 2% annual inflation requirement is redundant and unnecessary.

Overall, the costs of applying unnecessarily and unreasonably high decommissioning contingency requirements such as this one will translate into higher energy costs for consumers, as they will drive up the costs of building and operating solar facilities over their lifetimes. Given that ORES has already determined a lower contingency is appropriate, the benefits of applying this provision are negligible. This is not the type of requirement which could be accommodated by a design change to the Facility, nor is there a particular adverse effect of waiving this requirement on the community. The Applicant will already be required to provide over [REDACTED] in decommissioning financial security to protect the Towns in the event that the Facility owner does not conduct decommissioning and site restoration on its own—a contingency which is itself unlikely. There is no basis to impose additional financial burdens on the Facility by requiring more financial security which ORES has already adjudged to be unnecessary.

In short, the granular nature of the §94-c decommissioning cost estimate requirements ensures a fair estimate of the decommissioning cost, and therefore the 15% contingency required in §900-2.24 will be used. Utilizing 125% would result in undue economic burden for the Facility in decommissioning surety carrying cost during the Facility's operations. The Applicant's request is the minimum amount necessary as the Applicant is not requesting complete waiver of this provision, but rather only waiver of the significant additional amounts of security with an annual escalator.

Lastly, the request is also the minimum amount necessary. The waiver request is limited to the requirements for 125% of estimated decommissioning costs and the 2% annual escalator and, as explained above, these requirements are unnecessary and unreasonably high. The Applicant will comply with the provision in all other respects. The Applicant will post security in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal.

The degree of burden caused by the requirement is substantial. As discussed above, adhering to the Town's decommissioning requirements would require the Applicant to expend significant additional amounts of security. Significant and unnecessary increases in Facility costs can threaten a project's economic viability. The decommissioning costs proposed by the Applicant are sufficient to provide for removal of Facility components and are consistent with ORES

requirements. For these reasons, the burden should also not reasonably be borne by the Applicant.

The request cannot reasonably be obviated by design changes to the Facility. Design changes will not alter the fact that the Town's decommissioning requirements will impose a significant additional economic burden.

Here, the needs of consumers outweigh the impacts on the community that would result from refusal to apply the identified local substantive requirements. A waiver of this provision outweighs the impacts on the community because the Applicant will file, as part of the 94-c Application, a Decommissioning Plan that will provide adequate security and procedures for removal of the Project. Moreover, the costs to consumers associated with applying the identified local substantive requirements would outweigh the benefits of applying such provisions. As discussed above, utilizing the Town's decommissioning security requirements would impose substantial additional costs on the Project. Given that sufficient security will be posted as part of the 94-c process, additional significant additional costs would only serve to raise energy process or threaten Project viability completely.

4. §205-112 (A)(2): Setbacks.

"Setbacks – All Tier 3 Solar Energy Systems shall be setback a minimum of 200 feet from the fence surrounding the solar panels and equipment to all non-participating property lines and to the edge of any road ROW. This setback shall be a minimum of 50 feet from a participating property line. Additionally, the setback from the fence line shall be a minimum of 400 feet from a dwelling unit on an adjoining non-participating property. The setback to any off-site participating dwelling unit shall be 100 feet."

The Facility cannot be designed to comply with this requirement. Based on the Applicant's experience, the proposed 200-foot property line setbacks to non-participating properties and to the edge of any road right-of-way (ROW) and 400-foot setbacks from dwelling units on adjoining non-participating properties are in excess of similar state and local standards, as well as the Town's zoning requirements for other technology and uses. In addition, these setbacks are in excess of what may be required or considered reasonable to minimize potential environmental or other impacts associated with solar, in particular at the former Somerset Generating Site.

With a maximum height of 7.6–11.1 feet for solar panels (note: maximum 7.6 feet for ballasted solar panels; see Appendix 5-A, Sheet PV-E.05.21 for detail of ballasted solar panels), setbacks greater than 20–40 times the equipment height far outweigh the potential impact from solar or any other Town zoning requirements for other technologies and could be read to have the sole

purpose of limiting potential development. A local zoning setback typically has the purpose of ensuring that a permitted land use is maintained an appropriate distance from neighboring permitted uses. In this case, vegetative screening will be placed at the property line and solar panels operate with minimal sound, no emissions, and no other potential risks that require a setback distance greater than any other permitted use in the Town. The effect of such a setback limits the amount of available land for panels, requiring the use of other locations in order to generate the same amount of renewable electricity. The Applicant will comply with setbacks established by ORES and other local zoning laws that have appropriately balanced the benefits associated with solar projects with minimizing impacts by suggesting 100-foot setbacks from non-participating property lines and 250 feet from non-participating occupied residences. ORES' standards are based on extensive research and local experience.

Setbacks for the Facility are shown on Figure 24-3. Relief from the Town's setback requirements is limited and sought for the following parcels:

Areas 1 and 2 (Parcel ID: 7.00-03-28)

- Fence is within 200 feet of property (interconnection gen-tie line extends onto property) Kintigh Substation, New York State Electric and Gas, non-participating property (7.00-3-26) (See Figure 24-3, Map 1)
- Fence is within 200 feet of property line of New York State Electric and Gas Transmission Line, a non-participating property (7.00-3-27.1) (See Figure 24-3, Map 2)
- Fence is within 200 feet of property line of non-participating property (7.00-3-19) (See Figure 24-3, Map 2)
- Fence is within 200 feet of property line of non-participating property (7.00-3-2.111) (See Figure 24-3, Maps 2)
- Fence within 200 feet of ROW (NYS Route 18/Lake Road) (See Figure 24-3, Maps 1 and 2)

Adhering to the Town's setback requirements would decrease the usable space on Parcel 7.00-03-28 by approximately 100 acres requiring removal of approximately 8.9 MW (direct current [DC]) of renewable energy generation potential.

Area 3 (Parcel ID: 8.00-01-1.12)

- Fence is within 200 feet of property line of non-participating property (8.00-1-18.2) (Figure 24-3, Map 3)
- Fence is within 400 feet of dwelling on non-participating property (8.00-1.21) (Figure 24-3, Map 3)
- Fence within 200 feet of ROW (County Route 65/Hosmer Road) (Figure 24-3, Map 3)
- Fence and panels are within 400 feet of non-participating residence (8.00-1-1.12) (Figure 24-3, Map 3)

Adhering to the Town's setback requirements would decrease the usable space on this parcel by approximately 25 acres requiring removal of approximately 2.8 MW (DC) of renewable energy generation potential.

Area 4 (Parcel ID: 8.00-01-1.2)

- Fence within 200 feet of property line of non-participating properties (8.00-1-18.2 and 8.00-1-36) (See Figure 24-3, Map 3)
- Fence is within 400 feet of dwelling of non-participating property (17.00-1-1) See Figure 24-3, Map 3)
- Fence within 200 feet of ROW (NYS Route 18/Lake Road) (See Figure 24-3, Map 3)

Adhering to the Town's setback requirements would decrease the usable space on this parcel by approximately 36 acres requiring removal of approximately 5.9 MW (DC) of renewable energy generation potential.

Area 5 (Parcel ID: 8.00-01-1.2)

- Fence within 200 feet of non-participating property line of non-participating property (8.00-1-36) (See Figure 24-3, Map 4)
- Fence within 400' of dwelling on non-participating properties (8.00-1-52, 8.00-1-31.112 and 8.00-1-31.22) (See Figure 24-3, Map 4)
- Fence is within 50 feet of property line of participating property (8.00-1-1.2) (See Figure 24-3, Map 4)
- Fence within 200 feet of ROW (NYS Route 18/Lake Road) (See Figure 24-3, Map 4)

Adhering to the Town's setback requirements would decrease the usable space on this parcel by approximately 17 acres requiring removal of approximately 4.2 MW (DC) of renewable energy generation potential.

Area 6 (Parcel ID: 8.00-01-1.38)

- Fence within 200 feet of property line on west side of non-participating property (8.00-1-31/22). (See Figure 24-3, Map 6)

Adhering to the Town's setback requirements would decrease the usable space on this parcel by approximately 26 acres requiring removal of approximately 2.1 MW (DC) of renewable energy generation potential.

Area 7 (8.00-01-1.2)

- Fence is within 200 feet of property line of non-participating property (owned by Town) (8.00-1-7.2) (See Figure 24-3, Map 5)
- Fence is within 200 feet of (non-road [e.g., right-of-way, parcel easement]) non-participating property (includes non-road, ROW) (2.00-1-1.111) (See Figure 24-3, Map 5)
- Fence within 200 feet of property line of non-participating properties (2.00-1-32.2, 2.00-1-32.12 and 2.00-1-32.11) (See Figure 24-3, Maps 5 and 7)

- Fence within 400 feet of non-participating property (2.00-1-32.2) (See Figure 24-3, Map 5)

Adhering to the Town's setback requirements would decrease the usable space on this parcel by approximately 11 acres requiring removal of approximately 6.8 MW (DC) of renewable energy generation potential.

Area 8 (8.00-1-1.11)

- Fence is within 200 feet of non-participating property (8.00-1-1./A) (See Figure 24-3, Map 7)
- Fence is within 50 feet of property line of participating property (8.00-1-1.11) (in a few areas) (See Figure 24-3, Map 7)
- MV line/LOD (outside fence) is within 200 feet of the ROW for NYS Route 18/Lake Road (See Figure 24-3, Map 7)

Adhering to the Town's setback requirements would decrease the usable space on this parcel by approximately 39 acres. Utilizing the Town's setback would not require removal of MW (DC) of renewable energy generation potential. However, for consistency across parcels, ORES setbacks were used. Moreover, the property lines at issue, where the fence will be located at less than the Town's setbacks, are for participating properties and within the coal plant site. These properties are under the control of the landowner Somerset Operating Company, LLC.

Accordingly, if the Facility were to comply with the local setbacks, land available for PV infrastructure placement would shrink to 1,016 acres available for Facility components compared to the 1,264 acres available for panels under the §94-c setback requirements, or a reduction of the size of the Facility by approximately 20%. Under these circumstances, Facility capacity would be reduced approximately 30 MW (assuming MWdc/acreage is 0.121).

To maintain the proposed 125 MW of capacity for the Facility, the Applicant would, based on the breakdown above by development area and parcel, be required to obtain approximately 254 additional acres of buildable land (i.e., minimal environmental, cultural, or visual resources present with enough area available to satisfy local setback requirements) within the Town's Agricultural District because, as discussed herein,, all suitable and available land within the PUD and Industrial Districts have been used. The parcels selected by the Applicant for the Facility have been thoughtfully selected to minimize impacts within the Town. See Exhibit 2 (a)(1); Exhibit 4(c); Exhibit 9 (a)(1); Exhibit 11(c), 11(f); Exhibit 12(d); Exhibit 14(e), 14(f); Exhibit 15(a)(9). The only design change available to compensate for loss of acreage using the Town's setbacks would be to further expand into the Agricultural District. . Assuming the Applicant could acquire a minimum

of 254 additional acres of agricultural land currently from non-participating landowners, this would expand the footprint of the Project and create significant additional impacts such as wetland, T&E, visual and noise. Moreover, such an outcome would be contrary to the Town's desire, as expressed in meetings, to keep the project north of Lake Road. Any expansion into agricultural lands would by necessity be south of Lake Road.

No design change could bring the Facility into compliance with these setbacks, since they are tied to property lines and since the provision imposes such a large setback distance relative to the USCs. The request is the minimum necessary because the Facility already complies with a 100-foot setback, at its closest point, and for several parcels will be set back between 110 and 200 feet from non-participants in other areas of the Facility Site.

Here, the needs of consumers outweigh the impacts on the community that would result from refusal to apply the identified local substantive requirements. A waiver of this provision outweighs the impacts on the community because the majority of the Facility is being sited on the site of a former coal plant, where a data center has been constructed, and utilizes, to the maximum extent practicable, land within the Industrial and PUD zoning districts, consistent with this provision. If a waiver is not granted, the Project, if it proceeds, would be substantially reduced in size, lessening the Project's contribution to the State's renewable development to the detriment of all State residents.

Moreover, there is minimal impact on the community. The Applicant will adhere to setbacks contained in ORES' regulations, setbacks which are set at sufficient distances to minimize any adverse impacts on adjoining landowners, participating and non-participating.

Note that State policy favors utilization of repurposed sites for renewable development. ORES's own regulations provide for expedited treatment of projects shown to be on repurposed sites, including existing or abandoned commercial or industrial use property, brownfields, landfills, dormant electric generating or other previously disturbed locations.

For all of these reasons, the Applicant cannot reasonably bear the burden of enforcement of this requirement.

5. § 205-112(A)(8): Hazardous Materials

"The project components shall not contain any hazardous materials that could contaminate soils or the air by their release (units shall not contain cadmium, lead or other hazardous substances such as PFAS substances used in coatings, etc.).

MSD sheets for all materials considered hazardous shall be provided to the Barker Fire Department, Code Enforcement Officer and Town Hall.”

Because this provision prohibits all “hazardous materials,” and this term is undefined in the Somerset Code, it is overly broad, and the Facility cannot be designed to comply with this requirement. As applied to the proposed Facility, it is unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the proposed Facility.

Indeed, the limitation on all “hazardous substances,” an undefined term, could essentially rule out panels and associated equipment from any manufacturer and effectively preclude solar development within the Town. The Applicant seeks limited waiver of this provision to the extent that it bans all “hazardous substances.”

Although not directly on point, the Siting Board addressed a similarly restrictive local law in the *Hecate Greene* (Case Number 17-F-0619) proceeding. The local law stated: “[n]o unreasonable glare or heat shall be produced that is perceptible beyond the boundaries of the lot on which such use is situated. The design, construction, operation and maintenance of any utility-scale solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads and public parks in excess of that which already exists.” According to the Siting Board, “[a]s we interpret the local law, any glare from the Facility, no matter how minor, would result in an apparent violation of the local provision. The same reasoning applies to the Town of Somerset’s provision. Any hazardous substances, no matter how minor, would result in violation of the law.

General measures to minimize impacts from construction and operation of the Facility include compliance with the applicable local, state, and/or federal regulations that will govern Facility construction and operation, as well as the commitments made by the Applicant throughout this §94-c Application process and in the Siting Permit Conditions approved by the ORES. The Facility has been designed in a manner to minimize potential impacts.

§94-c regulations require public input into the environmental review of proposed development projects so that potential adverse impacts can be identified prior to implementation and avoided, minimized or mitigated to the greatest extent practicable. Here, potential adverse impacts are identified, avoided, minimized and mitigated to the maximum extent practicable.

One of the advantages of producing electricity from solar is that it does not produce gaseous, liquid, or significant solid waste during operation. Solar energy facilities do not require the use or storage of combustible fuels.

The Applicant is committed to developing and operating the Facility in a safe and environmentally responsible manner. The Applicant will only procure solar panels from reputable manufacturers. The Applicant will request and examine analytical reports, produced by qualified environmental testing facilities, that identify and quantify solar panel components/materials to ensure that any component/material that could potentially be considered hazardous are non-detectable or minimized to such an extent that its presence does not reasonably pose a threat. All solar panels used by the Applicant pass the EPA's Toxic Characteristic Leaching Procedure (TCLP) test and are classified as non-hazardous and are not regulated as toxic materials.

In addition to the mitigation measures described/referenced above, an Environmental Compliance and Monitoring Plan (ECMP) will be implemented during Facility construction. The ECMP will be developed prior to construction and approved by the ORES prior to implementation as part of the Facility's compliance filings for the Siting Permit. The ECMP will identify specific measures to protect sensitive environmental resources, identify measures to limit long-term impacts to agricultural land, and outline steps to adhere to all relevant permit conditions. The AES Corporation, Inc. (AES) Construction Manager will be responsible for overseeing all aspects of Facility construction, including overseeing Engineering, Procurement and Construction (EPC) contracts and other Facility agreements, overseeing the EPC contractor implementation, ensuring compliance with Facility regulatory approvals, on-site construction representation for monitoring Facility Site work, and assisting with communication with local officials, citizen groups and landowners. The AES Construction Manager also will oversee overall Facility Site construction, including safety and environmental performance and schedule, cost and quality performance, project plans of the day, monthly management meetings, overall project direction, and EPC contractor guidance and quality control. Additionally the AES Construction Manager will provide oversight and compliance monitoring for all environmental commitments and permit requirements during construction as identified in the Siting Permit issued for the Facility and related to public health and safety, including ensuring twice-weekly inspections of construction work sites are performed, required consultations with the ORES or other NYS agencies as completed needed, and ensuring regular reporting and compliance audits are issued.

An independent, third-party Environmental Monitor, which also will serve as the Agricultural Monitor for the Facility, will be responsible for overseeing compliance with Siting Permit conditions and permit requirements. It is anticipated that these two roles can be performed by the same staff person, whom will be required to have the qualifications necessary to oversee threatened and endangered species presence and reporting obligations, stormwater requirements, and oversight of agricultural lands and associated commitments to preserving agricultural soils. The Environmental Monitor will have stop work authority over all aspects of Facility construction activities and will have a daily presence on the site at all times there are ongoing construction or

restoration activities. They will be responsible for providing daily and weekly Stormwater Pollution Prevention Plan reports as needed and are responsible that all contractors receive required environmental training.

Once construction is complete, the ECMP will be revised to eliminate construction-only obligations; the remaining obligations will be integrated into the Operation and Maintenance (O&M) Plan. In addition to environmental inspections and/or monitoring that may be required, standard inspections will examine solar panels for wear and tear and any issues. Details regarding the inspection protocol and schedule will be provided in the O&M Plan.

For the reasons discussed above, the request cannot reasonably be obviated by design changes to the Facility. Design changes will not cure any issues regarding unavailability of solar facility components satisfying the Town's vague requirements.

The request is the minimum necessary, and the adverse impacts of granting the request shall be mitigated to the maximum extent practicable. The Applicant will endeavor to use Facility components that do not have, or have the minimal extent practicable, any potential hazardous substances.

The degree of burden caused by the requirement is abandonment of the Facility if solar components cannot comply with the overly broad restrictions contained in this provision.

The burden should not reasonably be borne by the Applicant. The Applicant has expended substantial time and money to develop a Facility that minimizes impacts and utilizes a previously disturbed brownfield site. The Applicant will attempt to procure Facility components that minimizes any potential release of hazardous materials but cannot commit to compliance with this provision because of its overly broad and ambiguous requirements.

The request cannot reasonably be obviated by design changes to the Facility. Because the term "hazardous substances" is not defined, the Applicant cannot reasonably comply nor can it reasonably infer what the Town of Somerset considers "hazardous." If no solar components can comply with this provision, there are no possible design changes to bring the Facility in compliance.

With respect to PFAS, the Applicant will select Facility components that do not contain PFAS. Solar panels are made with PV cells of silicon semi-conductors that absorb sunlight and create electric current. About 95% of all PV cells are made from silicon, an element so common that it makes up 27.7% of the Earth's crust and is the second most abundant element after Oxygen. PFAS is *not* customarily used in solar panels because safer, effective alternatives have already

been developed and commercialized. Moreover, the Applicant is not aware of any studies that have shown the presence or leaching of PFAS from PV panels—either while they are in active use or at the end of their life (e.g., in a landfill).

There are three other parts of a solar panel that cause confusion about the presence of PFAS; self-cleaning coating, adhesives, and substrate.

A self-cleaning coating on the top of a solar panel helps reduce dust, pollen, and snow adhesion, extending both the power output and the lifetime of the panel. Multiple self-cleaning coating options are available on the market, many of which make use of non-hazardous silicon-based chemistry. Confusion comes from the fact that some other commercialized self-cleaning coating options do make use of PFAS-based chemicals, although even those do not degrade under normal use. AES will not use panels with self-cleaning coatings that contain PFAS.

PV panels are sealed from the elements to maximize power output and lifetime. While PFAS chemicals are found in certain adhesives, such as carpentry glues, they are not typically used in sealant adhesives for solar panels. Instead, solar adhesives are based on silicone polymers, which are well known for their lack of negative health impacts and remarkable stability.

PV modules are housed in a weather-resistant substrate that offers additional protection from the elements. Thin-film PV units use glass as the substrate, while crystalline silicon PV units use a polymer substrate, which has led to the rumors of potential PFAS use in solar panels. The most common polymer used in silicon PV units is Tedlar, a weather resistant polymer that is *not* a PFAS compound itself and makes no use of PFAS during its manufacturing process.

With respect to cadmium and lead, tests of the solar panels selected for the Project were not detected at the reporting limit. In other words, the amount of these substances within the solar panels too minimal to be detected.

In sum, AES is only seeking a waiver of this provision to the extent it contains the ambiguous term “hazardous substance,” a moving target with which AES cannot reasonably comply.

The needs of consumers outweigh the impacts on the community that would result from refusal to apply the identified local substantive requirements. A waiver of this provision outweighs the impacts on the community because denial of the waiver could result in Project termination because the Applicant cannot select any solar panel manufacturer without knowing whether the Town will consider one or more elements to be a hazardous substance. Accordingly, denial of the waiver stymie achievement of the State’s renewable goals to the detriment of all residents.

Regardless, as discussed above, the solar panels the Applicant will use do not contain any of the hazardous substances listed in the provision (i.e. lead, cadmium, PFAS). Solar panels are sealed and generally do not leach into their surroundings. In the unlikely event that such a problem occurred, detailed above is the Applicant's commitment of monitoring and remediating any potential impacts.

Note that the majority of the Facility is being sited on a repurposed site. State policy favors utilization of repurposed sites for renewable development. ORES's own regulations provide for expedited treatment of projects shown to be on repurposed sites, including existing or abandoned commercial or industrial use property, brownfields, landfills, dormant electric generating or other previously disturbed locations.

Tier 4 Solar Energy Systems Waivers

6. **§205-113(A) - Permitting Requirements for Tier 4 Solar Energy Systems**

A. "All Tier 4 solar energy systems are permitted through the issuance of a special use permit within the Industrial, General Industry, and Planned Unit Development Districts, and subject to site plan and special use permit requirements set forth in this Section and in addition to the Tier 3 requirements set forth above."

7. **§ 205-113(D)(1) - Agricultural Lands**

"Any Tier 4 Solar Energy System shall not be permitted on any property, lot or parcel that contains 25% or more land classified as Prime Farmland or Farmland of Statewide Importance."

The Facility cannot be designed to comply with the substantive requirements of this provision. The prohibition of any solar energy systems on any property, lot, parcel that contains 25% or more land classified as prime farmland or farmland of statewide importance soils is unreasonably burdensome in view of CLCPA targets and the environmental benefits of the proposed Facility.

The USDA Natural Resources Conservation Service (NRCS) has identified eight Land Capability Classifications (LCCs) for soil types based on soil characteristics and topography. The NRCS does not discern between current land use in its designation, and therefore forested areas may be considered prime farmland. The LCC classes of I and II generally comprise what may be referred to as prime farmland, while class III soils are generally considered farmland of statewide

Importance. Soils designated as prime farmland if drained generally meet prime farmland criteria except for depth to seasonal high-water table and are suitable for drainage improvement.

The NYS Department of Agriculture and Markets (NYSAGM) administers the New York State Agricultural Land Classification System (LCS) which incorporates LCC information and additional scientific soil and crop data for rating soil types in each county, with Mineral Soil Groups 1–4 representing the most productive soils (i.e., prime farmland), and Mineral Soil Groups 5–10 being the least productive.

The NRCS and NYSAGM have designated the following acreages of agricultural soils within the Facility Site and the Town, summarized in Table 24-1.

Table 24-1. Soil Types and Percentages Within Facility Site and Town of Somerset

Agricultural Soil Classification	Facility Site (acres)	Percent (%) of Facility Site	Town of Somerset (acres)	Percent (%) of Town	Percent (%) of Facility Site Within Town
Natural Resources Conservation Service Land Capability Classifications Designations					
Prime Farmland	356	51%	8,764	37%	4%
Prime Farmland if Drained	293	42%	9,983	43%	3%
Farmland of Statewide Importance	13	2%	4,085	17%	0.3%
Not Prime Farmland	34	5%	640	3%	5%
Total	700	100%	23,472	100%	3%
New York State Department of Agriculture and Markets Designations					
Mineral Soil Group 1	11	2	-	-	-
Mineral Soil Group 2	100	14%	3,225	14%	3%
Mineral Soil Group 3	241	35%	4,030	17%	6%
Mineral Soil Group 4	186	27%	2,907	12%	6%
Total	538	78%	10,162	43%	5%

Figure 24-1 is a map showing the Facility Site and parcel boundaries layered upon prime farmland, prime farmland if drained, or farmland of statewide importance designations.

Utilizing the NRCS classifications, within the Facility Site approximately 662 acres (95%) of agricultural soils are classified as prime farmland (includes prime farmland, if drained) and farmland of statewide importance. Under NYS Agriculture Land Classification's Mineral Soil Groups (MSGs) 1–4, *i.e.*, prime farmland, approximately 538 acres of the Facility Site, or 77% is classified as prime farmland.

Within the PUD District, where large-scale solar is a permitted use, approximately 997 acres of the total 1,147 acres available are classified as NYS Agriculture Land Classification's MSGs 1–4. Accordingly, this provision creates a contradiction by, on the one hand permitting large-scale solar in the PUD District and prohibiting solar placement on MSGs 1-4 within the PUD.

Outside the PUD District, *i.e.*, south of NYS Route 18/Lake Road, Figure 24-1 shows that all parcels within the Facility Site have more than 50% of at least one of these three soil designations. Indeed, Table 24-1 and Figure 24-2 show that 97% of the Town of Somerset is comprised of these three soil designations (sum of prime farmland, prime farmland if drained, and farmland of statewide importance). Given the amounts of these soil types within the Town, prohibiting placement of Facility components on such parcels would effectively preclude solar development within the Town (outside of the Industrial and PUD District). The land within the Industrial District is not suitable for placement of solar facilities or is otherwise not available. Given the data center is partially constructed and operational (completion of construction and full operations anticipated in Quarter 2 of 2023) and the presence of coal ash disposal areas, there is approximately 1,062 acres available for solar development within the PUD District. Given that the land available within the Industrial and PUD Districts is not suitable or available for construction of large-scale solar, the Town's law effectively precludes such development.

Following is a breakdown, by parcel, of the percentage Prime Farmland soils or Farmland soils of Statewide importance. Additional information on prime farmland and farmland of statewide importance is included in Exhibit 15 section 15(b)(6) (see Table 15-9).

Table 24-2. Prime Farmland and Farmland of Statewide Importance for Project Parcels

Parcel ID (Acres)	Prime Farmland (Acres)	% of Parcel that is Prime Farmland	Farmland of Statewide Importance (Acres)	% of Parcel that is Farmland of Statewide Importance
7.00-3-28 (278.3 acres)	148.3	53.5%	11.4	4.1%
8.00-1-1.11 (621.5 acres)	362.6	58.5%	10.6	1.7%

Parcel ID (Acres)	Prime Farmland (Acres)	% of Parcel that is Prime Farmland	Farmland of Statewide Importance (Acres)	% of Parcel that is Farmland of Statewide Importance
8.00-1-1.12 (36.57 acres)	11.0	30.1%	4.3	11.7%
8.00-1-1.2 (815.0 acres)	406.7	49.9%	7.9	1.0%
8.00-1-38 (32.5 acres)	14.9	45.8%	0.0	0.0%

As Table 24-2 demonstrates, each of the five parcels contains greater than 25% prime farmland. Because the law states “Tier 4 Solar Energy System shall not be permitted on any property, lot or parcel that contains 25% or more land classified as Prime Farmland or Farmland of Statewide Importance,” waiver is necessary with respect to the restriction on Prime Farmland. No parcel contains greater than 25% Farmland of Statewide Importance. Accordingly, waiver of the requirement that no parcel contains greater than 25% Farmland of Statewide Importance is not necessary as the Project will comply.

Moreover, this provision is inconsistent with the ORES regulations and the State’s general policy as it relates to renewable energy development on agricultural lands. The Uniform Standards and Conditions (USCs) do not prohibit the siting of solar facility components on prime farmland - rather, they acknowledge that some siting will necessarily occur within USDA MSG 1 through 4, and thus require that construction activities adhere to the NYSAGM Guidelines for Solar Energy Projects Construction Mitigation for Agricultural Lands (dated 10/18/2019) to the maximum extent practicable, and that a third-party agricultural monitor be retained to oversee construction in such areas (19 NYCRR §900-6.4(s)(1)). In general, NYSAGM and other State agencies involved in Article 10 and §94-c permitting have required applicants to avoid and minimize impacts to agricultural resources, including prime farmland soils, but have never imposed a blanket prohibition on locating components on prime farmland soils. In fact, in its response to comments on the draft §94-c regulations, ORES stressed the need to balance potential impacts to agricultural resources with the State’s need for renewable energy facilities and the environmental benefits that they provide —those benefits extend to agriculture, which faces a number of threats due to climate change. ORES stressed that the two uses – farmland and renewable facilities – can coexist and still maintain economic viability, particularly when crop production and prices are affected by severe weather events or the global economy, which can reduce income for farmers and agricultural communities.”

Notably, this restriction contradicts other provisions of the Town Law. For example, as discussed above, utility scale solar facilities are a permitted use only in Industrial and Planned Development Districts. With this zoning restriction, there is essentially no need for a soil type restriction. Conversely, given the relatively small amount of acres in the PUD and Industrial Districts, further restrictions such as soil type would even further preclude solar development within the Town. Basically, if the ORES were to not apply the zoning restrictions, as discussed above, thereby allowing development in Agricultural districts, large-scale solar development would still be precluded in the Town.

Lastly, the request is the minimum necessary and the adverse impacts of granting the waiver have been minimized to the maximum extent practicable because the Applicant has designed the Facility to avoid and minimize impacts to prime farmland soils. Placement of solar facility components on land meeting the soil types identified in this provision is limited to a few parcels south of NYS Route 18/Lake Road land and under ownership by the former coal generating facility.

On a Town-wide scale, the quantity of prime farmland soils or farmland of statewide importance to be impacted is minimal and will not have a significant impact on the overall availability of prime farmland soils in the Town. As demonstrated in Exhibit 15, the Facility will not have a significant impact on agricultural resources within the Facility Site or the broader Study Area.

The degree of burden caused by the requirement would be a prohibition on construction of the Facility. This burden should not reasonably be borne by the Applicant. The Applicant has spent substantial time and money developing the Facility minimizing impacts and maximizing use of a previously disturbed coal plant site.

The request cannot reasonably be obviated by design changes to the Facility. Given the predominance of Prime Farmland and Farmland of Statewide Importance within the Town, the Facility cannot be redesigned to comply with this requirement.

Here, the needs of consumers outweigh the impacts on the community that would result from refusal to apply the identified local substantive requirements. A waiver of this provision outweighs the impacts on the community because the majority of the Facility is being sited on the site of a former coal plant, where a data center has been constructed, and utilizes, to the maximum extent practicable, land within the Industrial and PUD zoning districts, consistent with the 2022 Solar Law, and minimizes use of the Agricultural District.

If a waiver is not granted, the Project cannot proceed as all parcels have greater than 25% prime farmland thereby eliminating this Project's contribution to the State's renewable goals.

State policy favors utilization of repurposed sites for renewable development. ORES's own regulations provide for expedited treatment of projects shown to be on repurposed sites, including existing or abandoned commercial or industrial use property, brownfields, landfills, dormant electric generating or other previously disturbed locations.

8. § 205-113(D)(2) - Waterfront Development

“Tier 4 systems shall not be allowed in the waterfront protection, Agricultural / Agri-tourism, Land of statewide importance and Environmentally Sensitive areas of the Town as denoted on the Vision Map of the Town of Somerset Comprehensive Plan (on file with the Town Clerk). They also cannot be located within one-half mile of any other Tier 3 or Tier 4 system.”

At this time, the Facility cannot be designed to completely comply with this requirement. “Land of statewide importance” is not depicted on the Town's Vision Map (see Appendix 3-A, Map 9 (page 66) of Comprehensive Plan), nor could the Applicant find this term defined in the existing code or Solar Law. The Applicant seeks waiver of this provision only to the extent that it prohibits solar development in “Land of statewide importance.” A vague, subjective standard of “Land of statewide importance” is simply unworkable — an unenforceable standard is unreasonably burdensome.

According to the Town's Vision Map, the Facility is located in the Industrial/Business, Multiple Use, Mixed Use-Ag/Ag Support Business, and Shovel-Ready Business Areas. Given these designations, it is unlikely that any of these areas constitute “Land of statewide importance.” Accordingly, waiver of this provision is unlikely to frustrate the Town's vision.

In addition, in the Vision Map, the Waterfront Protection Area also slightly overlaps the Multiple Use Site Expansion Area. The Facility cannot be designed to comply with this requirement for the same reasons set forth above with respect to §205-110(a)(1) and Tier 3 systems.

The Facility will comply with the remainder of this provision. Accordingly, the requested waivers are the minimum amount necessary.

The degree of burden caused by the requirement, is that the Applicant would be required to move Facility components into the Agricultural District. Although the Applicant has additional land under control in the Agricultural District just south of the PUD District and NYS Route 18/Lake Road, this land has already been evaluated and determined to be not suitable for siting Facility

components. Therefore, the Applicant would be required to procure additional land from other landowners to maintain the current planned Facility capacity.

The burden should not reasonably be borne by the Applicant, the Applicant does not believe that the Town intended to keep solar components entirely outside of the waterfront area. This belief is based on the PUD District being located in the waterfront area and the specific allowance for solar in the PUD. It would be unduly burdensome for the Applicant to acquire additional land outside the PUD, perform the necessary studies, and make the necessary changes to the Application, especially given the likelihood that this is just an oversight in the Town code.

The request cannot reasonably be obviated by design changes to the Facility. As noted above, the Applicant does not have any additional land under its control suitable for solar placement. Moreover, the Applicant has utilized all land within the PUD District and there is no available space for additional components considering that a data center is also proposed in the PUD District.

Here, the needs of consumers outweigh the impacts on the community that would result from refusal to apply the identified local substantive requirements. A waiver of this provision outweighs the impacts on the community because the majority of the Facility is being sited on the site of a former coal plant (repurposed land), where a data center has been constructed, and utilizes, to the maximum extent practicable, land within the Industrial and PUD zoning districts, consistent with the 2022 Solar Law, and minimizes use of the Agricultural District. It is unlikely that any of the land being utilized, all under the ownership of Somerset Operating Company, constitutes Land of statewide importance. Thus, impacts on the community if the waiver is granted is also unlikely.

24(d) Summary Table of Applicable Local Substantive Requirements and Compliance Assessment

Table 24-3 below provides a list of the substantive requirements in the Town of Somerset Zoning Law and the 2022 Solar Law Amendment that may be applicable to the Facility and a description of how the Applicant plans to adhere to those requirements.

Table 24-3. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements.

LOCAL SUBSTANTIVE LAW	COMPLIANCE
Chapter 96 - Excavations	The Facility will be designed to comply with this requirement. Construction of the Project is excepted from compliance with this chapter pursuant to § 96-4(B) which exempts “the moving of stone, gravel, clay, sand, shale, subsoil or topsoil from one part of a premises to another part of a premises incident to the construction of a building or other improvement of land or incident to landscaping.”
Chapter 104: Flood Damage Prevention	The Facility will be designed to comply with these requirements.
§ 118 Infrastructure Preservation Law: “The provisions of this chapter shall apply to all activity conducted within the Town of Somerset where Town highways, roadways, or rights-of-way will be traveled on or traversed by any truck, vehicle, trailer, or equipment with a combined weight in excess of 14,000 pounds...”	The Facility will be designed to comply with this requirement. The Applicant consulted with the Town Highway Supervisor and confirmed no Road Use Agreement or permits would be needed, as none of the roads abutting the Facility or the construction haul routes are Town highways or roadways. (M. Flint personal communication, 2023) (Appendix 16-A). The Town of Somerset Code, with respect to Infrastructure Preservation, does not define “Town highways, roadways, or rights-of-way.” However, the Infrastructure Preservation Law defines “infrastructure” as “[t]he streets, rights-of-way, easements, waterlines, sewer lines, drainage systems, lighting and any other Town infrastructure under the control or maintenance of the Town. ” Because the Town Highway Supervisor advised that the Town does not maintain any proposed construction route, this provision does not apply. Note that the §94-c process supplants the local permitting process, however, the Applicant will work with the Town to obtain Road Use Agreements and/or road permits, if any are identified as being needed during the Application review .

LOCAL SUBSTANTIVE LAW	COMPLIANCE
§ 131-3(A), (C), (D) and (I): Noise	Town Code § 205-107 states that the 2022 Solar Law “shall take precedence over any inconsistent provision of the Zoning Law of the Town of Somerset.” Nevertheless, the Facility will be designed to comply with this requirement. The Town zoning code provides an exception for sounds caused by construction activity between the hours of 7:00 a.m. and 11:00 p.m.
§131-3(B): Noise - The use of any sound-emitting device inside or outside or a structure whereby the sound emitted from such device is audible on property being used for residential purposes at a point more than 100 feet from the real property boundary line of the property from which said sound emanates.	This section would otherwise be applicable. However, Town Code § 205-107 states that the 2022 Solar Law “shall take precedence over any inconsistent provision of the Zoning Law of the Town of Somerset.”
Chapter 191: Vehicles and Traffic: Vehicles over 10 tons prohibited on Town Highways.	The Facility will comply with this requirement. See above discussion regarding Infrastructure Preservation as to why Town Highways will not be used during construction.
§ 205-10: Preservation of natural features	The Facility will be designed to comply with this requirement.
§ 205-11(P)(1) – (4): Fences	The Facility will be designed to comply with this requirement to the extent not supplanted by the 2022 Solar Law.
§ 205-11(Y): Exterior Walls	The Facility will be designed to comply with this requirement.
2022 Solar Law (incorporated in Somerset Zoning Code, Article XXII)	
§ 205-106.1(D): Applicability – Conformance with NYS Uniform Fire Prevention and Building Code (“Building Code”), the NYS Energy Conservation Code (“Energy Code”), and the Town Code.	The Facility will be designed to comply with the Building and Energy Codes. The Applicant will comply with the Town Code except as discussed herein.

LOCAL SUBSTANTIVE LAW	COMPLIANCE
<p>§ 205-110(A): Location of Solar Energy Systems: Tier 3 solar energy systems are primarily intended to collect energy for off-site distribution, consumption, and energy markets and by the Town's definition are large solar energy projects that can have a significant impact on the Town. Tier 3 solar energy systems shall not be installed in environmentally sensitive areas, such as floodplains, wetlands and watershed protection areas as designated by the Town, county or other agency, waterfront areas of the Town and wood lots or in areas of important farm soils and tourism-related facilities. Specifically, Tier 3 systems are not allowed in the waterfront protection, agriculture/agri-tourism and environmentally sensitive areas of the Town as denoted on the Vision Map of the Town of Somerset Comprehensive Plan (on file at the Town).</p>	<p>The Facility cannot be designed to comply with the substantive requirements contained in this section.</p>
<p>§205-110.A.1 – Location of Solar Energy Systems: All Tier 3 solar energy systems are permitted through the issuance of a special use permit within the Industrial, General Industry Zoning Districts, and Planned Unit Development Districts (as restricted above), and subject to site plan application requirements set forth in this section. In order to ensure that the benefits of the community solar energy resource are available to the entire community, the Town of Somerset requires the applicant to enter into a solar energy system host community agreement with the Town of Somerset.</p>	<p>The Facility cannot be designed to comply with the substantive requirements contained in this section.</p>
<p>§ 205-110.C.2 - Drainage: Solar energy systems must comply with New York State stormwater regulations. Applicants must demonstrate that solar systems will not create adverse drainage, runoff or hydrology conditions that could impact adjoining and other non-participating properties. Applicants are required to submit drainage design plans to the Planning Board that may be forwarded to the Town Engineer for review.</p>	<p>The Facility will be designed to comply with this requirement.</p>

LOCAL SUBSTANTIVE LAW	COMPLIANCE
<p>§ 205-110.C.4 – Vehicular Paths: Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.</p>	<p>The Facility will be designed to comply with this requirement.</p>
<p>§ 205-110.C.5.a – Signage: No signage or graphic content shall be displayed on the solar energy systems except the manufacturer's name, equipment specification information, safety information, and twenty-four-hour emergency contact information. Said information shall be depicted within an area no more than eight square feet.</p>	<p>The Facility will be designed to comply with this requirement.</p>
<p>§ 205-110.C.5.b – Signage: As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.</p>	<p>The Facility will be designed to comply with this requirement.</p>
<p>§ 205-110.C.6 – Glare/Glint: All solar panels shall have antireflective coating(s) and proof of such submitted. All equipment and support structures should not produce glare or glint.</p>	<p>The Facility will be designed to comply with this requirement.</p>
<p>§ 205-110.C.7 – Lighting: Lighting of the solar energy systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast (dark sky compliant) from abutting properties.</p>	<p>The Facility will be designed to comply with this requirement.</p>

LOCAL SUBSTANTIVE LAW	COMPLIANCE
<p>§ 205-110.C.8 – Noise: The project shall be shown to not have adverse or unreasonable noise impacts on surrounding homes or other sensitive receptors. The one-hour average noise generated from the solar energy system's components and associated ancillary equipment shall not exceed a noise level, as measured at the outside wall of any non-participating residence or occupied community building, based on current (45dBA) or future recommendations from World Health Organization. Applicants may submit equipment and component manufacturers' noise ratings to demonstrate compliance. The applicant may be required to provide operating sound pressure level measurements from a reasonable number of sampled locations at the perimeter of the solar energy system to demonstrate compliance with this standard.</p>	<p>The Facility will be designed to comply with this requirement. However, the reference to the World Health Organization (WHO) is not appropriate in this context as the WHO does not provide guidelines for solar. In addition, the provision creates an unambiguous and potentially unenforceable standard if it relies on some future guidelines by reference. Accordingly, the Facility will comply with this requirement except with respect to recommendation from the WHO.</p>
<p>§ 205-110.C.9 – Tree Cutting: Removal of existing trees larger than six inches in diameter should be minimized to the extent possible. The standard being no more than 10% of the existing trees larger than six inches in diameter should be removed.</p>	<p>The Facility will be designed to comply with this requirement to the maximum extent practicable. AES interprets the 10% standard to be a guideline and not a requirement.</p>

LOCAL SUBSTANTIVE LAW	COMPLIANCE
<p>§ 205-110.D.3 – Decommissioning: Security: The deposit, executions, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town Attorney and/or engineer and approved by the Town Board, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be 125% of the cost of removal of the Tier 3 solar energy system and restoration of the property with an escalator of 2% annually for the life of the solar energy system. The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the solar energy system. This security amount shall be reviewed periodically and updated/renewed as necessary (determined at the time of the first security agreement). This "security" shall be in place prior to the start of construction.</p>	<p>To the extent that this provision's requirement that security be posted in an amount equal to 125% of the decommissioning costs (with a 2% escalator) is considered substantive, AES cannot comply. ORES' regulations require that AES post security in an amount equal to 115% of decommissioning costs, an amount sufficient to guarantee removal of the system and site restoration. Amounts greater than this will jeopardize Facility economics and amounts anticipated to benefit local communities through host community agreements. Exhibit 23 will contain a description of the security to be posted by AES for decommissioning of the Facility.</p>
<p>§ 205-110.F.k – Safety - Soil Removal: In the event of a fire, all contaminated soil must be removed and disposed of properly, in accordance with all applicable laws.</p>	<p>The Facility will be designed to comply with this requirement.</p>
<p>§ 205-112.A.1 – Lot Size: There are no lot size requirements; the project must be shown to meet all setback and other requirements of this article.</p>	<p>There are no substantive requirements regarding lot size. Compliance with setback and other requirements are discussed herein.</p>

LOCAL SUBSTANTIVE LAW	COMPLIANCE
<p>§ 205-112.A.2 – Setbacks: All Tier 3 solar energy systems shall be set back a minimum of 200 feet from the fence surrounding the solar panels and equipment to all non-participating property lines and to the edge of any road ROW. This setback shall be a minimum of 50 feet from a participating property line. Additionally, the setback from the fence line shall be a minimum of 400 feet from a dwelling unit on an adjoining non-participating property. The setback to any off-site participating dwelling unit shall be 100 feet.</p>	<p>The Facility cannot be designed to comply with this requirement. Based on our experience, the proposed 200-foot property line setbacks and 400-foot setbacks from residences are in excess of similar state and local standards, as well as Somerset zoning for other technology and uses. In addition, this setback is in excess of what may be required or considered reasonable to minimize potential environmental or other impacts associated with solar, in particular at the Somerset Generating Site. With a maximum height of 7.6–11.1 feet for solar equipment (panels) located outside the Facility Substation area, setbacks greater than 12-20 times the equipment height far outweigh the potential impact from solar or any other Somerset zoning requirements for other technologies and could be read to have the sole purpose of limiting potential development. A local zoning setback typically has the purpose of ensuring that a permitted land use is maintained an appropriate distance from neighboring permitted uses. In this case, vegetative screening will be placed at the property line and solar panels operate with minimal sound, no emissions, and no other potential risks that require a setback distance greater than any other permitted use in the Town. The effect of such a setback limits the amount of available land for panels, requiring the use of other locations in order to generate the same amount of renewable electricity. AES will comply with setbacks established by ORES and other local zoning laws that have appropriately balanced the benefits associated with solar projects with minimizing impacts by suggesting 100-foot setbacks from non-participating property lines and 250 feet from non-participating occupied residences (Figure 24-3). ORES’ standards are based on extensive research and local experience.</p>

LOCAL SUBSTANTIVE LAW	COMPLIANCE
<p>§ 205-112.A.3 – Height: The Tier 3 solar energy systems shall be less than or equal to 20 feet. The height of systems will be measured from the highest natural grade below each solar panel.</p>	<p>The Facility will be designed to comply with this requirement. Because this provision states that height shall be measured “below each solar panel,” this provision applies only to panel height. Maximum panel height is 11.1 feet. Moreover, the 2022 Solar Law states that “[t]his article shall take precedence over any inconsistent provision of the Zoning Law of the Town of Somerset.” Accordingly, height restrictions contained elsewhere in the code are superseded.</p>
<p>§ 205-112.A.4 – Fencing Requirements: All solar panels and mechanical equipment, and any related structures, shall be enclosed by a fence (seven feet high), and meet any other regulatory requirements such as NEC, with a self-locking gate to prevent unauthorized access. The type of fencing (including the need for barbed wire) will be determined by the Planning Board and shall fit into the character of the area. Fencing shall be of a good quality and have a typical lifespan of a minimum of 30 years.</p>	<p>The Facility will be designed to comply with this requirement.</p>
<p>§ 205-112.A.5.a – Screening: Solar energy systems smaller than five acres shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earthen berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.</p>	<p>The Facility will be designed to comply with this requirement.</p>

LOCAL SUBSTANTIVE LAW	COMPLIANCE
<p>§ 205-112.A.5.b.3 – Screening: The screening and landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. The landscaped screening shall be comprised of a minimum of one evergreen tree, at least six feet high at time of planting, plus two supplemental shrubs at the reasonable discretion of the Town Planning Board, all planted within each 10 linear feet of the exterior of the fencing required by § 205-112A(4) above. Existing vegetation on the subject property may be used to satisfy all or a portion of the required landscaped screening. A list of suitable evergreen tree and shrub species shall be provided by the applicant for the Town to review. This minimum screening requirement will be reduced if adjoining properties are participating properties. Every effort should be made to plant native trees and shrubs to preserve the character of the area and support local wildlife. The contractor in conjunction with a local nursery should recommend shrub screening for Planning Board approval. For all Tier 3 projects, the recommendations of a landscape professional are required. The Planning Board can require that Tier 3 systems involving complex or sensitive visual and/or aesthetic concerns be approved by a New York State registered landscape architect. All Tier 3 solar energy systems landscape plans must be approved by a New York State registered landscape architect.</p>	<p>The Facility will be designed to comply with this requirement.</p>

LOCAL SUBSTANTIVE LAW	COMPLIANCE
<p>§ 205-112.A.6.a – Agricultural Resources - Prime Farmland Restriction: Any Tier 3 solar energy system shall not be permitted on any property, lot, parcel that contains 50% or more land classified as prime farmland soils or farmland soils of statewide importance. Prime farmland is determined and classified by the United States Department of Agriculture (USDA) and the percentage of prime farmland and farmland of statewide importance is calculated using USDA maps and online data tools, including any amendments made to those maps and data. It is the responsibility of the developer and/or landowner to provide written evaluation, data and mapping to the Planning Board that this 50% requirement is met. The evaluation must contain data and maps that are supported, approved and/or published by the USDA, New York State Agriculture and Markets and/or Niagara County Soil and Water Conservation District (NRCS). The Planning Board may require that this evaluation be reviewed by the Town Engineer, consultant, or local agricultural services agent, where the cost of this review will be the responsibility of the developer or landowner.</p>	<p>The Facility cannot be designed to comply with this requirement. This provision prohibits placement of solar energy systems on parcels containing 50% or more land classified as prime farmland soils or farmland soils of statewide importance. There does not appear to be a basis for this provision and solar development is the only land use identified in the zoning law that is subject to such a specific provision. To the extent that the Facility is proposed on land containing these soil types, the land is being leased by willing landowner; and will be preserved and returned to its previous use upon decommissioning of the Facility. The same cannot be said for industrial/commercial buildings or residential developments. Some current uses of land, like at the Somerset Generating Facility, may not be consistent with a restriction based on the soil content.</p> <p>Moreover, this restriction appears to be in conflict with other provisions of the Town Law. For example, as discussed herein, utility-scale solar facilities are a permitted use only in Industrial and Business Districts. With this zoning restriction, there is essentially no need for a soil type restriction. Conversely, given the relatively small number of acres in the Industrial and Business Districts, further restrictions such as soil type would even further preclude solar development within the Town</p>
<p>§ 205-112.A.6.b – Agricultural Resources: Compliance with NYSAGM Guidelines: Tier 3 solar energy systems located on farmland shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets (See New York State Agriculture and Markets Guidelines).</p>	<p>The Facility will be designed to comply with this requirement.</p>

LOCAL SUBSTANTIVE LAW	COMPLIANCE
<p>§ 205-112.A.6.c – Agricultural Resources - Vegetation : Tier 3 solar energy system owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes. Once established, other agriculture uses such as pasturing livestock and apiculture are permissible and encouraged.</p>	<p>The Facility will be designed to comply with this requirement.</p>
<p>§ 205-112.A.6.d – Agricultural Restoration Requirements: Once the system is decommissioned, the site shall be restored and remediated in accordance with the New York State Agriculture and Markets Guidelines (this will be a condition of the special use permit).</p>	<p>The Facility will be designed to comply with the substantive requirements of this provision.</p>
<p>§ 205-112.A.7 – Noise: The project shall be shown to not have any adverse noise impacts on any surrounding homes or other sensitive receptors (see earlier section of the law for specific requirements).</p>	<p>The Facility will be designed to comply with this requirement.</p>
<p>§ 205-112.A.8 – Hazardous Materials: The project components shall not contain any hazardous materials that could contaminate soils or the air by their release (units shall not contain cadmium, lead or other hazardous substances such as PFAS substances used in coatings, etc.), MSD sheets for all materials considered hazardous shall be provided to the Barker Fire Department, Code Enforcement Officer and Town Hall.</p>	<p>This provision is overly broad, and the Facility cannot be designed to comply with this requirement. PFAS are used in a variety of products including waterproof coating and fire retardants. Accordingly, it may not be possible to construct the Facility using components that have no PFAS.</p>

LOCAL SUBSTANTIVE LAW	COMPLIANCE
<p>§ 205-113.A – Permitting Requirements for Tier 4 Systems: All Tier 4 solar energy systems are permitted through the issuance of a special use permit within the Industrial, General Industry, and Planned Unit Development Districts, and subject to site plan and special use permit requirements set forth in this Section and in addition to the Tier 3 requirements set forth above.</p>	<p>The Facility cannot be designed to comply with this requirement. Based on the Town’s existing zoning map, limiting solar development to Industrial, General Industry, and Planned Unit Development Zones would effectively preclude solar development within the Town. The vast majority of the Town is currently zoned Agricultural with Industrial and Business Zones comprising relatively few parcels around the Village of Barker and at the western Town boundaries in the vicinity of the Somerset Generating Facility. Assuming parcels were available in these zones, and there were landowners willing to enter leases (or land sales) for placement of panels on their property, the amount of land available is insufficient for large-scale solar development.</p>
<p>§ 205-113.D.1 – Prime Farmland: Any Tier 4 solar energy system shall not be permitted on any agricultural property, lot or parcel that contains 25% or more land classified as prime farmland or farmland of statewide importance.</p>	<p>The Facility cannot be designed to comply with this requirement.</p>
<p>§ 205-113.D.2 – Location of Tier 4 Systems: Tier 4 systems shall not be allowed in the waterfront protection, agriculture/agritourism, land of statewide importance and environmentally sensitive areas of the Town as denoted on the Vision Map of the Town of Somerset Comprehensive Plan (on file with the Town Clerk). They also cannot be located within a one-half mile of any other Tier 3 or Tier 4 system.</p>	<p>At this time, the Facility cannot be designed to comply with this requirement. “Land of statewide importance” is not depicted on the Town of Somerset’s Vision Map (see Appendix 3-A, Map 9), nor could AES find this term defined in the existing code or Proposed Solar Law. If the term “Land of statewide importance” is defined in the Town code in advance of Application filing, AES can engage in further discussions with the Town regarding compliance. If the term “Land of statewide importance” refers to “farmland of statewide importance, AES requests that the Town confirm.</p> <p>In addition, in the Vision Map, the Waterfront Protection Area also slightly overlaps the Multiple Use Site Expansion Area. If this is clarified, AES will further discuss compliance with the Town.</p>

LOCAL SUBSTANTIVE LAW	COMPLIANCE
<p>§205-115.A: Solar energy systems and solar energy equipment shall be certified under the applicable electrical and/or building codes as required.</p>	<p>The Facility will be designed to comply with this requirement.</p>
<p>§205-115.B: Solar energy systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the solar energy system is located in an ambulance district, the local ambulance corps.</p>	<p>The Facility will be designed to comply with this requirement.</p>
<p>§205-116 (E): Continued Operation: A solar energy system shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions. Further, the Building Inspector shall also have the right to request documentation from the owner for a solar energy system regarding the system's usage at any time.</p>	<p>The Facility will be designed to comply with this requirement insofar as it requires that a solar energy system shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outage.</p>
<p>§205-116(F): Removal. All solar energy systems shall be dismantled and removed immediately from a lot when the special permit or approval has been revoked by the Town of Somerset Planning Board or the solar energy system has been deemed inoperative or abandoned by the Building Inspector for a period of more than 365 days at the cost of the owner. If the owner does not dismantle and remove said solar energy system as required, the Town Board may, after a hearing at which the owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and place the cost of removal as a tax lien on said parcel. All materials to be removed shall be disposed of in a proper manner and in accordance with Niagara County law, preferably recycled.</p>	<p>The Facility will comply with the requirement to the extent it requires that materials be removed in a proper manner, preferably recycled. Whether compliance with Niagara County law is required will be determined at the time of removal. The remainder of this provision is procedural.</p>

24(e) Agencies with Review, Inspection, or Certification Responsibilities

It is the Applicant’s understanding that a municipal official for the Town of Somerset is responsible for reviewing and approving consistency with State code requirements, inspecting construction work, and certifying compliance with the New York State Fire Prevention and Building Code and Energy Conservation Code of New York State.

Table 24-4 below, provides the name and contact information of the local Code Enforcement Officer for the Town of Somerset.

Table 24-4. Local Contact Information for Review and Approval of Building Permits

Town	Contact Information
Somerset	Mark Remington Town Hall 8700 Haight Road PO Box 368 Barker, NY 14012 (716) 572-3896

The Town of Somerset has adopted and incorporated the New York State Uniform Fire Prevention and Building Code for administration into its local electric, plumbing and building codes. The Applicant requests that the Office authorize the exercise of the electric, plumbing and building permit application, inspection, and certification processes by the Town of Somerset. The Town has committed to engaging a qualified third-party consultant to provide these services. The Applicant agreed to reimburse the Town for expenses relating to confirmation of code compliance.

24(f) Zoning

The Town of Somerset has adopted zoning district designations. The following districts are established within the Town.

- Agricultural District A
- Single-Family Residential District R-1
- Single- and Two-Family Residential District R-2
- Lake Shore Residential District RLS
- Business District B
- Industrial District I
- General Industrial District GI
- Planned Unit Development District PUD

The Facility is within the Town and is located in the PUD and Agricultural Zoning Districts. As noted in section 24(b) of this exhibit, Tier 3 and Tier 4 Solar Energy Systems are allowed only in Industrial, General Industry, and PUD Districts through approval of a special use permit. No special exception is required for placement of solar in these districts. Land designated as Industrial was not suitable for solar placement. As discussed in section 24(c) of this exhibit, the Applicant is requesting to waive the zoning restrictions for the Facility in terms of developing within a small portion of the Agricultural District.

References

Flint, M. 2023a. Personal communication via phone between Michael Flint (Town of Somerset Highway Superintendent) and Linda Rivard (Tetra Tech, Inc.) on February 22, 2023 regarding roadway permits that may be required for the Facility.

Flint, M. 2023b. Personal communication via phone between Michael Flint (Town of Somerset Highway Superintendent) and Linda Rivard (Tetra Tech, Inc.) on August 9, 2023 regarding roadway permits that may be required for the Facility.