
NORTH SENECA

SOLAR PROJECT

APPENDIX 24-B
Local Law Consultations
ORES Permit Application No. 23-00036

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Via Email and USPS

Town Board
Town of Waterloo
66 Virginia Street
Waterloo, NY 13165
d-trout@live.com

Re: North Seneca Solar Project, Local Law Consultation

Dear Members of the Town Board,

North Seneca Solar Project, LLC, a subsidiary of Savion, LLC (the "Applicant"), is proposing to construct and operate the North Seneca Solar Project (the "Facility" or the "Project") in the Towns of Waterloo and Junius, Seneca County, New York. The Facility is a proposed major solar electric generating facility with an electric generating capacity of up to 90 MW, interconnecting to National Grid's existing 115 kV overhead transmission line.

The Facility is consistent with State policy encouraging the development of clean energy and renewable resources as a tool in combating climate change, curbing air pollution and emissions, and greening New York State's economy. The Facility will act as an economic stimulus to the area by providing jobs and local contracts for goods and services during construction, as well as long-term operational positions and long-term economic benefits through lease and property tax revenues, among other local benefits.

In April 2020, New York passed the Accelerated Renewable Energy Growth and Community Benefit Act (the "Act"). The Act is intended to assist New York State in achieving the renewable energy production and greenhouse gas emission reduction goals of the 2019 Climate Leadership and Community Protection Act ("CLCPA") by creating the Office of Renewable Energy Siting ("ORES" or the "Office") and establishing an expedited process for the review of renewable energy projects through Executive law Section 94-c ("Section 94-c"). The Project is proceeding through the Section 94-c process to obtain a permit for the proposed Facility from ORES.

Section 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 (i.e. site plan, special use permits and variance approvals). However, local substantive requirements (i.e. setbacks, height limits and sound limits) are still applicable to the Facility, unless ORES elects not to apply certain local requirements because it finds them, as applied to the Facility, to be unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the proposed Facility.

Section 94-c requires the Applicant to consult with local municipalities to determine which local substantive requirements apply to the Facility and whether design changes to the Facility can obviate the need to seek waivers of certain local requirements from ORES.

The Applicant has researched and reviewed potentially applicable local ordinances, laws, resolutions, regulations, standards and other requirements of a substantive nature pertaining to the construction or operation of the proposed Facility. Below is a list of the potentially applicable substantive local laws that the Applicant has identified. We appreciate the Town's cooperation by reviewing this list and confirming, in writing, that there are no other applicable laws and that all applicable substantive requirements have been identified. This letter is also intended to provide you with an initial overview of the Facility's compliance with substantive provisions of applicable local laws, and which laws, if any, the Applicant may need to seek waivers from ORES pursuant to Section 94-c. Additional information regarding potential local law waivers needed for the design of the Facility will be provided when more information is available regarding preliminary design.

Code of the Town of Waterloo

Chapter 134. Solar Energy Systems

(Local Law 1 of 2019, Adopting Chapter 134 Solar Energy Systems in Support of the Town of Waterloo Comprehensive Plan)

§§134.1. Authority, and 134.2. Purpose & Legislative Intent

These sections are procedural and/or do not contain substantive requirements applicable to the Facility.

§134.3. Definitions.

*This section is procedural and/or does not contain substantive requirements applicable to the Facility. Based on the definitions in this law, the Facility is considered a "Large-Scale Solar System."*¹

§134.4. New York State Unified Permit for all Small Scale Solar Projects for Residential and Small Business Owners.

This section does not apply to the Facility.

§134.5. Small-Scale Solar Energy System.

¹ "Large-Scale Solar Energy System" is defined as "[a] solar energy system that is ground-mounted and greater than 1,000 square feet based on the perimeter occupied by the panels and produces greater than 25kW (kilowatt) for the purpose of off-site sale or consumption." Code of the Town of Waterloo §134.3.

This section does not apply to the Facility.

§134.6. Large-Scale Solar Energy System.

A. Large-scale solar energy systems greater than 1,000 square feet based on perimeter occupied by the solar panels and greater than 25kW.

This section is procedural and/or does not contain substantive requirements applicable to the Facility. As noted above, the proposed Facility is a “Large-Scale Solar System” as defined in this law.

B. Permitting.

(1) Large-scale solar energy systems are permitted through the issuance of a special use permit and permitted in the following zoning districts: Industrial (I) and Agricultural (A), subject to the requirements set forth in this section, including site plan approval. Applications for the installation of Large-scale solar energy system shall be reviewed by the Code Enforcement Officer and referred, with comments to the Planning Board for its review and action, which can include approval with conditions, or denial.

Facility Status: Section 94-c preempts the procedural requirements of this section. The Applicant anticipates that the Facility will be designed to comply with the substantive requirements of this provision, as the Facility is proposed to be located in the Agricultural (A) zoning district.

Note that the Town of Waterloo Land Use Control Map, revised by Local Law No. 2 of 2020, identifies the A zoning district as “Agricultural (or Undeveloped)” in the map legend, the Zoning Law does not the A zoning district as the “Agricultural (or Undeveloped)” zoning district, only the A “Agricultural” district. The Applicant would like to confirm with the Town the “Agricultural (A)” zoning district identified in §134.6.B(1) is the same as the “A- Agricultural (or Undeveloped)” zoning district identified in the Land Use Control Map.

(2) Applications for large-scale solar energy systems that are subject to independent professional services for inspection, engineering and legal consultation will be the responsibility of the Applicant. If additional funds are needed in the fee account, the Planning Board will obtain an estimate from the consultant as to the amount necessary for completion of the remaining review(s). Said amount is to be paid by the Applicant to any further work being done by the consultant. Balance of the deposit will be returned upon completion of the project. The Planning Board will provide the Applicant in advance with established billing rates for engineering and legal services.

This section is procedural and/or does not contain substantive requirements applicable to the Facility.

(3) Special use permit application requirements. In addition to the requirements set forth in § 135-8 of this chapter, the following information must be included with an application for a special use permit for large-scale solar energy systems.

Subsections (3)(a) through (3)(g), and (3)(i), which identify the items to be included in a special use permit application for a large-scale solar system, are procedural and supplanted by Section 94-c. The applicability of and Facility compliance with the substantive provisions of §135-8 of the Code are addressed below in the section on Chapter 135. Zoning.

h) Decommissioning Plan. To ensure the proper removal of a large-scale solar energy system, a decommissioning plan shall be submitted as part of the application. Compliance with this plan shall be made a condition of the issuance of a special use permit under this section.

[1] In the event that the owner or lessee of any large-scale solar energy system ceases for a period of six (6) months to use or operate the said system or in the event the said system fails to generate electrical energy, as supported by metered use thereof, for a period of six (6) months, then in either event such by the owner or lessee. If the owner or lessee does not voluntarily dismantle the facility and remove the same from the site upon the occurrence of either event, the Code Enforcement Officer may recommend to the Town Board that the Town Board declare the system abandoned based on either or both events and the Town Board, upon receiving the recommendation of the Code Enforcement Office and holding a hearing on due notice to the property owner and operator of the facility, may declare the system abandoned and order the dismantling and removal of the system by the owner and/or operator, or, after the passing of 30 days from the date the Planning Board declares the facility abandoned, by Town staff or by a third party on contract with the Town. Failure to dismantle and remove a facility and restore the site to its natural state within 30 days after said facility has been declared abandoned by the Planning Board upon recommendation of the Code Enforcement Officer will result in forfeiture or the filing of a claim against the performance surety bond posted by said owner or lessee of said facility, as provided in §134.6(1)(h)(4) herein. The Town may also impose a lien on the property to cover removal costs, plus a service charge of 25% thereof, to cover the cost of supervision and administration, to the Town, and such amount shall be assessed against the property on which the facility was situated. The amount so assessed shall constitute a lien and charge on the real property on which it is levied until paid or otherwise satisfied or discharged and shall be collected in the same manner and at the same time as other Town taxes and charges.

Facility Status: Section 94-c preempts the procedural requirements of this section. As part of the 94-c application process pursuant to 19 NYCRR §2.24, the Applicant will prepare a Decommissioning and Site Restoration Plan. Pursuant to 94-c regulations, the Applicant will also establish a financial security for decommissioning and site restoration in a total amount equal to the gross decommissioning and site restoration estimate (which is the overall decommissioning and site restoration estimate plus a

fifteen [15] percent contingency cost) less the total projected salvage of facility components, as further discussed in subsection (4) below.

To the extent that this section requires decommissioning/deems a facility abandoned if Facility operations cease or the Facility fails to general electricity for a period of six (6) months, requires decommissioning and site restoration to be completed within 30 days of abandonment, or allows a lien to be placed on the property plus a 25% service charge to cover costs of removal, the Applicant may need to seek a waiver from ORES with respect to these requirements.

[2] The plan shall demonstrate how the removal of all infrastructure both above and below ground and the remediation of soil and vegetation shall be conducted to return the parcel to the condition the property was in prior to the installation of the large-scale solar energy system.

Facility Status: Section 94-c preempts the procedural requirements of this section. The Decommissioning and Site Restoration Plan prepared as part of the Applicant's 94-c application pursuant to 19 NYCRR §2.24(a) will address safety and removal of hazardous conditions, environmental impacts, aesthetics, recycling, future potential uses for the site, funding and schedule.

To the extent that this section requires removal of all below ground infrastructure, the Applicant may need to seek a waiver from ORES, as this requirement is inconsistent with 94-c regulations, which only requires removal of all facility components to a depth of four (4) feet below grade in agricultural land and three (3) feet below grade in non-agricultural land.

[3] The plan shall also include an expected timeline for execution.

Facility Status: Section 94-c preempts the procedural requirements of this section. The Decommissioning and Site Restoration Plan prepared as part of the Applicant's 94-c application pursuant to 19 NYCRR §2.24(a) will include a schedule/timeline for execution.

[4] A cost estimate detailing the projected cost of executing the decommissioning plan shall be prepared by a professional engineer. Cost estimations shall take into account inflation. A decommissioning performance surety bond shall be issued to the Town of Waterloo in that amount and shall remain in effect for as long as the large-scale energy system is in existence. The bond amount shall equal the decommissioning and reclamation costs for the entire system. The bond must remain valid until the decommissioning obligations have been met. The bond must remain valid until the decommissioning obligations have been met. A 20-year bond will be required for all large-scale solar energy systems, which

will require renewal after fifteen (15) years, for an additional twenty (20) years. The cost estimate shall be reviewed by the town Engineer and approved by the Town Attorney.

Facility Status: Section 94-c preempts the procedural requirements of this section. The financial security established for decommissioning and site restoration activities will be in compliance with 94-c regulations, 19 NYCRR §900-6.6, in a total amount equal to the gross decommissioning and site restoration estimate (which is the overall decommissioning and site restoration estimate plus a fifteen [15] percent contingency cost) less the total projected salvage of facility components. The financial security will remain active until the facility is fully decommissioned and is to be updated every fifth year to account for changes due to inflation or other cost increases pursuant to 19 NYCRR §900-10.2(b)(2).

To the extent that this section requires an inflation escalator at a more frequent rate than the five-year review pursuant to ORES regulations, prohibits inclusion of salvage value, or requires renewal of the security for a period exceeding the life of the facility plus time needed to fully decommission the Facility, the Applicant anticipates the need to seek a waiver from ORES for these requirements.

[5] Removal of large-scale solar energy systems must be completed in accordance with the decommissioning plan.

Facility Status: Section 94-c preempts the procedural requirements of this section. The Applicant will complete decommissioning and site restoration by implementing the Decommissioning and Site Restoration Plan approved by ORES pursuant to the 94-c process.

[6] If the large-scale solar energy system is not decommissioned after being considered abandoned, the Town may remove the system and restore the property and impose a lien on the property to cover the costs to the municipality and collect such amounts in the same way as other Town taxes, in addition to any other remedies available to the town.

Facility Status: Section 94-c preempts the procedural requirements of this section. As required by 19 NYCRR §900-6.6, the financial security established will be irrevocable and will be expressly held by and for the sole benefit of the Town.

(4) Special use permit standards. No special use permit for a large-scale solar energy system shall be issued unless the Planning Board specifically finds that the proposed project is in compliance with each of the following:

Section 94-c preempts the procedural requirements of this section. The Facility status with respect to substantive standards in each of subsections is addressed below.

a) Setbacks. Large-scale solar energy systems shall be sited to create a front setback of no less than 200 feet from the right-of-way line of the road and setbacks of 100 feet from all side and rear property lines. In addition, no large-scale solar energy system shall be located closer than 300 feet from any residential structure located on another parcel.

Facility Status: The setback requirements are more restrictive than the setback requirements under Section 94-c, and do not distinguish between participating and non-participating property lines, nor does they distinguish between residential and non-residential property lines. The 94-c setback requirements are 100 feet from non-participating residential property lines, 50 feet from centerline of public roads, 50 feet from non-residential non-participating property lines, and 250 feet from non-participating occupied residences.

As an initial matter, the application seeks clarification regarding the use of the terms “property lines” and “located on another parcel” as they relate to the application of the setbacks in this provision. The Zoning Law of the Town of Waterloo provides the following definition for “property line”: “[t]he line between lands set aside for a mobile home park and adjacent property.” See Zoning Law of the Town of Waterloo, Appendix: Definitions. The Zoning Law does not define the term “parcel.” See Zoning Law of the Town of Waterloo, Appendix: Definitions.

Throughout the Town’s solar regulations in Chapter 134, it appears that the term “parcel” is used interchangeably with the term “lot” (see §134.5.D(e)), and that the term “parcel” may be referring to the Facility site (see §134.6.B(3)(h) which refers to the facility “site” when discussing dismantling and removal in subsection [1] but then uses the term “parcel” when discussing removal and remediation in subsection [2]).

The Applicant interprets the terms “property lines” and “parcel” in this provision to apply not to the individual lots within the Facility site, but that the terms “property” or “parcel” as referenced in this provision means the entire Facility Site. The Applicant respectfully requests that the Town confirm this interpretation. In the event the Town agrees with this interpretation, the Applicant anticipates that the Facility will be designed to comply with the setbacks identified in this Section.

In the event the Town does not agree with the Applicant’s interpretation of this provision, the Applicant will need to seek a waiver from the 100-foot side and rear property line setbacks to the extent that they apply to participating property lines. Additionally, the Applicant also anticipates the need to seek a waiver from the 200-foot front yard setback from right-of-way line of roads, which is more than 4 times the required pursuant to Section 94-c requirements to the centerline of public roads. The Applicant is currently identifying locations where waivers will be required for the 200-foot front yard setback from rights-of-way. While the Applicant has worked to design the Facility in compliance with these setbacks to the extent reasonably practicable, these waivers are necessary to ensure that Facility components are sited efficiently and effectively to maximize Facility layout while also minimizing overall project footprint and associated environmental impacts.

The Applicant anticipates that the Facility will be designed to comply with the 300 ft setback from residential structures located on another parcel requirement.

b) Height. No part of the large-scale solar energy systems shall exceed ten (10) feet in height when oriented at maximum tilt.

Facility Status: The Applicant will need to seek a waiver to allow for the use of installation of panels and racking systems greater than ten feet in height, but in no case will exceed the maximum permitted height of twenty (20) feet pursuant to 94-c regulations.

c) Lot coverage. A large-scale solar energy system that is ground mounted shall not exceed 50% of the lot on which it is installed. The entire surface area of the solar panels shall be included in the total area regardless of the method by which the panels are supported or attached to the ground, or the angle at which they are placed.

Facility Status: The Applicant interprets the term "lot" as used in this section to apply to the entire Project Area (i.e. area leased for the project) rather than the individual participating parcels within the Project Area. The Applicant respectfully requests that the Town confirm this interpretation. The Applicant is currently in the process of reviewing facility design to determine whether the facility can comply with this requirement, and in the even compliance would be unduly burdensome the Applicant may need to seek a waiver from ORES.

d) Large-scale solar energy systems shall be located on lots with a minimum size of one (1) acre.

Facility Status: The Applicant anticipates that the Facility will be designed to comply with this requirement.

e) Security. All large-scale solar energy systems shall be enclosed by fencing to prevent unauthorized access, unless the Planning Board determines that fencing will cause environmental or ecological problems, or that such fencing is unnecessary. If the Planning Board makes such a determination, then the applicant must provide for other means, acceptable to the Planning Board, to prevent access to circuit conductors and other electrical components of the system. Warning signs with the property owner's contact information shall be placed on the entrance and perimeter of the property and of the solar energy system at locations acceptable to the Planning Board. Any fencing installed shall be acceptable to the Planning Board and shall include screening of said fencing as required by the Planning Board.

Facility Status: Section 94-c preempts the procedural requirements of this section. The Applicant anticipates that the Facility will be designed to be enclosed with a fence that meets the requirements of the Section 94-c regulations. In compliance with 94-c application requirements, the Applicant will prepare a Site Security Plan for the operation of the proposed facility, which will include a description of site security features.

f) Drainage. All large-scale solar energy systems shall include a drainage and stormwater management plan that is acceptable to the Planning Board.

Facility Status: Section 94-c preempts the procedural requirements of this section. In conformance with 94-c requirements, the Applicant will prepare a SWPPP for the collection and management of stormwater discharges from the facility site during construction. The SWPPP will be prepared in accordance with the applicable NYS Pollution Discharge Elimination (SPDES) General Permit for Stormwater Discharges from Stormwater Discharges from Construction Activity and the NYS Standards and Specifications for Erosion and Sediment Control.

g) Easements. All large-scale solar energy systems shall provide access, maintenance, and utility easements that are acceptable to the Planning Board. If the large-scale solar energy system will be operated by any entity other than the property owner, the Planning Board must approve the lease or contractual agreement between the property owner and the system operator.

Facility Status: Section 94-c preempts the procedural requirements of this section. As part of the 94-c process, the Applicant will provide documentation of all of its real property rights in the Facility area to ORES, including titles or leasehold interests in the Facility area, ingress and egress access to public streets, and such deeds, easements, leases, licenses, or other real property rights or privileges that are necessary for interconnections.

h) The Planning Board must approve the decommissioning plan submitted by the applicant. The Planning Board shall require that the applicant or property owner post an automatically renewing security bond for construction, maintenance, and removal of solar energy systems.

Facility Status: Section 94-c preempts the procedural requirements of this section. The requirement of construction and maintenance bonds are procedural local permitting requirements that are supplanted by the 94-c process. With respect to security bond for removal, the Applicant anticipates compliance with this requirement by establishing a financial security for decommissioning and site restoration that shall remain in place until the facility is fully decommissioned.

i) The Planning Board must approve the property operation and maintenance plan submitted by the applicant.

Facility Status: Section 94-c preempts the procedural requirements of this section. As part of the 94-c process, the Applicant will prepare a Construction Operations Plan as well as a Facility Maintenance and Management Plan, which will include plans, procedures and criteria addressing the topics identified in 19 NYCRR §90010.2(3).

j) All access roads and paths required for the project shall be integrated into other uses on the property, if possible. Access road siting and grading shall be designed to minimize any negative impacts from stormwater drainage.

Facility Status: The Applicant anticipates that the Facility will be designed to comply with this requirement. As part of the 94-c process, the Applicant will identify the extent of proposed access roads, including indications of any existing access roads that will be utilized. Additionally, as discussed above drainage and stormwater management will be addressed through the 94-c process in accordance with applicable NYS Pollution Discharge Elimination (SPDES) General Permit for Stormwater Discharges from Stormwater Discharges from Construction Activity and the NYS Standards and Specifications for Erosion and Sediment Control, and the NYS Stormwater Management Design Manual to the extent not covered by the SWPPP.

k) All Large-Scale Solar Energy Systems shall be adequately screened, as determined by the Planning Board, to avoid adverse aesthetic impacts.

Facility Status: Section 94-c preempts the procedural requirements of this section. The Applicant anticipates that the Facility will be designed to comply with this requirement to the maximum extent practicable, with visual screening to be implemented in accordance with the Visual Impacts Mitigation and Minimization Plan required by 19 NYCRR §900-2.9(d) to minimize visual impacts. To the extent this provision prohibits any visual impacts or defines adverse aesthetic impacts in a manner more restrictive than ORES, the Applicant may require a waiver.

l) Any application under this section shall meet any substantive provisions contained in local site plan requirements in the Zoning Code that, in the judgment of the Planning Board, are applicable to the system being proposed. If none of the site plan requirements are applicable, the Planning Board may waive the requirement for site plan review.

Facility Status: Section 94-c preempts the procedural requirements of this section. Applicability and Facility compliance with respect to substantive site plan requirements in the Zoning Code in the section on Chapter 135. Zoning below.

m) The Planning Board may impose conditions on the approval of any special use permit under this section in order to enforce the standards referred to in this section, or in order to discharge its obligations under the State Environmental Quality Review Act (SEQRA).

This section is procedural and/or does not contain substantive requirements applicable to the Facility.

n) A special use permit shall expire 18 months from the date of issuance if the proposed activity has not been substantially implemented as determined by the Planning Board. One twelve-month extension may be granted by the Planning Board

This section is procedural and/or does not contain substantive requirements applicable to the Facility.

§134.7. Inspection and Enforcement, §134.8. Penalties for offenses, and §134.9. Severability.

These sections are procedural and/or do not contain substantive requirements applicable to the Facility.

Chapter 79: Site Plan Review & Approval Law
(Adopted by Local Law 4 of 2000, as amended)

§134.6.B(4)(l) of the Solar Energy Systems Chapter requires compliance with the substantive provisions contained in the Site Plan requirements. The applicability of and Facility compliance with the provisions of Chapter 79 is addressed below.

§§79-1. Title, 79-2. Intent, 79-3. Definitions, and 79-4. Applicability; approval required.

These sections are procedural and/or do not contain substantive requirements applicable to the Facility.

§79-5. Standards for site plan review. In reviewing an application for approval of a site plan, the Planning Board will be guided by the existing characteristics and conditions of the site and its surroundings, by any particular design objectives of the applicant and by the quality and distinctiveness of the proposal. Each site plan shall conform to all general standards listed in this § 79-4, as applicable, and to other specific concerns related to a particular site, as may be identified in writing by the Planning Board. On request, the Planning Board may, by resolution, modify or waive any standard that is deemed to be not appropriate for the specific development under consideration.

Section 94-c preempts the procedural requirements of §79-5 and its subparts. Subsections H and I through H do not apply to the proposed Facility, as they apply to uses other than Large-Scale Solar Systems, types of buildings that are not proposed as Facility components, or to zoning districts other than the zoning district where the Facility is proposed.

A. Applicable requirements for special condition or special permit approvals, as may be set forth in a Town zoning law, if any, shall be complied with.

This section is procedural and/or does not contain substantive requirements applicable to the Facility.

B. Special attention shall be given to proper site drainage so that run off of stormwater will not adversely affect neighboring properties or produce downstream flooding.

Facility Status: Drainage and stormwater runoff are addressed by the requirements in §134.6.B(4)(f). Please refer to Facility Status with respect to §134.6.B(4)(f) for discussion of facility compliance.

C. Development on erodible soils, or on slopes of greater than 10%, shall be designed to minimize erosion during construction and after construction has been completed.

Facility Status: The Applicant anticipates that the Facility will be designed to substantially comply with this requirement. In compliance with Section 94-c, the Applicant will prepare a SWPPP in accordance with the applicable NYS Pollution Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity and the NYS Standards and Specifications for Erosion and Sediment Control, and the Vegetation Management Plan prepared pursuant to 19 NYCRR §900-10.2(4) will include restoration of

disturbed areas, ruts, and rills to original grades and conditions with permanent re-vegetation and erosion controls where appropriate.

D. In general, the total area of constructed impermeable surfaces (roofs, pavement, parking lots, walkways, etc.) should be limited to not more than 40% (75% for nonresidential projects) of any tax parcel included in the site plan review application.

Facility Status: The Applicant anticipates that the Facility will be designed to comply with this requirement.

I. To preserve visibility at road intersections that are not controlled by a traffic light, nothing higher than three feet shall be located or planted less than 30 feet from the intersection of the road right of-way lines.

Facility Status: The Applicant anticipates that the Facility will be designed to comply with this requirement.

E. Unless other requirements to the contrary are set forth in any Town zoning ordinance, all new buildings that are subject to site plan review and approval shall be located on a lot that has a minimum area of 30,000 square feet, with a minimum frontage of 150 feet, except that a minimum area of 40,000 square feet shall be provided for any lot located in any areas where there is no public water or sewer service available.

Facility Status: To the extent this section applies to the Operations and Maintenance trailer proposed by the Applicant within the Facility, the Applicant anticipates that the Facility will be designed to comply with this section.

F. A minimum building setback of at least 50 feet from the right-of-way line, or 75 feet from the center line of any road, whichever is greater, shall be provided, and no building shall be located less than 15 feet from all other property lines.

Facility Status: To the extent this section applies to the Operations and Maintenance trailer proposed by the Applicant within the Facility, the Applicant anticipates that the Facility will be designed to comply with this section.

J. An adequate amount of off-street parking shall be provided for the proposed use. No off-street parking space shall be less than nine feet by 18 feet or located less than 10 feet from any front property line.

Facility Status: The Applicant anticipates that the Facility will be designed to substantially comply with this requirement. During a Pre-Construction Meeting, as required pursuant to 19 NYCRR §900-6.4(c), the Applicant will provide the Town Supervisor and highway department with maps that show construction worker parking. To the extent that the “adequate amount” of off-street parking to be provided shall be determined based on the space requirements set forth in §135-9.B, please refer to the discussion of applicability and Facility status with respect to the off-street parking requirements of §135-9 of the Zoning Code addressed below.

K. All loading and unloading areas and outside storage areas, including used equipment storage and areas for the storage of trash, which face or are visible from a public road or an adjacent property shall be screened from public view by a vertical screen at least six feet in height. A landscaped buffer strip or a combination of landscaping and fencing may be used to provide the required screening. (See § 79-3.)²

Facility Status: The Applicant has interpreted this section to apply to permanent, rather than temporary, loading and unloading areas and outside storage areas. The Applicant respectfully requests that the Town confirm this interpretation. Assuming the Town agrees with this interpretation, the Applicant anticipates that it will comply with this requirement.

However, in the event the Town does not agree with this interpretation, the Applicant may need to seek a waiver of this requirement to the extent that it requires screening of temporary loading and unloading and outside storage areas during construction.

L. Multiple or extra-wide driveway cuts to provide access to any site shall be avoided in the site design where possible. On corner corner lots, the location of driveway cuts shall not be approved by the Planning Board until after review and comment, as appropriate, by the Town Highway Superintendent, the County Highway Superintendent (for county roads) and the State Department of Transportation (for state roads).

Facility Status: The Applicant anticipates that the Facility will be designed to comply with this requirement. As discussed above in Facility Status with respect to §134.6.B(4)(j), the Applicant will identify the extent of proposed access roads in its site plan as part of the 94-c process. The Applicant anticipates entering into a Road Use Agreement with the Town to address approval of any necessary alterations to Town roads, including the creation of new access or egress.

M. Access and circulation plans for vehicular traffic, including roadway and intersection design, traffic controls, signage and lighting shall be adequate to handle expected traffic volumes generated by the proposed development.

Facility Status: The Applicant anticipates that the Facility will be designed to comply with this requirement. As part of the 94-c process, in compliance with 19 NYCRR §900-2.17, the Applicant will prepare a site plan depicting all Facility site driveway and roadway intersections, as well as an analysis and evaluation of the traffic and transportation impacts of the facility which will include an identification and evaluation of mitigation measures for potential traffic and transportation impacts.

N. Exterior lighting, if any, shall be designed and located so that it does not produce glare on adjacent properties and does not impede the vision of traffic on adjacent roads. Exterior lighting fixtures are to be International Dark-Sky Association (IDA compliant).

² §79-3. Definitions states “Unless as otherwise specified in this chapter, all terms shall have the meanings identified in Chapter 135, §135-3, Definitions, of the Code of the Town of Waterloo.” §135-3 defines “Buffer Strip” as “[a] strip of land, generally adjacent to a property line, on which a screen of plantings and/or other landscaping that will be dense enough and high enough to be a visual buffer between properties is installed and maintained by the land owner” and “Landscaping, Landscaped” as “[t]he use of lawns, trees, plants or other natural or decorative features, including wood, stone or masonry fencing.”

Facility Status: The Applicant anticipates that the Facility will be designed to comply with this requirement to the maximum extent practicable.

O. The type and design of any connection to a public water supply shall be approved by the appropriate official.

This section is procedural and/or does not contain substantive requirements applicable to the Facility.

P. Approval of the type and design of any water supply or sewage disposal system shall be obtained from the Seneca County Health Department.

This section is procedural and/or does not contain substantive requirements applicable to the Facility.

Q. No offensive noise, traffic, odor, smoke, dust, heat, glare or electrical disturbance shall be produced that cannot be mitigated or contained on the site.

Facility Status: The Applicant anticipates that the Facility will be designed in compliance with this section. With respect to noise, the Facility is designed in compliance with the applicable noise design goals established in the Section 94-c regulations at 19 NYCRR §900-2.8. With respect to transportation, the Applicant is required to prepare a transportation study that analyses and evaluates the traffic and transportation impacts of the study and identifies mitigation measures if needed, pursuant to 19 NYCRR §900-2.17 of the 94-c regulations. With respect to dust, the applicant will minimize air emissions during construction in compliance with 19 NYCRR §900-6.4 by implementing dust control procedures to minimize the amount of dust generated by construction activities in a manner consistent with the Standards and Specifications for Dust Control, as outlined in the NYS Standards and Specifications for Erosion and Sediment Control.

With respect to glare, the Visual Impacts Minimization and Mitigation Plan prepared as part of the Section 94-c process will incorporate measures to address glare, including non-glare finish on certain components, use of solar panels with anti-reflective coatings, and an analysis that solar glare exposure at non-participating residences, airport or public roadway will be avoided or minimized, and will not result in complaints, impede traffic movements or create safety hazards.

R. Sites located in any area of special flood hazard shall comply with the provisions of Chapter 78 of the Town of Waterloo Code.

Facility Status: See discussion on applicability of and compliance with Chapter 78: Flood Damage Prevention.

S. All other applicable federal, state, county and local laws and regulations shall be complied with.

Facility Status: The Applicant anticipates that the Facility will be designed to comply with this requirement.

Chapter 135. Zoning

(Adopted by Local Law 3 of 2000, Amending the Code of the Town of Waterloo to add thereto Chapter 135 to be known as the “Zoning Law of the Town of Waterloo”, as amended)

§§135-1. Title and 135-2. Purpose

These sections are procedural and/or do not contain substantive requirements applicable to the Facility.

§135-3. Definitions

This section is procedural and/or does not contain substantive requirements applicable to the Facility. Relevant definitions are noted where applicable.

§135-4. Land Use Control Areas

This section is procedural and/or does not contain substantive requirements applicable to the Facility.

§135-5. District Regulations and Land Use Schedules

Subsections 1. Schedules of Regulations through 3. Site Plan Approval, and 6. NYS Agriculture and Markets Law are procedural and/or do not contain substantive requirements applicable to the Facility.

4. Schedule I: Land Uses or Activities, Town of Waterloo³

The proposed Facility is an allowed special use where proposed, the Agricultural (A) zoning district. Please refer to the discussion addressing §134-6.B(1) of the Solar Energy System chapter of the Town Code, discussed above.

5. Schedule II: Area, Frontage, Yard, Height and Coverage Requirements – Town of Waterloo

Schedule II: Area, Frontage, Yard, Height and Coverage Requirements¹

District	Building Type (See notes below)	Minimum Lot Area (square feet x 1,000)		Minimum Lot Width ² (feet)		Minimum Yard Setback (feet)			Maximum Building Height (feet)	Minimum Open Space	Notes (see below)
		With Public Sewers or Water	Without Public Sewers or Water	With Public Sewers or Water	Without Public Sewers or Water	Front ³	Side (each)	Rear			
A Agricultural	All	30	1 acre	100	150	50	15	15	35	0	1

¹ Requirements shown in this Schedule II are not necessarily consistent with the requirements specified for those land use activities in Schedule I that have special conditions attached (SC) or those that require a special use permit (SP) or site plan approval. Where there are such inconsistencies, the requirements of such special conditions or special use permit or site plan approval shall take precedence over the regulations set forth in this Schedule.

Facility Status: This section is superseded by the area, setbacks, height and lot coverage requirements in §134-6.B(4) of the Solar Energy System of chapter of the Town Code with respect to solar energy equipment. To the extent that this section is applicable to the proposed Operation and Maintenance Trailer, the Applicant anticipates that the Operation and

Maintenance Trailer will be in compliance with the standards for buildings within the Agricultural (A) zoning district.

§135-6. General provisions.

Subsections A. Applicability through F. Exceptions, H. Lots in two districts, and M. SEQR requirements, are procedural and/or do not contain substantive requirements applicable to the Facility.

G. Obstruction of vision. To preserve visibility at road intersections that are not controlled by a traffic light, nothing higher than three feet shall be located or planted less than 30 feet from the intersection of the road right-of-ways lines. Any fence or planting that does not conform to the requirements of this section and thereby results in an obstruction to the vision of motorists shall be corrected within 30 days from the date a notice thereof has been sent to the property owner by the Zoning Officer.

Facility Status: The Applicant anticipates that the Facility will be designed to comply with this requirement.

I. Drainageways. Natural drainage ways shall be preserved and shall be kept free of debris or other obstructions to water flow. Where relocation of a natural drainage way cannot be avoided, it must be located in a way that will assure the unobstructed flow of stormwater.

Facility Status: The Applicant anticipates that the Facility will be designed to comply with this requirement.

J. Rubbish and junk. Lots shall be kept free from abandoned or inoperable vehicles, discarded building material, discarded appliances and furniture, and all forms of rubbish and junk.

Facility Status: The Applicant anticipates that the Facility will be designed to comply with this requirement.

K. Excavation, filling or grading. Excavation, filling or grading shall be permitted only when such activity is carried out in accordance with Ch. 80, Mining and Excavation, of the Code of the Town of Waterloo.

This section does not apply to the proposed Facility. Based on the types of activities deemed exempt from the requirements of Ch. 80, set forth in Chapter 80, Section 80-4.B, which include but are not limited to excavation, movement or deposit of fill in connection with construction or landscaping which occurs in accordance with an approved site plan, this requirement and compliance with Ch. 80 do not apply to the Facility. Although the applicant does not need to obtain site plan approval for the proposed Facility because of preemption by Section 94-c, this exception would still apply because the Facility generally falls within the type of construction activities it was intended to cover.

L. General performance standards. All nonfarm land uses or activities in the Town of Waterloo shall be established, constructed or operated in accordance with the following performance standards:

(1) The activity shall not produce objectionable vibration, glare, heat or noise that is evident beyond the property line.

(2) The activity shall not result in the dissemination of noxious dust, gas, smoke, chemicals or odors beyond the property line.

(3) The activity shall not produce perceptible electromagnetic interference with normal radio or television reception in any area.

Facility Status: This provision is overly broad, and if strict compliance with this provision as written is required, the Applicant may need to seek relief from ORES. Please refer to the Facility Status with respect to the Town's local law provisions specifically applicable to noise and traffic for compliance therewith. With respect to dust, the applicant will minimize air emissions during construction in compliance with 19 NYCRR §900-6.4 by implementing dust control procedures to minimize the amount of dust generated by construction activities in a manner consistent with the Standards and Specifications for Dust Control, as outlined in the NYS Standards and Specifications for Erosion and Sediment Control.

With respect to glare, the Visual Impacts Minimization and Mitigation Plan prepared as part of the Section 94-c process will incorporate measures to address glare, including non-glare finish on certain components, use of solar panels with anti-reflective coatings, and an analysis that solar glare exposure at non-participating residences, airport or public roadway will be avoided or minimized, and will not result in complaints, impede traffic movements or create safety hazards.

With respect to effects on communications, as required by the Section 94-c regulations at 19 NYCRR §900-2.21(f), North Seneca Solar Project's 94-c application will include an evaluation that demonstrates that there are no adverse effects on communications systems.

N. Fences erected on residential lots or on land adjacent to residential lots.

(1) No fence shall be erected on a residential lot or on land adjacent to a residential lot unless a zoning permit has first been obtained. The application for such permit shall be accompanied by a site plan depicting height and location of the fence relative to all structures on the premises, to all property lines of the premises and to all public right-of-way-lines.

This section is procedural and/or does not contain substantive requirements applicable to the Facility.

(2) Any such fence shall not exceed eight feet in height above the ground, shall not be located less than three feet from the side and rear property lines of the premises and shall not extend beyond the setback line from any public right-of-way.

Facility Status: The Applicant anticipates that the Facility will be designed to comply with this requirement.

(3) A fence not exceeding three feet in height from the ground may be constructed less than three feet but not less than six inches from the side, front and rear lines of the premises.

This section does not apply to the Facility.

(4) The finished side of such fence shall face adjoining and public right-of-ways.

Facility Status: The Applicant anticipates that the Facility will be designed to comply with this requirement.

(5) No temporary fence shall be erected unless permitted in writing by the Town Code Enforcement Officer and subject to reasonable conditions as such Office may impose.

This section is procedural and/or does not contain substantive requirements applicable to the Facility.

(6) No barbed wire or electric fence shall be erected in a residential district.

Facility Status: The Applicant anticipates that the Facility will be designed to comply with this requirement.

(7) Barbed wire or electric fence on a residential lot in nonresidential districts shall not be erected less than 50 feet from any residence.

Facility Status: The Applicant anticipates that the Facility will be designed to comply with this requirement.

§ 135-7. Supplementary Regulations

Sections A. Applicability, B. Site plan review, E. Private roads, are procedural and/or do not contain substantive requirements applicable to the Facility.

C. Floodplains

(1) Location. Floodplain areas are determined by data developed by the U.S. Army Corps of Engineers and the United States Geological Survey. Flood hazard boundary maps are prepared by the Federal Emergency Management Agency.

This section is procedural and/or does not contain substantive requirements applicable to the Facility.

(2) Conditions. No structure, facility or landfill shall be erected or placed that would impede or change the direction of the flow of water in the flood area, or that could collect or catch floating debris, or be placed in such a way that the natural force of floodwater could carry dislodged material downstream to damage public and private property.

This section does not apply to the Facility as the Facility is not proposed within an area of special flood hazard.

(3) Wetlands. Notwithstanding any other provisions of this chapter, and particularly Schedule I, to the contrary, construction or any other development on any land in the Town of Waterloo designated as a wetland pursuant to Article 24 of the State Environmental Conservation Law, shall be in accordance with the provisions of the said Article 24. In addition, construction or any other development shall be in compliance with wetland requirements in the Clean Water Act and all requirements of the U.S. Army Corps of Engineers and the United States Environmental Protection Agency.

Facility Status: The Applicant anticipates that the Facility will be designed to comply with this requirement.

F. Signs.

(1) General provisions.

(a) After adoption of this chapter, no sign shall be erected, placed or maintained in the Town of Waterloo unless specifically permitted in this subsection or unless a permit therefore has been issued by the Zoning Board of Appeals. Replacement of any existing sign for any cause shall be in accordance with the more restrictive clause of this chapter.

This section is procedural and/or does not contain substantive requirements applicable to the Facility.

(b) Signs must be constructed of durable material and maintained in good condition.

(c) Other than an official traffic sign or a sign required by law, no sign shall be erected within or shall overhang the right-of-way lines of a public thoroughfare.

(d) Signs shall not project beyond property lines and shall not block sight lines for vehicles entering or leaving a premises.

(e) No illuminated sign shall be permitted or installed that would be distracting or hazardous to traffic on an adjacent road. Illuminated signs shall not be flashing or animated.

(f) No sign shall be higher than 30 feet from the ground unless a variance therefore has been granted by the Zoning Board of Appeals.

(g) For signs painted or installed on opposite sides of a board or standard (a two-sided sign), only one side need be considered in determining the area of such sign.

Section 94-c preempts the procedural requirements of these subsections, (b) through (g). The Applicant anticipates that the Facility will be designed to comply with the substantive requirements of (b) through (g). Pursuant to the 94-c requirements for the Facility's Visual Impacts Minimization and Mitigation Plan, no advertisements,

conspicuous lettering, or logos identifying the facility owner, solar module manufacturer, or any other supplier entity, other than warning and safety signs, will be on allowed as part of the Facility.

(h) A sign to be installed on the face of any new building may be included in the permit covering the construction of such building and no other permit or fee shall be required.

This section does not apply to the proposed Facility.

Sections 135-7(F)(2) Exempt Signs and 135-7(F)(3) Signs for which a Permit is Required are both procedural and/or do not contain substantive requirements applicable to the Facility.

§ 135-8. Special Conditions and Special Use Permits.

§134.6.B(3) of the Solar Energy Systems Chapter states that the requirements contained in §135-8 of the Zoning Chapter are also applicable to Large-Scale Solar Energy Systems. The applicability of and Facility compliance with the provisions of §135-8 is addressed below.

Subsections A. Purpose and B. Applicability are procedural and/or do not contain substantive requirements applicable to the Facility.

C. Special Conditions. The Zoning Officer shall issue a zoning permit for the following uses only when satisfied that applicable conditions set forth in this subsection, and all other applicable regulations, have been met.

Subsections C(1) through C(5) are not applicable to the Facility based on it being a Large-Scale Solar Energy System, as they apply to other types of use classifications.

(6) Signs in all districts must comply with applicable requirements of §135-7F of this chapter.

Please refer to § 135-7.F addressed above.

D. Special use permits.

(1) General requirements.

This section identifies the determinations that must be made by the Planning Board in order to issue a special use permit. As such, it consists of procedural requirements preempted by Section 94-c.

(2) Specific requirements.

This section does not apply to the proposed Facility based on its being a Large-Scale Solar Energy System, as they apply to other types of use classifications.

(3) Procedure for a special permit.

This section is procedural and is preempted by Section 94-c.

§135-9. Parking and loading.

§134.6.B(4)(l) of the Solar Energy Systems Chapter requires compliance with the substantive provisions contained in the Site Plan requirements. §79-5.J of the Site Plan requirements requires an “adequate amount of off-street parking . . . for the proposed use.” To the extent the “adequate amount” is based on the Town’s off-street parking requirements set forth in §135-9 of the Zoning Code, the applicability of and compliance with those provisions are addressed below.

A. Purpose.

This section is procedural and/or does not contain substantive requirements applicable to the Facility.

B. Off-street parking requirements.

(1) Required spaces. The minimum number of off-street parking spaces required for land uses or activities permitted by this chapter shall be as set forth in Schedule III, which is hereby adopted and made a part of this chapter.

Schedule III does not provide a specific space requirement for Large-Scale Solar Energy Systems, nor does it provide any space requirements for utility or electric generation types of uses. Schedule III provides a catchall space requirement of 1.00 spaces per 250 square feet of “gross floor area” for all business and commercial uses other than those identified in the Schedule.

Based on the use of gross floor area square footage to establish the minimum number of space requirements, this requirement is interpreted as not applicable to the proposed Facility. The Applicant respectfully requests that the Town confirm this interpretation is accurate. However, the Applicant will identify construction worker parking during pre-construction meeting with municipal supervisor and highway departments, which will be adequate to meet the Facility’s parking needs.

(2) Size and access. Each required off-street parking space shall have a dimension of at least nine feet by 18 feet exclusive of passageways and driveways thereto. Each such space shall have direct and usable access to a road, designed and located so as not to require the backing of any vehicle into a road right-of-way, except that this provision shall not apply to one- and two- family dwellings.

See discussion with respect to subsection B(1) above. Because there is no required off-street parking space requirement applicable to the proposed Facility, this section does not apply.

(3) Parking in yards. Off-street parking space, open to the sky, may be located in any yard area required by Schedule II of this chapter except that:

(a) No parking space may be located less than 10 feet from any property line of an adjacent residential lot.

(b) For nonresidential land use activities, all front yard area not used for parking or access shall be improved by grass, trees, shrubs or other forms of landscaping.

See discussion with respect to subsection B(1) above. Because there is no required off-street parking space requirement applicable to the proposed Facility, this section does not apply.

(4) Screening and landscaping. In commercial and industrial districts, and for nonresidential land uses in other districts, off-street parking areas adjacent to an existing residence shall provide a buffer strip designed to screen the parking area from such adjacent residence.

(5) Parking area lighting. If an off-street parking area is to be lighted, such illumination shall be designed using cut-off fixtures, or equivalent, installed so that light does not create glare onto adjacent residential properties or onto any adjacent roadway.

Subsections §135-9.B(4) and (5) do not apply to the Facility, as no parking area will be constructed as part of the Facility.

Chapter 78. Flood Damage Prevention

(Local Law 5 of 2011, A Local Law Amending Chapter 78 Flood Damage Prevention of the Code of the Town of Waterloo)

Chapter 78 does not apply to the Facility as it is not proposed within areas of special flood hazard.

Chapter 93. Noise

(Local Law 8 of 2011, Local Law Amending Chapter 93 Noise of the Code of the Town of Waterloo)

§§ 93-1 through 93-4 are procedural and/or do not contain substantive requirements applicable to the Facility.

§93-5. Machinery and mechanical devices.

Except by a variance from the Town of Waterloo Zoning Board of Appeals it shall be unlawful for any person to operate any machinery, equipment, pump, fan, air conditioning apparatus or similar mechanical device in any manner so as to exceed the noise levels permitted in any residential area⁴ where the noise created during either the nighttime or daytime hours exceeds the limits in the APPENDIX.

Based on the definition of “residential area” this section is not applicable to the Facility. Furthermore, the Applicant was not able to find a copy of the Appendix referenced in this section filed with the Department of State. The Applicant respectfully requests that the Town confirm there is no such Appendix.

⁴ “Residential Area” is defined as “[a]ny area of the town occupied in whole or in part by residences, including mobile homes, where the distance between occupied buildings, residential or otherwise, does not exceed 100 feet.

§93-6. Construction.

During the nighttime hours⁵ it shall be unlawful for any person within a radius of 500 feet of a residence, to operate equipment or perform any outside construction or repair work except that of an emergency nature on buildings, structures or projects, or to operate any pile driver, pneumatic hammer, derrick, electric hoist or other construction equipment except to perform emergency work.

Facility Status: The Applicant anticipates that it will comply with this requirement.

§93-9. Interference with broadcast reception.

It shall be unlawful for any person to operate within the town any electrical amplifying device, machine or equipment which causes interference with radio or television reception when such interference can reasonably be eliminated by shielding, altering, adjusting or otherwise taking corrective measures to eliminate the fault.

Facility Status: The Applicant anticipates that the Facility will be designed to comply with this requirement. As part of the Section 94-c process, in compliance with 19 NYCRR §900-2.21(c), the Applicant will identify all existing underground cable and fiber optic major transmission telecommunication lines within a one (1)-mile radius of the facility and the electric interconnection between the facility and the point of interconnection, will prepare a statement describing the anticipated effects of the Facility and the electric interconnection between the facility and the point of interconnection on the communications systems identified in §900-2.21(c), as well as an evaluation of the design configuration of the facility and electric interconnection between the Facility and the point of interconnection demonstrating that there shall be no adverse effects on such communications systems.

Chapter 137. Road Specifications

(Local Law 3 of 2006, Local Law Adding Chapter 137 Code of the Town of Waterloo)

The Applicant anticipates entering into a Road Use Agreement with the Town which will address the use of Town roads during the construction, operation and decommissioning of the proposed Facility. The Applicant understands that Chapter 137 includes certain procedural requirements including approvals, bonding, inspection and pre-construction meeting requirements, as well as substantive requirements and standards for materials, road specifications and construction activities. The Applicant has reviewed the Town's Road Specifications chapter and intends to incorporate relevant provisions of said chapter into the Road Use Agreement.

Local Law 3 of 2013, Authorizing Exclusion of Motor Vehicles in Excess of 10 tons from Town Roads as Established in NY VAT Law §1660

1. Legislative Intent: It is the intent of this local law to restrict access to the Town roads indicated below to vehicles in excess of 10 tons, except for the pickup and delivery of materials on such roads, and except for fire, rescue, emergency, and Town or school vehicles.

Powderly Road

⁵ "Nighttime Hours" are defined as the "hours between 10:00 p.m. on Sunday through Thursday and 7:00 a.m. the following day, and between 12:00 midnight on Friday and Saturday and 7:00 a.m. of the following day."

Mills Road
Dunham Road
Blue Sky Road
Hecker Road
Reed Road
Serven Road
Preemption Road
Steele Road
Maney Road
Bonnel Road

The Applicant anticipates entering into a Road Use Agreement with the Town which will address use of Town roads during the construction, operation and decommissioning of the proposed Facility, including haul routes.

Sections 2 through 5 are procedural and/or do not contain any substantive requirements applicable to the Facility.

At this time, we anticipate that the 94-c application will be submitted in late Q4 2023. In the meantime, North Seneca Solar Project will continue consultations with the Town regarding various topics which are required to be addressed under Section 94-c. In addition, 94-c requires a number of notifications and community meetings which will take place in advance of the filing of the Application.

After you have had an opportunity to review this letter, North Seneca Solar Project plans to discuss any questions the Town may have regarding local laws at the local agency meeting scheduled for September 11, 2023. We would appreciate you confirming that the above is accurate, and if something that should have been identified as applicable was not identified, please let us know. We also ask that the Town carefully review North Seneca Solar Project's requests for clarification or interpretation with respect to §§79-5.K. Loading & Unloading Areas and Outside Storage Areas, 134.6.B(1) Zoning Districts, 134.6.B(4)(a) Setbacks, 134.6.B(4)(c) Lot Coverage, and 135-9. Parking and loading and looks forward to discussing the Town's position on these items during our meeting. Furthermore, the Applicant requests that the Town confirm that there is no adopted "Appendix" containing noise level limits referenced in §93-5. North Seneca Solar Project appreciates the Town's review of this letter and looks forward to working with the Town throughout the 94-c process.

Very truly yours,

/s/ Ayah F. Badran

James A. Muscato II

Ayah F. Badran

Young/Sommer LLC

Attorneys for North Seneca Solar Project, LLC

cc: Rosemarie A. Marsh, Town Clerk
rmars@townofwaterloo.org

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E. Dennis Benjamin, Town Attorney
dbenjamin@benjaminandjames.com

From: [Ayah Badran](#)
To: jcleere@townofwaterloo.org
Cc: dbenjamin@benjaminandjames.com; d-trout@live.com; [Camille Kaynor](#); [James Muscato](#)
Subject: North Seneca Solar Project - Local Law Consultations
Date: Wednesday, October 18, 2023 5:38:00 PM
Attachments: [231018 Proposed Waterloo Interpretation Ltr.docx](#)
[230906 North Seneca Solar Project Waterloo Local Law Consultation Letter.pdf](#)

Dear Jim,

I'm reaching out on behalf of the North Seneca Solar Project to follow up on conversations the North Seneca Team had with the Town at the Local Agency Meeting last month, specifically regarding applicable local laws. As discussed at the meeting, there are several provisions of the Town Code that we're seeking clarity on, and it would be helpful to obtain an interpretation from the Town, so we are sure they are being interpreted correctly in North Seneca Solar Project's Section 94-c application materials. These requests for interpretations were also identified in the Local Law Consultation Letter that was provided to the Town prior to the Local Agency Meeting, which I have attached for your convenience.

In an effort to facilitate this process, we've prepared a proposed interpretation letter that we've drafted in the form of a letter from your office to North Seneca Solar Project. The interpretation proposed letter we're providing is only intended to facilitate this process and understand should you choose to make revisions as you see fit to provide your interpretations for each of the provisions.

Please do not hesitate to contact me should you have any questions or want to discuss the letter generally.

Thank you,

Ayah F. Badran
Young / Sommer LLC
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September 6, 2023

Via Email and USPS

Town Board

Town of Junius

655 Dublin Road

Clyde, NY 14433

erniebrownell@gmail.com

Re: North Seneca Solar Project, Local Law Consultation

Dear Members of the Town Board,

North Seneca Solar Project, LLC, a subsidiary of Savion, LLC (the "Applicant"), is proposing to construct and operate the North Seneca Solar Project (the "Facility" or the "Project") in the Towns of Waterloo and Junius, Seneca County, New York. The Facility is a proposed major solar electric generating facility with an electric generating capacity of up to 90 MW, interconnecting to National Grid's existing 115 kV overhead transmission line.

The Facility is consistent with State policy encouraging the development of clean energy and renewable resources as a tool in combating climate change, curbing air pollution and emissions, and greening New York State's economy. The Facility will act as an economic stimulus to the area by providing jobs and local contracts for goods and services during construction, as well as long-term operational positions and long-term economic benefits through lease and property tax revenues, among other local benefits.

In April 2020, New York passed the Accelerated Renewable Energy Growth and Community Benefit Act (the "Act"). The Act is intended to assist New York State in achieving the renewable energy production and greenhouse gas emission reduction goals of the 2019 Climate Leadership and Community Protection Act ("CLCPA") by creating the Office of Renewable Energy Siting ("ORES" or the "Office") and establishing an expedited process for the review of renewable energy projects through Executive law Section 94-c ("Section 94-c"). The Project is proceeding through the Section 94-c process to obtain a permit for the proposed Facility from ORES.

Section 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 (i.e. site plan, special use permits and variance approvals). However,

local substantive requirements (i.e. setbacks, height limits and sound limits) are still applicable to the Facility, unless ORES elects not to apply certain local requirements because it finds them, as applied to the Facility, to be unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the proposed Facility.

Section 94-c requires the Applicant to consult with local municipalities to determine which local substantive requirements apply to the Facility and whether design changes to the Facility can obviate the need to seek waivers of certain local requirements from ORES.

The Applicant has researched and reviewed potentially applicable local ordinances, laws, resolutions, regulations, standards and other requirements of a substantive nature pertaining to the construction or operation of the proposed Facility. Based on a review of the Town of Junius' local laws and ordinances, we have not identified any substantive local law or ordinance provisions that are applicable to the Facility.

Other than Local Law No. 2 of 2021, entitled "A Local Law to Provide that the Exemption for Solar or Wind Energy Systems and for Farm Waste Energy Systems Pursuant to Real Property Tax Law Section 487 Shall Not be Applicable within the Town of Junius" the Town does not appear to have enacted any local laws or ordinances applicable to solar facilities. It is also our understanding that the Town does not have a zoning ordinance, a local land use or site plan law, flood damage prevention law, street, road or highway preservation or restoration law, or a local law providing for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code. Furthermore, in the absence of a local law providing for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code, it is our understanding that the Seneca County Department of Building & Fire Code Enforcement administers and enforces the Uniform Code.

Despite the lack of applicable local laws and regulations, we remain committed to coordinating and consulting with the Town regarding the Section 94-c process, the application, and the proposed Facility throughout the process. At this time, we anticipate that the 94-c application will be submitted in late Q4 2023. In the meantime, North Seneca Solar Project will continue consultations with the Town regarding various topics which are required to be addressed under Section 94-c. In addition, 94-c requires a number of notifications and community meetings which will take place in advance of the filing of the Application.

After you have had an opportunity to review this letter, North Seneca Solar Project plans to discuss any questions the Town may have regarding local laws at the local agency meeting scheduled for September 11, 2023. We would appreciate you confirming that the above is accurate, and if any local law or ordinance provisions that should have been identified as applicable were not identified, please let us know. North Seneca Solar Project appreciates the Town's review of this letter and looks forward to working with the Town throughout the 94-c process.

Very truly yours,

/s/ Ayah F. Badran

James A. Muscato II
Ayah F. Badran
Young/Sommer LLC

cc: Coleen Smith, Town Clerk
csmithjuniusclerk@gmail.com

Jeffrey D. Graff, Town Attorney
jgraff@jeffgrafflaw.com

October , 2023

Via Email and USPS

James A. Muscato
Young/Sommer LLC
Executive Woods
Five Palisades Drive
Albany, NY 12205
jmuscato@youngsommer.com

Re: North Seneca Solar Project, Local Law Consultations – Local Law Interpretation

Dear Mr. Muscato,

The Town is in receipt of North Seneca Solar Project, LLC’s (“North Seneca Solar Project”) Local Law Consultation Letter, dated September 6, 2023 (Attachment A). In the Local Law Consultation Letter, North Seneca Solar Project summarized the substantive Town of Waterloo local laws applicable to the proposed North Seneca Solar Project (the “Project” or “Facility”), identified local law provisions it intends to seek waivers for from the Office of Renewable Energy Siting (“ORES”) as part of the Section 94-c process, and requested interpretations of several local law provisions from the Town.

After consulting with the Town Attorney, the Town agrees that North Seneca Solar Project has identified all Town laws that are potentially applicable to the proposed Project. On behalf of the Town of Waterloo Land Use and Zoning Department, I write to provide the following responses to the requested interpretations in my capacity as the Town of Waterloo Zoning & Code Enforcement Officer.

Code of the Town of Waterloo, Chapter 134: Solar Energy Systems

§134.6.B(1) Zoning Districts

Section 134.6.B(1) of the Town Code allows large-scale solar energy systems, as a special use subject to site plan approval, in the Town of Waterloo’s Industrial (I) and Agricultural (A) zoning districts. North Seneca Solar Project has requested clarification regarding the identification of the A zoning district as it appears on the Town of Waterloo Land Use Control Map, revised by Local Law No. 2 of 2020. While the Town of Waterloo Land Use Control Map lists the A zoning district as “Agricultural (or Undeveloped)” in the legend, the Town of Waterloo Zoning Law only has a single agricultural zoning district, the “Agricultural (A)” zoning district, which is the same as what is identified on the Town of Waterloo Land Use Control Map as “Agricultural (or Undeveloped)”.

§134.6.B(4)(a) Setbacks

Section 134.6.B(4)(a) requires large-scale solar energy systems to be sited to create a front setback of no less than 200 ft from the right-of-way line of the road and setbacks of 100 ft from all side and rear *property lines*. It also requires that large-scale solar energy systems be setback a

minimum of 300 ft from any residential structure *located on another parcel*. North Seneca Solar Project has requested confirmation that the terms “property lines” and “parcel” as used in §134.6.B(4)(a) are not intended to apply to the individual lots within the Facility site (i.e. parcels participating in the Project), but rather the terms “property lines” and “parcel” as used in this section refer to entire Facility Site (i.e. property lines between participating and nonparticipating parcels and “located on another parcel” being a non-participating parcel).

Based on a review of the definitions and use of terms “property lines” and “parcel”, or other similar terms in the Code of the Town of Waterloo, I agree with North Seneca Solar Project’s interpretation of this section. Because Chapter 134: Solar Energy Systems does not provide definitions for these terms, reference to other sections of the Town Code is appropriate. Town Code, Chapter 135: Zoning (the “Zoning Law of the Town of Waterloo”), Appendix: Definitions, defines “property line” as “[t]he line between lands set aside for a mobile home park and adjacent property.” Although the definition is not specifically applicable within the context of the Town’s Solar Energy Systems provisions, it does indicate that, in other contexts in the Town Code where setbacks are applied to a specific use that may involve or span across more than one parcel, it is the Town’s intent that such setbacks not be applicable to individual parcels participating in the specific project or use, but rather to apply between participating and non-participating parcels. *See e.g.* Town Code, Chapter 89: Mobile Homes, §89-7. Mobile home park requirements.

Furthermore, although the Town Code does not provide a definition for the term “parcel”, the term “parcel” appears to be used interchangeably with the term “lot” throughout Chapter 134: Solar Energy Systems (*e.g.* §134.5.D(e)), and that the term “parcel” refers to the Facility site as a whole (*e.g.* §134.6.B(3)(h)). This is demonstrated in §134.6.B(3)(h), which refers to the facility “site” when discussing dismantling and removal in subsection (1) but then uses the term “parcel” when discussing removal and remediation in subsection (2).

Therefore, my interpretation is that the setbacks in §134.6.B(4)(a) are intended to apply only to setbacks to non-participating parcels and that the setback to residential structures is intended to apply only to such structures located on non-participating parcels.

§134.6.B(4)(c) Lot Coverage

Section 134.6.B(4)(c) prohibits ground mounted large-scale solar energy systems from exceeding 50% of the “lot on which it is installed.” For the reasons discussed above with respect to §134.6.B(4)(a), the 50% maximum lot coverage requirement **should be interpreted to apply to the entire Facility Site (i.e. the area leased for the project), rather on an individual basis to each of the participating parcels within the Facility Site.** This interpretation is consistent with how this provision has been applied to other utility scale solar facilities in the Town, specifically the Trelina Energy Solar Center (where this 50% maximum lot coverage requirement was applied to the entire Facility Site rather than on the individual participating parcel level) and the Town did not object to such interpretation in the Article 10 proceeding in that case.

Code of the Town of Waterloo, Ch. 79: Site Plan Review & Approval Law

§79-5.K. Loading & Unloading Areas and Outside Storage Areas

Section 79-5.K requires screening of all loading and unloading areas and outside storage areas, including used equipment storage and areas for the storage of trash, that face or are visible from a public road or an adjacent property. This requirement is intended to apply to uses that involve permanent loading and unloading areas and outside storage areas, permanent equipment storage areas, and permanent trash storage areas. ***The screening requirements in this section do not apply to any temporary loading and unloading areas, outside storage areas, used equipment storage, and trash storage areas.***

Code of the Town of Waterloo, Ch.135: Zoning Law of the Town of Waterloo

§135-6.L. General Performance Standards

This section requires that all nonfarm land uses or activities within the Town of Waterloo be established, constructed, or operated in accordance with the following performance standards:

- (1) The activity shall not produce objectionable vibration, glare, heat or noise that is evident beyond the property line.
- (2) The activity shall not result in the dissemination of noxious dust, gas, smoke, chemicals or odors beyond the property line.
- (3) The activity shall not produce perceptible electromagnetic interference with normal radio or television reception in any area.

Based on a review of the relevant standards addressing these types of impacts in the New York Executive Law Section 94-c regulations, 19 NYCRR Part 900, ***it is my determination that compliance with the relevant 94-c regulations designed to specifically address these types of impacts would be sufficient to comply with the very broad general performance standards contained in §135-6.L.*** This determination is based on my review of the following:

- **Noise & Vibration:** 19 NYCRR §900-2.8 sets maximum noise limits for solar facilities during operation, requires an evaluation construction noise levels to demonstrate that noise levels are adequately protective of human health & safety, and also requires the identification of noise abatement measures if necessary. Additionally, in order to ensure that noise impacts during construction are minimized, 19 NYCRR §900-6.4(k) requires proper maintenance of mufflers on all transportation and construction machinery, response to noise and vibration complaints in accordance with an established complaint resolution protocol, and compliance with local laws applicable to construction noise.
- **Glare:** 19 NYCRR §900-2.9(d)(7) requires solar panels to have anti-reflective coatings, and also requires an assessment of solar glare exposure at any non-participating residence, airport or public roadway indicating that glare will be avoided or minimized and will not be at a level that would result in complaints, impede traffic movements or create safety hazards.

- Air Emissions & Dust: 19 NYCRR §900-6.4(j) requires a number of measures designed to minimize air emission during construction, including (1) prohibiting contractors from leaving generators idling when electricity is not needed and from leaving diesel engines idling when equipment is not actively being used; (2) implementing dust control procedures to minimize the amount of dust generated by construction activities in a manner consistent with the Standards and Specifications for Dust Control, as outlined in the New York State Standards and Specifications for Erosion and Sediment Control; (3) use of construction equipment powered by electric motors where feasible, or by ultra-low sulfur diesel; and (4) disposal or reuse of cleared vegetation in a way that minimizes greenhouse gas emissions.
- Effect on Communications: 19 NYCRR §900-2.21(f) requires an evaluation that demonstrates that there are no adverse effects on various communications systems.

Similarly, compliance with the above Section 94-c requirements would be sufficient to demonstrate compliance with §79-5.Q. of the Chapter 79: Site Plan Review & Approval Law of the Town Code, which generally prohibits the production of offensive noise, traffic, odor, smoke, dust, heat, glare or electrical disturbance that cannot be mitigated or contained on the site. In addition to the relevant Section 94-c standards discussed above that address the requirements of §79-5.Q, 19 NYCRR §900-2.17 requires a comprehensive evaluation of traffic and transportation impacts associated with the proposed Facility, which in addition to an evaluation of the adequacy of the road system to accommodate projected traffic, also requires an identification and evaluation of mitigation measures regarding any potential traffic and transportation impacts. Compliance with this requirements of 19 NYCRR §900-2.17, combined with the Section 94-c requirement listed above, is sufficient to demonstrate compliance with §79-5.Q.

§135-9. Parking and loading

As noted by North Seneca Solar Project in its Local Law Consultation Letter, §134.6.B(4)(l) of the Solar Energy Systems Chapter requires compliance with the substantive provisions contained in the Site Plan requirements, and §79-5.J of the Site Plan requirements provides that “an adequate amount of off-street parking shall be provided for the proposed use.” To determine what is considered an “adequate” amount of off-street parking, reference to §135-9.B. Off-street parking requirements is necessary. Section 135-9.B(1) provides that “[t]he minimum number of off-street parking spaces required for land uses or activities permitted by this chapter shall be as set forth in Schedule III, which is hereby adopted and made a part of this chapter.”

While Schedule III identifies minimum off-street parking requirements for various land uses or activities within the Town of Waterloo, it does not provide a minimum off-street parking requirement for Large-Scale Solar Energy Systems. It also does not provide any minimum off-street parking requirements for similar types of uses such as utilities or electric generation facilities. Schedule III does include some general minimum off-street parking requirements for broad categories of uses, including for “wholesale, warehouse, storage and similar low-person intensive uses”, “manufacturing, fabricating, testing, assembling, repairing or servicing facility”

and “all other businesses and commercial uses.” For these categories of uses, minimum off-street parking requirements are calculated based on square footage of “gross floor area.”

Because “large-scale solar energy systems” do not fall within the category of “commercial uses” (which are defined in the Definitions Appendix of the Zoning Law as “[a]ny building or lot that is, has been or will be used for any purpose that is not residential, agricultural or public in nature”), and because the minimum off-street parking space requirements are based on a the size of a “gross floor area”, *it is my interpretation that minimum off-street parking requirements are not intended to apply to large-scale solar energy systems.*

Code of the Town of Waterloo, Ch. 93: Noise

§93-5. Machinery and Mechanical Devices

Section 93-5 of the Town’s noise law makes it unlawful for any person to operate “any machinery, equipment, pump, fan, air conditioning apparatus or similar mechanical device in any manner so as to exceed the noise levels permitted in any residential area where the noise created during either the nighttime or daytime hours exceeds the limits in the APPENDIX.” North Seneca Solar Project has requested confirmation that the Town’s noise law does not in fact have an adopted Appendix containing such noise limits, as referenced in §93-5. I have reviewed a copy of Local Law 8 of 2011 entitled “Local Law Amending Chapter 93 Noise of the Code of the Town of Waterloo” as filed with the New York State Department of State and can ***confirm that the Town does not have an adopted Appendix reference in this section.*** Furthermore, based on the definition of “residential area”, which is defined as “[a]ny area of the town occupied in whole or in part by residences, including mobile homes, where the distance between occupied buildings, residential or otherwise, does not exceed 100 feet”, ***it is my determination that this section would not apply to the area of the Town of Waterloo where the Facility Site is proposed.***

Sincerely,

James Cleere
Town of Waterloo
Zoning & Code Enforcement Officer

cc:

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From: [Ayah Badran](#)
To: [Jim Cleere](#)
Cc: dbenjamin@benjaminandjames.com; d-trout@live.com; [Camille Kaynor](#); [James Muscato](#)
Subject: RE: North Seneca Solar Project - Local Law Consultations
Date: Thursday, October 19, 2023 12:37:00 PM

Jim,

Thanks for getting the most recent versions of the Zoning Law and Schedules I & II so quickly. I will follow up with the Town Clerk regarding the FOIL request, so she is aware these have been provided.

Please let us know if you have any questions as you review the proposed local law interpretation letter we provided, or if you would like to discuss next steps with respect to the interpretations, we're happy to discuss.

Thank you,

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From: Jim Cleere <jcleere@townofwaterloo.org>
Sent: Thursday, October 19, 2023 9:34 AM
To: Ayah Badran <abadran@youngsommer.com>
Cc: dbenjamin@benjaminandjames.com; d-trout@live.com; Camille Kaynor <ckaynor@savionenergy.com>; James Muscato <JMuscato@youngsommer.com>
Subject: Re: North Seneca Solar Project - Local Law Consultations

On 10/18/2023 5:38 PM, Ayah Badran wrote:

Dear Jim,

I'm reaching out on behalf of the North Seneca Solar Project to follow up on conversations the North Seneca Team had with the Town at the Local Agency Meeting last month, specifically regarding applicable local laws. As discussed at the meeting, there are several provisions of the Town Code that we're seeking clarity on, and it would be helpful to obtain an interpretation from the Town, so we are sure they are being interpreted correctly in North Seneca Solar Project's Section 94-c application materials. These requests for interpretations were also identified in the Local Law Consultation Letter that was provided to the Town prior to the Local Agency Meeting,

which I have attached for your convenience.

In an effort to facilitate this process, we've prepared a proposed interpretation letter that we've drafted in the form of a letter from your office to North Seneca Solar Project. The interpretation proposed letter we're providing is only intended to facilitate this process and understand should you choose to make revisions as you see fit to provide your interpretations for each of the provisions.

Please do not hesitate to contact me should you have any questions or want to discuss the letter generally.

Thank you,

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Dear Ayah

you will need to review our new zoning and Schedule II which was adopted at our September meeting. There has been some changes so before any letters will e signed please review as some of your questions may be answered with the new zoning codes. For instance in your original letter to the town you cited schedule II in agricultural which was an old schedule from many years ago. So please review everything and then if there are further questions i will be happy to clarify any questions you may have. Attached you will find copies of our current zoning.

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