North Seneca Solar Project

ORES Permit Application No. 23-00036

1100-2.25 Exhibit 24

Local Laws and Ordinances

REVISION 1

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EXHIBIT 24 LOCAL LAWS AND ORDINANCES

OVERVIEW

This exhibit addresses the requirements specified in Title 16 of the New York Codes, Rules and Regulations (NYCRR) § 1100-2.25 regarding local laws and ordinances.

New York State Public Service Law Article VIII (Article VIII), and its implementing regulations (16 NYCRR § 1100-1 through 1100-15), provide for the review of major renewable energy facilities in New York State and establish a unified and streamlined review, in lieu of requiring major renewable energy facility developers to apply for numerous state and local approvals. Article VIII expressly states that no municipality or political subdivision or any agency thereof may require any approval, consent, permit, certificate, contract, agreement or other condition for the development, design, construction, operation or decommissioning of a major renewable energy facility with respect to which an application for a siting permit under Article VIII has been filed (Article VIII § 144(2)). As a result, to the extent that a local municipality requires site plan approvals, special use permits, building permits, or any other approval, consent, permit, certificate, contract, agreement, or other condition with respect to the Facility such review and approval is expressly preempted by Article VIII. Such approvals include local approvals subject to review by town boards, planning boards, zoning boards, or other town employees with respect to local requirements for the Facility. For example, this would include a requirement that provides discretion to a town planning board to review and approve solar panel height, or review and approve density of vegetative screening.

However, local substantive requirements not otherwise requiring local review or approval (i.e., setbacks, height limits, sound limits, percent cover requirements etc.) are still applied to the Facility by the Office of Renewable Energy Siting (ORES). Article VIII § 142(5) provides that ORES may only issue a final Siting Permit if it makes a finding that the proposed Facility, together with any applicable Uniform Standard Conditions (USCs), Site Specific Conditions (SSCs), and compliance filings set forth in the Permit would comply with applicable laws and regulations. In making this determination, the Office may elect not to apply, in whole or in part, any local law or ordinance which would otherwise be applicable if it makes a finding that, as applied to the proposed Facility, it is unreasonably burdensome in view of the Climate Leadership and Community Protection Act (CLCPA) targets and the environmental benefits of the proposed facility.

CONSULTATION WITH LOCAL MUNICIPALITIES

The Article VIII Pre-application Procedures (16 NYCRR § 1100-1.3) require consultation with local municipalities by requiring an applicant to provide, among other items, a summary of the substantive provisions of local laws applicable to the construction, operation, maintenance, and decommissioning of the proposed facility, an identification of such substantive local law provisions for which the applicant will request that the Office make a finding that compliance therewith would be unreasonably burdensome, and an explanation of all efforts by the applicant to comply with such substantive local law provisions through the consideration of design changes to the proposed facility, or otherwise.

The proposed up to 90 megawatt (MW) solar energy facility and associated infrastructure (the Facility) will be located in the Town of Junius and Town of Waterloo (referred to jointly as the "Towns"), Seneca County, New York. Throughout the Article VIII pre-application process, the North Seneca Solar Project, LLC (the Applicant) has consulted with the Towns. Consultations have included meetings with the Town Supervisors to discuss the Facility, as well as outreach in the form of open houses and town meetings. A more detailed description of the Applicant's consultation and outreach efforts is provided in Exhibit 2, Appendix 2-A. As required by 16 NYCRR § 1100-1.3, consultations with the Towns included identification of applicable substantive local law provisions.

The Applicant researched local ordinances, laws, resolutions, standards and other substantive requirements potentially applicable to the construction, operation, and decommissioning of the Facility. To facilitate consultations on local laws with the Towns, the Applicant submitted letters to the Town of Junius and the Town of Waterloo, on September 6, 2023, identifying applicable local ordinances, laws, resolutions, regulations, standards and other substantive requirements applicable to Facility construction, operation and decommissioning, identified those provisions for which the Applicant may need to seek waivers, and requested that the Towns confirm that all applicable substantive requirements had been identified by the Applicant. These letters are included in Appendix 24-B. The Applicant met with the Towns on September 11, 2023, and conferred with them on a range of topics, including identifying relevant substantive local laws and ordinances applicable to the Facility and identification of those provisions from which the Applicant would be seeking waivers from ORES. A copy of the September 11, 2023 local agency meeting agenda and presentation slides are provided in Exhibit 2, Appendix 2-A. Following the local agency meeting, on October 18, 2023, the Applicant contacted the Town of Waterloo Code Enforcement Officer seeking clarification on interpretations of certain local law provisions. A copy of the consultation on local law interpretations is provided in Appendix 24-B. As of the date of this Application, the Applicant has not received a response regarding local law interpretations.

The Applicant has worked diligently to design a facility that assists New York State in achieving the objects of the CLCPA and is consistent with the Scoping Plan, that also minimizes environmental impacts, takes into consideration the interests of the host community, and is consistent with applicable substantive provisions of local laws and ordinances to the maximum extent practicable.

(a) List of Substantive Local Ordinance/Laws Applicable to Facility Construction and Operation

The Applicant has designed the Facility in conformance with all local substantive requirements, except for those substantive requirements identified in Section (c) below, for which the Applicant seeks a waiver from ORES. This section identifies the local ordinances, laws, resolutions, regulations, standards and other requirements applicable to the construction and operation of the proposed Facility that are of a substantive nature. See Appendix 24-A for copies of the local laws and ordinances that include the substantive provisions described below.

Town of Waterloo

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

Through Local Law No. 1 of 2019, the Town of Waterloo adopted Chapter 134 "Solar Energy Systems" ("Chapter 134" or the "Town Solar Law") of the Code of the Town of Waterloo (the "Code"). Pursuant to the provisions § 134.3 of Chapter 134, which defines "Large-Scale Solar Energy System" as "[a] Solar Energy System that is ground-mounted and greater than 1,000 square feet based on the perimeter occupied by the solar panels and produces greater than 25kW (kilowatt) for the purposes of off-site sale or consumption" the proposed Facility is considered a "Large-Scale Solar Energy System" for purposes of applicability of the Town Solar Law. Below are the applicable substantive requirements of Chapter 134:

- § 134.6. Large-Scale Solar Energy System.
    - 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 . . .[1]
        - (3) Special Use Permit Application Requirements.
            - (h) Decommissioning Plan.
                - Subsections [1], [2], [3], and [4]
        - (4) Special Use Permit Standards.
            - a) Setbacks.
            - b) Height.
            - c) Lot coverage.
            - d) Minimum Lot Size.
            - e) Security.
            - f) Drainage.
            - g) Easements.
            - h) Decommissioning plan, security bond for removal of solar energy systems.
            - i) Operation and maintenance plan.
            - j) Access roads.
            - k) Screening.
            - l) Substantive site plan requirements in Zoning Code.

Town of Waterloo Town Code, Chapter 79: Site Plan Review & Approval Law
Local Law 1 of 2018, Chapter 79 "Site Plan Review & Approval Law"

Section 134.6.B(4)(l) of the Town's Solar Law states in relevant part that "[a]ny application under this section shall meet any substantive provisions contained in local site plan requirements in the Zoning Code that . . .

[1] Procedural provisions of this requirement are omitted.

are applicable to the system being proposed . . ." The procedural provisions in this section, which grant the Planning Board the authority to determine which site plan requirements are applicable and the ability to waive the requirement for site plan review are preempted by Article VIII. The applicable substantive site plan provisions are identified below:

- § 79-5. Standards for site plan review.
    - 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.
    - 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.
    - D. Total area of constructed impermeable surfaces.
    - I. Visibility at road intersections.
    - 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.
    - 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.
    - J. An adequate amount of off-street parking shall be provided for the proposed use.
    - L. Driveway cuts.
    - M. Access and circulation plans
    - N. Exterior lighting.
    - 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.
    - S. All other applicable federal, state, county and local laws and regulations shall be complied with.

Town of Waterloo Town Code, Chapter 93: Noise
Local Law 8 of 2011, A local law amending Chapter 93 Noise of the Code of the Town of Waterloo

- § 93-6. Construction
- § 93-9. Interference with broadcast reception.

Town of Waterloo Town Code, Chapter 135: Zoning
Local Law 10 of 2011, A local law amending Chapter 135 Zoning of the Code of the Town of Waterloo[2]

- § 135-5. District Regulations and Land Use Schedules

[2] Relevant amendments thereto are noted where applicable.

- 4. Schedule I: Land Uses or Activities
- 5. Schedule II: Area, Frontage, Yard, Height and Coverage Requirements

- § 135-6. General provisions.
  - G. Obstruction of vision.
  - I. Drainageways.
  - J. Rubbish and junk.
  - L. General performance standards.
  - F. Fences erected on residential lots or on land adjacent to residential lots.
    - (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.
    - (4) The finished side of such fence shall face adjoining and public right-of-ways.
    - (6) No barbed wire or electric fence shall be erected in a residential district.
    - (7) Barbed wire or electric fence on a residential lot in nonresidential districts shall not be erected less than 50 feet from any residence.
- § 135-7. Supplementary Regulations
  - C. Floodplains
    - (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.
    - (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.
  - F. Signs.
    - (1) General provisions.
      - (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.

- § 135-8. Special Conditions and Special Use Permits.
  - C. Special Conditions.
    - (6) Signs in all districts must comply with applicable requirements of §135-7F of this chapter.

Town of Waterloo Town Code, Chapter 74: Fire Prevention and Building Code, Uniform

- *Local Law 1 of 1984*

This local law announces that the Town of Waterloo will no longer administer the Uniform Code as of January 1, 1985.

Town of Junius

The Applicant researched and reviewed potentially applicable local laws, ordinances, regulations, standards and other requirements to the construction or operation of the Facility. Based on this review, the Applicant determined that the Town of Junius does not have any applicable laws, ordinances, regulations, standards or other requirements applicable to the construction and operation of the Facility. Therefore, the Applicant has not identified any substantive provisions for the Town of Junius.

As noted above, the Applicant provided the Town of Junius a letter consulting on local laws prior to holding a meeting to discuss the various pre-application consultation topics required by 16 NYCRR § 1100-1.3(a). In the letter, and at the consultation meeting held on September 11, 2023, the Applicant advised the Town that it had not identified any applicable local laws in its research and review of the Town's local laws and ordinances, and the Town of Junius has not disputed the Applicant's findings or identified any applicable laws that the Applicant has failed to identify.

Local Ordinances/Laws Applicable to Road Use

In order to construct and operate the Facility, the Applicant will need to (i) traverse municipal highways, roads, bridges, culverts and related fee owned land, rights-of-way or easements owned or maintained by the host municipalities ("municipal roads") with heavy vehicles and equipment in excess of the legal dimensions or weights set forth in New York State Vehicle and Traffic Law § 385, (ii) place certain underground collection and transmission and communication cables, conduit, and other wires and cables in close proximity to or under or across certain municipal roads, and (iv) carry out other related activities involving municipal roads.

The Applicant has identified substantive local laws applicable to the use of municipal roads during construction and operation of the Facility. The procedural provisions of these local laws and ordinances are

pre-empted by Article VIII, unless expressly authorized by the Office. Refer to Exhibit 16 for further details on roads to be involved in Facility construction, operation and decommissioning.

The Applicant is in the process of consulting with the Towns of Waterloo and Junius on use of Town roads and intends to negotiate Road Use Agreements (RUAs) with each of the Towns, to the extent required. In the absence of RUAs, as with other provisions of local law, the Towns' review and approval authority is superseded by Article VIII and the Applicant requests that ORES retain its authority with respect to review and approval of the Applicant's use of Town roads should the Applicant and the Towns not enter into RUAs. Final details regarding the use of Town roads and RUAs will be provided as part of the Applicant's Final Traffic Control Plan, to be submitted in compliance with 16 NYCRR § 1100-10.2(8).

The Town of Junius has not adopted any Road Use, or Road Preservation/Restoration Laws. The Town of Waterloo has adopted a Road Specifications Law and a Law that excludes motor vehicles in excess of 10 tons from certain Town roads, unless a delivery or pickup is being made on such roads.

Town of Waterloo Town Code, Chapter 137. Road Specifications
Local Law 3 of 2006, Local Law Adding Chapter 137 Code of the Town of Waterloo

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

The Applicant intends to comply with the applicable substantive standards of these local laws during the construction and operation of the Facility by either entering into a road use agreement with the Town of Waterloo or by complying with the applicable substantive provisions of the above identified laws. More specifically, although the Applicant intends to have vehicles in excess of 10 tons travel on Dunham Road, such use of the road would be exempt from the restriction in Local Law 3 of 2013 because the purpose of

use of Dunham Road by vehicles in excess of 10 tons will be to deliver and pickup materials along that Road as the Applicant has proposed a Facility access road off of Dunham Road. With respect to Blue Sky Road, while the Applicant intends to use it as a haul route, it intends to restrict use of that road by construction vehicles in excess of the 10-ton weight limit. *See* Exhibit 16 for additional information regarding locations of access roads and proposed haul routes.

However, in the event the Applicant and the Town of Waterloo are unable to agree on the terms of a road use agreement, the Applicant reserves the right to seek necessary approvals from the Office, and waivers of provisions that become unreasonably burdensome, if necessary, as part of the Applicant's Traffic Control Plan to be submitted pursuant to 16 NYCRR § 1100-10.2(8). Furthermore, to the extent that Seneca County requires highway work permits and/or road use agreements, the Applicant requests that ORES expressly authorize the County to issue such permits.

(b) List of Substantive Local Ordinances/Laws Related to Use of Water, Sewer, or Telecommunication Lines

The Facility will not be interconnecting to any water, sewer, or telecommunication lines in public rights of way. Therefore, the Applicant has determined that there are no substantive requirements in local laws or regulations applicable to the interconnection or use of water, sewer or telecommunication lines that are applicable to the Facility.

(c) List of Substantive Local Ordinances/Laws That the Applicant Requests the Office 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 the construction and operation of the Facility (e.g. site plan review, special use permits, building permits etc.). However, local substantive requirements not otherwise requiring local review or approval (i.e., setbacks, height limits, sound limits, percent cover requirements etc.) are still applied to the Facility by ORES.

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, as applied to the Facility, it is unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the Facility. Although the Applicant has designed the Facility with the intent to comply with applicable local substantive requirements, as demonstrated below, certain substantive requirements cannot be complied with due to the unreasonably burdensome nature of the requirements.

For the provisions discussed below, the Applicant determined that compliance would be impracticable due to the degree of the burden compliance would have on the Facility in view of the CLCPA targets the Facility will be contributing to and the environmental benefits associated with the Facility. The Applicant has provided a statement of justification for each local substantive requirement that it requests ORES not apply. As required by 16 NYCRR § 1100-2.25(c), the statements of justification demonstrate the degree of the

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 Article VIII regulations.

Generally, the Applicant submits that the below provisions, as applied to the Facility, are unreasonably burdensome in view of the CLCPA targets and environmental benefit of the proposed Facility. Some provisions threaten the feasibility of the project, while others are technically impossible or impractical to comply with. By contrast, the impacts of granting the waiver requests are minor to nonexistent. For the reasons set forth below, ORES should grant the waivers requested by the Applicant.

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

§ 134.6.B(3)(h) Decommissioning Plan.

> (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 . . .

Statement of Justification

The Applicant requests that ORES not apply the provisions of this section which require decommissioning of the Facility if it ceases to be used or operated or in the event the system fails to generate electrical energy for a period of 6 months, and the provision which requires that the Facility be completely dismantled, removed, and the site restored within 30 days of the start of decommissioning.

6 Month Abandonment Timeframe

(1) The degree of burden caused by the requirement

This section requires decommissioning, or considers the Facility abandoned if the Facility ceases operation or fails to generate electricity for a period of 6 months. Requiring compliance with this requirement would be unreasonably burdensome in view of the CLCPA targets and the environmental benefits that will be

provided by this Facility. While the Uniform Standards and Conditions (USCs) do not set a specific timeframe within which a Facility is deemed abandoned, prior proceedings before the Siting Board and ORES[3] have found 6 months to be unreasonable and agreed that 12 months to be a more appropriate length of time to require decommissioning if a facility has ceased to operate or generate electricity for such time period.

The 6-month time period provided in this section is not sufficient to allow for the flexibility the Applicant requires to address potential issues that may be the cause of the Facility's failure to operate or generate electricity for such period of time. Flexibility is particularly important as many of the conditions or factors contributing to a Facility's inability to operate/generate electricity for a given length of time are outside of the Applicant's ability to control, such as a natural disaster that results in significant damage to the panels. For example, in the event the Facility is inoperable and cannot generate electricity due to a damaged Facility component(s), replacing the damaged equipment may take longer than 6 months due to market conditions outside of the Applicant's control, such as a lack of availability, or trade concerns. Other reasons that could cause lengthy periods of Facility inoperability could include curtailment or other events dictated by the utility or the New York Independent System Operator (NYISO).

(2) Why the burden should not reasonably be borne by the Applicant

The burden of this requirement should not be borne by the Applicant, because although the Applicant or Facility operator may be working diligently to ensure that events causing Facility inoperability are resolved as efficiently as possible while also ensuring safe operations at the Facility, the amount of time to complete Facility repairs is dependent on many factors outside of the Applicant's control.

(3) The request cannot be obviated by design changes to the facility

This waiver request cannot be obviated by design changes to the Facility because this request relates to a timeframe to get the Facility back into operation in the event the Facility is inoperable and cannot generate electricity, which could be as a result of a number of different events many of which are outside of the Applicant's control.

[3] Matter No. 21-01069, Application of Watkins Glen Solar Energy Center, LLC for a 94-c Permit for Major Renewable Energy Facility; Case 19-01181, Application of Trelina Solar Energy Center, LLC for a CECPN Pursuant to Article 10 to Develop, Construct and Operate a Solar Generating Facility with a Maximum Generating Capability of 80 MW in the Town of Waterloo, Seneca County; Case 17-F-0597, Application of High River Energy Center, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the Public Service Law for Construction of a Solar Electric Generating Facility Located in the Town of Florida, Montgomery County; Case 17-F-0599, Application of East Point Energy Center, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the Public Service Law for Construction of a Solar Electric Generating Facility Located in the Town of Sharon, Schoharie County.

(4) The request is the minimum necessary

The request is the minimum necessary in order to ensure that the Facility is not forced to begin the decommissioning process before the end of its useful life. The Applicant requests that ORES waive the 6-month abandonment timeframe and allow for a 12-month abandonment period. As described in Appendix 23-A. Decommissioning and Site Restoration Plan, the Applicant proposes that the Facility be deemed abandoned if it ceases to generate electricity for a period of 12 consecutive months, unless the following occurs during the 12-month period: (1) repair, restoration, or improvement of a Facility component that affects electricity generation and the repair, restoration or improvement activity is diligently being pursued by the Applicant, or (2) a Force Majeure event occurs. The first contingency displays the Applicant's clear intent to restore generation activity at the Facility, but completion of the work may be delayed by factors discussed above that are outside of the Applicant's control and the Applicant should not be penalized for those delays. The second contingency protects the Applicant from unforeseeable circumstances or events that prevent the Applicant from restoring generation activity at the Facility. Lastly, a 12-month abandonment timeframe is consistent with similar waiver requests granted in other proceedings.

(5) The adverse impacts of granting the request would be minimized or mitigated to the maximum extent practicable consistent with applicable requirements set forth in Part 1100

Adverse impacts, if any, would be mitigated to the maximum extent practicable by the Applicant's adherence the operation requirements contained in the Article VIII regulations including maintenance and inspection requirements and reporting to NYSDPS or ORES when required, in addition to the Offices' process for overseeing equipment replacements.

Finally, requiring the Applicant to comply with such a short 6 month timeframe to initiate decommissioning in the event the Facility ceases to operate or generate electricity for such period would not be in the best interest of consumers, as it would result in the removal of the Facility's generating capacity from the State's electricity sector before the end of the Facility's useful life. This would be an unreasonable result considering the significant amount of resources, including but not limited to, financial and material resources, invested in the Facility's design, permitting and construction, and would be contrary to the State's need for fast and efficient deployment of renewable resources to meet the CLCPA targets.

30-day Decommissioning & Site Restoration Timeframe

(1) The degree of burden caused by the requirement

The 30-day time period to complete decommissioning and site restoration is unreasonably brief and is technically impossible to achieve due to how long each required aspect of decommissioning takes. For example, as outlined in Table 23-1 of Exhibit 23, site preparation for decommissioning, including erosion and sediment control installation and de-energizing electrical components, is expected to take up to 12 weeks; disassembling and removing facility infrastructure is estimated to take 16 to 20 weeks; and site

restoration, including seeding and revegetation, is expected to require an additional 16 to 20 weeks. Although the USCs do not set a specific timeframe within which decommissioning and site restoration activities must be completed, in prior matters before both the Siting Board and ORES,[4] the importance of need for flexibility, particularly as it relates to site restoration efforts which depend on the timing of the growing season, has been noted. As described in the Decommissioning Schedule in Exhibit 23, Appendix A. Decommissioning and Site Restoration Plan, decommissioning and site restoration efforts, including removal of facility components and site restoration, is anticipated to take approximately 18 months from the start of decommissioning to complete. As this schedule demonstrates, in order to remove Facility components in a safe manner consistent with applicable regulations and complete site restoration efforts, the Applicant requires substantially more than the 30-day limit set in § 134.6. B. (3) (h).

(2) Why the burden should not reasonably be borne by the Applicant

The burden of this requirement should not be borne by the Applicant, because no Applicant should be required to meet an impossible standard. While the Applicant appreciates the Town's desire to ensure that decommissioning and site restoration activities are completed promptly with as little negative impact on the host community as possible, it is simply impossible to achieve decommissioning and site restoration within the 30-day timeframe set by the Town. Additionally, the objective of ensuring that decommissioning and site restoration activities are completed promptly with as minimal an impact to the host community as possible, is an objective that will be achieved through the implementation of the Applicant's Decommissioning Plan, which sets a reasonable and realistic schedule for decommissioning and site restoration efforts.

(3) The request cannot be obviated by design changes to the facility

Because this request is based on impossibility, and given that it relates to decommissioning activities at the end of the Facility's useful life, design changes would have no effect on the ability of the Applicant to comply with this 30-day requirement and in turn there are no design changes that could be implemented to obviate the need for this waiver request.

(4) The request is the minimum necessary

This request is the minimum necessary to ensure that the Facility decommissioning and site restoration schedule is feasible and based on the size of the Facility, a feasible schedule the Applicant is requesting is 18 months. The Applicant has only requested in this waiver request that the 30-day timeframe for decommissioning and site restoration be waived to allow for sufficient time for the necessary

[4] Matter No. 21-00748, Permit Application of Hemlock Ridge Solar LLC (formerly Orleans Solar LLC) for a 94-c Permit for Major Renewable Energy Facility; Case 19-01181, Application of Trelina Solar Energy Center, LLC for a CECPN Pursuant to Article 10 to Develop, Construct and Operate a Solar Generating Facility with a Maximum Generating Capability of 80 MW in the Town of Waterloo, Seneca County.

decommissioning and site restoration activities to be completed safely and effectively, which as demonstrated in the Applicant's Appendix 23-A (Decommissioning and Site Restoration Plan), is approximately 18 months.

(5) The adverse impacts of granting the request would be minimized or mitigated to the maximum extent practicable consistent with applicable requirements set forth in Part 900

The adverse impacts, if any, associated with the granting of this request will be mitigated to the maximum extent practicable by the Applicant's adherence to a Decommissioning and Site Restoration Plan, including a schedule, approved by ORES.

§ 134.6.B(3)(h) Decommissioning Plan.

(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.

Statement of Justification

The requirement to file a decommissioning plan with the Town per the local review process is procedural and supplanted by Article VIII. A decommissioning and restoration plan has been prepared for the Facility and is submitted for the Office's review in Appendix 23-A. Decommissioning and Site Restoration Plan. However, to the extent this section contains a substantive local law provision requiring removal of all below-ground equipment, structures and foundations to an unspecified depth, the Applicant respectfully seeks a waiver of this requirement from ORES as it applies to buried components at a depth of greater than 3 feet below grade in non-agricultural land and 4 feet below grade in agricultural land. Facility components at greater than these depths will be left in place, consistent with Article VIII regulations 16 NYCRR § 1100-10.2(b)(1) and New York State Department of Agriculture and Markets *Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands* (Revision 10/18/2019) (NYSDAM Guidelines). The Applicant also seeks a waiver of the requirement to remove all above ground infrastructure to allow access roads or driveways to be left in place at the request of property owners.

(1) The degree of burden caused by the requirement

Requiring removal of all buried Facility components, to an unspecified depth, is unreasonably burdensome in view of the CLCPA targets, exceeds NYSDAM guidelines, and would result in unjustified impacts to environmental resources and the surrounding community.

In addition to the resource impacts discussed below in subsection (2), requiring removal of buried Facility components at depths greater than 3 feet in non-agricultural lands and 4 feet in agricultural lands, including collection cables (particularly those installed by trenchless methods [i.e., horizontal directional drilling]), access roads would extend the scope and duration of decommissioning for an additional approximately

seven weeks, which would result in exposing the surrounding community to more intensive and longer term of impacts from the additional earth disturbance, noise and construction traffic impacts that would result. Efforts to remove all Facility components buried below 3 feet in non-agricultural land and 4 feet in agricultural land, including collection cables, would cost approximately $248,000. Taking into consideration that the Section 94-c regulations require the gross cost estimate to include a fifteen (15) percent contingency cost based on the overall decommissioning and site restoration estimate, this would result in an additional cost of approximately $37,200, which would create an unreasonable economic burden on the Facility, with no discernable environmental benefit associated with such efforts.

(2) Why the burden should not reasonably be borne by the Applicant

It should be noted that collection lines for the Project will be buried at a depth of greater than 3 feet in non-agricultural land and 4 feet in agricultural land, including by trenchless installation (i.e., horizontal directional drilled [HDD] or bored) beneath roadways, streams and wetlands, existing utilities and other sensitive environmental resources, and requiring removal of these components below such depths would cause unnecessary impacts. Within the Facility Site, approximately 12.3 miles of collection line is being proposed to be placed at a depth of greater than 3 feet in non-agricultural lands 4 feet in agricultural lands. Of this, approximately 1.8 miles of collection line is proposed to be installed using trenchless installation. The NYSDAM Guidelines require that, at decommissioning, all above ground structures (including panels, racking, signage, equipment pads, security fencing) and underground utilities, if less than 48 inches deep, be removed. The NYSDAM Guidelines require removal of all underground direct buried electric conductors and conductors in conduit and associated conduit with less than 48 inches of cover by methods that cause the least amount of disturbance as possible. As for all underground electric conduits and direct buried conductors that are more than 48 inches below grade, the NYSDAM Guidelines allow for components to be abandoned in place.

The NYSDAM Guidelines are aimed at avoiding and minimizing impacts to agricultural lands, and requiring removal of all buried facility components, irrespective of depth, would be inconsistent with NYSDAM Guidelines and cause unnecessary soil disturbance. Similarly, requiring removal to a depth of greater than 3 feet in non-agricultural lands and in wetlands would result in ground disturbance and wetlands impacts that can be avoided by not requiring compliance with this local law requirement. Furthermore, as noted above in subsection (1), requiring compliance with this local law requirement would expand the scope and duration of decommissioning and site restoration activities, which would in turn result in an additional impact to adjacent properties and surrounding community with no discernable benefit in return.

With respect to access roads and driveways to be left in place at property owners request, requiring removal would prohibit the Applicant from allowing landowners to retain the added value that these types of improvements may provide to landowners after the Facility is decommissioned. Access roads can provide significant benefit to landowners, particularly farmers, who may seek to resume agricultural use of the Facility Site following decommissioning and site restoration. These improvements would provide an added benefit to landowners who wish to keep them, would not negatively impact the community, and in fact may

aid in retaining the value of improved lands and render these parcels more marketable or usable for future development or agricultural use. Meanwhile, strict enforcement of this local law provision would require the Applicant remove improvements that a landowner may wish to retain, resulting in additional construction impacts and disturbances in order to remove improvements landowners seek to retain and potentially for landowners to reinstall similar improvements in the future.

(3) The request cannot be obviated by design changes to the facility

This request is not one that can be obviated by changes in Facility design, as it relates to the scope of required decommissioning and site restoration activities as it relates to underground Facility components such as collection below 3 feet in non-agricultural land and 4 feet in agricultural land, and certain aboveground improvements.

(4) The request is the minimum necessary

The request is the minimum necessary as it will apply only to the specific Facility components, such as the 12.3 miles of collection line, that are proposed to be located at depths greater than 3 feet below grade in non-agricultural land and 4 feet below grade in agricultural land and is consistent with the requirements of the Article VIII regulations and NYSDAM guidelines. With respect to the access roads and driveways the Applicant is only requesting the ability to leave such improvements in place at the specific request of landowners. Should landowners not wish to retain these improvements, the Applicant will remove them in accordance with the Decommissioning and Site Restoration Plan.

(5) The adverse impacts of granting the request would be minimized or mitigated to the maximum extent practicable consistent with applicable requirements set forth in Part 900

The waiver requested would likely contribute to less adverse impacts, if any, both to the surrounding community and environmental resources, as compared to requiring compliance with the local requirement to remove *all* below ground components. As discussed above in subsection (2), requiring removal of *all* below ground components and above ground infrastructure that landowners request be left in place would result in undue resource impacts, including impacts to agricultural resources, wetlands, soil disturbance, and general community impacts due to an extended and more disruptive decommissioning and site restoration process. To the extent that there are any adverse impacts that may be associated with this waiver request, such impacts would be minimized by the Applicant's compliance with its Decommissioning and Site Restoration Plan developed in compliance with the requirements of 16 NYCRR §§ 1100-2.24(c) and 1100-10.2(b)(1) and the NYSDAM Guidelines.

§ 134.6.B(3)(h) Decommissioning Plan.

> (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.

Statement of Justification

As noted in Table 24-1 below, the procedural provisions of this section, requiring local approval of the decommissioning plan are preempted by Article VIII, as the Applicant has submitted a Decommissioning and Site Restoration Plan as part of this Application (*see* Appendix 23-A), which will be reviewed by ORES consistent with Article VIII regulations. Furthermore, the Applicant will comply with the requirement that the cost estimate take into account inflation, in compliance with 16 NYCRR §1100-10.2(b)(2), the financial security will be updated every fifth year to account for changes due to inflation or other cost increases, and the financial security will be based on a gross cost estimate that includes a 15% contingency cost based on the overall decommissioning and site restoration estimate.

However, the Applicant seeks a waiver of this section to the extent that it requires the security to be structured in the form of a 20-yr bond, requiring renewal after 15 years for an additional 20 years. The Applicant also seeks a waiver of this section to the extent that it fails to allow for the adjustment of the cost of the decommissioning and site restoration estimate for salvage value.

(1) <u>The degree of burden caused by the requirement</u>

The degree of the burden caused by this section is substantial. As discussed below, adhering to the Town's decommissioning security requirements would require the Applicant to expend significant amounts of funding for the financial security. Significant and unnecessary increases in Facility costs can threaten a project's economic viability. Consistent with 16 NYCRR § 1100-2.24(c), the Applicant's net decommissioning cost for the Facility, including a 15% contingency and accounting for salvage value, is approximately $3.03 million. 16 NYCRR § 1100-6.6(b) requires letters of credit or other financial assurance approved by the Office to be established by the Applicant and to remain active until the Facility is fully decommissioned and requires an update to the financial security instrument every fifth year after its establishment to account for any changes to the structure of the letters of credit or other financial instrument due to inflation or other cost increases. In compliance with the 94-c regulations, the Applicant will be required to obtain a financial security and pay the costs of maintaining that security over the life of the project. This is already a significant expense.

The structure of the security pursuant to this section, requiring a 20-year bond, to be renewed after 15 years for an additional 20 years, is inconsistent with the Article VIII requirements and would unnecessarily extend

the duration of the bond beyond the 35-year expected life of the Facility. The Town's requirement is inconsistent with the Article VIII regulations, as it does not expressly allow the Applicant to post a bond for the 35-year expected life of the Facility, but instead requires a 20-year bond, to be renewed after 15 years for another 20 years. This would contribute to an unnecessary increase in Facility costs, estimated at approximately $460,000, with no associated benefit in return as compared to the requirements imposed by Article VIII regulations. This additional cost is based on an assumption of Savion's credit rating of BB- with the market rate for 7-10 years, and for the entire net decommissioning cost of approximately $3.03 million. Savion notes that it is difficult to estimate the price of surety bond beyond 7-10 years as most insurers and banks are unwilling to take this contingent risk, so the additional cost of approximately $460,000 for the difference between a 35-year bond and a 40-year bond is an estimate. This added cost is substantial, resulting in a decommissioning security requirement that is significantly higher than what is required by ORES.

Furthermore, this requirement fails to adjust the cost estimate for salvage value, which is also inconsistent with 16 NYCRR § 1100-6.6(b) which requires the financial security be equal to the net decommissioning and site restoration estimate, with the net decommissioning estimate equal to the gross decommissioning and site restoration estimate *less the total project salvage value of facility components*. The Gross Decommissioning Cost for the Facility is approximately $3.9 million, and applying the 15% contingency which amounts to approximately $584,500, the Gross Decommissioning Cost and 15% contingency combined total to $4.48 million. As detailed in Appendix 23-A (Decommissioning and Site Restoration Plan), the total estimated salvage value is approximately $1.45 million, which brings the Net Decommissioning Cost to approximately $3.03 million. To directly compare the cost of the Town's provision to the cost of the security required under the Article VIII regulations, if the Applicant were required to comply with §134.6. B.(3)(h)(4) by not accounting for salvage, the amount of the decommissioning security would increase substantially from approximately $3.03 million to approximately $4.48 million, which would place a significant additional financial burden on the Applicant.

(2) <u>Why the burden should not reasonably be borne by the Applicant</u>

The decommissioning and site restoration cost estimate proposed by the Applicant are sufficient to provide for removal of Facility components and site restoration. The Net Decommissioning Cost, detailed in Appendix 23-A, has been prepared consistent with the method for determining the amount of the financial security pursuant to the Article VIII regulations, a method that has been deemed reasonably by ORES, based on careful consideration of the best practices for Decommissioning and Site Restoration Plans for renewable energy projects. Solar facility components have resale value and can be sold in the wholesale market. Salvageable materials from solar facility components (including steel, copper, silicon) are commodities that have a long history of being reused, reclaimed, or re-purposed, and historically the market value of such components have generally exhibited an upward trend. Accounting for salvage value of these types of materials in decommissioning estimate is common practice across the industry. There is no evidence to suggest that these materials will not be salvageable at the time of decommissioning, and the required 15%

contingency and update to the security every 5th year pursuant to Article VIII regulations will adequately account for any changes in market value.

Furthermore, due the structure for the financial security set in of §134.6. B.(3)(h)(4), requiring a 20-year bond to be established at the outset, and then 15 years later requiring renewal for another 20 years, would result in an added cost of approximately $460,000. The method for determining the amount of the financial security pursuant to Article VIII regulations has been deemed reasonable by ORES, based on careful consideration of the best practices for siting renewable energy projects. There would be no added benefit to requiring compliance with the Town's structure for the bond, since the Article VIII regulations already require that the financial security to be established must remain active until the Facility is fully decommissioned. The additional costs the Applicant would have to bear for compliance with this requirement would in the end result in higher energy costs to be paid by consumers. Furthermore, requiring compliance with this local requirement would put this Facility at a competitive disadvantage as compared to other facilities that have been allowed to rely on the 94-c standard for setting the financial security amount. For these reasons, the burden should not reasonably be borne by the Applicant.

(3) The request cannot be obviated by design changes to the facility

This is not the type of requirement that could be obviated by design changes to the Facility. Regardless of how the Facility is designed, the requirements of this section would significantly increase the amount of financial security required for decommissioning and site restoration and impose a security structure that is inconsistent with that required by Article VIII regulations.

(4) The request is the minimum necessary

This request is the minimum necessary because the Applicant is simply requesting that the standard established in the USCs be applied, and is not requesting a complete waiver of this section, but rather only a wavier of the structure (20-year bond to be renewed for an additional 20 years after a 15-year period), and to allow the net decommissioning cost to account for projected salvage for facility components.

(5) The adverse impacts of granting the request would be minimized or mitigated to the maximum extent practicable consistent with applicable requirements set forth in Part 900

In terms of mitigating any potential adverse impacts of granting this request, the financial security to be established based on the USCs is already sufficient to allow the Towns to finance the decommissioning of the Facility, in the unlikely event that the Facility owner does not itself conduct decommissioning and site restoration efforts at the end of the Facility's useful life. For all the above reasons, requiring compliance with the structure of the financial security and lack of accounting for salvage value in this section, as applied to the Facility, is unreasonably burdensome in view of the CLCPA targets and the environmental and other benefits to consumers associated with the Facility.

§134.6.B(4)(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.

Statement of Justification

Under §134.6.B(4)(a), a large-scale solar energy system must be set back at least 200 feet from a right-of-way, 100 feet from side and rear property lines, and 300 feet from any residential structures located on another parcel. Chapter 134 of the Town Code does not provide any definitions for "property lines" or "parcel." 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. Although this definition is not specifically applicable within the context of the Town's Solar Energy System provisions contained in Chapter 134 of the Town Code, it is instructive, and indicates that in other contexts in the Town Code where setbacks are applied to a use that may involve or span across more than one parcel, such setbacks are not applicable to the individual participating parcels within the project area or site, but rather apply to non-participating parcels. *See e.g.* Town Code, Chapter 89: Mobile Homes, § 89-7. Mobile home park requirements. Furthermore, although the Zoning Law does not define the term "parcel" (*See* Zoning Law of the Town of Waterloo, Appendix: Definitions) the term "parcel" is used interchangeably with the term "lot" throughout Chapter 134: Solar Energy Systems (e.g. §134.5.D(e)), and the term "parcels" 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).

Furthermore, although not controlling, an Order recently released by the New York State Board on Electric Generation Siting and the Environment is instructive. According to the Siting Board's Order in the *Trelina Solar Energy Center* proceeding (Case 19-F-0366), the Siting Board agreed with the applicant's interpretation that the term "lot" in Chapter 134, within the context of §134.6.B(4)(c), was intended to mean the entire Project site, rather than individual parcels within the Project site. The Applicant here argues that a similar interpretation of "property" and "parcel" applies here for §134.6.B(4)(a), that these terms be interpreted not as the individual lots within the Project site but that the "property" or "parcel" be interpreted as the entire 940-acre Facility Site. This interpretation is supported not only by the Siting Board's decision in *Trelina*, but also by the Town's definition of "property line" in the Zoning Law, which indicates that "property" it is intended mean the entire property where a certain use/project is proposed and the "property line" is the boundary dividing the land where the use/project is proposed from adjacent land not subject to the use/project. The Town's use of the term "parcel" in §134.6.B(3)(h)[2] also provides further support for this

interpretation, as the decommissioning plan's requirements for removal and remediation apply to the entire Facility as a whole and not just to an individual parcel within the Project Site.

The Applicant respectfully requests that ORES apply this interpretation, i.e. that the setbacks described in §134.6.B(4)(a) apply only to setbacks to property lines of non-participating parcels and that the setback to residential structures applies only to such structures located on non-participating parcels, when determining whether the Facility is in compliance with this section. In the event ORES applies this interpretation, the Applicant would no longer need to seek this waiver request because the only portion of the Facility that would be within the setbacks are collection lines, which are not included in setback calculations because unlike other components of a solar energy facility, collection lines have to physically cross property lines at some point and a solar energy facility such as the proposed Facility, or any other solar energy facility for that matter, cannot be constructed without collection lines crossing property lines. However, in the event ORES elects not to apply this interpretation, the Applicant seeks a waiver from the Office to the extent that the 100-foot side and rear property line setback restricting all solar energy equipment, including PV arrays, applies to participating project parcels, and from the 300-foot setback from residential structures on "another parcel" to the extent that it applies to non-participating residential structures.

(1) <u>The degree of burden caused by the requirement</u>

The burden to the Project as a result of requiring a design change so that the Facility complies with the 100 foot side and rear participating parcel property line setbacks on participating properties would result in a loss of approximately 9 acres of buildable land and 3.25 acres of PV arrays, accounting for approximately 2,014 PV panels, for the Facility, which would result in a decrease of the Facility's generating capacity. Figure 24-1 shows the losses of buildable area and PV arrays that would result from application of these setback requirements. To be able to comply with these setback requirements, the Applicant would need to construct additional fencing and access roads, add additional collection lines and inverters, and would need to lease additional land in order to achieve the Project's 90 MW of proposed generating capacity. As demonstrated in Figure 2-3, the Facility is subject to a number of design constraints that restrict the available, buildable land in this area without further impacting environmental resources such as forests, wetlands, and occupied wildlife habitat; other impacts such as noise and visual, could also increase, and any required mitigation for such impacts would pose a substantial financial burden on the Project. In addition to the 100-foot side and rear property line setback applied to participating project parcels restricting the Applicant's ability to efficiently site Facility components such as PV arrays, these setbacks, along with the 100-foot setback from non-participating parcels, the 300-foot setback from non-participating residential structures, and the 200 feet from the right-of-way line setback, would prevent collection and transmission lines from crossing all property boundary lines.

(2) Why the burden should not reasonably be borne by the Applicant

The burden of this loss of generation capacity and availability of useful land should not be borne by the Applicant because the lands impacted are those belonging to participating landowners who are already being compensated for the use of their land, because there is no clear benefit or purpose to applying the 100-foot side and rear property line setback and 300-foot setback from residential structures to participants. The decrease in energy generation as a result of requiring compliance with these setbacks would restrict the Facility's ability to provide the maximum amount of energy possible within the Project Site and would in turn diminish the Project's contribution to the State's CLCPA targets. The loss in generating capacity would be detrimental to project viability, as the loss in generating capacity would result in the need to abandon the Project.

Furthermore, requiring compliance with these setback requirements would deny participating landowners the ability to use large strips of their land for no clear purpose, and would require Facility components to be spread across a larger area of land or encroach on areas that are currently being avoided to avoid and minimize environmental impacts. Meanwhile, applying these setbacks to participating landowners does not provide any added benefits or protections to non-participating parcels, as the Facility has been designed to meet, and in some instances exceeds, these Town setbacks with respect to non-participating parcels and residential structures on non-participating parcels (see Appendix 5-A), and otherwise avoids, minimizes or mitigates significant adverse impacts to non-participants by complying with various ORES Uniform Standards and Conditions and installation of visual screening (see Exhibits 8 and 9 for further information on impact minimization and minimization measures). Additionally, as noted in Exhibit 2 and demonstrated in Figure 2-3, following consultation with ORES and the New York State Department of Environmental Conservation (NYSDEC), along with the completion of various onsite ecological studies, the Facility footprint as originally designed was reduced several times throughout the siting process in order to avoid and minimize impacts to environmentally sensitive resources, such as wetlands, core forest blocks, occupied wintering raptor habitat, other sensitive species habitat, and lands managed by the NYSDEC. The Facility was also reduced to accommodate exclusion areas identified by participating landowners for various reasons, including to allow for the continuation of agricultural practices on their land. As such, the burden should not reasonably be borne by the Applicant, as the Applicant has invested substantial resources, including time and financial resources, to develop a project that minimizes potential impacts to sensitive environmental resources within the Facility Site while also maximizing generating capacity to contribute to the CLCPA targets.

(3) The request cannot be obviated by design changes to the facility

Design changes to the Facility would not obviate the need to seek this waiver, as these setbacks are tied to participating parcel property lines and the location of participating residential structures within the Project Site and compliance with the setbacks would require a substantial amount of additional acreage which the Applicant does not have signed on. Design changes to achieve

compliance with these setbacks would require the removal of approximately 2,014 PV panels as discussed above, for no clear, measurable benefit. The design changes needed to achieve compliance with these setbacks would force the Applicant to try to relocate panels elsewhere in the Project area which, as noted above would be very difficult due to substantial constraints in the area and would be determinantal to the Applicant's effort to avoid and minimize environmental impacts.

(4) The request is the minimum necessary

The request is the minimum necessary because the Applicant only seeks a waiver of the 100-foot rear and side setback with respect to PV arrays sited on participating project parcels. With respect to the siting of all electrical components,, the Applicant adheres to the 100-foot setback to non-participating property lines, to the 300-foot setback from all residential structures, and to the 200-foot setback to right-of-way lines of roads, all of which are generally greater than those required by the Article VIII regulations. Therefore, this request is the minimum necessary because the Applicant is only seeking a waiver of the 100-foot rear and side yard setbacks with respect to PV arrays sited on participating project parcels.

(5) The adverse impacts of granting the request would be minimized or mitigated to the maximum extent practicable consistent with applicable requirements set forth in Part 900

Finally, the adverse impacts of granting the request, if any, shall be mitigated to the maximum extent practicable through the Applicant's compliance with the Uniform Standards and Conditions. The waiver requested also avoids the unnecessary loss of buildable area and creation of strips of unusable land and the likely increase of environmental impacts that would result if the Applicant was forced to comply with this local law provision. Additionally, the loss of generating capacity is an unreasonable outcome that is inconsistent with the State's renewable generation goals and the environmental benefits of this generation that far outweigh the benefit, if any, of imposing these setbacks. On the grounds of consumer needs for renewable energy/consistency with the CLCPA, as well as the grounds of project feasibility/viability, the Applicant respectfully requests a waiver of this section to the extent that the 100-foot side and rear property line setback applies to participating project parcels, and from the 300-foot setback from residential structures on "another parcel" to the extent that it applies to residential structures within the Project Site.

§134.6.B(4)(b) Height.

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

Statement of Justification

The Applicant has interpreted this section to require panels not to exceed 10 feet in height at maximum tilt. Although this section references the term "solar energy system" which is defined as "[a]n electrical generating system composed of a combination of either solar panels or solar energy equipment" (*see* Town

of Waterloo Code §134.3. Definitions), the reference to height when oriented at maximum tilt clearly indicates that this 10-foot height requirement is intended to apply to solar panels. Furthermore, in *Application of Trelina Solar Energy Center* (Case 19-F-0366), this height limit was interpreted to apply to solar panels.[5] The Applicant respectfully requests that ORES apply the same interpretation in this proceeding,

The Applicant is seeking a waiver of this provision, to allow for the installation of panels with a maximum height of 12 feet at full tilt.

(1) The degree of burden caused by the requirement

The burden imposed on the Project by the application of §134.6.B(4)(b) is substantial and would result in a significant reduction in energy production capacity and cost-competitiveness of the Facility. If the Facility is forced to comply with the 10-foot height restriction then less efficient technology, such as fixed tilt racking systems, smaller modules, or significantly more grading would be required to meet the height limitation. The Applicant is proposing the use of single-axis tracker racking systems with one in portrait solar panel orientation. This results in exceedance of the 10-foot maximum height requirement when the panels are at full tilt (60^{o}) of 2 ft. (the project is designed for panel heights at 12 ft.). To comply with the Town's requirement, the Applicant would need to consider the use a fixed tilt system for the Facility and would also have implications on visual impacts from the Facility, particularly glare. Other options to meet the 10-foot height limit would be to increase the amount of grading across the Facility Site to ensure a uniform height of 10 feet which increases the amount of ground disturbance and also increases the Facility construction costs, making it less cost- competitive relative to other projects. Lastly, with the 10-foot height limit, the options for tracker and PV module vendor and model selection that would put the Facility in compliance is significantly reduced, thereby limiting flexibility during the procurement process potentially resulting in higher equipment costs, again making Facility costs less competitive and reducing the potential that the Facility is constructed and contributes 90 MW of renewable energy to the grid.

(2) Why the burden should not reasonably be borne by the Applicant

The 10-foot height limit is a technological limitation that would prevent the Applicant from relying on the most efficient technology for the proposed site, a one in portrait solar panel orientation with single-axis tracker racking systems. Although not necessarily controlling, a recent Order issued by the New York State Board on Electric Generation and Siting and the Environment is instructive. In *Application of Trelina Solar Energy Center* (Case 19-F-0366), the Board found that on balance, the Town of Waterloo's 10-foot height limit was a technological limitation that prevents the use of most suitable technology,

[5] Case No. 19-F-0366, Application of Trelina Solar Energy Center, LLC for a CECPN Pursuant to Article 10 to Develop, Construct and Operate a Solar Generating Facility with a Maximum Generating Capability of 80 MW in the Town of Waterloo, Seneca County, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions, issued November 30, 2021 (p. 72-73).

reduces efficiency of the system, and would potentially increase the land impacts associated with the proposed project, and concluded that requiring compliance with this 10-foot requirement would be unreasonably burdensome.

As noted above, in order to meet the 10-foot height requirement and achieve the same up to 90 MW generating capacity currently proposed, the Applicant would either need to grade the Facility Site to achieve the required height or utilize a different technology which is not ideal for this Facility Site. Requiring the Applicant to rely on less efficient tracking system and PV module technology, or on fixed tilt, would result in increased land impacts to generate the same amount of energy, an unreasonable result. By using a one in portrait solar panel orientation with a single-axis racking systems, the Applicant is able to reduce the number of racks used and limit soil disturbance. Furthermore, in addition to the 10-foot height requirement limiting the efficiency of the technology that can be relied on for this Project, it would also limit the ability of the Applicant to propose the use of tracker racking systems. This would likely have implications on visual impacts, particularly glare. Single-axis tracking PV arrays maintain low incidence angles relative to the sun, significantly limiting the amount of incoming solar radiation that can be reflected by the arrays in the morning and the evening when the receipt of solar glare by nearby residences is most likely. For this reason, tracking PV arrays rarely reflect enough sunlight to produce retinal irradiance values sufficient to result in either green or yellow glare. Unlike tracking PV arrays, under clear sky conditions, fixed-tilt PV arrays can produce glare in the early morning and evening when the sun is low on the horizon and incidence angle between the PV modules and the sun is approximately 60 degrees or greater. *See* Exhibit 8, Appendix 8-B: Solar Glare Analysis Report. As in *Trelina*, the Applicant should not be forced to rely on less efficient technology which would result in additional visual, land use, and ground disturbance impacts to meet this 10-foot panel height requirement.

(3) <u>The request cannot be obviated by design changes to the facility</u>

As described above, requiring the Facility to comply with the Town's 10-foot maximum height requirement would prohibit the Applicant from installing an optimized single portrait solar panel orientation with a single axis tracker racking system using minimal grading, and would instead require the Applicant to rely on less efficient technology with greater impacts. Requiring the Applicant to install a single portrait panel orientation system with fixed-tilt racking would, within the current buildable area, result in a substantial loss of energy production as well. The Applicant has used all available buildable area, while also avoiding and minimizing impacts to various environmental resources where feasible (*see* avoidance and minimization discussions in Exhibit 12: NYS Threatened or Endangered Species, Exhibit 13: Water Resources and Aquatic Ecology, and Exhibit 14: Wetlands). Increasing the amount of grading to ensure a maximum height of 10 feet would result in significantly more ground disturbance impacts and construction costs for the Facility in addition to limiting the selection of equipment available for the Facility.

(4) The request is the minimum necessary

This request is the minimum necessary because it only increases the maximum height of the solar panels, when oriented at maximum tilt, by 2 feet above the Town's maximum height requirement. The PV arrays will use interval backtracking and have a resting angle of 60 degrees, which the panels will rest at overnight, and a maximum tracking angle of 52 degrees. The height of the arrays will vary depending upon their location on the landscape and as the structures tilt to follow the sun throughout the day; at their tallest position, the PV modules will be up to 12 feet tall. The maximum height of the panels is only sustained for short periods of time during daylight hours. As a result, for the majority of the time during daylight hours, the panels are expected to be at less than 12 feet in height, and at times less than 10 feet. Although the panels will exceed the 10-foot maximum height at full tilt, this will mainly occur when the panels are stored overnight, a time when panels are much less likely to be visible. Therefore, the requested waiver is the minimum necessary for this provision because the request is the minimum necessary based on the proposed design which maximizes generation capacity within the buildable area.

(5) The adverse impacts of granting the request would be minimized or mitigated to the maximum extent practicable consistent with applicable requirements set forth in Part 900

The proposed panel design, with a maximum height of 12 feet, is well within the maximum 20-foot allowable height for panels pursuant to 16 NYCRR § 1100-2.6(e), a height limit that was set by ORES based on careful consideration of the best practices for siting renewable energy projects, past precedents in Article 10 cases and typical local law requirements in New York State, as well as a balance of relevant considerations including visual impacts, impacts to agricultural lands, and potential safety concerns. Compliance applicable setbacks, and the implementation of visual impacts minimization and mitigation efforts, address any potential adverse impacts associated with granting this request (*see* Appendix 8-1: Visual Impact Assessment).

In addition, as noted above, the Town's height limit is a technological limitation that would prevent the Applicant from using a more efficient design. Furthermore, the needs of consumers for a solar facility that maximizes efficient use of available buildable area and contributes towards the State's renewable energy and greenhouse gas (GHG) reduction goals, outweighs the benefit, if any, to be achieved by applying the local height restriction. Therefore, for all of the above stated reasons, applying this local requirement to the Facility would be unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the Facility.

Town of Waterloo Town Code, Chapter 79: Site Plan Review & Approval

§79-5.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.

Statement of Justification

The Facility cannot be designed to comply with this requirement because (1) the term "offensive" is not defined, and (2) the requirement itself is overly broad, is ambiguous and unduly burdensome. The Applicant has identified potential difficulties in interpreting and applying this provision as written because this section lacks an enforceable standard by which Facility compliance can be measured. If this section as written is strictly construed, without a metric or definition for what constitutes an "offensive" level of noise, traffic, odor, smoke, dust, heat, glare or electrical disturbance, it is impossible for the Applicant to confirm that the Facility is in compliance. While the Facility has been designed to comply with the general intent of this requirement, because it would be impossible to comply with this requirement based on a strict interpretation of its language, the Applicant requires a waiver of this section.

(1) The degree of burden caused by the requirement

The strict application of this provision to the Facility could result in any level of noise, traffic, odor, smoke, dust, heat, glare or electrical disturbance being deemed "offensive" and as a violation of this provision. Requiring compliance with an undefined standard that could potentially mean that any level of impact is a violation would essentially prohibit construction of the Facility, which is a significant burden on the Project. Additionally, because it is impossible for the Applicant to determine what levels of disturbances would be considered "offensive" under the local standard, the Facility design cannot be modified to obviate the need for this waiver.

(2) Why the burden should not reasonably be borne by the Applicant

Although the Town's Solar regulations (Chapter 134 of the Town Code) require compliance with the substantive requirements in Chapter 79, it is the Applicant's understanding that the standards contained in §79-5, including §79-5.O were primarily designed to guide Planning Board review of a site plan during the Special Use Permit/Site Plan review process. This is likely why the law relies on such broad language in this section, and although substantive in nature, is impossible to apply outside of the Site Plan review process as it leaves great discretion to the Planning Board to decide what constitutes "offensive."

By complying with the clear and enforceable standards set forth in 16 NYCRR Part 1100 with respect to these potential impacts, the Applicant has demonstrated that impacts from the Facility have been avoided to the extent practicable, and where full avoidance is not achieved, impacts will be mitigated. With respect to noise, the Facility has been designed to meet the standards set in 16 NYCRR § 1100-2.8(b)(2) and has demonstrated in the noise assessment of Facility construction and operation in Exhibit 7 that the Facility will not result in adverse impacts to the sensitive receptors identified. To address glare, solar panels will have an anti-reflective coating as required in 16 NYCRR § 1100-2.9(d)(7). Additionally, as discussed in Exhibit 8, the Applicant has addressed potential impacts in its Visual Impacts Minimization and Mitigation Plan through an assessment indicating that solar glare exposure at non-participating residence and public roadway will be avoided or minimized, and will not result in complaints, impede traffic movements or create safety hazards. Similarly, for potential impacts to traffic, as demonstrated in Exhibit 16, the Applicant has

conducted an analysis and evaluation of the traffic and transportation impacts of the Facility and has identified and evaluated mitigation measures for potential impacts, including but not limited to time restrictions, physical roadway improvements, and new traffic control devices.

With respect to dust, the Applicant will minimize air emissions during construction in compliance with 16 NYCRR § 1100-6.4 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. The Applicant will also minimize air emissions generally during construction by: (1) prohibiting contractors from leaving generators idle when electricity is not needed and from leaving diesel engines idling with equipment is not actively being used, (2) using construction equipment powered by electric motors where feasible, or by ultra-low sulfur diesel, and (3) disposal or reuse of cleared vegetation in a manner that minimizes greenhouse gas emissions. The assessments of effects on communications and electric and magnetic fields, which requires the Applicant to demonstrate compliance with NYSPSC's *Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities* for electromagnetic field levels at the edges of ROWs, adequately address "electrical disturbance" impacts based on accepted State standards. For these reasons, the burden of requiring compliance with §79-5.Q should not reasonably be borne by the Applicant, as it cannot demonstrate compliance with an undefined and vague standard but has shown through the 94-c application process that these types of impacts are being avoided and mitigated.

(3) The request cannot be obviated by design changes to the facility

The requested waiver cannot be obviated by design changes to the Facility, because, as discussed above, this request is based on impossibility. This local requirement is vague and overly broad, and the Applicant cannot determine or demonstrate compliance with such a requirement, irrespective of Facility design.

(4) The request is the minimum necessary

This request is the minimum necessary because it simply seeks to remove this subjective, vague and unenforceable local requirement and replace it with the respective concrete and measurable standards contained in 16 NYCRR Part 1100.

(5) The adverse impacts of granting the request would be minimized or mitigated to the maximum extent practicable consistent with applicable requirements set forth in Part 900

It is unlikely that granting this waiver would result in any adverse impacts, and may actually be more protective of community impacts because it would remove the lack of clarity and inconsistency that would result from attempting to enforce the subjective and vague local standard of "offensive" and ensure compliance is measured based on measurable standards set in Article VIII that are based on public health and safety and prior precedent in State and local regulation of this industry. Adverse impacts of granting this waiver request, if any, would be adequately addressed by the Applicant's compliance with and the

State's enforcement of the applicable standards contained in 16 NYCRR Part 1100 as generally addressed in the Exhibits identified above.

Town of Waterloo Town Code, Chapter 135: Zoning

§135-6.L. General performance standards.

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

Statement of Justification

The Facility cannot be designed to comply with this requirement because (1) the term "objectionable" is not defined, (2) the term "evident" is not defined, and (e) the requirement itself is overly broad, is ambiguous and unduly burdensome. The Applicant has identified potential difficulties in interpreting and applying this provision as written because this section lacks an enforceable standard by which Facility compliance can be measured. If this section as written is strictly construed, without a metric or definition for what constitutes an "objectionable" level of vibration, glare, heat, or noise, it is impossible for the Applicant to confirm that the Facility is in compliance. Furthermore, if this section were to be strictly interpreted to prohibit *any* level of vibration, glare, heat or noise beyond the boundaries of the Facility Site, it would essentially prohibit the construction and operation of the Facility. While the Facility has been designed to comply with the general intent of this requirement, and arguably does so by compliance with the Article VIII Uniform Standards and Conditions, because it would be impossible to comply with this requirement based on a strict interpretation of its language and could potentially be interpreted to prohibit construction and operation of the Facility, the Applicant requires a waiver of this section.

(1) The degree of burden caused by the requirement

The strict application of this provision to the Facility could result in any level of vibration, glare, heat or noise being deemed "offensive" and as a violation of this provision. Requiring compliance with an undefined standard that could potentially mean that any level of impact is a violation would essentially prohibit construction of the Facility, which is a significant burden on the Project. Additionally, because it is impossible for the Applicant to determine what levels of disturbances would be considered "offensive" under the local standard, the Facility design cannot be modified to obviate the need for this waiver.

(2) Why the burden should not reasonably be borne by the Applicant

By complying with the clear and enforceable standards set forth in 16 NYCRR Part 1100 with respect to these types of potential impacts, the Applicant has demonstrated that impacts from the Facility have been avoided to the extent practicable, and where full avoidance is not achieved, impacts will be mitigated. With respect to noise, the Facility has been designed to meet the standards set in 16 NYCRR Section 1100-2.8(b)(2) and has demonstrated in the noise assessment of Facility construction and operation in Exhibit 7 that the Facility will not result in adverse impacts to the sensitive receptors identified (see Exhibit 7 for additional discussion on avoidance and minimization of impacts). To address glare, solar panels will have

an anti-reflective coating as required in 16 NYCRR § 1100-2.9(d)(7), and the Facility's proposed use of tracking PV arrays maintains low incidence angles by following the sun's position throughout the day, which increases the amount of incoming solar radiation absorbed by the panels and limits the amount reflected. Additionally, as discussed in Exhibit 8, the Applicant has addressed potential impacts in its Visual Impacts Minimization and Mitigation Plan through an assessment indicating that solar glare exposure at non-participating residences and public roadways will be avoided (refer to Exhibit 8, Appendix 8-B: Solar Glare Analysis Report for a complete discussion of avoidance of glare).

(3) The request cannot be obviated by design changes to the facility

The requested waiver cannot be obviated by design changes to the facility, because, as discussed above, this request is based on impossibility. This local requirement is vague and overly broad, and the Applicant cannot determine or demonstrate compliance with such a requirement, irrespective of Facility design.

(4) The request is the minimum necessary

This request is the minimum necessary because it simply seeks to remove this subjective, vague and unenforceable local requirement and replace it with the respective concrete and measurable standards contained in 16 NYCRR Part 1100.

(5) The adverse impacts of granting the request would be minimized or mitigated to the maximum extent practicable consistent with applicable requirements set forth in Part 900

It is unlikely that granting this waiver would result in any adverse impacts, and may actually be more protective of community impacts because it would remove the lack of clarity and inconsistency that would result from attempting to enforce the subjective and vague local standard of "offensive" and ensure compliance is measured based on measurable standards set in Article VIII that are based on public health and safety and prior precedent in State and local regulation of this industry. Adverse impacts of granting this waiver request, if any, would be adequately addressed by the Applicant's compliance with and the State's enforcement of the applicable standards contained in 16 NYCRR Part 1100 as generally addressed in the Exhibits identified above.

(d) Summary Table of Substantive Local Requirements

Table 24-1 provides a list of all substantive requirements applicable to the Facility in the Town of Waterloo and a description of how the Applicant plans to adhere to those requirements. As noted above, no applicable substantive requirements were identified in the Town of Junius.

Table 24-1. List of Substantive Requirements Applicable to the Facility and Plans to Adhere to the Requirements

Local Substantive Law	Compliance
Town of Waterloo Town Code ***Chapter 134: Solar Energy Systems***	
§ 134.6. B. (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.	While the procedural provisions of this section are supplanted by Article VIII, this provision is listed to demonstrate that large-scale solar energy systems are considered special permit uses allowed in the Industrial (I) and Agricultural (A) zoning districts. The Facility is proposed to be located in the A district. Refer to Exhibit 3 for further details on local zoning district designations.
§ 134.6. B. (3) Special use permit application requirements. (h) Decommissioning Plan. [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	The procedural requirements of this section, including application, notice and hearing requirements, and determinations by the Town Code Enforcement Officer and Planning Board are supplanted by Article VIII. The Applicant cannot comply with the substantive requirement in this section, the six (6) month time frame triggering decommissioning and thirty (30) time frame for completing dismantling, removal and site restoration. See statement of justification for waiver request in Section (c) of this Exhibit.

Local Substantive Law	Compliance
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.	
§134.6. B. (3)(h)(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.	The procedural provisions in this section regarding the scope of the Decommissioning and Site Restoration Plan as set by the Planning Board are preempted by Article VIII, as the Decommissioning and Site Restoration Plan will be prepared in accordance with 16 NYCRR § 2.24(a). To the extent that this section requires removal of all below ground infrastructure, the Applicant cannot comply with this requirement. See statement of justification for waiver request in Section (c) of this Exhibit.
§134.6. B. (3)(h)(3) The plan shall also include an expected timeline for execution.	While the procedural provisions of this section regarding the scope of the Decommissioning and Site Restoration Plan as set by the Planning Board are preempted by Article VIII, the Applicant's Decommissioning and Site Restoration Plan prepared in accordance with 16 NYCRR § 2.24(a) will include a timeline for execution of decommissioning and site restoration activities.
§134.5.B(3)(h)(4) A cost estimate detailing the projected cost of executing the decommissioning	The procedural provisions of this section, requiring local approval of the decommissioning plan are

Local Substantive Law	Compliance
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.	preempted by Article VIII, as the plan will be reviewed by ORES consistent with Article VIII regulations. The Applicant will comply with the requirement that the decommissioning financial security be in the form of a performance surety bond. The Applicant will also comply with the requirement that the cost estimate take into account inflation, as in compliance with 16 NYCRR § 1100-10.2(b)(2), the financial security will be updated every fifth year to account for changes due to inflation or other cost increases, and the financial security will be based on a gross cost estimate that includes a 15% contingency cost based on the overall decommissioning and site restoration estimate. Refer to Exhibit 23: Site Restoration and Decommissioning and Appendix 23-1: Decommissioning and Site Restoration Plan. However, the Applicant cannot comply with the requirement that the security be in the form of a 20-year bond, requiring renewal after 15 years for an additional 20 years, and seeks a waiver of this requirement. Furthermore, to the extent that this section prohibits the inclusion of salvage in the decommissioning and site restoration, the Applicant also requests that the Office waive this requirement. See Applicant's statement of justification for waiver request in Section (c) of this Exhibit.
§134.6.B(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: (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	The procedural requirements of this section, requiring a special use permit and review of compliance with standards by the Planning Board are supplanted by Article VIII. The Applicant is seeking a waiver of this provision to the extent that the 100-foot setbacks apply to the PV panels. Designing the Facility to include 100-foot setbacks between participating parcels

Local Substantive Law	Compliance
lines. In addition, no large-scale solar energy system shall be located closer than 300 feet from any residential structure located on another parcel.	would create an unreasonable and unnecessary burden.
§134.6.B(4)(b) Height. No part of the large-scale solar energy systems shall exceed ten (10) feet in height when oriented at maximum tilt.	The Facility cannot be designed to comply with this requirement. The Applicant has requested a waiver to allow for the 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 the Article VIII regulations.
§134.6.B(4)(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.	The Facility has been designed to comply with this provision, see Appendix 24-C for an analysis of the area and proportion of each parcel covered by solar energy equipment.
§134.6.B(4)(d) Large-scale solar energy systems shall be located on lots with a minimum size of one (1) acre.	The Facility has been designed to comply with this provision.
§134.6.B(4)(e) 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.	The procedural requirements of this section, including the Planning Board's authority to make determinations regarding fencing and screening of fencing, are supplanted by Article VIII. The Facility has been designed to comply with the substantive requirements of this provision, including security fencing and adequate safety and warning signage. See Exhibit 6 Public Health, Safety and Security.
§134.6.B(4)(f) Drainage. All large-scale solar energy systems shall include a drainage and stormwater	While the procedural requirement of this section requiring the Planning Board to assess the

Local Substantive Law	Compliance
management plan that is acceptable to the Planning Board.	acceptability of the drainage and stormwater management plan is supplanted by Article VIII, the Facility has been designed to comply with this requirement. See Exhibit 13 for information on stormwater management, including the preliminary SWPPP in Appendix 13-C.
§134.6.B(4)(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.	While the procedural requirements of this section requiring Planning Board review and approval of easement agreements for the Facility Site, and access, maintenance and utilities, the Applicant has complied with the substantive requirements of this section by obtaining title to, or leasehold interest in the facility site, including ingress and egress access, and easements or other real property rights necessary for all interconnections for the Facility Site. See Exhibit 4 for information on real property rights.
§134.6.B(4)(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.	While the procedural requirements of this provision requiring Planning Board approval and posting of a construction and maintenance bond, the Applicant will substantively comply with the decommissioning plan and removal security bond requirements. The decommissioning financial security, consistent with 16 NYCRR § 1100-6.6, will remain active until the Facility is fully decommissioned. See Exhibit 23 for additional information regarding the decommissioning plan and financial security.
§134.6.B(4)(i) The Planning Board must approve the property operation and maintenance plan submitted by the applicant.	While the procedural provisions of this section requiring Planning Board approval of the operation and maintenance plan, to the extent that this section contains a substantive provision requiring an operations & maintenance plan be in place, the Applicant will comply with this section by preparing a Construction Operations Plan and a Facility Maintenance and Management Plan as pre-construction compliance consistent with the requirements of 16 NYCRR § 1100-10.2.

Local Substantive Law	Compliance
§134.6.B(4)(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.	The Facility has been designed to comply with this requirement. See Exhibit 5 for information regarding access roads, and Exhibit 13 for additional information regarding stormwater, including the preliminary SWPPP in Appendix 13-C.
§134.6.B(4)(k) All Large-Scale Solar Energy Systems shall be adequately screened, as determined by the Planning Board, to avoid adverse aesthetic impacts.	While the procedural provisions of this section requiring the Planning Board to determine the adequacy of screening are supplanted by Article VIII, the Facility has been designed to comply with this requirement. See Exhibit 8 for details on visual impacts minimization and mitigation, and screening.
§134.6.B(4)(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.	While the procedural provisions of this section requiring the Planning Board to determine the applicability of substantive local site plan requirements is supplanted by Article VIII, the Facility has been designed to comply with the applicable substantive site plan requirements, with the exception of those from which it has requested waivers from ORES. See Facility Compliance discussion with respect to Town Code §78-5.
Town of Waterloo Town Code ***Chapter 79: Site Plan Review & Approval***	
§79-5. Standards for site plan review. 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.	The Facility has been designed to comply with the applicable substantive requirements for special condition or special permits. Refer to Facility Compliance with respect to §135-8.C(6).
§79-5.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.	The Facility has been designed to comply with this section. See Exhibit 13 for information on stormwater management, including the preliminary SWPPP in Appendix 13-C.
§79-5.C. Development on erodible soils, or slopes of greater than 10%, shall be designed to minimize erosion during construction and after construction has been completed.	The Facility has been designed to comply with this section. See Exhibit 11 for information on existing slopes within Facility Site, and Exhibit 13 for information on stormwater management and erosion and sediment control, including the preliminary SWPPP in Appendix 13-C.
§79-5.D. In general, the total area of constructed impermeable surfaces (roofs, pavement, parking	While the procedural provisions of this section regarding site plan review are supplanted by Article

Local Substantive Law	Compliance
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.	VIII, the Facility has been designed to comply with this section. See Appendix 24-C for a tax parcel breakdown of total area of impervious surfaces. See also Exhibit 5 for information regarding proposed Facility and existing features and the preliminary SWPPP in Appendix 13-C.
§79-5.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.	To the extent that this section applies to the storage trailer proposed by the Applicant within the Facility, the Facility will be designed to comply with this section. See Exhibit 5.
§79-5.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.	To the extent that this section applies to the storage trailer proposed by the Applicant within the Facility, the Facility will be designed to comply with this section. See Exhibit 5.
§79-5.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.	The Facility has been designed to comply with this section. See Exhibit 8, Appendix A, for additional information regarding placement of proposed screening, and Exhibit 16 for information regarding sight distances at driveway and roadway intersections.
§79-5.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.	The Facility will substantially comply with this requirement. During a Pre-Construction Meeting, as required pursuant to 16 NYCRR § 1100-6.4(c), the Applicant will provide the Town Supervisor and highway department with maps that show construction worker parking. There will be sufficient space for parking within the Facility Site

Local Substantive Law	Compliance
	for the limited employees/staff parking needs during Facility operations.
§79-5.L. Multiple or extra-wide driveway cuts to provide access to any site shall be avoided in the site design where possible. On 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).	While the procedural provisions of this section requiring Planning Board review and approval of driveway cuts are supplanted by Article VIII, the Facility has been designed to comply with this section. See Exhibit 5 for information regarding proposed access roads.
§79-5.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.	The Facility has been designed to comply with this section. See Exhibit 16 for information regarding traffic and transportation impacts.
§79-5.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).	The Facility has been designed to comply with this section. See lighting plan in Exhibit 8, Appendix 8-D.
§79-5.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.	This section is overly broad, ambiguous, and unduly burdensome as it and does not provide an enforceable standard by which Facility compliance can be measured. As such, the Facility cannot be designed to comply with this requirement. See discussion on waiver in Section (c) of this Exhibit.
§79-5.S. All other applicable federal, state, county and local laws and regulations shall be complied with.	The Facility has been designed to comply with this requirement, with the exception of those local law requirements from which the Applicant has requested waivers from ORES.
Town of Waterloo Town Code ***Chapter 93: Noise***	
§93-6. Construction. During the nighttime hours 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,	The Applicant will comply with this section.

Local Substantive Law	Compliance
structures or projects, or to operate any pile driver, pneumatic hammer, derrick, electric hoist or other construction equipment except to perform emergency work.	
§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.	The Facility has been designed to comply with this requirement. See Exhibit 20 for information on broadcast reception and 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 communications systems.
Town of Waterloo Town Code ***Chapter 135: Zoning***	
§135-5.4. Schedule I: Land Uses or Activities	The Facility has been designed to comply with the substantive requirements in this section. The Facility is an allowed special use where proposed, the Agricultural (A) zoning district.
§135-5.5. Schedule II: Area, Frontage, Height and Coverage Requirements Minimum Lot Area: - With Public Sewers or Water: 2 Acres - Without Public Sewers or Water: 2 Acres Minimum Lot Frontage: - With Public Sewers or Water: 100 feet - Without Public Sewers or Water: 150 feet Minimum Setback Requirements: - Accessory Building: o Rear: 15 ft o Side: 15 ft Maximum Building Height: 35 ft Maximum Building Lot Coverage on Lot: 20%	This section is superseded by the area, setbacks, height and lot coverage requirements in §134-6.B(4) of the Solar Energy System Chapter of the Town Code with respect to solar energy equipment. To the extent that this section is applicable to the proposed storage trailer, the Facility has been designed in compliance with the standards for nonresidential buildings within the Agricultural (A) zoning district.
§135-6. General provisions. G. Obstruction of vision. To preserve visibility at road intersections	While the procedural provisions of this section are supplanted by Article VIII, the Facility has been

Local Substantive Law	Compliance
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 rights-of-way 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.	designed to comply with this section. See Exhibit 8, Appendix A, for additional information regarding placement of proposed screening, and Exhibit 16 for information regarding sight distances at driveway and roadway intersections.
§135-6. I. Drainage ways. 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.	The Facility has been designed to comply with this section. See Exhibit 13 for information on stormwater management, including the preliminary SWPPP in Appendix 13-C.
§135-6.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.	The Applicant will comply with this section.
§135-6.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.	This section is overly broad, is ambiguous, and does not provide an enforceable standard by which Facility compliance can be measured. As such, the Facility cannot be designed to comply with this requirement. See discussion on waiver in Section (c) of this Exhibit.
§135-6.L(2) The activity shall not result in the dissemination of noxious dust, gas, smoke, chemicals or odors beyond the property line.	The Facility has been designed to comply with this requirement. Air emissions during construction will be minimized during construction in compliance with 16 NYCRR § 1100-6.4, including prohibiting contractors from leaving generators idling when electricity is not needed and from leaving diesel engines idling when equipment is not actively being used, 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 NYS Standards and Specifications for Erosion and Sediment Control, using construction

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	equipment powered by electric motors where feasible, or by ultra-low sulfur diesel, and disposal or reuse of cleared vegetation in a way that minimizes greenhouse gas emissions.
§135-6.L(3) The activity shall not produce perceptible electromagnetic interference with normal radio or television reception in any area.	The Facility has been designed to comply with this section. See Exhibit 20 for information on broadcast reception and 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 communications systems.
§135-6.N. Fences erected on residential lots or on land adjacent to residential lots. (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.	The Facility has been designed to comply with this section.
§135-6.N(4) The finished side of such fence shall face adjoining and public rights-of-way.	The Facility has been designed to comply with this section.
§135-6.N(6) No barbed wire or electric fence shall be erected in a residential district.	The Facility has been designed to comply with this section, as the Facility Site does not include any parcels located within a residential district.
§135-6.N(7) Barbed wire or electric fence on a residential lot in nonresidential districts shall not be erected less than 50 feet from any residence.	The Facility has been designed to comply with this section, as barbed wire fencing, where proposed, will be located more than 50 feet from residences.
§135-7.C(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.	The Facility has been designed to comply with this section.
§135-7.C(3) Wetlands. Notwithstanding an 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 Facility has been designed to comply with this section. See Exhibit 14 for information regarding wetlands, and Exhibit 25 for information on CWA permitting.

Local Substantive Law	Compliance
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.	
§135-7.F. Signs (1) General provisions. (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.	The procedural provision in this section regarding Zoning Board of Appeals authority to grant a variance is supplanted by Article VIII. The Facility has been designed to comply with the substantive requirements in these sections, §135-7.F.(1)(b) through (f), inclusive.
§135-8. Special Conditions and Special Use Permits. C. Special Conditions. (6) Signs in all districts must comply with applicable requirements of §135-7F of this chapter.	The Facility has been designed to comply with this section. Refer to compliance with §135-7.F discussed above.

(e) Identification of Municipal Agency Qualified to Review, Approve, Inspect, and Certify Compliance Certification

It is the Applicant's understanding that the Town of Waterloo has expressly declined to administer the New York State Uniform Fire Prevention and Building Code (Uniform Code), and the Town of Junius has not adopted a local law providing for the administration and enforcement of the Uniform Code. Seneca County is responsible for reviewing and approving building plans, inspecting construction work, and certifying compliance with the New York State Uniform Fire Prevention and Building Code, the Energy Conservation Construction Code of New York State, and the substantive provisions of any applicable local electrical,

plumbing, or building code in the Towns of Waterloo and Junius. The Seneca County Code Enforcement Law 2022, adopted as Local Law No. 5 of 2022, is procedural and establishes Seneca County's code enforcement program including establishing the position of Code Enforcement Officer, outlining the procedural process for obtaining building permits and certificates of occupancy/certificates of compliance, and the construction inspection process.

As procedural requirements, these processes are preempted by Article VIII and the Applicant is not required to obtain local permits, including but not limited to building permits. However, the Facility will comply with the Uniform Code, to the extent the Uniform Code applies to the Facility. The Applicant requests that the Office expressly authorize the exercise of the applicable electric, building permit, inspection and certification processes by Seneca County. Due to the complex nature of the Facility, the Applicant may seek to arrange with the County to hire consultant services to assist with the review, inspection and approval process for work and Facility components required to comply with the Uniform Code. The Applicant has consulted with the County on hiring of third-party consultants and has agreed to reimburse the Town for expenses relating to such work.

Alternatively, the Applicant may request to submit for review building plans to an entity qualified by the New York State Department of State (NYSDOS), in order to obtain compliance certified with the Uniform Code. In the event certification of compliance by NYSDOS is required, including arrangements to pay for costs of necessary consultant services. Table 24-2 below provides the name and contact information for the Seneca County Code Enforcement Officer:

Table 24-2. Local Contact Information for Review and Approval of Building Permits

County	Contact Information
Seneca	Mark Shaw, Senior Code Enforcement Officer Seneca County Department of Building & Fire Code Enforcement 1 Dipronio Drive Waterloo, NY 13165 (315) 539-1628 mshaw@co.seneca.ny.us

(f) Zoning Designation of the Facility Site

The Town of Junius has not adopted a zoning ordinance or law or flood damage prevention law. The Town of Waterloo has adopted zoning district designation, in addition to a flood damage prevention law. The zoning districts and zoning designation for the portion of the Facility to be located in the Town of Waterloo are addressed below.

Zoning Districts & Zoning Designation for Facility

Pursuant to the Town of Waterloo Zoning Law, the Town is divided into the following zoning districts: Agricultural (A), Low-Density Residential (R1), Moderate-Density Residential (R2), Commercial, Multiple Use, Industrial. All Facility components to be located within the Town of Waterloo are within the A District. Large-scale solar energy systems are allowed by special use permit in the A District. *See* Code of the Town of Waterloo §134.6.A(1).

The Town of Waterloo has also adopted a Flood Damage Prevention Law, which applies to all areas of special flood hazard within the jurisdiction of the Town and provides for additional development requirements for structures, utilities, and development activities within the areas of special flood hazard. *See* Code of the Town of Waterloo §78-6. The areas of special flood hazard are those areas identified by the Federal Emergency Management Agency in Flood Insurance Rate Maps enumerated on Map Index No. 360759-0001-0006 dated September 16, 1981, and with accompanying Flood Boundary and Floodway Maps enumerated on Map Index No. 360759-0001-0006 dated September 16, 1981. *See* Code of the Town of Waterloo §78-7. The Facility Site is not located within areas of special flood hazard and as such is not subject to the requirements of Chapter 78 nor those of Chapter 135 § 135-7.C(2) of the Waterloo Town Code.