



APPENDIX 13-C

ORES Surface Waters



**Somerset Solar Project
Somerset, Niagara County**

Surface Waters Jurisdictional Determination

January 25, 2022

Pursuant to § 900-1.3(f)(2), AES Clean Energy Development LLC. provided a draft surface waters delineation report entitled “Wetland and Waterbody Delineation Report” dated October 1, 2021, a “Wetlands Delineation Memorandum” dated December 9, 2021, as well as associated photographs and GIS shapefiles received December 15, 2021 for the proposed Somerset Solar Project located in Niagara County, New York.

Pursuant to § 900-1.3(f)(4), the Office of Renewable Energy Siting (the Office or ORES), in consultation with the New York State Department of Environmental Conservation (NYSDEC), hereby provides Attachment A. The information provided in Attachment A will be necessary for developing Exhibit 13 (§900-2.14) in support of an application to the Office for a major renewable energy facility.

Please note that this determination only applies to major renewable energy facilities as defined by Section 94-c of New York Executive Law and 19 NYCRR Part 900. This determination does not cover other projects, nor does it cover determinations under other applicable federal, state, or local jurisdictions, such as the Army Corps of Engineer’s regulatory program under Section 404 of the Clean Water Act. Please contact those entities regarding their potential regulatory jurisdiction.

This determination is valid for a period of five years from the date of this letter. After five years, determinations and delineations will be considered expired and subject to change until a new determination or delineation is conducted and the Office extends this determination or issues a new jurisdictional determination.

As a reminder, with respect to both wetlands and waterbodies, the Applicant must first provide a written explanation of how the Facility design avoids impacts to identified natural resources (Exhibit 13 Water Resources and Aquatic Ecology, 19 NYCRR §900-2.14) (Exhibit 14 Wetlands, 19 NYCRR §900-2.15(e)). For impacts that cannot be avoided, the Applicant must then provide a written explanation of all efforts taken to minimize impacts of the proposed Facility to the relevant identified natural resources (Exhibit 13 Water Resources and Aquatic Ecology, see e.g., 19 NYCRR §900-2.14(b)(6) and (c)) (Exhibit 14 Wetlands, 19 NYCRR §900-2.15(e)).



**Office of
Renewable
Energy Siting**

KATHY HOCHUL
GOVERNOR

HOUTAN MOAVENI
EXECUTIVE DIRECTOR

For impacts which cannot be avoided or minimized, the Applicant must provide the Office with sufficient information to determine whether impacts will be mitigated to the maximum extent practicable. While final details concerning proposed mitigation measures can be deferred to the required pre-construction mitigation plan for each resource area (Exhibit 13 Water Resources and Aquatic Ecology, 19 NYCRR §900-2.14(b)(7) and Exhibit 14 Wetlands, 19 NYCRR §900-2.15(e)), a sufficient showing of proposed mitigation measures is required at the application stage for the Office, in consultation with NYSDEC, to make the required determinations in Executive Law 94-c.

CC: NYSDEC

Attachment A

Office of Renewable Energy Siting

Water specific jurisdictional determinations for surface waters identified in the draft wetland and waterbodies delineation report

Stream Delineation ID ¹	Flow Char./ Stream Type ²	Stream Name	NYS Stream Class	Waterbody Identification Number (WIN)	Protected Stream (ECL 15-0501) (Yes/No)	Navigable Water (ECL 15-505) (Yes/No)	Stream Order (1 or >1)	Description of minor adjustments from draft delineation report, in any.
SB-2	Perennial	Fish Creek	C	ONT-145	No	Yes	>1	
SB-3	Perennial	Fish Creek	C	ONT-145	No	Yes	>1	

¹ ID assigned by applicant in draft wetland delineation report.

² Perennial, intermittent, ephemeral.



**Somerset Solar Project
Somerset, Niagara County**

Wetlands Jurisdictional Determination

January 25, 2022

Pursuant to § 900-1.3(e)(2), AES Clean Energy Development LLC. provided a draft wetlands delineation report entitled “Wetland and Waterbody Delineation Report” dated October 1, 2021, a “Wetlands Delineation Memorandum” dated December 9, 2021, as well as associated photographs and GIS shapefiles received December 15, 2021 for the proposed Somerset Solar Project located in Niagara County, New York.

Pursuant to § 900-1.3(e)(4), the Office of Renewable Energy Siting (the Office or ORES), in consultation with the New York State Department of Environmental Conservation (NYSDEC), hereby provides specific jurisdictional determinations for state-regulated wetlands identified in the draft wetland delineation report and shapefiles in Attachment A. The information provided in Attachment A will be necessary for developing Exhibit 14 (§900-2.15) in support of an application to the Office for a major renewable energy facility.

Please note that this determination only applies to major renewable energy facilities as defined by Section 94-c of New York Executive Law and 19 NYCRR Part 900. This determination does not cover other projects, nor does it cover determinations under other applicable federal, state, or local jurisdictions, such as the Army Corps of Engineer’s regulatory program under Section 404 of the Clean Water Act. Please contact those entities regarding their potential regulatory jurisdiction.

This determination is valid for a period of five years from the date of this letter. After five years, determinations and delineations will be considered expired and subject to change until a new determination or delineation is conducted and the Office extends this determination or issues a new jurisdictional determination.

As a reminder, with respect to both wetlands and waterbodies, the Applicant must first provide a written explanation of how the Facility design avoids impacts to identified natural resources (Exhibit 13 Water Resources and Aquatic Ecology, 19 NYCRR §900-2.14) (Exhibit 14 Wetlands, 19 NYCRR §900-2.15(e)). For impacts that cannot be avoided, the Applicant must then provide a written explanation of all efforts taken to minimize impacts of the proposed Facility to the relevant identified natural resources (Exhibit 13 Water Resources and Aquatic Ecology, see e.g., 19 NYCRR §900-2.14(b)(6) and (c)) (Exhibit 14 Wetlands, 19 NYCRR §900-2.15(e)).



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For impacts which cannot be avoided or minimized, the Applicant must provide the Office with sufficient information to determine whether impacts will be mitigated to the maximum extent practicable. While final details concerning proposed mitigation measures can be deferred to the required pre-construction mitigation plan for each resource area (Exhibit 13 Water Resources and Aquatic Ecology, 19 NYCRR §900-2.14(b)(7) and Exhibit 14 Wetlands, 19 NYCRR §900-2.15(e)), a sufficient showing of proposed mitigation measures is required at the application stage for the Office, in consultation with NYSDEC, to make the required determinations in Executive Law 94-c.

CC: NYSDEC

Attachment A

Office of Renewable Energy Siting

Wetland specific jurisdictional determination for wetlands from draft wetland and waterbodies delineation report

Wetland Delineation ID ¹	Acreage	Category ²	State Wetland ID	Wetland Classification	Changes ³
OW-4	0.099748196	Unmapped >12.4 ac	NA	NA	
WA-12	2.329624407	Unmapped >12.4 ac	NA	NA	
WA-3A	6.957258216	Unmapped >12.4 ac	NA	NA	
WA-3A	24.03059955	Unmapped >12.4 ac	NA	NA	
WA-3A	18.02154554	Unmapped >12.4 ac	NA	NA	
WA-3A	8.126475125	Unmapped >12.4 ac	NA	NA	
WA-3A	1.810718776	Unmapped >12.4 ac	NA	NA	
WA-3A	0.123039224	Unmapped >12.4 ac	NA	NA	
WA-3A	4.114700831	Unmapped >12.4 ac	NA	NA	
WA-3B	13.82228158	Unmapped >12.4 ac	NA	NA	
WA-5	22.23492589	Unmapped >12.4 ac	NA	NA	
WA-7	28.61305874	Unmapped >12.4 ac	NA	NA	
WB-13	7.630800874	Unmapped >12.4 ac	NA	NA	
WB-18	9.498056344	Unmapped >12.4 ac	NA	NA	
WB-18	0.503464192	Unmapped >12.4 ac	NA	NA	
WB-18	5.72357E-07	Unmapped >12.4 ac	NA	NA	
WB-19	52.25976484	Unmapped >12.4 ac	NA	NA	

Wetland Delineation ID ¹	Acreage	Category ²	State Wetland ID	Wetland Classification	Changes ³
WB-19	0.071157389	Unmapped >12.4 ac	NA	NA	
WB-19	0.463759259	Unmapped >12.4 ac	NA	NA	
WB-20A	10.338001	Unmapped >12.4 ac	NA	NA	
WB-20A	0.045526803	Unmapped >12.4 ac	NA	NA	
WB-20A	0.001347682	Unmapped >12.4 ac	NA	NA	
WB-20B	21.39895817	Unmapped >12.4 ac	NA	NA	
WB-20B	2.576349439	Unmapped >12.4 ac	NA	NA	
WB-25	0.126719025	Unmapped >12.4 ac	NA	NA	
<p>¹ ID assigned by applicant in draft wetland delineation report.</p> <p>² Includes mapped wetlands and unmapped wetlands with a total area greater than 12.4 acres in size.</p> <p>³Changes include any minor adjustments to features provided by the applicant</p>					