



APPENDIX 24-B

Town of Somerset Local Law Consultation Log

Mr. Richard Dewart
Town of Somerset
8700 Haight Road, PO Box 368
Barker, NY 14012

Town of Somerset Town Board
8700 Haight Road, PO Box 368
Barker, NY 14012

Dear Supervisor Dewart and Town Board Members,

As you are aware, AES Clean Energy Development, LLC (“AES”) is proposing to redevelop portions of the inactive Somerset coal-fired power plant and adjoining properties into a 115 - 130-megawatt (MW) alternating current (AC) solar energy generation facility (the “Project”).

The Project is consistent with recent State policies encouraging the development of clean energy and renewable resources as a tool in combating climate change, curbing harmful air pollution, and greening New York State’s economy as well as repurposing existing or abandoned commercial or industrial use properties. The Project will also provide an economic stimulus to the area during construction by providing jobs and local contracts for goods and services. During operation, the Project will offer long-term highly skilled operational positions and significant long-term economic benefits through lease revenue to local landowners and property tax revenue to the community.

In April 2020, New York passed the Accelerated Renewable Energy Growth and Community Benefit Act (the “Act”). The Act is intended to assist New York State in achieving the renewable energy production and greenhouse gas emission reduction goals of the 2019 Climate Leadership and Community Protection Act establishing an expedited process for reviewing renewable energy projects (“Section 94-c” or “94-c”). Later this year, AES will seek a siting permit from the Office of Renewable Energy and Siting (“ORES” or “Office”) under the new Section 94-c process.

Section 94-c preempts local procedural requirements, such as permits and approvals which would otherwise be required by the host municipalities for construction and operation of the Project (*i.e.*, site plan, special use permit or variance approvals). However, local substantive requirements (*i.e.*, setbacks, height limits, lot coverage requirements) will still be applied to the Project by the Office unless it elects to not apply the requirements because it finds them to be unreasonably burdensome or inconsistent with the requirements of 19 NYCRR § 900.6, the State’s uniform standards and conditions for renewable energy projects.

Section 94-c requires that applicants consult with local municipalities to determine what local substantive requirements apply to the Project and whether design changes to the Project can obviate the need to request the Office elect to not apply those requirements.

AES has researched potentially applicable local ordinances, laws, resolutions, regulations, standards and other requirements of a substantive nature required for the construction or operation of the proposed Project as a Utility-Scale Solar Energy System. On January 21, 2022, AES submitted a letter to the Town identifying substantive provisions of the Town’s Solar Energy Systems Law, as it existed at that time, as well as the Town’s proposed revisions to the Solar Energy Systems Law.

AES is aware that in March 2022, the Town adopted Local Law No. 3 Amending Article XXII of Chapter 205 of the Town Code- Solar Energy Systems (“2022 Solar Law”). Below is a list of the identified substantive provisions and an assessment of the Project’s compliance with the substantive requirement. The substantive local law analysis is based on the Town’s current general laws and the 2022 Solar Law.

We appreciate the Town reviewing this list and confirming, in writing that there are no other applicable laws and that substantive requirements have been identified.

Chapter 96 - Excavations¹

§ 96-9. Standards and conditions for permit²

A. In approving or denying an excavation permit, the standards and considerations to be taken into account shall include but not be limited to the following:

(1) No excavation shall be permitted within 200 feet of any road right-of-way nor within 100 feet of any property line, nor shall any such excavation be permitted within 500 feet of any residential dwelling unit within the Town of Somerset.

Facility Status: The Facility will be designed to comply with this requirement. The Town Zoning Code defines excavation as “[a] cavity, hole, mine, pit or quarry on land formed by digging, for the purpose of extracting clay, stone, gravel, sand, shale or other natural minerals or the topsoil therefrom.” Activities with respect to the Facility will be limited to trenching for the installation of underground collection cable and, therefore, no excavation, as contemplated by the Town Zoning Code, will occur.

§ 96-11. Certificates of insurance

A. Upon approval of the application but before issuance of the permit, the applicant shall file with the Town Clerk certificates of insurance evidencing the issuance of liability coverage in the following amounts:

(1) Bodily injury: \$1,000,000.

(2) Property damage: \$1,000,000.

B. Said insurance must be maintained throughout the term of the permit and until a certificate of compliance has been issued by the Town Board of the Town of Somerset. Said insurance must name the Town of Somerset and its agents as an additional insured.

Facility Status: The Facility will be designed to comply with this requirement.

¹ Exception: The moving of stone, gravel, clay, sand, shale, subsoil or topsoil from one part of a premises to another part of the same premises incident to the construction of a building or other improvement of land or incident to landscaping.

² Requirement to obtain a permit is procedural and preempted by 94-c. Substantive requirements included.

Chapter 131 - Noise

§ 131-3. Prohibited acts.

No person shall cause or permit to be caused by any means:

A. Sound which causes the sound level to exceed 80 dBA between the hours of 7:00 a.m. and 11:00 p.m., nor 50 dBA between the hours of 11:00 p.m. and 7:00 a.m. on any property being used for residential purposes (other than the premises from which the sound emanates), including both the residence and the real property outside of the residence and forming a part of the residential property.

B. The use of any sound-emitting device inside or outside of a structure whereby the sound emitted from such device is audible on property being used for residential purposes at a point more than 100 feet from the real property boundary line of the property from which said sound emanates.

C. The use or operation of any sound-producing device, or the production of sound by any other means, within 500 feet of any school, church, synagogue, mosque, temple or courthouse while the same is in session, or within 500 feet of any hospital, nursing home or medical facility at any time, when such sound would disturb a reasonable person of normal auditory sensitivities present in such structure or facility, provided that conspicuous signs are displayed indicating the location of such facility.

D. The outdoor use or operation of any powered tool or equipment, including but not limited to saws, sanders, drills, grinders, lawn mowers or tractors, leaf blowers, or any other garden tools or equipment, audible on property being used for residential purposes between the hours of 11:00 p.m. and 7:00 a.m. of the following day, so as to disturb the quiet, comfort or repose of a reasonable person of normal auditory sensitivities.

E. The operation of any motor vehicle with a gross vehicle weight rating in excess of 10,000 pounds, or any auxiliary equipment attached to such motor vehicle, for a period longer than 15 minutes in any hour while the vehicle is stationary for reasons other than traffic congestion, so that the sound emanated therefrom is audible on property being used for residential purposes between the hours of 11:00 p.m. and 7:00 a.m. of the following day.

I. The conduct of any construction activities, including but not limited to the erection, demolition, assembling, altering, installing or equipping of buildings, public or private roadways, roads, parks, utility lines or other property, including related activities such as land clearing, grading, earthmoving, excavating, blasting, filling or landscaping, so as to project a noise therefrom so as to disturb the quiet comfort or repose of a reasonable person of normal auditory sensitivities on property being used for residential purposes between the hours of 11:00 p.m. and 7:00 a.m. of the following day.

Facility Status: The Facility will be designed to comply with these requirements.

Zoning

§ 205-11: Regulations Applicable to all Zones

P. Fences.

(1) Any fences erected in the Town shall adhere to the following:

(a) Fences may be erected, altered or reconstructed to a height not to exceed three feet above ground level when located within 25 feet of the street right-of-way line.

(b) Fences may be erected, altered or reconstructed to a height not to exceed six feet above ground level when located more than 25 feet from the street line, except when such fence protects a swimming pool, in which event a height of eight feet is allowed.

(2) These restrictions shall not be applied so as to restrict the erection of a wall for the purpose of retaining earth, except if within the highway right-of-way when permission of the Highway Superintendent is required.

(3) These restrictions shall not be applied to restrict the erection, alteration or reconstruction of fences used in connection with farms except insofar as such fences might affect the public safety.

(4) Fences used for agricultural purposes in the A District shall be exempt from these provisions.

Facility Status: The Facility will be designed to comply with the 2022 Solar Law given that the solar law provides that it shall take precedence over any inconsistent provision of the Zoning Law.

Y. Exterior walls of all structures shall be completed by finishing with wood, stone, brick, stucco, vinyl, aluminum, cement or similar permanent material.

Facility Status: The Facility will be designed to comply with this requirement.

Local Law Amending Article XXII of Chapter 205 of the Town Code- Solar Energy Systems (2022 Solar Law)³

§ 205-106 - Applicability

4. All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable, codes, regulations and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code (“Building Code”), the NYS Energy Conservation Code (“Energy Code”), and the Town Code.

Facility Status: The Facility will be designed in accordance with the Building Code and Energy Conservation Code. The Facility will be designed and installed in accordance with the Town Code except as discussed herein.

§ 205-110 – Permitting Requirements for Tier 3 Solar Energy Systems⁴

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

³ The section references and subsections are numbered according to the Town of Somerset Local Law Amending Article XXII of Chapter 205 of the Town Code- Solar Energy Systems (2022 Solar Law).

⁴ Pursuant to the definitions in the Proposed Solar Law, the Somerset Facility is a Tier 4 Solar Energy System. However, the 2022 Solar Law provides that a Tier 4 Solar Energy System must comply with all Tier 3 requirements.

Protection, Agriculture / Agro-tourism and Environmentally Sensitive areas of the Town as denoted on the Vision Map of the Town of Somerset Comprehensive Plan (on file at the Town).

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

Notwithstanding Article XVA of Section 205 of the Town Code of the Town of Somerset, Tier 3 Solar Energy Systems shall be permitted through the process set forth in this Article. The requirements set forth in Article XV of Section 205 of the Town Code shall not be applicable to Tier 3 Solar Energy System within a Planned Unit Development District.

Facility Status: The Facility cannot be designed to comply with this requirement. The term “waterfront area, used in this provision,” is not defined in the Proposed Solar Law. “Waterfront area,” however, is defined in Town Code § 197-3 as “[t]he waterfront revitalization area delineated in the Town's Local Waterfront Revitalization Program.” The LWRP, in turn, defines “revitalization area” as “all of the land area along the Lake Ontario shoreline.” Accordingly, this provision would effectively preclude any solar development along any land bordering Lake Ontario, which includes the former Somerset Generating parcels. Such a result is contrary to the Town’s Vision Map which identifies the Somerset Generating site, where AES’ Somerset Solar Project is proposed to be located, as Industrial/Business, “Shovel Ready” Business Area, Multiple Use, and Mixed Use – Ag / Ag Support Business. The prohibition on solar development in “waterfront areas” also contradicts § 205-113 (see below) which restricts solar development to Industrial and General Industry Zoning Districts and Planned Unit Development Districts which would include (not exclude) the Somerset Generating Site. Based on the Vision Map, almost all of the land designated as Industrial is in the waterfront area at and near the Somerset Generating site.

In addition, in the Vision Map, the Waterfront Protection Area also slightly overlaps the Multiple Use Site Expansion Area. AES requests that the Town clarify that the Waterfront Protection Area does not overlap the Multiple Use Site Expansion Area.

3.b – Drainage

Solar energy systems must comply with NYS Stormwater regulations.

Facility Status: The Facility will be designed to comply with this requirement.

3.d – Vehicular paths

Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.

Facility Status: The Facility will be designed to comply with this requirement.

3.e - Signage

i. No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted within an area no more than 8 square feet.

Facility Status: The Facility will be designed to comply with this requirement.

ii. As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

Facility Status: The Facility will be designed to comply with this requirement.

3.f – Glare/Glint

All solar panels shall have anti-reflective coating(s) and proof of such submitted. All equipment and support structures should not produce glare or glint.

Facility Status: The Facility will be designed to comply with this requirement.

3.g – Lighting

Lighting of Solar Energy Systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast (dark sky complaint) from abutting properties.

Facility Status: The Facility will be designed to comply with this requirement.

3.h - Noise

The Project shall be shown to not have adverse or unreasonable noise impacts on surrounding homes or otherwise sensitive receptors. The 1-hour average noise generated from the solar energy system's components and associated ancillary equipment shall not exceed a noise level, as measured at the outside wall of any non-participating residence or occupied community building, based on current (45 dBA) or future recommendations from the World Health Organization.

Facility Status: The Facility will be designed to comply with this requirement. Please note that AES generally agrees that the proposed 45 dBA standard is consistent with what other communities and the State have found to protect public health and minimize potential environmental impacts. This standard is also consistent with the standard for solar facilities established by ORES. However, the reference to the World Health Organization (WHO) is not appropriate in this context as the WHO does not provide guidelines for solar. In addition, the provision creates an unambiguous and potentially unenforceable standard if it relies on some future guidelines by reference. Accordingly, the Facility will comply with this requirement except with respect to recommendation from the WHO.

3.i – Tree cutting

Removal of existing trees larger than 6 inches in diameter should be minimized to the to the extent possible. The standard being no more than 10% of the existing trees larger than 6 inches in diameter should be removed.

Facility Status: The Facility will be designed to comply with this requirement to the maximum extent practicable. AES interprets the 10% standard to be a guideline and not a requirement.

4. Decommissioning

- i. Solar Energy Systems that have been abandoned and/or not producing electricity (defined as operated at a minimum of 50% capacity of the system for a period of at least 6 months) for a period of 1 year shall be removed at the Owner and/or Operator's expense, which at the Owner's option may come from any security made with the Town as set forth in this law. A yearly operational report will be required to be submitted to the Town documenting the system's performance.
- ii. A decommissioning plan signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant, addressing the following:
 - (a) The cost of removing the Solar Energy System (no allowance for recycle value).
 - (b) The time required to decommission and remove the Solar System and any ancillary structures.
 - (c) The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.
 - (d) If on Agricultural lands, the plan must include meeting the NYS Agriculture and Markets standards.
- iii. Security
 - (a) The deposit, executions, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town Attorney and/or engineer and approved by the Town Board, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be 125 % of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of 2 % annually for the life of the Solar Energy System. The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the Solar Energy System. This security amount shall be reviewed periodically and updated/renewed as necessary (determined at the time of the first security agreement). This "security" shall be in place prior to the start of construction.
 - (b) In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.
 - (c) In the event of default or abandonment of the Solar Energy System, the system shall be decommissioned as set forth in this law.

Facility Status: The requirement to file a decommissioning plan is procedural and supplanted by the 94-c process. However, a decommissioning plan will be prepared and filed as part of Application Exhibit 23. In

addition, to the extent that this provision's requirement that security be posted in an amount equal to 125% of the decommissioning costs (with a 2% escalator) is considered substantive, AES cannot comply. ORES' regulations require that AES post security in an amount equal to 115% of decommissioning costs, an amount sufficient to guarantee removal of the system and site restoration. Amounts greater than this will jeopardize Project economics and amounts anticipated to benefit local communities through host community agreements. Exhibit 23 will contain a description of the security to be posted by AES for decommissioning of the Facility.

6. Safety; applications shall include a safety plan

1) Emergency Operations Plan. A copy of the approved Emergency Operations Plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:

- k. In the event of a fire, all contaminated soil must be removed and disposed of properly, in accordance with all applicable laws.

Facility Status: The requirement to file a safety plan is procedural and supplanted by the 94-c process. However, the Facility will be designed to comply with the substantive requirement in subsection k. A Safety Response Plan will be filed as part of Application Exhibit 6. Prior to Application filing, AES will provide a draft copy of the Safety Response Plan to the Town of Somerset and local emergency responders for review and comment.

7. Environmental and cultural resources; information on the environmental and cultural resources (as identified through the NYSDEC Mapping system and by the Town of Somerset) on the subject property and surrounding properties.

Facility Status: This provision is procedural and supplanted by the 94-c process. However, efforts to avoid and mitigate environmental impacts and cultural resources will be addressed in the 94-c Application.

§ 205-112 – Special Use Permit Standards

1. Specific standards

- a. Lot size – There are no lot size requirements; the project must be shown to meet all setback and other requirements of this law.

Facility status: Compliance with setback and other requirements are discussed herein.

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

Facility status: The Facility cannot be designed to comply with this requirement. Based on our experience, the proposed 200 ft property line setbacks and 400 ft setbacks from

residences are in excess of similar state and local standards, as well as Somerset zoning for other technology and uses. In addition, this setback is in excess of what may be required or considered reasonable to minimize potential environmental or other impacts associated with solar, in particular at the Somerset Generating site. With a maximum height of 12-15 ft for solar equipment, setbacks greater than 12-20 times the equipment height far outweigh the potential impact from solar or any other Somerset zoning requirements for other technologies and could be read to have the sole purpose of limiting potential development. A local zoning setback typically has the purpose of ensuring that a permitted land use is maintained an appropriate distance from neighboring permitted uses. In this case, vegetative screening will be placed at the property line and solar panels operate with minimal sound, no emissions, and no other potential risks that require a setback distance greater than any other permitted use in the Town. The effect of such a setback limits the amount of available land for panels, requiring the use of other locations in order to generate the same amount of renewable electricity. AES will comply with setbacks established by ORES and other local zoning laws that have appropriately balanced the benefits associated with solar projects with minimizing impacts by suggesting 100-foot setbacks from non-participating property lines and 250 feet from non-participating occupied residences. ORES' standards are based on extensive research and local experience.

- c. Height – The Tier 3 Solar Energy Systems shall be less than or equal to 20 ft. The height of the systems will be measured from the highest natural grade below each solar panel. This height requirement can be waived by the Planning Board if the panels are being raised to accommodate agricultural purposes.

Facility status: The Facility will be designed to comply with this requirement.

- d. Fencing requirements – All solar panels and mechanical equipment, and any related structures shall be enclosed by a fence (seven feet high), and meet any other regulatory requirements such as NEC, with a self-locking gate to prevent unauthorized access. The type of fencing (including the need for barbed wire) will be determined by the Planning Board and shall fit into the character of the area. Fencing shall be of a good quality and have a lifespan of a minimum of thirty years.

Facility status: The Facility will be designed to comply with the substantive requirements of this provision. Planning Board approval is a procedural requirement supplanted by the 94-c process.

- e. Screening and visibility
 - ii. Solar Energy Systems larger than 5 acres shall be required to:
 - c) The screening and landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. The landscaped screening shall be comprised of a minimum of 1 evergreen tree, at least 6 feet high at the time of planting, plus 2 supplemental shrubs at the reasonable discretion of the Town Planning Board, all planted within each 10 linear feet of the exterior of the fencing required by Section 205-112(1)(d) above. Existing vegetation on the subject property may be used to satisfy all or a portion of the required landscaped

screening. A list of suitable evergreen tree and shrub species shall be provided by the applicant for the Town to review. This minimum screening requirement will be reduced if adjoining properties are participating properties. Every effort should be made to plant native trees and shrubs to preserve the character of the area and support local wildlife. The contractor in conjunction with a local nursery should recommend shrub screening for planning board approval

Facility status: AES will endeavor to comply with the substantive requirements of this provision. However, vegetative screening may be planted more than 10 feet away from exterior fencing where required by topography.

f. Agricultural resources

- i. Any Tier 3 Solar Energy System shall not be permitted on any property, lot, parcel that contains 50% or more land classified as Prime Farmland soils or Farmland soils of Statewide importance. Prime farmland is determined and classified by the US Department of Agriculture (USDA) and the percentage of Prime Farmland and Farmland of Statewide Importance is calculated using USDA maps and online data tools, including any amendments made to those maps and data. It is the responsibility of the developer and/or landowner to provide written evaluation, data and mapping to the Planning Board that this 50% requirement is met. The evaluation must contain data and maps that are supported, approved and/or published by the USDA, NYS Agriculture and Markets and/or Niagara County Soil and Water Conservation District (NRCS). The Planning Board may require that this evaluation be reviewed by the town engineer, consultant, or local agricultural services agent, where the cost of this review will be the responsibility of the developer or landowner.

Facility status: The Facility cannot be designed to comply with this requirement. This provision prohibits placement of solar energy systems on parcels containing 50% or more land classified as Prime Farmland soils or Farmland soils of Statewide importance. There does not appear to be a basis for this provision and solar development is the only land use identified in the zoning law that is subject to such a specific provision. To the extent that the Facility is proposed on land containing these soil types, the land is being leased by willing landowner; and will be preserved and returned to its previous use upon decommissioning of the Facility. The same cannot be said for industrial/commercial buildings or residential developments. Some current uses of land, like at the Somerset Generating Facility, may not be consistent with a restriction based on the soil content.

Moreover, this restriction appears to be in conflict with other provisions of the Town Law. For example, as discussed herein, utility-scale solar facilities are a permitted use only in Industrial and Business Districts. With this zoning restriction, there is essentially no need for a soil type restriction. Conversely, given the relatively small number of acres in the Industrial and Business Districts, further restrictions such as soil type would even further preclude solar development within the Town.

- ii. Tier 3 Solar Energy Systems located on Farmland shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets (See NYS Agriculture and Markets Guidelines).⁵

Facility status: The Facility will be designed to comply with this requirement.

- iii. Tier 3 Solar Energy System owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes. Once established, other agriculture uses such as pasturing Livestock and apiculture are permissible and encouraged.

Facility status: The Facility will be designed to comply with the substantive requirements of this provision.

- iv. Agricultural Restoration Requirements: once the system is decommissioned, the site shall be restored and remediated in accordance with the NYS Agriculture and Markets Guidelines (this will be a condition of the Special Use Permit) Agricultural Restoration Requirements: once the system is decommissioned, the site shall be restored and remediated in accordance with the NYS Agriculture and Markets Guidelines (this will be a condition of the Special Use Permit)

Facility status: The Facility will be designed to comply with the substantive requirements of this provision.

g. Noise

The project shall be shown to not have any adverse noise impacts on any surrounding homes or other sensitive receptors (see earlier section of the law for specific requirements).

Facility status: The Facility will be designed to comply with this requirement.

h. Hazardous materials

The project components shall not contain any hazardous materials that could contaminate soils or the air by their release (units shall not contain cadmium, lead or other hazardous substances such as PFAS substances used in coatings, etc.). MSD sheets for all materials considered hazardous shall be provided to the Barker Fire Department, Code Enforcement Officer and Town Hall.

Facility status: This provision is overly broad, and the Facility cannot be designed to comply with this requirement. PFAS are used in a variety of products including waterproof coating and fire retardants. Accordingly, it may not be possible to construct the facility using components that have no PFAS.

⁵ NYS DAM Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands (Revision 10/18/2019)

Available here: https://agriculture.ny.gov/system/files/documents/2019/10/solar_energy_guidelines.pdf

Please note that, as written, the provision could effectively preclude any solar development within the Town.

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

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

Notwithstanding Article XVA of Section 205 of the Town Code of the Town of Somerset, Tier 4 Solar Energy Systems shall be permitted through the process set forth in this Article. The requirements set forth in Article XV of Section 205 of the Town Code shall not be applicable to Tier 4 Solar Energy System within a Planned Unit Development District

In order to ensure that the benefits of the community solar resource are available to the entire community, the Town of Somerset shall require all Tier 4 applicants to enter into a Solar Energy System Host Community Agreement.

Facility status: The Facility cannot be designed to comply with this requirement. Based on the Town's existing zoning map, limiting solar development to Industrial, General Industry, and Planned Unit Development Zones would effectively preclude solar development within the Town. The vast majority of the Town is currently zoned Agricultural with Industrial and Business Zones comprising relatively few parcels around the Village of Barker and at the western Town boundaries in the vicinity of the Somerset Coal Plant. Assuming parcels were available in these zones, and there were landowners willing to enter leases (or land sales) for placement of panels on their property, the amount of land available is insufficient for large-scale solar development.

Tier 4 systems shall require the following additional (in addition to those in the Tier 3 level) submittals and requirements, or include revisions to Tier 3 requirements:

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

Facility status: The Facility cannot be designed to comply with this requirement for the reasons set forth above.

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

Facility status: At this time, the Facility cannot be designed to comply with this requirement. "Land of statewide importance" is not depicted on the Town of Somerset's Vision Map (see attached), nor could AES find this term defined in the existing code or Proposed Solar Law. If the term "Land of statewide importance" is defined in the Town code in advance of Application filing, AES can engage in further discussions with the Town regarding compliance. If the term "Land of statewide importance" refers to "Farmland of Statewide importance, AES requests that the Town confirm.

In addition, in the Vision Map, the Waterfront Protection Area also slightly overlaps the Multiple Use Site Expansion Area. If this is clarified, AES will further discuss compliance with the Town.

§ 205-114 – Ownership changes (Procedural)

Although the notice and security requirements of this provision are procedural, AES agrees to notify the Town of any ownership changes related to the Facility.

§ 205-115 – Safety

1. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.
2. Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Solar Energy System is located in an ambulance district, the local ambulance corps.

Facility status: The Facility will be maintained in good working order and in accordance with industry standards. Site access will be maintained including snow removal. However, site access approval by local fire departments and ambulance corps is procedural and supplanted by the 94-c siting process.

§ 205-116 – Permit time frame, maintenance, abandonment and fees (Procedural)

The requirements of § 205-116 are procedural and, therefore, supplanted by the 94-c siting process. However, AES will maintain the Facility in operational condition at all times, subject to reasonable maintenance and repairs, and file a complaint resolution plan with the Office as part of the 94-c Application and further agrees to do the following, as required by this section:

1. Inspections by Building Inspector
2. Annual inspection by professional engineer
3. Construction inspections
4. File an annual report with the Town
5. Comply with the Town Infrastructure Preservation Law

AES appreciates the Town’s review of this updated list and requests that we set up a time to discuss (1) the applicable requirements (2) the process for obtaining needed determinations or whether they can be issued on the basis of this letter and (3) conformation from the Town in both of these regards.

By: Michael Farrell

Name: Michael Farrell

Title: Director, AES Development

Mr. Richard Dewart
Town of Somerset
8700 Haight Road, PO Box 368
Barker, NY 14012

Town of Somerset Town Board
8700 Haight Road, PO Box 368
Barker, NY 14012

Dear Supervisor Dewart and Town Board Members,

As you are aware, AES Clean Energy Development, LLC (“AES”) is proposing to redevelop portions of the inactive Somerset coal-fired power plant and adjoining properties into a 130-140-megawatt (MW) alternating current (AC) solar energy generation facility (the “Project”).

The Project is consistent with recent State policies encouraging the development of clean energy and renewable resources as a tool in combating climate change, curbing harmful air pollution, and greening New York State’s economy as well as repurposing existing or abandoned commercial or industrial use properties. The Project will also provide an economic stimulus to the area during construction by providing jobs and local contracts for goods and services. During operation, the Project will offer long-term highly skilled operational positions and significant long-term economic benefits through lease revenue to local landowners and property tax revenue to the community.

In April 2020, New York passed the Accelerated Renewable Energy Growth and Community Benefit Act (the “Act”). The Act is intended to assist New York State in achieving the renewable energy production and greenhouse gas emission reduction goals of the 2019 Climate Leadership and Community Protection Act establishing an expedited process for reviewing renewable energy projects (“Section 94-c” or “94-c”). AES will seek a siting permit from the jurisdiction of the Office of Renewable Energy and Siting (“ORES” or “Office”) under the new Section 94-c process.

Section 94-c preempts local procedural requirements, such as permits and approvals which would otherwise be required by the host municipalities for construction and operation of the Project (*i.e.*, site plan, special use permit or variance approvals). However, local substantive requirements (*i.e.*, setbacks, height limits, lot coverage requirements) will still be applied to the Project by the Office unless it elects to not apply the requirements because it finds them to be unreasonably burdensome or inconsistent with the requirements of 19 NYCRR § 900.6, the State’s uniform standards and conditions for renewable energy projects.

Section 94-c requires that applicants consult with local municipalities to determine what local substantive requirements apply to the Project and whether design changes to the Project can obviate the need to request the Office elect to not apply those requirements.

AES has researched potentially applicable local ordinances, laws, resolutions, regulations, standards and other requirements of a substantive nature required for the construction or operation of the proposed Project as a Utility-Scale Solar Energy System. AES is aware that, on April 19, 2021, the Town adopted a moratorium on the processing, permitting, and/or construction of solar energy systems within the Town. The moratorium was in effect for six (6) months or until such time as the Town passes a local law amending its existing solar energy systems law. AES is also aware that the Town is proposing new laws regulating the siting of solar energy systems entitled, Local Law Amending Article XXII of Chapter 205 of the Town Code- Solar Energy Systems (“Proposed Solar Law”).¹

Below is a list of the identified substantive provisions and a preliminary assessment of the Project’s compliance with the substantive requirement in the list below. The substantive local law analysis is based on the Town’s current laws and codes as well as the Proposed Solar Law.

We appreciate the Town reviewing this list and confirming, in writing that there are no other applicable laws and that substantive requirements have been identified.

Chapter 96 - Excavations²

§ 96-9. Standards and conditions for permit³

A. In approving or denying an excavation permit, the standards and considerations to be taken into account shall include but not be limited to the following:

(1) No excavation shall be permitted within 200 feet of any road right-of-way nor within 100 feet of any property line, nor shall any such excavation be permitted within 500 feet of any residential dwelling unit within the Town of Somerset.

Facility Status: The Facility will be designed to comply with this requirement. The Town Zoning Code defines excavation as “[a] cavity, hole, mine, pit or quarry on land formed by digging, for the purpose of extracting clay, stone, gravel, sand, shale or other natural minerals or the topsoil therefrom.” Activities with respect to the Facility will be limited to trenching for the installation of underground collection cable and, therefore, no excavation, as contemplated by the Town Zoning Code, will occur.

¹ On November 11, 2021, the Town issued a Notice that a public hearing would be held on December 8, 2021. A revised version of the Proposed Solar Law was attached to the agenda for the Town Board’s January 5, 2022, meeting.

² Exception: The moving of stone, gravel, clay, sand, shale, subsoil or topsoil from one part of a premises to another part of the same premises incident to the construction of a building or other improvement of land or incident to landscaping.

³ Requirement to obtain a permit is procedural and preempted by 94-c. Substantive requirements included.

§ 96-11. Certificates of insurance

A. Upon approval of the application but before issuance of the permit, the applicant shall file with the Town Clerk certificates of insurance evidencing the issuance of liability coverage in the following amounts:

(1) Bodily injury: \$1,000,000.

(2) Property damage: \$1,000,000.

B. Said insurance must be maintained throughout the term of the permit and until a certificate of compliance has been issued by the Town Board of the Town of Somerset. Said insurance must name the Town of Somerset and its agents as an additional insured.

Facility Status: The Facility will be designed to comply with this requirement.

Chapter 131 - Noise

§ 131-3. Prohibited acts.

No person shall cause or permit to be caused by any means:

A. Sound which causes the sound level to exceed 80 dBA between the hours of 7:00 a.m. and 11:00 p.m., nor 50 dBA between the hours of 11:00 p.m. and 7:00 a.m. on any property being used for residential purposes (other than the premises from which the sound emanates), including both the residence and the real property outside of the residence and forming a part of the residential property.

B. The use of any sound-emitting device inside or outside or a structure whereby the sound emitted from such device is audible on property being used for residential purposes at a point more than 100 feet from the real property boundary line of the property from which said sound emanates.

C. The use or operation of any sound-producing device, or the production of sound by any other means, within 500 feet of any school, church, synagogue, mosque, temple or courthouse while the same is in session, or within 500 feet of any hospital, nursing home or medical facility at any time, when such sound would disturb a reasonable person of normal auditory sensitivities present in such structure or facility, provided that conspicuous signs are displayed indicating the location of such facility.

D. The outdoor use or operation of any powered tool or equipment, including but not limited to saws, sanders, drills, grinders, lawn mowers or tractors, leaf blowers, or any other garden tools or equipment, audible on property being used for residential purposes between the hours of 11:00 p.m. and 7:00 a.m. of the following day, so as to disturb the quiet, comfort or repose of a reasonable person of normal auditory sensitivities.

E. The operation of any motor vehicle with a gross vehicle weight rating in excess of 10,000 pounds, or any auxiliary equipment attached to such motor vehicle, for a period longer than 15 minutes in any hour while the vehicle is stationary for reasons other than traffic

congestion, so that the sound emanated therefrom is audible on property being used for residential purposes between the hours of 11:00 p.m. and 7:00 a.m. of the following day.

I. The conduct of any construction activities, including but not limited to the erection, demolition, assembling, altering, installing or equipping of buildings, public or private roadways, roads, parks, utility lines or other property, including related activities such as land clearing, grading, earthmoving, excavating, blasting, filling or landscaping, so as to project a noise therefrom so as to disturb the quiet comfort or repose of a reasonable person of normal auditory sensitivities on property being used for residential purposes between the hours of 11:00 p.m. and 7:00 a.m. of the following day.

Facility Status: The Facility will be designed to comply with this requirement.

Zoning

§ 205-11: Regulations Applicable to all Zones

P. Fences.

(1) Any fences erected in the Town shall adhere to the following:

(a) Fences may be erected, altered or reconstructed to a height not to exceed three feet above ground level when located within 25 feet of the street right-of-way line.

(b) Fences may be erected, altered or reconstructed to a height not to exceed six feet above ground level when located more than 25 feet from the street line, except when such fence protects a swimming pool, in which event a height of eight feet is allowed.

(2) These restrictions shall not be applied so as to restrict the erection of a wall for the purpose of retaining earth, except if within the highway right-of-way when permission of the Highway Superintendent is required.

(3) These restrictions shall not be applied to restrict the erection, alteration or reconstruction of fences used in connection with farms except insofar as such fences might affect the public safety.

(4) Fences used for agricultural purposes in the A District shall be exempt from these provisions.

Facility Status: The Facility will be designed to comply with this requirement.

Y. Exterior walls of all structures shall be completed by finishing with wood, stone, brick, stucco, vinyl, aluminum, cement or similar permanent material.

Facility Status: The Facility will be designed to comply with this requirement.

§ 205-106: Use districts where allowed

Subject to the provisions of this article, solar energy systems shall be allowed as follows:

C. Utility-scale solar energy systems are only permitted by special permit in an Agricultural District (A) or all industrial districts (I and GI).

Facility Status: The Facility cannot be designed to comply with this requirement. The proposed solar Facility will be located on property currently owned by the Somerset Coal

Plant. Certain land owned by Somerset Coal Plant is designated as Planned Use district. Accordingly, portions of the solar Facility will also be located in districts designated as Planned Use.

§ 205-107: General regulations

The placement, construction, and major modification of all solar energy systems within the boundaries of the Town of Somerset shall be permitted only as follows:

C. Utility-scale solar energy systems shall be permitted only by special permit by the Town of Somerset Planning Board in use districts where allowed in accordance with the criteria established in this article, after SEQRA review with the Town of Somerset Planning Board, upon concurrent site plan approval issued by the Town of Somerset Planning Board, and upon issuance of a building permit, and shall be subject to all provisions of this article.

Facility Status: The requirements of this provision are procedural and supplanted by the 94-c siting process.

§ 205-108: General criteria

D. Solar storage batteries. When solar batteries are included as part of any solar energy system, they shall be placed in a secure container or enclosure meeting the requirements of the New York State Building Code.

Facility Status: The Facility will be designed to comply with this requirement.

E. All solar energy systems, regardless if they tie into the grid or not, shall adhere to all applicable federal, state, county and Town of Somerset laws, regulations and building, plumbing, electrical, and fire codes, and the applicant shall provide the Building Inspector with all certifications of proper placement and installation, including electrical, as State Code or the Building Inspector deems necessary.

Facility Status: The Facility will be designed to comply with this requirement.

F. Any solar energy system and any related access road shall be accessible for all emergency service vehicles and personnel.

Facility Status: The Facility will be designed to comply with this requirement.

G. All structures and devices used to support solar collectors shall be nonreflective and/or painted a subtle or earth-tone color.

Facility Status: The Facility will be designed to comply with this requirement.

H. The design, construction, operation, and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.

Facility Status: The Facility cannot be designed to comply with this requirement. Although the Facility will be designed to minimize reflection to the maximum extent practicable, it is

not possible to prevent misdirection completely. A glare study will be prepared and submitted with the 94-c application.

I. The development and operation of a solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Somerset or other federal or state regulatory agencies.

Facility Status: The Facility will be designed to comply with this requirement.

J. Artificial lighting of any solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.

Facility Status: The Facility will be designed to comply with this requirement.

K. If the use of an approved solar energy system is discontinued, the owner or operator shall notify the Building Inspector within 30 days of such discontinuance. If a solar energy system is to be retained and reused, the owner or operator shall further inform the Building Inspector of this, in writing, at such time and obtain any necessary approvals within one year; otherwise, it shall be automatically deemed abandoned.

Facility Status: The requirements of this provision are procedural and supplanted by the 94-c process. However, AES agrees to provide the notices required by this provision.

M. An applicant shall be responsible for the disposal of any solar energy system components in compliance with all federal, state and local laws and regulations for disposal of said solar energy system existing at such time as the disposal takes place.

Facility Status: The Facility will be designed to comply with this requirement.

§ 205-110: Special permit criteria

Special permits issued for utility-scale solar energy systems shall meet the following conditions:

A. Minimum lot area: The minimum lot area shall be five acres.

Facility Status: The Facility will be designed to comply with this requirement.

B. Maximum lot area: The maximum lot area shall be 100 acres.

Facility Status: The Facility cannot be designed to comply with this requirement. The proposed solar Facility will be located on property currently owned by the Somerset Coal Plant. Certain parcels have lot areas greater than 100 acres.

C. Setbacks: Any utility-scale solar energy system shall adhere to the following setbacks:

(1) From any Agricultural District (A), residential district (R-1, R-2 or RLS), Business District, or Planned Unit Development (PUD) Use District: a minimum of 200 feet from all property lot lines bordering these use districts.

Facility Status: The Facility cannot be designed to comply with this requirement due to limited available space to reach project viability while avoiding and minimizing potential

adverse impact to environmental features and existing infrastructure at the site as well as incorporating open space requirements of the town.

(2) From any industrial (I, GI) use district: a minimum of 100 feet from all property lines bordering an industrial (I, GI) use district.

Facility Status: The Facility cannot be designed to comply with this requirement due to limited available space to reach project viability while avoiding and minimizing potential adverse impact to environmental features and existing infrastructure at the site as well as incorporating open space requirements of the town.

(3) From any property lot lines: a minimum of 100 feet from any property lot line.

Facility Status: The Facility cannot be designed to comply with this requirement due to limited available space to reach project viability while avoiding and minimizing potential adverse impact to environmental features and existing infrastructure at the site as well as incorporating open space requirements of the town.

(4) From buildings or structures:

(a) A minimum of 250 feet from any building or structure, except if said building or structure is used for the actual operation of the utility-scale solar energy system; and

(b) A minimum of 500 feet from any dwelling on adjoining lots.

Facility Status: The Facility cannot be designed to comply with this requirement due to limited available space to reach project viability while avoiding and minimizing potential adverse impact to environmental features and existing infrastructure at the site as well as incorporating open space requirements of the town.

(5) From public roads and railroads:

(a) A minimum of 200 feet from any public road or railroad (measured from the road right-of-way or property line); and

(b) Where the lot line abuts a public right-of-way, the setbacks specified above shall be measured from such right-of-way line.

Facility Status: The Facility cannot be designed to comply with this requirement due to limited available space to reach project viability while avoiding and minimizing potential adverse impact to environmental features and existing infrastructure at the site as well as incorporating open space requirements of the town.

(6) From schools and public parks: a minimum of 500 feet from all property lot lines bordering a school or public park.

Facility Status: The Facility will be designed to comply with this requirement.

(7) Notwithstanding the setback provisions set forth in this section, such setbacks from property lines do not apply if the application is accompanied by a legally enforceable agreement that runs with the property for a period of 25 years or the life of the special permit, whichever is longer, that the adjacent landowner(s) agree(s) to the elimination

of the required setbacks. These setback requirements in this section can only be varied through this agreement process with adjoining landowners and not through a variance with the Zoning Board of Appeals. Any agreement to the elimination of such property line setbacks shall not constitute the reduction or elimination of required setbacks from structures, as previously identified, and such setbacks from structures, for safety reasons, shall not be reduced or eliminated.

Facility Status: The Facility will be designed to comply with this requirement.

D. Maximum overall height. The height of a utility-scale solar energy system shall not exceed 20 feet when oriented at maximum tilt.

Facility Status: The Facility will be designed to comply with this requirement.

E. Number of utility-scale solar energy systems allowed per lot. There shall only be allowed one utility-scale solar energy system per lot.

Facility Status: The Facility will be designed to comply with this requirement.

F. A utility-scale solar energy system shall only be located in a rear yard if there is a principal structure or dwelling on said lot.

Facility Status: The Facility will be designed to comply with this requirement.

G. A utility-scale solar energy system shall adhere to all applicable federal, state, county and Town of Somerset laws, regulations and building, plumbing, electrical, and fire codes.

Facility Status: The Facility will be designed to comply with this requirement.

H. Development and operation of a utility-scale solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Somerset or other federal or state regulatory agencies. The applicant must supply specific information on the project's potential impacts to migrating birds.

Facility Status: The Facility will be designed to comply with this requirement.

I. The design, construction, operation, and maintenance of a utility-scale solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.

Facility Status: The Facility cannot be designed to comply with this requirement. Although the Facility will be designed to minimize reflection to the maximum extent practicable, it is not possible to prevent misdirection completely. A glare study will be prepared and submitted with the 94-c application.

J. All structures and devices used to support solar collectors shall be nonreflective and/or painted a subtle or earth-tone color.

Facility Status: The Facility will be designed to comply with this requirement.

K. All transmission lines and wiring associated with a utility-scale solar energy system shall be buried and include necessary encasements in accordance with the National Electrical

Code and Town requirements. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan.

Facility Status: The Facility cannot be designed to comply with this requirement. AES will place transmission lines and wiring underground where practicable. However, for engineering reasons, some transmission lines and wiring may need to be placed aboveground.

L. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.

Facility Status: The Facility will be designed to comply with this requirement.

M. Artificial lighting of utility-scale solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.

Facility Status: The Facility will be designed to comply with this requirement.

N. Any signage used to advertise the solar energy facility shall be in accordance with the Town's signage regulations.

Facility Status: The Facility will be designed to comply with this requirement.

O. Any site containing a utility-scale solar energy system shall contain fencing or other device acceptable to the Town enclosing all solar energy system components to prevent safety hazards.

Facility Status: The Facility will be designed to comply with this requirement.

P. A berm, landscape screen, or other opaque enclosure, or any combination thereof acceptable to the Town capable of screening the site, may be required along any property line that abuts an existing residence.

Facility Status: The requirement for Town approval of screening measures is procedural and preempted by the 94-c siting process. However, as part of the application process, AES will produce a Visual Impact Analysis and solicit input from the Town and interested stakeholders regarding sensitive viewpoints and proposed screening.

Q. After completion of a utility-scale solar energy system, the applicant shall provide a post-construction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans.

Facility Status: The requirement to provide a certification is procedural and supplanted by the 94-c siting process. However, AES agrees to provide certification to the Town.

R. Compliance with regulatory agencies. The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of a utility-scale solar energy system.

Facility Status: The Facility will be designed to comply with this requirement.

S. A bond or other appropriate form of security acceptable to the Planning Board shall be provided to cover the cost of the removal and site restoration. Said bond or security shall be filed prior to construction. Said bond shall not be revocable and:

- (1) Shall extend for a period of not less than the actual removal and restoration without limit as to duration; and
- (2) Shall transfer to cover any subsequent owner or operator of the system.

Facility Status: The requirement for Planning Board approval is procedural and supplanted by the 94-c siting process. However, AES will provide a decommissioning plan with its 94-c application that will adequately cover costs of removal and restoration with a 15% contingency. Any decommissioning security will run with the project to any subsequent owner.

T. Clearing, grading, stormwater and erosion control.

- (1) Before the Town of Somerset shall issue a clearing, grading, stormwater or building permit for a utility-scale solar energy system, the applicant shall submit a stormwater and erosion control plan to the Town Engineer for its review and approval; and
- (2) The plan shall minimize the potential adverse impacts on wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands and minimize erosion or sedimentation.

Facility Status: The requirement to submit a stormwater and erosion control plan to the Town Engineer is a procedural requirement supplanted by the 94-c siting process. A Stormwater Pollution Prevention Plan will be prepared and submitted with the 94-c Application.

U. Shall meet all building permit requirements including the New York State Uniform Fire Prevention and Building Code standards and be installed by a qualified solar installer.

Facility Status: The requirement to obtain a building permit is a procedural requirement supplanted by the 94-c siting process. The Facility will be designed to meet New York State Uniform Fire Prevention and Building Code standards and be installed by a qualified solar installer.

§ 205-111: Maintenance, procedures, and fees

B. Inspections. Upon reasonable notice, the Town of Somerset Building Inspector or his or her designee may enter a lot on which a solar energy system has been approved for the purpose of compliance with any requirements or conditions. Twenty-four hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a utility-scale solar energy system shall be inspected annually by a New York State licensed professional engineer that has been approved by the Town or, at any other time, upon a determination by the Town's Building Inspector that damage may have occurred, and a copy of the inspection report shall be submitted to the

Town Building Inspector. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.

Facility Status: The requirements of this section are procedural and supplanted by the 94-c siting process.

C. General complaint process. During construction, the Town Building Inspector can issue a stop order at any time for any violations of a special permit or building permit. After construction is complete, the permit holder of a utility-scale solar energy system shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements.

Facility Status: The requirements of this section are procedural and supplanted by the 94-c siting process. However, AES will prepare a complaint resolution plan to be submitted with the 94-c Application that will contain a contact person, including name and phone number, for receipt and processing of any complaint.

D. Continued operation. A solar energy system shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions. Further, the Building Inspector shall also have the right to request documentation from the owner for a solar energy system regarding the system's usage at any time.

Facility Status: The Facility will be maintained in operational condition at all times. The requirement to provide system information to the Building Inspector is procedural and supplanted by the 94-c siting process.

E. Removal. All solar energy systems shall be dismantled and removed immediately from a lot when the special permit or approval has been revoked by the Town of Somerset Planning Board or the solar energy system has been deemed inoperative or abandoned by the Building Inspector for a period of more than 365 days at the cost of the owner. If the owner does not dismantle and remove said solar energy system as required, the Town Board may, after a hearing at which the owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and place the cost of removal as a tax lien on said parcel.

Facility Status: The Facility cannot completely comply with the requirements of this section. A decommissioning plan will be submitted with the 94-c Application which will provide for the removal of the solar energy system at the end of the system's useful life or when it ceases operation. The decommissioning plan will provide a reasonable timeframe in which Facility removal will occur. However, removal cannot occur immediately. AES will also post security for the life of the Facility that will adequately cover any removal costs. In the unlikely event that the Town is responsible for removing the Facility, the Town will be able to draw on this security to cover associated costs.

F. Determination of abandonment or inoperability. A determination of the abandonment or inoperability of a solar energy system shall be made by the Town Building Inspector, who shall provide the owner with written notice by personal service or certified mail. Any appeal

by the owner of the Building Inspector's determination of abandonment or inoperability shall be filed with the Town of Somerset Zoning Board of Appeals within 30 days of the Building Inspector causing personal service or mailing by certified mail his written determination, and the Board shall hold a hearing on same. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a court of competent jurisdiction grants a stay or reverses said determination. At the earlier of the 366 days from the date of determination of abandonment or inoperability without reactivation or upon completion of dismantling and removal, any approvals for the solar energy system shall automatically expire.

Facility Status: The requirements of this section are procedural and supplanted by the 94-c siting process.

Local Law Amending Article XXII of Chapter 205 of the Town Code- Solar Energy Systems § 205-106 - Applicability

4. All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable, codes, regulations and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code (“Building Code”), the NYS Energy Conservation Code (“Energy Code”), and the Town Code.

Facility Status: The Facility will be designed in accordance with the Building Code and Energy Code. The Facility will be designed and installed in accordance with the Town Code except as discussed herein.

§ 205-110 – Permitting Requirements for Tier 3 Solar Energy Systems⁴

Tier 3 Solar Energy Systems shall not be installed in environmentally sensitive areas, such as flood plains, wetlands and watershed protection areas as designated by the Town, County or other Agency, waterfront areas of the Town and wood lots or in areas of important soils and tourism related facilities. Specifically, Tier 3 systems are not allowed in Waterfront Protection, Agriculture / Agro-tourism and Environmentally Sensitive areas of the Town as denoted on the Vision Map of the Town of Somerset Comprehensive Plan.

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

Facility Status: The Facility cannot be designed to comply with this requirement. The term “waterfront area, used in this provision,” is not defined in the Proposed Solar Law. “Waterfront area,” however, is

⁴ Pursuant to the definitions in the Proposed Solar Law, the Somerset Facility is a Tier 4 Solar Energy System. However, the Proposed Solar provides that a Tier 4 Solar Energy System must comply with all Tier 3 requirements.

defined in Town Code § 197-3 as “[t]he waterfront revitalization area delineated in the Town's Local Waterfront Revitalization Program.” The LWRP, in turn, defines “revitalization area” as “all of the land area along the Lake Ontario shoreline.” Accordingly, this provision would effectively preclude any solar development along any land bordering Lake Ontario, which includes the former Somerset Generating parcels. Such a result is contrary to the Town’s Vision Map which identifies the Somerset Generating site, where AES’ Somerset Solar Project is proposed to be located, as Industrial/Business, “Shovel Ready” Business Area, Multiple Use, and Mixed Use – Ag / Ag Support Business. The prohibition on solar development in “waterfront areas” also contradicts § 205-113 (see below) which restricts solar development to Industrial and General Industry Zoning Districts and Planned Unit Development Districts which would include (not exclude) the Somerset Generating Site. Based on the Vision Map, almost all of the land designated as Industrial is in the waterfront area at and near the Somerset Generating site.

AES recommends that removing the reference to “waterfront area” in this provision would clarify the intent and make the language more consistent with the Vision Map document. The Waterfront Protection Area adequately covers and protects waterfront land east of the Somerset Generating Plant. Accordingly, removal of “waterfront area” will allow the reuse of the Somerset Generating Site for solar development while maintaining the intended uses for the remainder of the waterfront.

In the alternative, AES requests that the Town qualify the term “waterfront area” so that it would not encompass Somerset Generating property. For example,

“Tier 3 Solar Energy Systems shall not be installed in environmentally sensitive areas, such as flood plains, wetlands and watershed protection areas as designated by the Town, County or other Agency, waterfront areas of the Town **not currently zoned for Planned Unit Development, including adjacent parcels irrespective of zoning which are under common ownership or control as parcels within the Planned Unit Development zone,** and wood lots or in areas of important soils and tourism related facilities.”

In addition, in the Vision Map, the Waterfront Protection Area also slightly overlaps the Multiple Use Site Expansion Area. AES requests that the Town clarify that the Waterfront Protection Area does not overlap the Multiple Use Site Expansion Area.

3.b – Drainage

Solar energy systems must comply with NYS Stormwater regulations.

Facility Status: The Facility will be designed to comply with this requirement.

3.d – Vehicular paths

Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.

Facility Status: The Facility will be designed to comply with this requirement.

3.e - Signage

i. No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer’s name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted within an area no more than 8 square feet.

Facility Status: The Facility will be designed to comply with this requirement.

ii. As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

Facility Status: The Facility will be designed to comply with this requirement.

3.f – Glare/Glint

All solar panels shall have anti-reflective coating(s) and proof of such submitted. All equipment and support structures should not produce glare or glint.

Facility Status: The Facility will be designed to comply with this requirement.

3.g – Lighting

Lighting of Solar Energy Systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast (dark sky complaint) from abutting properties.

Facility Status: The Facility will be designed to comply with this requirement.

3.h - Noise

The Project shall be shown to not have adverse or unreasonable noise impacts on surrounding homes or otherwise sensitive receptors. The 1-hour average noise generated from the solar energy system's components and associated ancillary equipment shall not exceed a noise level, as measured at the outside wall of any non-participating residence or occupied community building, based on current (45 dBA) or future recommendations from the World Health Organization.

Facility Status: The Facility will be designed to comply with this requirement. Please note that AES generally agrees that the proposed 45 dBA standard is consistent with what other communities and the State have found to protect public health and minimize potential environmental impacts. This standard is also consistent with the standard for solar facilities established by the NYS Office of Renewable Energy Siting. However, AES suggests that the reference to the World Health Organization (WHO) is not appropriate in this context as the WHO does not provide guidelines for solar. In addition, it would create an unambiguous and potentially unenforceable standard if it relies on some future guidelines by reference.

3.i – Tree cutting

Removal of existing trees larger than 6 inches in diameter should be minimized to the extent possible. The standard being no more than 10% of the existing trees larger than 6 inches in diameter should be removed.

Facility Status: The Facility will be designed to comply with this requirement.

4. Decommissioning

- i. Solar Energy Systems that have been abandoned and/or not producing electricity (defined as operated at a minimum of 50% capacity of the system for a period of at least 6 months) for a period of 1 year shall be removed at the Owner and/or

-
- Operator's expense, which at the Owner's option may come from any security made with the Town as set forth in this law. A yearly operational report will be required to be submitted to the Town documenting the system's performance.
- ii. A decommissioning plan signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant, addressing the following:
 - (a) The cost of removing the Solar Energy System (no allowance for recycle value).
 - (b) The time required to decommission and remove the Solar System and any ancillary structures.
 - (c) The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.
 - (d) If on Agricultural lands, the plan must include meeting the NYS Agriculture and Markets standards.
 - iii. Security
 - (a) The deposit, executions, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town Attorney and/or engineer and approved by the Town Board, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be 125 % of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of 2 % annually for the life of the Solar Energy System. The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the Solar Energy System. This security amount shall be reviewed periodically and updated/renewed as necessary (determined at the time of the first security agreement). This "security" shall be in place prior to the start of construction.
 - (b) In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.
 - (c) In the event of default or abandonment of the Solar Energy System, the system shall be decommissioned as set forth in this law.

Facility Status: The requirement to file a decommissioning plan is procedural and supplanted by the 94-c process. However, a decommissioning plan will be prepared and filed as part of Application Exhibit 23. Exhibit 23 will contain a description of the security to be posted by AES for decommissioning of the Facility.

6. Safety; applications shall include a safety plan

Emergency Operations Plan. A copy of the approved Emergency Operations Plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:

- k. In the event of a fire, all contaminated soil must be removed and disposed of properly, in accordance with all applicable laws.

Facility Status: The requirement to file a safety plan is procedural and supplanted by the 94-c process. However, the Facility will be designed to comply with the substantive requirement in subsection k. A Safety Response Plan will be filed as part of Application Exhibit 6. Prior to Application filing, AES will provide a draft copy of the Safety Response Plan to the Town of Somerset and local emergency responders for review and comment.

7. Environmental and cultural resources; information on the environmental and cultural resources (as identified through the NYSDEC Mapping system and by the Town of Somerset) on the subject property and surrounding properties.

Facility Status: This provision is procedural and supplanted by the 94-c process. However, efforts to avoid and mitigate environmental impacts and cultural resources will be addressed in the 94-c Application.

§ 205-112 – Special Use Permit Standards

1. Specific standards

- a. Lot size – There are no lot size requirements; the project must be shown to meet all setback and other requirements of this law.

Facility status: Compliance with setback and other requirements are discussed herein.

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

Facility status: The Facility cannot be designed to comply with this requirement. Based on our experience, the proposed 200 ft property line setbacks and 400 ft setbacks from residences are in excess of similar state and local standards, as well as Somerset zoning for other technology and uses. In addition, this setback is in excess of what may be required or considered reasonable to minimize potential environmental or other impacts associated with solar, in particular at the Somerset Generating site. With a maximum height of 12-15 ft for solar equipment, setbacks greater than 12-20 times the equipment height far outweigh the potential impact from solar or any other Somerset zoning requirements for other technologies and could be read to have the sole purpose of limiting potential development. A local zoning setback typically has the purpose of

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

- c. Height – The Tier 3 Solar Energy Systems shall be less than or equal to 20 ft. The height of the systems will be measured from the highest natural grade below each solar panel. This height requirement can be waived by the Planning Board if the panels are being raised to accommodate agricultural purposes.

Facility status: The Facility will be designed to comply with this requirement.

- d. Fencing requirements – All solar panels and mechanical equipment, and any related structures shall be enclosed by a fence (seven feet high), and meet any other regulatory requirements such as NEC, with a self-locking gate to prevent unauthorized access. The type of fencing (including the need for barbed wire) will be determined by the Planning Board and shall fit into the character of the area. Fencing shall be of a good quality and have a lifespan of a minimum of thirty years.

Facility status: The Facility will be designed to comply with this requirement.

- e. Screening and visibility

- ii. Solar Energy Systems larger than 5 acres shall be required to:

- c) The screening and landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. The landscaped screening shall be comprised of a minimum of 1 evergreen tree, at least 6 feet high at the time of planting, plus 2 supplemental shrubs at the reasonable discretion of the Town Planning Board, all planted within each 10 linear feet of the exterior of the fencing required by Section 205-112(1)(d) above.

Facility status: AES will endeavor to comply with this requirement. However, vegetative screening may be planted more than 10 feet away from exterior fencing where required by topography.

- f. Agricultural resources

- i. Any Tier 3 Solar Energy System shall not be permitted on any property, lot, parcel that contains 50% or more land classified as Prime Farmland soils or Farmland soils of Statewide importance. Prime farmland is determined and classified by the US Department of Agriculture (USDA) and the percentage of Prime Farmland and Farmland of Statewide Importance is calculated using USDA maps and online data tools, including any amendments made to those maps and data. It

is the responsibility of the developer and/or landowner to provide written evaluation, data and mapping to the Planning Board that this 50% requirement is met. The evaluation must contain data and maps that are supported, approved and/or published by the USDA, NYS Agriculture and Markets and/or Niagara County Soil and Water Conservation District (NRCS). The Planning Board may require that this evaluation be reviewed by the town engineer, consultant, or local agricultural services agent, where the cost of this review will be the responsibility of the developer or landowner.

Facility status: The Facility cannot be designed to comply with this requirement. This provision prohibits placement of solar energy systems on parcels containing 50% or more land classified as Prime Farmland soils or Farmland soils of Statewide importance. There does not appear to be a basis for this provision and solar development is the only land use identified in the zoning law that is subject to such a specific provision. To the extent that the Facility is proposed on land containing these soil types, the land is being leased by willing landowner; and will be preserved and returned to its previous use upon decommissioning of the Facility. The same cannot be said for industrial/commercial buildings or residential developments. Some current uses of land, like at the Somerset Generating Facility, may not be consistent with a restriction based on the soil content.

Moreover, this restriction appears to be in conflict with other provisions of the Town Law. For example, as discussed herein, utility-scale solar facilities are a permitted use only in Industrial and Business Districts. With this zoning restriction, there is essentially no need for a soil type restriction. Conversely, given the relatively small number of acres in the Industrial and Business Districts, further restrictions such as soil type would even further preclude solar development within the Town.

We recommend removing the restriction that solar facilities cannot be placed on parcels containing 50% Prime Farmland soils or Farmland soils of Statewide importance. In the alternative, we suggest that (1) the local law maintain this limitation only for parcels that are actively being farmed by the owner of the property, or (2) that parcels immediately adjacent to Planned Use Development zones and under common ownership or control of persons developing solar generation within the PUD be excluded.

a. Noise

The project shall be shown to not have any adverse noise impacts on any surrounding homes or other sensitive receptors (see earlier section of the law for specific requirements).

Facility status: The Facility will be designed to comply with this requirement.

b. Hazardous materials

The project components shall not contain any hazardous materials that could contaminate soils or the air by their release (units shall not contain cadmium, lead or other hazardous substances such as PFAS substances used in coatings, etc.). MSD sheets for all materials considered hazardous shall be provided to the Barker Fire Department, Code Enforcement Officer and Town Hall.

Facility status: This provision is overly broad, and the Facility cannot be designed to comply with this requirement. PFAS are used in a variety of products including waterproof coating and fire retardants. Accordingly, it may not be possible to construct the facility using components that have no PFAS. AES recommends that the Town thoroughly examine this issue before adopting this provision possibly revising the provision to limit use of hazardous substances to the maximum extent practicable and consistent with industry standards.

Please note that, as written, the provision could effectively preclude any solar development within the Town.

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

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

In order to ensure that the benefits of the community solar resource are available to the entire community, the Town of Somerset shall require all Tier 4 applicants to enter into a Solar Energy System Host Community Agreement.

Facility status: The Facility cannot be designed to comply with this requirement. Based on the Town's existing zoning map, limiting solar development to Industrial and General Industry Zones would effectively preclude solar development within the Town. The vast majority of the Town is currently zoned Agricultural with Industrial and Business Zones comprising relatively few parcels around the Village of Barker and at the western Town boundaries in the vicinity of the Somerset Coal Plant. Assuming parcels were available in these zones, and there were landowners willing to enter leases (or land sales) for placement of panels on their property, the amount of land available is insufficient for large-scale solar development.

The site of the Somerset Coal Plant is currently zoned PUD. AES recommends that this provision be revised to also allow for solar development in the Planned Use District (PUD). This is consistent with the Town's Vision Map.

Tier 4 systems shall require the following additional (in addition to those in the Tier 3 level) submittals and requirements, or include revisions to Tier 3 requirements:

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

Facility status: The Facility cannot be designed to comply with this requirement for the reasons set forth above.

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

Facility status: The Facility cannot be designed to comply with this requirement. “Land of statewide importance” is not depicted on the Town of Somerset’s Vision Map (see attached), nor could AES find this term defined in the existing code or Proposed Solar Law. AES recommends that the Town define this term, and allow for further comment, or remove reference to “Land of statewide importance” from this provision.

In addition, in the Vision Map, the Waterfront Protection Area also slightly overlaps the Multiple Use Site Expansion Area. AES requests that the Town clarify that the Waterfront Protection Area does not overlap the Multiple Use Site Expansion Area.

§ 205-114 – Ownership changes (Procedural)

Although the notice and security requirements of this provision are procedural, AES agrees to notify the Town of any ownership changes related to the Facility.

§ 205-115 – Safety

1. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.
2. Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Solar Energy System is located in an ambulance district, the local ambulance corps.

Facility status: The Facility will be maintained in good working order and in accordance with industry standards. Site access will be maintained including snow removal. However, site access approval by local fire departments and ambulance corps. Is procedural and supplanted by the 94-c siting process.

§ 205-116 – Permit time frame, maintenance, abandonment and fees (Procedural)

The requirements of § 205-116 are procedural and, therefore, supplanted by the 94-c siting process. However, AES will maintain the Facility in operational condition at all times, subject to reasonable maintenance and repairs, and file a complaint resolution plan with the Office as part of the 94-c Application and further agrees to do the following, as required by this section:

1. Inspections by Building Inspector
2. Annual inspection by professional engineer
3. Construction inspections
4. File an annual report with the Town
5. Comply with the Town Infrastructure Preservation Law

AES appreciates the Town's review of this list and requests that we set up a time to discuss (1) the applicable requirements (2) the process for obtaining needed determinations or whether they can be issued on the basis of this letter and (3) conformation from the Town in both of these regards.

Respectfully submitted,

Michael Farrell

Michael Farrell
Director, Development
AES Clean Energy