

STIPULATION OF SETTLEMENT
In the Matter of Somerset Solar, LLC
Matter No. 22-00026

THIS STIPULATION OF SETTLEMENT (Stipulation) is entered into as of the 13th day of September, 2024, by and between Somerset Solar, LLC (Applicant), the Town of Somerset, and the New York State Office of Renewable Energy Siting and Electric Transmission (Office or ORES) in settlement of certain issues concerning the Application in this matter for which the Office issued a Draft Permit on April 5, 2024 (DMM Item No. 61).¹

1. In accordance with the terms and conditions set forth hereinbelow, the Applicant, the Town of Somerset, and the Office (collectively, the “Parties”) have resolved, by stipulation, certain potential adjudicable issues related to the interpretation of the Town of Somerset Local Law No. 3 of 2022 (Solar Energy Law) and its application to the Facility.
2. The Parties stipulate as follows:
 - a. Town of Somerset Solar Energy Law § 205-113 (codified as Zoning Ordinance of the Town of Somerset § 205-113[A] and [B]) provides:
 - A. All Tier 4 solar energy systems are permitted through the issuance of a special use permit within the Industrial, General Industry, and Planned Unit Development Zoning Districts, and subject to site plan and special use permit requirements as set forth previously in this article and in addition to the Tier 3 requirements set forth above.
 - B. Notwithstanding Article XVA of Chapter 205 of the Town Code of the Town of Somerset, Tier 4 solar energy systems shall be permitted through the process

¹ Effective April 20, 2024, the Renewable Action through Project Interconnection and Deployment (RAPID) Act (L 2024, ch 58, part O) repealed Executive Law § 94-c, repealed the current Public Service Law Article VIII, and enacted a new Public Service Law Article VIII entitled “Siting of Renewable Energy and Electric Transmission” (see RAPID Act §§ 2, 11). The RAPID Act also retitled the Office as the Office of Renewable Energy Siting and Electric Transmission; transferred the Office from the Department of State to the Department of Public Service; and continued all existing functions, powers, duties, and obligations of the Office under former Executive Law § 94-c. Further, all applications pending before the Office on the effective date of the Act are considered and treated as applications filed pursuant to the RAPID Act as of the date of application filing (see id. § 4). Accordingly, this Stipulation references the current Public Service Law Article VIII rather than former Executive Law § 94-c.

With respect to ORES’s regulations at 19 NYCRR part 900 (Part 900), the RAPID Act transferred part 900 to 16 NYCRR chapter XI, and continued Part 900 in full force and effect subject to conforming changes, such as the substitution of numbering, names, titles, citations, and other non-substantive changes to be filed with the Secretary of State (see RAPID Act § 7). The conforming changes were filed with the Secretary of State and became effective July 17, 2024. Accordingly, this Stipulation uses the numbering of the new 16 NYCRR part 1100 (Part 1100) rather than the numbering of former Part 900.

set forth in this article. The requirements set forth in Article XV of Chapter 205 of the Town Code shall not be applicable to Tier 4 solar energy systems within a Planned Unit Development District.

In 2013, the Town of Somerset approved the Somerset Lakeshore PUD Rezoning (“2013 PUD Plan”) for the area designated “Shovel Ready Business Area” in Application Figure 24-4, Town of Somerset Vision (DMM No. 52). Prior to the Application being deemed complete, the Town of Somerset advised the Applicant of its position that the 2013 PUD Plan applies to the Facility and prohibits the placement of solar facility components within the Public Use Area and Open Space and Environmental Area.

As explained in Application Exhibit 24, the Applicant did not agree with the Town’s position but, because the Facility design contemplates solar facility components within the Public Use Area and Open Space and Environmental Area, the Applicant sought limited waiver of the Solar Energy Law § 205-113. The Office denied the Applicant’s request for waiver.

The Town of Somerset, Somerset Solar, LLC, and the Office of Renewable Energy Siting hereby stipulate and agree that (1) given the ambiguity in Solar Energy Law § 205-113 regarding its applicability to the Facility, and (2) in the interest of avoiding placement of solar facility components on other parcels in the vicinity of Facility and avoid potential additional Facility impacts, the Final Siting Permit contain the following language granting a limited waiver of Town of Somerset Solar Energy Law § 205-113:

Based upon the record in this case, the Office approves limited relief from Solar Energy Local Law § 205-113 (codified as Zoning Ordinance of the Town of Somerset §§ 205-113[A]), which as applied to portions of the Facility located within Public Use Area and Open Space and Environmental Area established in the 2013 PUD Plan for the “Shovel Ready Business Area,” shown in Application Figure 24-4, Town of Somerset Vision Map (DMM No. 52) is unreasonably burdensome in light of the CLCPA targets and the environmental benefits of the Facility.

- b. Town of Somerset Solar Energy Law § 205-112.1(b) (codified as Zoning Ordinance of the Town of Somerset § 205-112.A[2]) provides:

“(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 [Right of Way]. 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.”

In Exhibit 24 of its Application, the Applicant requested waiver of the Town of Somerset’s Solar Energy Local Law § 205-112.1(b) (codified as Zoning Ordinance of the Town of Somerset § 205-112.A[2]) regarding setbacks. ORES denied the Applicant’s request for waiver of the Town’s setback requirements on the grounds that the Applicant did not provide a sufficient statement of justification for the request, as required by 16 NYCRR § 1100-2.25(c).

In its *Issues Statement*, filed June 16, 2024, the Applicant argued that the Office’s denial of Applicant’s request for a waiver of Town of Somerset code § 205-112.1(b) constituted a substantive and significant dispute between the Applicant and the Office thereby creating an adjudicable issue. In support of its position, using information in the original Application and supplements, the Applicant provided additional explanation and clarification, with more detailed and clarified figures, as to why the information contained in the Application justified waiver of the Town’s setback requirements. (*see Applicant Issues Statement*, pp. 10-28; DMM No. 68)

The Office filed its *Response to Petitions for Party Status, Statement of Issues by the Applicant, and the Statement of Compliance with Local Laws and Regulations* on July 15, 2024. (DMM No. 72) According to the Office, after considering the Applicant’s further explanation and descriptive information, relief from the Town’s local setback requirements is warranted as such requirements are unreasonably burdensome in light of CLCPA targets and the environmental benefits of the proposed Facility. (Office Response, pp. 36)

In a supplement to its *Combined Petition for Party Status and Statement of Compliance with Local Laws*, the Town of Somerset took the position that a potential waiver of Solar Energy Law § 205-112.1(b) creates substantive and significant issue requiring an adjudicatory hearing.

In the interest of avoiding placement of solar facility components on other parcels in the vicinity of Facility and avoid potential additional Facility impacts, the Town of Somerset, Somerset Solar, LLC, and the Office of Renewable Energy Siting hereby stipulate and agree that an adjudicatory hearing is not required resolve remaining issues regarding Somerset Solar Energy Law § 205-112.1(b) and that the Final Permit issued in this proceeding include a waiver of Somerset Solar Energy Law § 205-112.1(b) as follows:

Based upon the record in this case, the Office approves limited relief from Solar Energy Local Law § 205-112.1(b) (codified as Zoning Ordinance of the Town of Somerset § 205-112.A[2]), which as applied to the Facility is unreasonably

burdensome in light of the CLCPA targets and the environmental benefits of the Facility. The Permittee shall maintain a setback of 400 feet from any solar panel(s) to a dwelling unit on an adjoining non-participating property. With respect to all other setback requirements, the Permittee shall otherwise comply with the setback requirements set forth in 19 NYCRR Part 900-2.6(d).

- c. Town of Somerset Solar Energy Law § 205-113.1 (codified as § 205-113(D)(3)(1) in the Town of Somerset Town Code) provides:

“Any Tier 4 solar energy system shall not be permitted on any agricultural property, lot or parcel that contains 25% or more land classified as prime farmland or farmland of statewide importance.”

The Applicant requested, and the Office granted, waiver of this provision in the Draft Permit. In its Combined Petition for Party Status and Statement of Compliance with Local Laws, filed June 17, 2024 (DMM No. 67), the Town argued that the Office’s waiver of Solar Energy Law § 205-113.1 creates a substantive and significant issue and requested an adjudicatory hearing.

The Town of Somerset, Somerset Solar, LLC, and the Office of Renewable Energy Siting hereby stipulate and agree that there are no substantive and significant issues with respect to Town of Somerset Solar Energy Law § 205-113.1 and that no adjudicatory hearing is required.

- d. Town of Somerset Solar Energy Law § 205-110.4.iii(a) (codified as Zoning Ordinance of the Town of Somerset § 205-110.D(3)(a)) provides:

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

The Applicant requested, and the Office granted, limited waiver of this provision in the Draft Permit. In its *Combined Petition for Party Status and Statement of Compliance with Local Laws*, filed June 17, 2024 (DMM No. 67), the Town argued

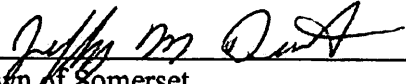
that the Office's limited waiver of Solar Energy Law § 205-110.4.iii(a) creates a substantive and significant issue and requested an adjudicatory hearing. The Town of Somerset, Somerset Solar, LLC, and the Office of Renewable Energy Siting hereby stipulate and agree that there are no substantive and significant issues with respect to Town of Somerset Solar Energy Law § 205-110.4.iii(a) and that no adjudicatory hearing is required.

- e. In its Combined Petition for Party Status and Statement of Compliance with Local Laws, filed June 17, 2024 (DMM No. 67, p. 22), the Town argued that the visual impacts to the Great Lakes Scenic Trail were not sufficiently analyzed thereby creating a substantive and significant issue and requested an adjudicatory hearing.

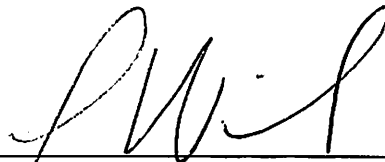
The Town of Somerset, Somerset Solar, LLC, and the Office of Renewable Energy Siting hereby stipulate and agree that there are no substantive and significant issues with respect to visual impacts and that no adjudicatory hearing is required.

- f. Based upon settlement discussions between the Permittee, the Town and ORES Staff, the Applicant shall update its Landscape Plan to provide for screening substantially similar to the screening shown in Attachment 1 in the areas shown on Attachment 2 designated as "Additional Proposed Vegetative Screening (Aug '24)."

- 3. With the exception of the foregoing, nothing in this Stipulation changes any other provisions of the Application.
- 4. All other provisions of the Town's Solar Energy Local Law remain unchanged and are not affected by this Stipulation.
- 5. This Stipulation is entered into as a result of site-specific, project-specific negotiations between the Applicant, the Town, and the Office, and is not intended to establish any guidelines or precedent for future proceedings under Public Service Law Article VIII. Any reviewing judicial court or administrative body shall interpret this Stipulation according to its plain language. This Stipulation shall not be construed for or against any party. Any reviewing judicial court or administrative body shall apply New York State law.
- 6. This Stipulation may be executed in counterparts.



Town of Somerset



Somerset Solar, LLC

By: Steven Wilson

Date: 9/13/24



Office of Renewable Energy Siting

By: Hayley Carlock, Esq.

Date: 9/12/24