ConnectGen Chautauqua County LLC

South Ripley Solar Project
Matter No. 21-00750

900-2.25 Exhibit 24

Supplement

Local Laws and Ordinances

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EXHIBIT 24 LOCAL LAWS AND ORDINANCES

The proposed 270 MW-ac Facility will be located in Chautauqua County, New York, entirely within the Town of Ripley. Throughout the pre-application process, the Applicant conferred with the Town of Ripley on a range of issues, including identifying relevant local laws and ordinances that would otherwise apply to the Facility. In addition, the Applicant has appeared at nearly every Planning and Town Board meeting for over the two years where local laws potentially applicable to the Facility were discussed. As a result, the Applicant has identified substantive local laws, ordinances, and other regulations, standards, and/or requirements that may be applicable to the construction, operation, or decommissioning of the Facility. On February 10, 2021, the Applicant sent a letter to the Town providing a list of all substantive laws identified in the Town and a preliminary assessment of the Facility's compliance with the substantive provisions of local law and proposed waivers that may be needed from the Office of Renewable Energy Siting (Office) pursuant to the Office's authority under Section 94-c. The Town did not respond to this letter identifying any laws or applicable local requirements not identified by the Applicant.

This Application identifies the local laws as they existed at the time of the Application submission and is intended to identify the areas of local codes relevant to the proposed Facility. The Town of Ripley Zoning Law ("Zoning Law") was adopted in 2017. In April 2020, the Town adopted a three-month moratorium on the development of Energy Storage Facilities within the Town (Local Law No. 1, 2020) to re-evaluate the existing ordinance to determine whether any revisions should be adopted. In August 2020, the moratorium on Energy Storage Facilities was extended an additional six months, or through February 27, 2021 (Local Law No. 3, 2020). The Energy Storage Moratorium was not extended, and no Energy Storage Facilities Law was proposed or enacted by the Town Board. On December 16, 2021, the Ripley Town Board held a working session to review and discuss the Planning Board's recommendations for an energy storage zoning amendment. No amendments have been officially passed by the Town Board.

The Town of Ripley's Zoning Law regulates large scale solar in Section 620 and was enacted in 2017 (referred to generally in this exhibit at the 2017 Zoning Law or 2017 Solar Law). However, in February 2021, the Town of Ripley introduced a local law which would create a new Article of the Zoning Law (Article XV) entitled "the Town of Ripley Solar Energy Zoning Law" proposing additional provisions on the development of Solar Energy Systems and associated Battery Energy Storage Systems in the Town.[1] Public comments on the draft Solar Energy Zoning Law were due March 30, 2021 and the Applicant provided a number of comments for the Board's consideration. Please see Attachment 24-B for the public comments submitted to the Town of Ripley by the March 30, 2021 deadline. On May

[1] Under the proposed Solar Energy Zoning Law, "Solar Energy Systems are defined as "[a] system of components intended for the collection, inversion, storage, and/or distribution of solar energy and that directly or indirectly generates thermal, chemical, electrical, or other usable energy. A solar energy system consists of, but is not limited to, solar collectors, mounting devices or structures, generators/turbines, water and energy storage and distribution systems, *Battery Energy Storage Systems*, storage, maintenance and/or other accessory buildings, inverters, fans, combiner boxes, meters, transformers, and all other mechanical structures."

13, 2021, a revised draft Solar Energy Zoning Law (Proposed Solar Zoning Law) was provided to the public. On June 3, 2021, the Town approved resolutions to refer the revised Proposed Solar Zoning Law to the County Planning Board pursuant to GML 239-m and scheduled a public hearing on the proposed law for June 28, 2021. On June 28, 2021, the Applicant provided verbal public comment regarding the Proposed Solar Zoning Law and the Town of Ripley extended the comment period until August 10, 2021. On September 9, 2021, after the Applicant submitted its original Application, the Town of Ripley adopted the Proposed Solar Zoning Law with no changes to the form introduced on May 13, 2021 (see Appendix 24-A). The Amendment to the Zoning Law is referred to generally as the 2021 Solar Zoning Law Amendment to differentiate from the provisions of the solar law that existed prior to the amendment.

The Applicant consulted with the Town with respect to the 2021 Solar Zoning Law Amendment and submitted comments during the April 1, 2021 Pre-Application Municipal Consultation meeting identifying waivers needed because certain substantive provisions in the 2021 Solar Zoning Law Amendment are unreasonably burdensome, as discussed below. Under the Section 94-c law and regulations, it is not clear whether a law enacted subsequent to the filing of an application is "applicable" to the Facility and must be considered by the Applicant and ORES and the subject of findings. The Applicant has requested that the Office elect not to apply unreasonably burdensome provisions of the 2017 Zoning Law. However, should ORES determine that the amendment to the zoning law enacted post-application filing is applicable to the Facility, the Applicant is also seeking waivers from certain provisions of the zoning amendment that are unreasonably burdensome as detailed and explained below.

Prior to the recent engagement with the Town on local laws as described in Exhibit 2, the Applicant prepared and implemented a Public Involvement Program (PIP) plan for the Project when proceeding under the Article 10 Application process which commenced in 2019. As part of the PIP, the Applicant consulted with the Town of Ripley, Chautauqua County, the Chautauqua County Industrial Development Agency (CCIDA), local residents, and other local stakeholders. Outreach to municipal stakeholders included presentations at town board meetings, open house events, and virtual public meetings to introduce the Applicant and the Project to the community. The Applicant is also working with the Ripley Central School District, the Sherman Central School District, Chautauqua County, and CCIDA with the intention of executing a Payment in Lieu of Taxes (PILOT) agreement prior to construction of the Project. Coordination included the Applicant providing Project-specific information to the municipality, as well as consulting and responding to comments from agency stakeholders. Dates for these meetings are identified in Appendix 2-B.

Before formally electing to transfer to the 94-c permitting process, the Applicant attended a monthly Ripley Town Board meeting on January 14, 2021 where the 94-c permitting process transfer was discussed, mailed meeting notices and posted in local newspapers in preparation for the pre-Application public meeting identifying the 94-c process as the governing process, and orally stated during the January 28, 2021 pre-Application public meeting that the Project would

proceed under 94-c. On February 10, 2021, the Applicant notified the Secretary of the Siting Board that it was electing to proceed in the Section 94-c siting process and, since the election to Section 94-c, has held additional outreach with members of the public and the host municipalities to provide information on the new Section 94-c process and provide project updates. A summary of these local engagement and outreach efforts is included as Appendix 2-A. These engagement efforts included discussions of applicable local laws to the Facility and substantive standards or provisions of local laws that may require waivers due to the constraints they would impose on the Facility. Outreach to the Town of Ripley for agreement on substantive and procedural requirements has been performed in accordance with the Section 94-c requirements, and results of the coordination are summarized in the following sections.

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

Below is a list of local laws and ordinances of a substantive nature that may be applicable to construction and operation of the Facility. These provisions are included because of their potential application to the Facility.

- Town of Ripley Zoning Law (Adopted February 9, 2017)(2017 Zoning Law)
    - Section 402, District Uses
    - Section 403, District Area Standards
    - Section 505, Visibility at Intersections
    - Section 507, Topsoil Excavation
    - Section 603, Cesspools and Septic Tanks
    - Section 605, Pond Setbacks
    - Section 610, Signs
    - Section 618, Off-Street Parking (for operations)
    - Section 620, Solar and Wind Systems. Note: The letters refer to the relevant subsection of Ripley Zoning Law § 620.[2]
        - A. Solar or Wind Permit and Placement
        - D.6.C. Substantive requirements relating to approval for large-scale solar systems as special use
        - D.7. Abandonment and Decommissioning
    - Section 628, Trash Storage

[2] Section 620 was amended on September 9, 2021 to reflect the Proposed Solar Energy Zoning Law as discussed above. However, given Section 620 was in effect at the time of the original Application submission on August 10, 2021, the Applicant has not removed the sections referencing the original law as it is not clear whether or not the original zoning law or the amendment is applicable to the Facility. As noted above, should ORES determine that a Zoning Law enacted subsequent to the filing of the Application is applicable, Section 620 would no longer be relevant and the Solar Energy Zoning Law adopted on September 9, 2021 would be applicable to the Facility.

- Town of Ripley Solar Energy Zoning Law amendments (2021 Solar Zoning Law Amendment)
    - Section 1504 (F) – *"Intentionally Blank"*
    - Section 1508 - Permitting Requirements for Tier 3 and Tier 4 Solar Energy Systems
    - Section 1508 (B) – Setbacks
    - Section 1508 (C) - Vehicular Paths
    - Section 1508 (D) – Signage
    - Section 1508 (E) – Glare
    - Section 1508 (F) – Lighting
    - Section 1508 (G) - Tree Cutting
    - Section 1508 (H) – Blasting
    - Section 1508 (I) - Dielectric Coolants
    - Section 1508 (J) – Noise
    - Section 1508 (K) - Project Construction Hours
    - Section 1508 (M) – Decommissioning
    - Section 1508 (O) - Special Use Permit Standards and Substantive Standards
        - Section 1508(O)(1) – Lot Size
        - Section 1508(O)(2) - Setbacks
        - Section 1508(O)(3) - Height
        - Section 1508(O)(4) – Lot Coverage
        - Section 1508(O)(5) – Fencing Requirements
        - Section 1508(O)(6) – Screening and Visibility
        - Section 1508(O)(7) – Agricultural Resources
    - Section 1509 – Safety

- Chautauqua County Sanitary Code
    - Article IV: Private Sewage
    - Article VIII: General Sanitation
        - Section 8, Temporary Toilet Facilities on Construction Sites
    - Article IX: Offensive Material
    - Article XIX: Refuse Disposal
        - Section 4, Transportation of Refuse

(b) List of Substantive Local Ordinances/Laws Related to Use of Water, Sewer, or Telecommunication Lines in Public Rights-of-Way

The Applicant has determined that there are no substantive requirements in local laws or regulations applicable to the interconnection or use of water, sewer, or telecommunication lines in public rights-of-way that are applicable to the Project.

(c) List of Substantive Local Ordinances/Laws That the Applicant Requests the Office Not Apply

The Office may elect to not apply, in whole or in part, any local law or ordinance which would otherwise be applicable if it makes a finding that it is unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the proposed facility. Although it is the Applicant's intent and desire to comply with all substantive local laws and ordinances, there are some substantive provisions of the local zoning ordinances that the Applicant has demonstrated are simply unworkable for the Project and are unreasonably burdensome under the statute and regulations, either because they preclude construction of the Project entirely, thereby minimizing the Project's environmental benefits, or, if applied to the Project, would cause a more significant impact on the community or the environment than if the requirement were not applied. For example, the Zoning Law limits the number of panels that can be included on a single parcel of land in the Town. In order to comply with such a requirement and still obtain the Applicant's goal of generating 270 MW of electricity, which is viable at this project location, it would require substantial additional land for the location of panels in other areas throughout the Town.

For each local substantive requirement identified by the Applicant, a statement of justification is provided. The statements of justification demonstrate the degree of burden caused by the requirement, why the burden should not reasonably be borne by the Applicant, that the request cannot reasonably be obviated by design changes to the facility, that the request is the minimum necessary, and that the adverse impacts of granting the request are mitigated to the maximum extent practicable consistent with applicable requirements set forth in the Office's regulations.

2017 Zoning Law

1. **Zoning Law, Section 620 (A), Solar or Wind Permit and Placement -** Consideration will be given to locating the solar or wind structure the furthest distance from adjoining properties, on the southern or windward exposure, which is reasonably possible. This distance shall be a minimum of 100 feet and may be required to be more if the slope so dictates and as dictated by NYSERDA regulations. NYS Consolidated permitting procedure and application will be followed.

Statement of justification: To the extent this provision is applicable and not superseded by the 2021 Solar Zoning Law Amendment passed after the Application was filed, the Applicant requests that the Office elect not to apply this

provision. The Zoning Law does not provide any specification for "southern or windward exposure" and how it should be applied to participating parcels, many of which may not have a clear property boundary with adjacent properties defined by a particular direction. Additionally, the provision offers no clear guidance on whether adjoining properties includes only non-participating adjacent tax parcels, or if it is intended to apply to all tax parcels, regardless of participation in the solar project. Finally, the provision defining setback: "100 feet and may be required to be more if the slope so dictates and as dictated by NYSERDA regulations" offers no specificity regarding applicable NYSERDA regulations and directly conflicts with Section 620 (C)(1) – Height and Setbacks which requires that Ground Mounted Solar Energy Systems adhere to the setback requirements of the underlying zoning district (50 feet from Front Yard, 50 feet from Side Yard, and 50 feet from Rear Yard for Non-residential Primary Use in the Rural Zoning District).

The Applicant has designed the Facility to comply with the height and setback requirements outlined in Section 620 (B)(2) – Height and Setbacks and does partially comply with Section 620 (A) with 100 feet setbacks from property lines applied to solar panels in relation to non-participating residential (tax parcels with occupied residences) property boundaries. Overall, the adverse impacts of granting the Applicant's request are mitigated to the maximum extent practicable and consistent with applicable requirements set forth in the Office's regulations.

2. **Zoning Law, Section 620(6)(C)(3), Lot Coverage -** A Large-Scale Solar Energy System that is ground-mounted shall not exceed 50% of the lot on which it is installed. The surface area covered by Solar Panels shall be included in total lot coverage.

Statement of justification: To the extent this provision is applicable and not superseded by the 2021 Solar Zoning Law Amendment, the Applicant requests that the Office elect not to apply this provision. It is unclear from the Town's Zoning Law whether lot coverage includes open space between Facility components. In an effort to clarify the intent of this provision and its applicability to the Facility, in February 2019, the Applicant had a meeting to discuss the definition of lot coverage in relation to solar facilities with the Chair of the Planning Board, Ripley Code Enforcement Officer, and Deputy Town Supervisor. As a follow up from that meeting, the Applicant submitted a request for a letter of concurrence with the Applicant interpretation of the definition of lot coverage ratio. The Applicant followed up on this request in March 2019, May 2019, June 2019, July 2019, and August 2019, and finally at the 94-c pre-Application consultation meeting in April 2021. To this date, the Applicant has not received an official concurrence or interpretation of the definition. Although the law itself may be inapplicable, the 2021 Solar Zoning Law Amendment may be instructive. In the 2021 Solar Zoning Law Amendment (Section 1503), Lot Coverage is calculated "by dividing the Facility Area on any given parcel by the total Area of the Parcel and multiplying the result by 100 to obtain a percentage of lot coverage." Facility Area is defined as, "The physical area, measured in both square feet and acres, used for any solar energy system, including the area within fencing, roads, visual screening, support facilities, Solar Energy Equipment, and all other components of a solar energy system facility. The facility area shall include, and shall not be limited to, the surface

area of any Solar Panel and Solar Energy Equipment." Assuming the updated definition correctly reflects the Town's interpretation of lot coverage, the provision in the 2017 Zoning Law is unduly burdensome as applied to the Facility because it includes all areas within fence lines (including open, undeveloped space between rows) and all areas of visual screening (which could include existing foliage utilized by a facility for visual screening) and would result in the loss of a substantial share of the proposed Facility capacity. The Applicant's request for waiver cannot be obviated by changes to Facility design as this approach to lot coverage significantly limits locating panels on parcels. As noted above, the Applicant's requests for clarification of this provision and how the lot coverage is calculated were not addressed by the Town. However, in order to identify whether or not the Facility could be re-designed to meet a generous reading of the provision, the Applicant calculated that it would need to eliminate components on 17 out of 53 host parcels participating in the Project and would need to acquire additional land that is not available to reach capacity requirements for Project economic feasibility. In and of itself, the 50% lot coverage limitation does not have any environmental or other benefits to the Town or does not necessarily minimize potential visual impacts but instead simply eliminates otherwise useful land within the Facility Site. To the contrary, this reduction in generating capacity would have a number of detrimental impacts on the Project, including; increasing construction costs (reducing buildable acreage on each participating parcel would fragment the project solar arrays leading to more complex, smaller build areas), preventing the Project from being able to satisfy its NYSERDA REC contract (a 30 MW reduction in capacity would prevent the Project from meeting its production commitments), and preventing the Applicant from being able to achieve financing for Project Construction and NYISO interconnection upgrades costs (the financing of the currently identified interconnection costs cannot be supported by the lower Project capacity).

Alternatively, the Applicant would need to acquire additional site control across a much wider area, supplementing approximately 145 acres of lost buildable acreage from the current participating parcels. Given the 50% lot coverage ratio, the Applicant would hypothetically need to acquire site control on an additional 290 acres to make up for the lost capacity. Assuming that the Applicant could find additional landowners willing to host components, spreading the Facility across numerous additional parcels would only increase environmental and other impacts with increased wetland crossings, more agricultural land removed from production, more trees cleared for collection lines and solar arrays, a wider spread potential visual and noise impact, and the potential for impacts to historically sensitive areas outside of the current Facility Site (see Exhibit 9).

Notably, if the 50% lot coverage requirement does not include open space and vegetative screening, a more reasonable interpretation, the Facility *will* comply with this requirement. Additionally, the Applicant has worked extensively with participating landowners to set aside property for continued agricultural production or other current use. Please see Figure 15-4 for a map of landowner defined exclusion zones where the Applicant has committed to limit development to allow for the co-utilization of property for solar and landowner use. Overall, the adverse impacts of granting the

Applicant's request are mitigated to the maximum extent practicable and consistent with applicable requirements set forth in the Office's regulations.

3. **2021 Solar Zoning Law Amendment, Section 1508 (C) – Vehicular Paths -** Roads shall be capable of bearing the weight of emergency vehicles and sufficiently wide to permit access to emergency vehicles such as fire trucks and ambulances so that emergency vehicles may pass each other without leaving the road.

Statement of justification: To the extent applicable, the Applicant is seeking a waiver of this provision because it would require road widths that could be greater than 24 ft. wide. (Assuming two fire trucks that average approximately 12 ft. in width). However, there is no need for multiple emergency vehicle access on roads of that width throughout the Facility Site. As discussed in Exhibit 6, the primary fire risk at the Facility is at the BESS, collection substation or inverters. All compacted gravel access roads have been designed to facilitate access throughout the Project. Roads are a minimum 20 feet wide and have occasional turnarounds with 50-foot radii to accommodate large truck movement (e.g., pumper or ladder type fire trucks). The 13 to 20-foot spacing between each row of panels can also provide access, if needed. In addition, there is a minimum 15-foot-wide clear path between the fence and panels to allow for additional vehicle access (e.g., pickup truck, ATV, etc.) throughout the site. As demonstrated in Appendix 5-A, the proposed access roads for the Facility are of a sufficient width, capacity, and incorporate sufficient turnaround/passing areas to ensure fire trucks and other equipment can access these locations in the unlikely event of an emergency. Therefore, this requirement unnecessarily increases the amount of agricultural, forest and other land disturbance to build unnecessarily wide roads for extremely low likelihood events. Expanding the access roads by just 2 ft on both sides (to increase access roads to a total width to 24 ft) would require the removal of at least 209 racks of solar modules, a reduction of at least 4.5 MWac of generating capacity, and would increase the total permanent wetland impact across the project area by approximately 0.13 acres, an approximately 13% increase in total permanent wetland impact for the Facility). Additionally, the road width of 20 ft was determined as a result of consultations with local emergency first responders. Please see Exhibit 2, Exhibit 6, and Exhibit 18 for more information.

4. **2021 Solar Zoning Law Amendment, Section 1508 (I) – Dielectric Coolants**: Dielectric coolants used in any power transformers, voltage regulators, sectionalizing switches, transformer rectifiers, electromagnets, and voltage supply circuits installed on the SEPGS shall be a fire-resistant natural ester dielectric coolant specifically formulated from edible vegetable oils and food grade performance enhancing additives for use in distribution and power transformers, as required by any applicable state or federal laws, regulations, or guidelines. All dielectric coolants used at the site shall be free, to the extent possible, of petroleum, halogens, silicones, or any other materials not specified above.

Statement of justification: The requirement to use fire-resistant natural ester dielectric coolant specifically formulated from edible vegetable oils and food grade performance enhancing additives is unreasonably burdensome. The design, manufacturing, and operation of electrical equipment that uses dielectric coolants is governed by federal and state electrical and environmental codes and regulations. The specificity of dielectric coolant material type is not consistent with town zoning regulating other mechanical and electrical equipment, even electrical substation equipment similar to what would be utilized by solar in the town currently. Additionally, the provision as proposed does not provide flexibility if there is not a commercially reasonable or technically viable option to utilize the specific coolants outlined, nor does it consider potential future improvements in coolant types. Finally, for various reasons, the high voltage power transformer was purchased and partially constructed prior to the adoption of the 2021 Zoning Law and was not designed to utilize the coolant required under the newly adopted zoning law, though was compliant with the Town's zoning at the time of equipment purchase and 94-c Application submission (See Appendix 5-E for spec sheets regarding the high voltage power transformer).

5. **2021 Solar Zoning Law Amendment, Section 1508 (J) – Noise:** Once in operation, sound pressure level at the exterior of any residence or nonparticipating property line, expressed in terms of dBA Leq-8hr, shall not exceed existing background ambient noise, expressed in dBA Leq-8hr as measured by a qualified acoustician, by more than 6dB.

Statement of justification: Section 94-c contains explicit standards which are inconsistent with this provision. The Facility is being designed and finalized in conformance with the Section 94-c standards given the fact that this local law standard was not adopted at the time the PNIA was prepared, the facility designed, and the application submitted. Even if it is considered applicable, however, the requirement that sound pressure level at any non-participating property lines shall not exceed existing background ambient noise, expressed in dBA Leq-8hr, by more than 6 dBA is unreasonably burdensome because it requires the Applicant to have knowledge of the existing ambient sound level along every point of every non-participating adjacent property line for every 8 hour interval during the year, which is not a practical requirement and the Applicant has no technically feasible way of meeting the requirement. As seen in in Appendix 7-1 (Project Noise Impact Assessment [PNIA]), even amongst the 6 monitoring locations utilized for the collection of existing sound data, there was a large variance in on-site conditions and sound measurements due to locally specific conditions. This is exemplative of the difficulty of meeting the 6 dBA requirement when applied to hundreds of property boundaries with extremely varying local conditions. Without the technical ability to adequately measure the ambient sound conditions at every non-participating property boundary as a point of comparison to the 6 dbA standard, the Applicant could not feasibly meet this requirement, nor could any developer, solar or otherwise. This would make complaint response and compliance assessment difficult since it would require the Applicant to anticipate concurrent low ambient sound levels and high project sound levels at a given location. Any measurements of the

Project would need to control for ambient sound levels over the entire 8-hour period. The Applicant requests that the Office elect not to apply this provision.

One way to address this difficulty in the standard is to average all of the ambient measured sound levels measured around the Project, then set this as the ambient level for all receptors and for all times in the future. In that way, the noise limit is known and knowable at the time of the application for the life of the Project. This is, as an example, the approach taken by the Ohio Power Siting Board in their noise standard. If the Project sound levels are compared to the standard using this method, then we conclude that the Applicant has designed the Facility to meet the local standard. That is, the average measured ambient sound levels for the Facility Site were 37 dBA at night and 41 dBA during the day. This would make the noise limit under that standard 43 dBA at night and 47 dBA during the day. Per Table 23 in Appendix B of the PNIA (Appendix 7-1), "Receiver Location and Modelling Results" the average Project nighttime Leq-8hr at a sensitive receptor was 31 dBA with a maximum value of 40 dBA[3]. As a result, the maximum Project sound levels are at least 3 to 7 dB below the limit under this interpretation of the standard.

However, as before, to satisfy the literal requirements of the law, the Applicant would have to measure the ambient sound levels at all residents within and surrounding the Facility site to capture local sound conditions, an expensive and technically burdensome requirement. The Applicant requests that the Office elect not to apply this provision. As noted above, the Facility has been designed in accordance with the Office's regulations, which are fully protective of human health and the environment and will minimize the potential for noise impacts associated with the Facility. In addition, any potential impacts above what would be allowed under the Office's regulations or otherwise addressed by the local law will be mitigated by a complaint resolution plan which will address sound complaints from the Facility in the unlikely event that noise created by the Facility results in complaints.

6. **2021 Solar Zoning Law Amendment, Section 1508(O)(1) – Lot Size:** The property on which the Tier 3 and Tier 4 Solar Energy System is placed shall meet the lot size requirements in Appendix F (10 acres for Rural and Rural Agricultural Zoning Districts).

Statement of justification: The 10-acre minimum lot size requirement is unreasonably restrictive as applied to the Facility. However, the Facility has been designed to substantially comply with this requirement. There are only four parcels in the whole Facility Site which no not comply with the requirement. There are only two parcels upon which panels are located that are less than 10 acres. Additionally, because the law does not specify which Solar Energy System equipment qualifies for this restriction, there are two other participating parcels hosting collection lines and interconnection equipment with the potential to be impacted. Please see Appendix 24-D for maps of the four parcels.

[3] These Project sound levels do not include tonal penalties. Tonal penalties are not specified in the zoning law.

One parcel (approximately 7.5 acres) is adjacent to two separate parcels owned by the same landowner, the parcels were subdivided in the past but share a land use and the landowner wants to utilize all 3 for solar development with the Applicant. The 7.5-acre parcel would host an access road required for access to one of the other two parcels without road frontage. The removal of the 7.5-acre parcel from the project would necessitate a reroute of the access road creating an additional crossing through a delineated stream with significant bank grade concerns, creating an increased environmental impact, and the removal of 60 full racks of panels, resulting in a loss of capacity of approximately 1.3 MWac. There are no other access routes to the parcel without road frontage without signing up additional landowners who do not want to participate in the project or impacting delineated wetlands and streams. Please see Page 1 of Appendix 24-D for a map of the change necessitated by the removal of this 7.5-acre parcel from project participation.

The second, an 8-acre parcel is also adjacent to another participating larger parcel owned by the same landowner. The 8-acre parcel also hosts an access road which has been routed to avoid tributaries to the Twenty-mile Creek (a major wetland feature in the Facility Site) and visual screening to minimize the potential visual impact of panels on the larger parcel on neighboring non-participating parcels. The removal of the 8-acre parcel from the project would necessitate a reroute of the access road creating a new, previously avoided, stream crossing through a delineated stream with significant bank grade concerns, creating an increased environmental impact, and the removal of at least 54 full racks of panels, resulting in a loss of capacity of approximately 1.2 MWac. Please see Page 2 of Appendix 24-D for a map of the change necessitated by the removal of this 8-acre parcel from project participation.

The third parcel (approximately 4.2acres) is adjacent to another participating parcel owned by the same landowner. The 4.2-acre parcel will not host any solar panels but will host an underground collection line because it is the only potential collection line route for the same landowner's panel-hosting parcel to connect with the rest of the Facility Site. The Applicant would have to secure additional site control from non-participating neighbors and design a longer collection line easement to connect the solar arrays to the rest of the Facility. Given the constraints of participating parcel availability, it is likely that the panel-hosting parcel would be removed from the project should the underground collection route be impacted by the lot size requirements resulting in a loss of 1.5 MWac of generating capacity. Please see Page 3 of Appendix 24-D for a map of the impacted parcel.

The fourth parcel is a 6-acre parcel with an approximately 25-foot-wide strip of property that transects a major project collection line route adjacent to the collection substation. A reroute to avoid this 25 ft strip on the 5-acre parcel would require a complete design of the Facility with an additional approximately 2 miles of collection lines, a significant loss of PV array capacity to support the siting of the reroute, the loss of an existing visual screen (forest stand), and 2 additional 4-circuit overhead collection road crossings. Accordingly, the Applicant's request for waiver cannot be reasonably obviated by design changes. Please see Page 4 of Appendix 24-D for a map of the impacted parcel.

As discussed, only a small fraction of the 270 MW Facility (4 of 53 participating parcels) cannot comply with this provision. In each case, site specific conditions necessitate the use of the parcel less than 10 acres because no larger-sized alternative is available, or environmental conditions preclude the redesign of the Facility without increasing the environmental impact (such as increased impact to wetland or stream features) and loss of generating capacity.

Overall, the adverse impacts of granting the Applicant's request are mitigated to the maximum extent practicable and consistent with applicable requirements set forth in the Office's regulations.

7. **2021 Solar Zoning Law Amendment, Section 1508(O)(2) – Setbacks:** Tier 4 Solar Energy Systems shall meet the setback requirements in Appendix F. In addition, Tier 4 Solar Energy Systems shall be setback a minimum of 450 feet from the exterior of any occupied residence located on a non-participating property. Setbacks in Appendix F are 200 ft from property boundaries for Tier 4 Solar Energy Systems.

Statement of justification: The Facility has been designed to apply the Town's setbacks in Section 620(A) of the 2017 Zoning Law, to all non-participating residence property lines (100 ft.). In addition, the Facility has been designed in conformance with Section 94-c required setbacks (100 ft. to non-participating residential property boundaries and 250 ft. to non-participating residences). Additionally, as discussed above, the Facility is designed consistent with the height and setback requirements outlined in Section 620(6)(C)(1) of the 2017 Zoning Law.

In the event applicable, in the 2021 Solar Zoning Law Amendment the Town has established new setbacks which far exceed the previous local and existing State standards and require a 200 ft. setback to all property boundaries (participating and non-participating) and an additional 450 ft. setback to non-participating residences. The Facility cannot be designed to meet the 2021 Solar Zoning Law Amendment requirements for the following reasons:

1. The definition of Solar Energy Systems is too broad and covers all components of the Facility, thereby requiring the applicable setbacks be applied to all components.

2. The provision does not allow for adjacent participating landowners to waive setback requirements, thereby creating huge swaths of land throughout the Facility site that are essentially "no build" zones of 400 ft. between other panel arrays (200 ft. on each side of the lot line).

3. The minimum property line and occupied residence setbacks are too restrictive, effectively preventing the development of utility-scale solar projects within the Town of Ripley.

Per the definition of Solar Energy System in the 2021 Solar Zoning Law Amendment:

"A system of components intended for the collection, inversion, storage, and/or distribution of solar energy and that directly or indirectly generates thermal, chemical, electrical, or other usable energy. A solar energy system consists of, but is not limited to, solar collectors, mounting devices or structures, generators/turbines, water and energy storage and distribution systems, Battery Energy Storage Systems, storage, maintenance and/or other accessory buildings, inverters, fans, combiner boxes, meters, transformers, and all other mechanical structures. The area for the solar energy system is all of the area within the project fence line, as well as, the area covered by all facility components, including but not limited to, access roads, transmission lines, and support buildings."

The definition of Solar Energy Systems to which the setbacks would be applied encompasses all components of the Project, not just solar panels and racking. Thus, the property line and residence setbacks within the Facility Site would prohibit the siting of all current access roads (200 feet setback from all property boundaries, including those along road frontage, would prohibit any access to participating parcels given access roads are covered under the definition of solar energy system) and all current collection line routes (for the same reason as the access road same restricted). Given environmental constraints within the Facility Site, availability of participating parcels, and the presence of residences, especially along the road frontage, the recently enacted setbacks would prohibit the development of the South Ripley Project, and likely any project, and the request cannot reasonably be obviated by design changes to the Facility.

Additionally, the 2021 revisions do not allow for adjacent tax parcel owners to waive setback requirements. Per Appendix F, minimum setbacks are measured from "Property Line" with no allowance for adjacent participating parcels. This provision is prohibitively restrictive and prevents landowners from utilizing property simply because it has been subdivided in the past. For example, the Facility includes 8 separate landowners that own multiple adjacent tax parcels that they have committed to the Project. The 2021 Solar Zoning Law Amendment requires that setbacks be applied to each and every tax parcel, regardless of participation in the project. This impacts all landowners with property lines bordering participating neighbors.

Finally, the setbacks are 2 to 4 times the minimum setbacks established under the State's regulations for the Section 94-c process (100 feet from non-participating residential property lines; 50 feet from road centerline; 50 feet from non-participating non-residential property line; 250 from non-participating occupied residences) and effectively preclude any solar development within the Town. The 200-foot setbacks would make the development on 26 of the 53 currently participating parcels technically infeasible (reducing buildable acreage on the property so significantly (to less than 2 acres per parcel) that no infrastructure can be feasibly sited, restricting current collection line routes and allowing for no alternatives, or preventing needs road frontage). This is equivalent to the removal of approximately 114 MWs from the total project capacity. Please see Appendix 24-C for an analysis for the potential impact on the full Town of Ripley. The setbacks as proposed would limit to potential developable acreage within the Town from 31,300 acres to 11,982 acres (a 61% reduction) and as shown in the figure, allows for no connectivity between parcels.

8. **2021 Solar Zoning Law Amendment, Section 1508(O)(4)(b) – Lot Coverage:** Lot coverage of Tier 3 and Tier 4 Solar Energy Systems, as defined above, shall not exceed the maximum lot coverage requirement of the underlying zoning district.

   Assuming the Facility qualifies as a Non-Residential (Primary Use), the maximum lot coverage for the Rural / Agricultural Zoning District is 15%.

Statement of justification: The provision is unreasonably burdensome as applied to the Facility as inclusion of open space between rows and within the fence line and visual screening outside of fence line would essentially prohibit construction of the Facility and essentially render Tier 4 solar development within the Town technically and economically infeasible. Under the 2021 Solar Energy Zoning Amendment, Lot Coverage is calculated by dividing the Facility Area on any given tax parcel by the total Area of the Parcel and multiplying the result by 100 to obtain a percentage of lot coverage. Facility Area is defined to include all open green space within the fence line and visual screening.

The Applicant's request for waiver cannot be obviated by changes to Facility design. In order to comply with this provision limiting lot coverage to 15% and taking into consideration that open space is considered in the calculation, the Applicant would be required to reduce the equipment sited on 33 of 53 host parcels (a loss of 674 buildable acres) which is equivalent to an approximate loss of 143 MWs of installed capacity. Please see Appendix 24-E for a map of the impacted parcels. To meet the target 270 MWac capacity, the Applicant would be required to spread out the Facility components and obtain substantially more parcels, needing to replace the buildable area removed from currently participating parcels with new site control on an additional 4,500 acres (given the 15% lot coverage ratio restriction). Given this significant expansion of the Facility Site, the potential environmental and other impacts on the local community would be substantially increased. This expansion would require an increased number of wetland crossings, wider spread visual impact on areas currently outside of the Facility Site, wider spread tree clearing, road crossings, and soil impact for collection routes, more laydown yards and construction traffic over a larger area in the region, and potentially the participation of adjacent townships. The Applicant would also be required to find additional landowners to support the expansion which would impact the economic feasibility of the Project given the expansion would require over a 100% increase in the Facility Site size. Notably, the maximum lot coverage percentage is substantially less than the 50% lot coverage requirement in the 2017 Zoning Law. To put the total impact in perspective, of the approximately 31,300 acres in the town of Ripley, and 15% lot coverage restriction would reduce the potential buildable area within the whole town of Ripley to 4,695 acres, without accounting for environmental restrictions (wetlands, historical properties, endangered species, forest, agricultural impacts), actual constructability (existing grade, size of remaining buildable area on each tax parcel, other setbacks and limitations in the zoning law, fragmented construction sites,

collection line paths), or current land type use. This restriction would render Tier 4 solar development within the Town impossible both technically (actual construction) and economically (funding land acquisition across such a huge area).

9. **2021 Solar Zoning Law Amendment, Section 1508(O)(5)(b)** – Fencing Requirements:
    b. Chain-link fencing surround [sic] Tier 4 Solar Energy Systems shall be visually screened wherever visible from roads, residences, or visually sensitive resources.

Statement of justification: The Applicant is proposing a distance of over 5 miles of new roadside and near-roadside visual screening in the form of planting modules, while additionally preserving existing vegetative screening across the Facility Site to help mitigate potential visual impacts as described in Exhibit 8. The Applicant is committed to receiving input from the Town of Ripley and other interested stakeholders to addressing and mitigating visual impact concerns and has performed extensive outreach to incorporate local input (please see Exhibit 8 for a description of visual stakeholder outreach and coordination). However, Section 1508(O)(5)(b) is unreasonable because of its broad and burdensome requirement that screening be provided wherever the project is visible from any road, residence, or visual resource and does not provide specifics with which facilities can be designed.

Adherence to the Town's screening requirement would further cause a substantial burden on the Applicant. Appendix 8-B, the Visual Impact Mitigation and Minimization Plan illustrates the location of the proposed mitigation and the types of proposed vegetative screening. Once established, the Facility vegetative mitigation will increase in effectiveness over the operational life of the Facility. Early or immediate vegetative screening would be prohibitively expensive and would ultimately result in "over-planting" which could lead to the failure of the vegetative mitigation during the operation of the Facility. Additionally, as mentioned, while the Applicant has planned visual screening (or the preservation of existing visual buffers) along almost all roadside views of the Facility, the proposed visual screening is not always designed for complete visual obstruction. As discussed in Appendix 8-A and Appendix 8-B, visual planting modules have been designed to complement different visual profiles within the Facility Site, and a thick planting module is not necessarily the lowest impact visual mitigation for every situation. The proposed regulations to not provide specificity to allow for a sophisticated visual planting regime, nor do they provide specificity on how sensitive visual resources are established or at what viewshed distance should be considered.

Accordingly, the burden of providing the amount of screening required by the Town's Proposed Solar Law should not reasonably be borne by the Applicant. Moreover, the requirement cannot reasonably be obviated by design changes to the facility. The Applicant has, to the maximum extent practicable, designed the Facility in a manner to take advantage of existing screening. Further decreasing Facility visibility would likely require adding additional parcels, if

available, causing additional economic impacts and possibly increasing other impacts in exchange for satisfying the requirements of this provision.

As stated above, the Applicant is providing substantial screening for Facility components as described in Exhibit 8. Accordingly, the Applicant is not requesting that the requirements of this provision be waived in its entirety. The Applicant's request is the minimum necessary and all adverse impacts of granting the request are mitigated to the maximum extent practicable consistent with applicable requirements set forth in the Office's regulations.

In addition, the Applicant seeks a waiver from Section (O)(5)(d) which contains a prohibition of barbed wire on top of the fence surrounding the Facility Site. The barbed wire designed for this Facility is a single line above the last chain link section of fencing. At the locations near the POI, barbed wire is required by applicable codes for security reasons. Similarly, around the panel arrays and other equipment, barbed wire is designed to deter trespassers to the Facility Site and is a potential requirement for the Facility's insurance.

(d) Summary Table of Substantive Local Requirements

The table below provides a list of the substantive requirements in the 2017 Zoning Law and the 2021 Solar Law Amendment that may be applicable to the Facility and a description of how the
Applicant plans to adhere to those requirements.

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

LOCAL SUBSTANTIVE LAW	COMPLIANCE
Section 505, Visibility at Intersections	The Facility will be designed to comply with these requirements.
Section 507, Topsoil Excavation	The Facility will be designed to comply with these requirements.
Section 603, Cesspools and Septic Tanks	The Facility will be designed to comply with these requirements.
Section 605, Pond Setbacks	The Facility will be designed to comply with these requirements.
Section 610, Signs	The procedural requirement for a Zoning Permit is preempted by 94-c. The Facility will be designed to comply with the substantive requirements of Section 610.

LOCAL SUBSTANTIVE LAW	COMPLIANCE
Section 618, Off-Street Parking (for operations)	The Facility will be designed to comply with these requirements.
Section 620(A), Solar or Wind Permit and Placement	The Facility cannot be designed to comply with this requirement. Per the discussion above, this provision does not contain the specificity required for compliance and directly conflicts with later setback requirements outlines for Ground Mounted Solar Projects.
Section 620(6)(A), Substantive requirements relating to approval for large-scale solar systems as special use	The Facility will be designed to comply with these requirements.
Section 620(6)(B)(4),	The Facility will be designed to comply with these requirements.
Section 620(6)(B)(5),	Although the procedural requirement of subsection 5 is preempted by 94-c, the Project will comply with the substantive requirements of subsection 5 as part of the 94-c process.
Section 620(6)(C)(1), Height and Setbacks	The Facility will be designed to comply with these requirements.
Section 620(6)(C)(2), Lot Size	The Facility will be designed to comply with these requirements.
Section 620(6)(C)(3), Lot Coverage	The Facility cannot be designed to comply with this requirement. The Facility will be designed to comply with these requirements based on ConnectGen's interpretation of this provision that the Town's lot coverage standards include the solar panels themselves, as well as the footprint of any other hardened buildings or structures on the site, and do not include green space, such as the open areas between rows of solar panels.
Section 620(6)(C)(4), Fencing	The Facility will be designed to comply with these requirements.
Section 628, Trash Storage	The Facility will be designed to comply with these requirements.
Section 630, Heavy Vehicle Parking	The Facility will be designed to comply with these requirements.
2021 SOLAR ZONING LAW AMENDMENT	**COMPLIANCE**
Section 1504 (F), Conformance with Building and Energy Codes	The Facility will be designed to comply with these requirements. The Applicant is working with the NYS

LOCAL SUBSTANTIVE LAW	COMPLIANCE
	Department of State to implement the building/fire/electrical code.
Section 1508 (C) - Vehicular Paths	The Facility cannot be designed to comply with this requirement. The proposed access roads for the Facility are of a sufficient width to ensure fire trucks and other equipment can access these locations in the unlikely event of an emergency. This requirement unnecessarily increases the amount of agricultural, forest and other land disturbance to build unnecessarily wide roads for extremely low likelihood events.
Section 1508 (D) – Signage	The Facility will be designed to comply with the substantive requirements of this provision.
Section 1508 (E) – Glare	The Facility will be designed to comply with the substantive requirements of this provision.
Section 1508 (F) – Lighting	The Facility will be designed to comply with the substantive requirements of this provision.
Section 1508 (G) - Tree Cutting	The Facility will be designed to comply with the substantive requirements of this provision.
Section 1508 (H) – Blasting	The Facility will be designed to comply with the substantive requirements of this provision.
Section 1508 (I) - Dielectric Coolants	The Facility cannot be designed to comply with this requirement. The requirement to use fire-resistant natural ester dielectric coolant specifically formulated from edible vegetable oils and food grade performance enhancing additives is unreasonably burdensome. The design, manufacturing, and operation of electrical equipment that uses dielectric coolants is governed by federal and state electrical and environmental codes and regulations. The specificity of dielectric coolant material type is not consistent with town zoning regulating other mechanical and electrical equipment and does not provide flexibility if there is not a commercially reasonable or technically viable option to utilize the specific coolants outlined, nor does it consider potential future improvements in coolant types.
Section 1508 (J) – Noise	The Facility cannot be designed to comply with these requirements. Section 94-c contains explicit standards which are inconsistent with this provision. The Facility is being designed and finalized in conformance with the Section 94-c standards given the fact that this local law standard has not yet been adopted. Nevertheless, at this time, the Facility's ability to comply with a substantive standard of 6 dBA over ambient if it were applicable to the Facility is not known. Generally, a

LOCAL SUBSTANTIVE LAW	COMPLIANCE
	standard based on ambient sound is a difficult standard to monitor and enforce in the operation phase of the Facility. In addition, the standard could be variable at locations throughout the Facility Area and over time given the changes in ambient sound. Accordingly, this standard would be unreasonably burdensome if adopted.
Section 1508 (K) - Project Construction Hours	The Facility will be designed to comply with this substantive requirement.
Section 1508(O)(1) – Lot Size	The Facility cannot be designed to comply with this requirement. The 10-acre minimum lot size requirement is unreasonably restrictive as applied to the Facility. However, the Facility has been designed to substantially comply with this requirement. There are only two parcels upon which panels are located that are less than 10 acres.
Section 1508(O)(2) - Setbacks	The Facility has been designed to apply the Town's setbacks in Section 620(A), to all non-participating residence property lines. In addition, the Facility has been designed in conformance with Section 94-c required setbacks. Additionally, the Facility is designed consistent with the setback requirements outlined in Section 620(6)(C)(1), Height and Setbacks of the existing Zoning Law. In the proposed law, setbacks far exceed the existing local and State standards and propose 200 ft. to all property boundaries and 450 ft. to non-participating residences. Thus, the Facility cannot be designed to comply with this requirement.
Section 1508(O)(3) – Height	The Facility will be designed to comply with this substantive requirement.
Section 1508(O)(4) – Lot Coverage	The Facility cannot be designed to comply with this requirement. Per the discussion above, the Section 1508 (O)(4) definition of lot coverage would result in a significant reduction in Project capacity or would require the Applicant increase the acreage of the Facility Site by over 100% in order to maintain the lot coverage required. Additionally, the maximum lot coverage would be reduced from 50% to 15% under the updated zoning, effecting a wholesale ban on the development of utility-scale solar within the Town of Ripley. Of the 31,300 acres in Ripley, only 4,695 would be eligible for development under this restriction, making the development of utility-scale solar within the Town of Ripley technically and economically infeasible.
Section 1508(O)(5)(a) – Fencing Requirements	The Facility will be designed to comply with this substantive requirement.

LOCAL SUBSTANTIVE LAW	COMPLIANCE
Section 1508(O)(5)(b) – Fencing Requirements	This provision is overly broad, and the Facility cannot be designed to satisfy its requirements as written. Section 1508(O)(5)(b) is unreasonable because of its broad and burdensome requirement that screening be provided wherever the project is visible from any road, residence, or visual resource and does not provide specifics with which facilities can be designed. Visual screening will be addressed in the 94-c siting process.
Section 1508(O)(5)(d) – Fencing Requirements	The Facility will be designed to generally comply with this substantive requirement except where the Facility is potentially required by insurance requirements to use a single line barbed wire on top of the perimeter fence for the panel arrays and POI.
Section 1508(O)(6) – Screening and Visibility	The Facility cannot be designed to comply with this requirement.
Section 1508(O)(7)(a) – Agricultural Resources	The Facility will comply with this substantive requirement.
Section 1508(O)(7)(b) – Agricultural Resources	The Facility will comply with this substantive requirement.
Section 1508(O)(7)(c) – Agricultural Resources	The Facility will comply with this substantive requirement.
Section 1508(O)(7)(d) – Agricultural Resources	The Facility will be designed to comply with this substantive requirement.
Section 1509(A) – Safety	The Facility will be designed to comply with this substantive requirement.
Section 1509(B) – Safety	The Facility will generally be designed to comply with this substantive requirement. The Applicant will maintain access roads and enable fire equipment to access locations, such as inverters and the POI and BESS to ensure adequate access in the unlikely event of a fire or other emergency.
Section 1509(C) – Safety	The Facility will be designed to comply with this substantive requirement.

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

It is the applicant's understanding that a municipal official for the Town of Ripley is responsible for reviewing and approving consistency with State code requirements, inspecting construction work, and certifying compliance with the New York State Fire Prevention and Building Code and Energy Conservation Code of New York State.

Table 24-2 below, provides the name and contact information of the local Code Enforcement Officers for the Town of Ripley.

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

Town	Contact Information
Ripley	Melanie Eddy, Code Enforcement Officer P.O. Box 2 Ripley, NY 14775 Phone: (716) 736-3737 Email: rosko3737@gmail.com

The Town of Ripley has adopted and incorporated the New York State Uniform Fire Prevention and Building Code for administration into its local electric, plumbing and building codes. ConnectGen requests that the Office authorize the exercise of the electric, plumbing and building permit application, inspection, and certification processes by the Town of Ripley. In the South Ripley Solar Project Host Community Agreement approved by the Ripley Town Board on December 30, 2021, the Town committed to engaging a qualified third-party consultant to provide these services. Accordingly, the Applicant agreed to reimburse the Town for expenses relating to confirmation of code compliance.

(f) Zoning Designation

The Town of Ripley has adopted zoning district designations. Under Article IV (District Regulations) of the Town of Ripley's current Zoning Law, the following districts are established within the Town: R-1 Residential (small lot), R-2 Residential (large lot), RURAL Rural/Agricultural, REC/CON Recreation/Conservation, C-1 Commercial, C-2 Commercial, M/I Manufacturing and Industry, and M/I-A Manufacturing and Industry-Adult Business. As provided in § 620 (Solar and Wind Systems) of the Town of Ripley Zoning Law, large-scale solar energy systems are allowed within Rural, C-2, MI/A, and R-2 zoning districts as a special use. Except for a small crossing of the REC/CON zoning district with a proposed overhead collection line, the entire Facility is proposed within the Rural/Agricultural zoning district and therefore is permitted in the zoning district.

Under the Proposed Solar Energy Zoning Law, Tier 3 and Tier 4 Solar Energy Systems are permitted within Rural/Agricultural (Rural), Commercial (no-rural) (C-1), Commercial Rural (C-2), and Manufacturing and Industry (M-I) districts with a Special Use Permit and Site Plan Review approved by the Town Board. Tier 3 and Tier 4 Solar Energy Systems are a prohibited use in all other zoning districts. As with the existing Zoning Law, except for the small portion crossing the REC/CON zoning district, the entire Facility is proposed within the Rural/Agricultural zoning district and therefore is permitted in the zoning district.

With respect to the REC/CON zoning district, based on the text of the law, the district was established to preserve the corridors immediately around Gage's Gulf and Twenty-Mile Creek. According to the law, "The uses permitted are to be consistent with protection of the district using accepted conservation practices and recreational activities." According to Appendix A of the Zoning Law, "essential services" including utilities are allowed "by right" in the REC/CON zoning district. In fact, several existing utility systems currently exist within the zone. The Facility proposes to cross the REC/CON zone at a single location with 2 overhead poles located at the edges of the REC/CON zone and approximately 500 ft of 34.5 kV collection line spanning the poles. This use within the REC/CON zone is necessary to collect the electricity generated on the eastern portion of the Facility and deliver it to the POI substation in the western portion of the Facility. There will be no solar panels, roads, or other project components located in the REC/CON zone. Solar panels are not a permitted use in the REC/CON zone.

In this instance, the Facility's use of the REC/CON zone is consistent with the permitted essential service or utility uses. However, to the extent necessary, the Applicant requests ORES waive the use limitations to allow the overhead crossing of the REC/CON district. The Applicant's efforts to minimize potential impacts to the potential impacts to the Twentymile Creek are discussed in more detail in Exhibit 13. A waiver is necessary because there is no location to the eastern portion of the Town that could interconnect to the available POI infrastructure without crossing the REC/CON zone at some location. The alternative would require a substantial re-routing of the overhead collection line, increasing potential impacts, and utilize land not currently within the Company's control. The removal of this limited overhead crossing without a feasible alternative would result in the loss of approximately 70 MW of generating capacity. Please see Appendix 24-F for a figure outlining the potential loss in generating capacity (highlighted in red). Given the limited potential impacts to the district, it would be unreasonably burdensome to require the Applicant to avoid this district and not allow the collection line crossing at this location.

REFERENCES

The Town of Ripley Planning Board. February 9, 2017. The Town of Ripley Zoning Law. Available at: http://www.ripley-ny.com/services/building-zoning