Town of Otsego

Local Law __ of the Year 2025

A Local Law Of the Town of Otsego Regulating Solar Energy Systems



## SECTION ONE. AUTHORITY

This Solar Energy Local Law is adopted pursuant to sections 261-263 of the Town Law of the State of New York, and pursuant to Sections 10 and 22 of the Municipal Home Rule Law which authorize the Town of Otsego, NY to adopt zoning and planning provisions that advance and protect the health, safety and welfare of the community.

## **SECTION TWO**. PURPOSES

A. The purposes of this law shall be to provide for the siting, development and decommissioning of solar energy systems, subject to reasonable conditions to reduce potential impacts on adjoining properties as well as properties in any solar energy system's viewshed, while promoting the effective and efficient use of solar energy resources.

B. The town finds that well-planned and suitably located solar energy systems can be beneficial.

C. This law seeks to foster thorough project planning and appropriate siting in support of the town's Comprehensive Plan objectives of preserving its attractive natural and cultural landscape, and sustaining its valuable existing residential, economic and natural resources, particularly agricultural land use, open spaces, natural habitats, fresh watersheds and historic structures and properties.

D. This law seeks to insure that any solar energy systems are installed in a manner consistent with all New York State and local building, electrical, plumbing and fire protection, construction and apparatus access codes and regulations that are applicable.

E. This law seeks to ensure that as the science regarding solar installations, including battery, storage facilities, develops, our local firefighters, and emergency responders are protected.

F. This law seeks to ensure that financial procedures are reviewed, adopted, and maintained in ways that will best protect the community in the event that failures, abandonment or inadequate decommissioning of solar energy systems occur.

G. This law seeks to place and balance any gain from solar installations within the context of their potential negative impacts on the town's unique topographical combination of steep slopes, number of roadway miles requiring maintenance, economic viability that draws tourists because of its sweeping natural views and agricultural viewsheds, and its beautiful lakes currently under threat from drainage problems, silt infiltration and invasive species.

## SECTION 3. DEFINITIONS

**Abandonment.** A solar energy system shall be considered abandoned after 12 months without electrical energy generation.

**AC.** AC as used in this document refers to and is defined as alternating current, that is, an electric current that periodically reverses direction and changes its magnitude continuously with time.

**ANSI** – Refers to the American National Standards Institute.

**Applicant.** The person, owner, or entity filing an application for a solar permit under this law. For the purposes of this solar law property owners as well as any person or entity filing an application seeking a solar permit on land belonging to a property owner will be considered jointly and severally liable for any failure to comply with any provisions of this law or a permit issued in accordance with this law, and enforcement may be directed jointly and severally at the property owner(s) as well as any person or entity filing an application and obtaining a permit for a system to be installed on a property.

**Aquifer.** A geologic formation that contains water and may provide a usable amount of ground water for individual wells or central water systems.

**Battery energy storage system.** - One or more devices, assembled together, capable of storing energy in order to supply electricity for the normal service of a dwelling, commercial building, or other structure that may or may not be connected to grid.

**Battery management system.-** - An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are identified.

**Buffer**. When referred to in this law, a buffer means a designated area of land separating different land uses, to mitigate the potential negative impacts of solar energy systems where they did not exist before to nearby properties. Buffers are intended to act as a transitional spaces, minimizing conflicts between potentially incompatible land uses, with the goal of enhancing the overall quality of the surrounding environment and maintaining the general character of the neighborhood.

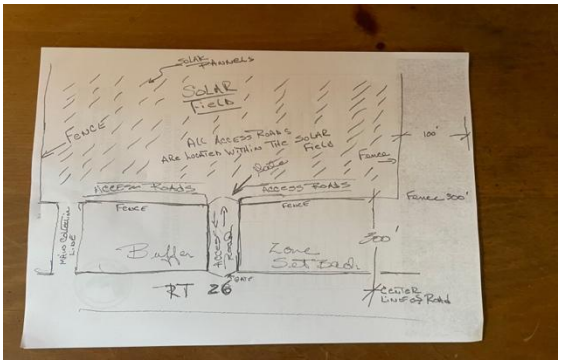
**Building Integrated Photovoltaics (BIPV).** The term BIPV can be used to describe any integrated building materials or feature (e.g., roof tiles, siding or windows) that also generate photovoltaic solar electricity.

**Clearcutting**: The removal of trees more than 3 inches in diameter at breast height in an area containing either: (1) more than 500 trees per acre; or (2) more than 60 square feet per acre of tree trunks. NOTE: we are still grappling with this: Here is DEC definition: harvesting trees over six inches in diameter at breast height (DBH) with an average residual basal area of less than 30 square feet per acre over a 10-year period.

**Consumer price index change** - The Consumer Price Index for Urban Consumers, as published by the U.S. Department of Labor, Bureau of Labor Statistics. Change shall be calculated in January each year as the percentage difference between the annual average of the most recent calendar year and that of the previous year.

**Decommissioning -** The process for removing a **Solar Energy System** and remediating the land.

**Facility area -** The cumulative land area occupied during the commercial operation of the solar energy generating facility. This shall include all areas and equipment within the facility's perimeter boundary – including the solar energy system, onsite interconnection equipment, onsite electrical energy storage equipment, and any other associated equipment – as well as any site improvements beyond the facility's perimeter boundary such as access roads, permanent parking areas, or other permanent improvements. The facility area shall not include perimeter site improvements established for impact mitigation purposes, including but not limited to vegetative buffers and landscaping features.




**Farm operation -** Land and on-farm buildings, equipment, facilities, and practices which contribute to the production, preparation, and marketing of crops, livestock, and livestock products as a commercial enterprise (in accordance with Agriculture & Markets Law § 301[11] or such similar section if § 301 is re-numbered).

**Glare** - The effect by reflections of light with intensity sufficient as determined in a scientifically reasonable manner to cause annoyance, discomfort or loss in visual performance and visibility in any material respects.

**Grid-tied solar system.** A grid-tied solar system is connected to the local utility grid. This system comprises solar panels, an energy meter, and one or multiple inverters. The solar panels convert the sun's rays into direct current (DC) electricity, which is then inverted into alternating current (AC) for home use.

**Ground-mounted solar energy system.** A solar energy system that is affixed to the ground either directly or by support structures or other mounting devices and that is not attached or affixed to an

existing structure. Pole mounted solar energy systems shall be considered ground-mounted solar energy systems for the purposes of this local law.

**Immaterial modifications** .- Changes in the location, type of material or method of construction of a solar energy system that will not: (1) result in any new or additional adverse environmental impact not already reviewed and accepted for the project by the Town Planning Board; (2) cause the project to violate any applicable setbacks or other requirements of this Law; or (3) cause the project not to conform to the State Environmental Quality Review determination or findings issued by the Planning Board.

**Kilowatt (kw):** A unit of power equal to 1,000 watts. The AC nameplate capacity of residential and utility scale commercial solar energy systems may be described in terms of kw. For the purposes of this law a Kilowatt shall be considered a dimensional requirement.

**Lot coverage** - The percentage of a lot or area of a land parcel the "facility area" of a solar energy system occupies.

**Megawatt (MW**): A unit of power equal to 1,000 kw. The AC nameplate capacity of larger solar energy systems may be described in terms of MW. For the purposes of this law a Megawatt shall be considered a dimensional requirement

**Nameplate capacity**: A solar energy system's maximum electric power output under optimal operating conditions. Nameplate Capacity in this law will be expressed in terms of Alternating Current (AC) or Direct Current (DC).

**Native perennial vegetation**: Native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for Pollinators and shall not include any prohibited or regulated invasive species as determined by the NEW YORK STATE Department of Environmental Conservation.

**NEC:** National Electric Code

**NFPA** - National Fire Protection Association

**Nationally recognized testing laboratory** - A U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

**Net metering**. Is a billing arrangement that allows owners of solar panels or other forms of on-site renewable energy generation to receive credit on their electricity bills for the excess electricity they generate and send back to the grid. Essentially, the utility meter runs backward when the solar energy system owner produces more electricity than it consumes, effectively offsetting electricity costs.

**Non-participating property** - A property not owned or leased by the solar energy system operator, nor having any land use agreement or easement related to the system.

**Occupied habitat** - An area in which a species listed in 6 NYCRR Part 182, defined herein as "species in need of protection," has been determined to exhibit one or more essential behaviors,

including behaviors associated with breeding, hibernation, reproduction, feeding, sheltering, migration, or overwintering.

**On-farm solar energy system:** A Solar Energy System located on a farm which is an active "farm operation" (as defined by Article 25-AA of the Agriculture and Markets Law, which may include one or multiple contiguous or non-contiguous parcels) in an agricultural district, which is designed, installed, and operated so that the anticipated annual total amounts of electrical energy generated do not exceed more than 110 percent of the anticipated annual total electrical energy consumed by the farm operation held under single ownership.

**Participating property.** - A property owned or leased by the solar energy system operator, or a property having any land use agreement or easement related to the system. Where multiple adjacent properties are participating in a solar energy system, the combined lots shall be considered as one for the purposes of applying lot size and setback requirements.

**Permanent.** A solar energy system of whatever scale shall be considered permanent when it is designed or constructed for more than short term use, and is either actually attached to real property (for example, by structural elements inserted into the ground) or attached to some structure that is appurtenant or accessory a feature or structure that is permanently attached to a real property. Solar energy systems are considered permanent when they are of the type (similar to sheds, fences or inground swimming pools) that are generally transferred with the real property upon sale.

**Pollinators:** Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.

**Prime farmland**: Land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oil seed crops and that is available for these uses. Prime farmland has a combination of soil properties, growing season, and moisture supply needed to produce sustained high yields of crops in an economic manner if it is treated and managed according to acceptable farming methods. In general, prime farmland has an adequate and dependable water supply from precipitation or irrigation, favorable temperature and growing season, and acceptable level of acidity or alkalinity, and acceptable content of salt or sodium, and few or no rocks. Its soils are permeable to water and air. Prime farmland is not excessively eroded or saturated with water for long periods of time, and it either does not flood frequently during the growing season or is protected from flooding. Users of the lists of prime farmland map units should recognize that soil properties are only one of several criteria that may qualify farmland as prime. Other considerations include land use, frequency of flooding, irrigation, water table, and wind erodibility. The USDA maintains lists of prime farmland.

**Roof-mounted solar energy system.** A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity primarily for onsite consumption.

**SEQRA.** The State Environmental Quality Review Act ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA").

**Small portable solar energy system:** A small, portable solar energy system is not covered by the provisions of this law so long as: it is portable, the total solar panel area is less than 100 square feet, and it is not connected to a battery storage system that is not part of the solar unit or an

electrical grid. Examples include, but are not limited to: solar lights in gardens, along fences, drive and walkways, on mailboxes and panels for camping.

**Solar collector**- A solar or photovoltaic cell, plate, panel, film, array, reflector, or other structure affixed to the ground, a building, or other structure that harnesses solar radiation to directly or indirectly generate thermal, chemical, electrical, or other usable energy, or that reflects or concentrates solar radiation to a solar or photovoltaic cell, plate, panel, film, array, reflector, or other structure that directly or indirectly generates thermal, chemical, electrical, or other usable energy.

**Solar energy equipment.** - Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity.

**Solar energy system.** - A complete system 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, storage, maintenance and/or other accessory buildings, inverters, combiner boxes, meters, transformers, and all other mechanical structures. Solar energy systems are considered Permanent, unless they are Small Scale Portable Systems, as those terms are defined in this law.

**Solar panel** - A photovoltaic device capable of collecting and converting solar energy into electricity.

**Solar energy system types permitted in the town of Otsego shall include: small-scale, intermediate scale and utility-scale as defined herein.**

**A. Small-Scale Solar Energy Systems** include the following:

- Residential Roof-Mounted Solar Energy Systems with a Nameplate Capacity not more than 12 kW AC.
- Building Integrated Solar Systems
- Ground-mounted systems with a nameplate capacity up to 25 kW AC or a panel surface area up to 2,000 square feet that are permanent as that term is defined herein or not small-scale portable as that term is defined herein.
- On-Farm Solar Energy Systems that generate not more than 110 % of the electricity consumed solely for farm-related uses over the 12 months previous to installation.

**B. Intermediate-Scale Solar Energy Systems** include the following:

- Roof-mounted Solar-energy systems not included under Small-Scale Solar Energy Systems that are intended for use providing energy solely for residential, educational, recreational, museum or business uses permitted in the town on a single lot or abutting lots under a single ownership with a Nameplate Capacity of 12 kW AC or more, but less than **2 MW AC.**
- A Ground-Mounted Solar Energy Systems with Nameplate Capacity that does not exceed **2 MW AC** and does not generate not more than 110% of the electricity necessary solely for the operation of the residential, educational, recreational, museum or business uses on the site or consumed solely on the site over the 12 months previous to installation.
- Ground-Mounted Solar Energy Systems with a panel surface or facility area between 2000 square feet and three (3) acres of lot coverage in size.

**C. Utility-Scale Solar Energy System** – A solar energy generation facility designed and intended to supply energy into a utility grid for off-site consumption. As defined in this law, A Utility-Scale Solar Energy System may not to exceed 5 MW of production, with a Facility Area limited to ten (10) acres of lot coverage. . The Facility Area of a Utility-Scale solar energy system may not exceed more than sixty percent (60%) of the lot on which it is sited, and may not be sited on non-contiguous parcels..

**Species in Need of Protection** - Species listed in Title 6, Part 182 of the New York Codes, Rules and Regulations as Endangered, Threatened or of Special Concern.

**UL** - Underwriters Laboratory, an accredited standards developer in the United States.

**Uniform Code** - The New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

## SECTION FOUR. APPLICABILITY

A. The requirements herein shall apply to all Solar Energy Systems and solar related equipment installations modified or installed after the effective date of this law, excluding general repair and maintenance.

B. Solar Energy Systems constructed or installed prior to the effective date of this Local Law because they were interpreted by the Town's Zoning Enforcement Officer as accessory to a structure or as an accessory structure permitted in the zone in which they were erected and which, in addition, can establish compliance with The New York State Uniform Fire Prevention and Building Code shall not be required to meet the requirements of this Local Law. However, in order to qualify for exemption from the requirements of this law, any solar energy system installed prior to the effective date of this law must be registered on a form to be developed with the Town of Otsego Zoning Enforcement Officer within 60 days of the effective date of this law. A photograph of the system to be exempted with details describing the system and date of installation is required to complete the form and establish the exemption.

C. All solar energy systems shall be designed, erected and installed in accordance with all applicable codes, regulations and industry standards as referenced in the New York State Uniform Fire Prevention and Building Code (Uniform Code), including the Fire Service and Fire Access Codes and the State Energy Conservation Construction Codes.

D. To the extent that any other town of Otsego law, rule or regulation, or parts thereof, are inconsistent with the provisions of this law, the provisions set forth in this law shall control only as they pertain to solar energy systems.

E. In accordance with Sections 10 and 22 of the Municipal Home Rule Law of New York State, any proposed solar energy system subject to review by the New York Board on Electric Generation and Siting and the Environment pursuant to Article 10 of the New York State Public Service Law, or the Office of Renewable Energy Siting pursuant to Article 94-c of the Executive Law, the RAPID Act, or

any successor state law, shall be subject to all substantive provisions of this law and any other applicable laws, codes, ordinances and regulations of the Town of Otsego.

## SECTION FIVE. ADMINISTRATION AND ENFORCEMENT

The Zoning Enforcement Officer is hereby authorized to act as the administrative and enforcement officer of the Town for this law, with the following duties and authority:

A. In consultation with the Town Planning Board and Zoning Board of Appeals, to develop and recommend such forms, and additional rules and regulations as deemed necessary for proper administration and enforcement of this Local Law. Said forms, rules and regulations shall be reviewed and approved by the Town Board and its attorney and shall be available for public view at the Town Clerk's Office, AND, AS SOON AS REASONABLY POSSIBLE, ON THE TOWN'S WEBSITE.

B. To work with the County authority issuing Building, Fire Safety, Electrical and/or Plumbing permits for Solar Energy Systems covered by this law and conducting inspections thereunder to establish appropriate written procedures to confirm that the required permits of those types have been issued and shared by the appropriate authorities.

C. To accept applications required by this Law AND TO REPORT THE APPLICATION FOR SUCH PERMITS ON A MONTHLY BASIS TO THE TOWN BOARD.

D. Within ten (10) business days of the receipt of the application, to issue -- subject to such conditions as may be necessary -- or refuse to issue, where appropriate, any requested permit, certificate or license therefore, except where such application involves review by an official board under the provisions of this Local Law.

E. All applications clearly in violation of any provision of this Local Law shall be rejected.

1. Where REJECTION IS BASED ON NON-CONFORMITY with the SECTIONS OF THE LOCAL LAW WHICH REGULATE USES WITHIN A ZONE, DIMENSIONS, AND/OR SET-BACKS, THE MATTER SHALL BE REFERRED TO THE ZBA.

2. Where REJECTION IS BASED A FAILURE TO PROVIDE APPLICATION MATERIALS REQUIRED UNDER SECTIONS SIX THROUGH NINE OF THIS Local Law OR WHERE AN ISSUE is uncertain the application shall be referred to the Planning Board for review as an appeal and disposition under the Planning Board's site plan review authority.

F. Where such review is required, the Zoning Enforcement Officer shall notify the applicant of such fact and of any necessary applications, statements, plans, or other documentation required for such review within ten (10) business days of receipt of the original application.

G. The Zoning Enforcement Officer shall notify the applicant of meetings at which his application will be acted upon by any reviewing board and said officer shall take such action as may be directed by such Board within ten (10) business days of such direction.

H. To timely file with the Town Clerk copies of all applications received and permits issued.

I. To enter upon, examine or inspect, for the purpose of administering or enforcing this Law all premises, public or private, with reasonable arrangements with the owner or in any manner consistent with constitutional safeguards, or, where needed, the conditions of any requisite warrant any land, building or structure which is the subject of an application under this Local Law.

J. To make follow-up visits after solar energy plan permit approval to ensure adherence to any approval granted. A written report of each examination or inspection shall be kept on file in the Office of the Town Clerk AND REPORTED ON A MONTHLY BASIS TO THE TOWN BOARD.

K. To perform any other administrative or enforcement duties specified in this Local Law including but not limited to the issuance of permits, licenses or certificates, accepting or reviewing

applications, plans, or plats, and carrying out any lawful order of the Town Planning Board, the Town Board, the Zoning Board of Appeals, or a Court having jurisdiction over this law.

L. To receive, promptly investigate, maintain records and document complaints against the owner, applicant, solar energy system organization or occupant of the premises where there is claimed or appears to exist a violation of any provision of this Local Law.

M. To act upon any and all complaints and observation of violations and to seek criminal and/or civil penalties for the violations of this law as shall be deemed necessary to achieved the purposes of this law, as well as the abatement of any violation.

N. To serve a written notice of violation or accusatory instrument and/or Stop Work Order upon the owner or occupant of the premises where there appears to exist a violation of any provision of this Local Law, specifying what provision is being violated and in what manner.

O. Violations of any section of this law shall be punishable in criminal court with a fine of not more than $300 per day for each day the violation continues and not more than 15 days of imprisonment.

## SECTION SIX. REQUIREMENTS FOR SMALL-SCALE SOLAR ENERGY SYSTEMS

A. Requirements Applicable To **All** Small-Scale Solar Energy Systems

**1. Permits**. Prior to installing a Small-Scale Solar Energy System, a zoning permit shall be obtained from the Town of Otsego Zoning Enforcement Officer. Additionally, prior to installing a small-scale solar energy system, a building permit shall be obtained from the Uniform Code Enforcement Officer of the County of Otsego or whomever is acting on behalf of the Town of Otsego at the time of the application.

2. **Code Compliance**. The installation of a small-scale solar collector or panel, whether on the roof, integral to the building, attached to the main structure, an accessory structure, or as a detached, freestanding or ground-mounted type of installation shall meet the zoning, building code and fire code requirements as well as the requirements of this law for its solar energy type.

3. . **Glare prevention**. All small-scale solar collectors and related equipment shall be surfaced, designed, and sited so as prevent glare from reflecting onto adjacent properties and roadways. When applying for a zoning permit, the application will not be deemed complete unless it includes a certification from a licensed engineer or solar expert confirming that the installation will meet this criteria.

**4. Design Principles.** All solar energy systems and their associated support elements shall, at the time of installation, be designed according to generally accepted engineering practices to withstand snow loads for this region, as well as wind pressures applied to exposed areas by wind from any direction, to minimize the migration of light or sound from the installation and to minimize the development of sight obstructions for adjacent structures or land parcels, AS WELL AS THE POSSIBILITY OF DAMAGE TO ADJACENT PROPERTIES.

**5. Safety.** In order to ensure the safety of firefighters and other emergency responders, there shall be a minimum perimeter area as established under the NYS Uniform Code around the edges of the roof for roof-mounted systems and in yard along pathways to provide space for walking around and moving firefighting and other safety equipment around all solar collectors and panels. Signage that directs

firefighters and emergency responders to switches to turn off roof-mounted, ground-mounted and building integrated solar energy systems must be prominently displayed, with notification of locations to local firefighting and emergency response agencies. As NYS rules for the safety of firefighting and emergency response are changed, solar systems in this town must change to meet those safety requirements. Property owners are to arrange annual inspections of small-scale solar energy systems for compliance with the section are required.

B. A. Requirements Applicable To Small-Scale Ground-Mounted Solar Energy Systems

1. A ground-mounted or freestanding solar energy system collector height shall not exceed 15 feet when oriented at maximum tilt.

2. Freestanding or ground mounted small-scale solar collectors are permitted as accessory structures in all zoning districts of the Town, subject to the following additional conditions:
(a) Buffers. A minimum 25-foot buffer, consisting of natural and undisturbed vegetation, shall be provided between all mechanical equipment including solar panel arrays and the lot lines for adjacent properties and rights of way for roadways to provide screening.
(b) Appeals. In the event that a lot is not configured to provide a 25-foot buffer, an applicant for a ground-mounted or freestanding solar energy systems may apply to the Zoning Board of Appeals for a variance from strict compliance with this law.

3. Freestanding or ground mounted small-scale solar collectors are NOT permitted IN FRONT YARDS, UNLESS ……..OUR CHANGES HAVE NOT DEALT WITH THE FRONT YARD PROBLEM.

INSERT DRAWINGS HERE

C. A. Requirements Applicable To Small-Scale ROOF-Mounted Solar Energy Syst.
1. All roof-mounted solar energy systems shall be mounted in a manner consistent with the relevant provisions of the New York State Uniform Fire Prevention and Building Code (Uniform Code), including the Fire Service and Fire Access Codes and the New York State Energy Conservation Construction Codes.

2. A roof-mounted solar energy system shall not be mounted in such a way as to exceed the height restrictions for the zone in which it is constructed. However, if, upon proof from a certified solar expert or licensed engineer, added height is needed in order to achieve proper solar orientation, panels may exceed a roofline by up to five feet, provided such an inclination meets the other requirements of this law.

3. Any roof-mounted solar energy system proposed to be placed on a building within any historic district, or on a registered historic structure must receive approval from the appropriate preservation authority before a solar energy system can be mounted on the roof. A copy of such approval must be provided to the zoning enforcement officer for the town for inclusion in the property file.

D**. Battery Energy Storage Systems**. Battery Energy Storage Systems associated with a Small-Scale Solar Energy System shall have an energy capacity of no more than 600 kWh and shall comply with all applicable provisions of Section 1206 of the New York State Uniform Fire Prevention and Building

Code (Uniform Code), including the Fire Service and Fire Access Codes. A building permit and an electrical permit shall be required for installation of any Battery Energy Storage Systems

**E. Roof installed building Integrated photovoltaics.** All roof-installed building integrated photovoltaics must comply with all applicable provisions of the appropriate sections of the NEW YORK STATE Uniform Fire Prevention and Building Code (Uniform Code), including the Fire Service and Fire Access Codes. A building permit and an electrical permit shall be required for installation of any building Integrated photovoltaics. Signage that directs firefighters and emergency responders to switches to turn off such systems must be prominently displayed, with notification of locations to local agencies.

## SECTION SEVEN. REQUIREMENTS FOR INTERMEDIATE-SCALE SOLAR ENERGY SYSTEMS

A. **Permits**. Prior to installing a an intermediate-scale solar energy system, a zoning permit shall be obtained from the Town of Otsego Zoning Enforcement Officer. Additionally, prior to installing a small-scale solar energy system, a building permit shall be obtained from the Uniform Code Enforcement Officer of the County of Otsego or whomever is acting on behalf of the Town of Otsego at the time of the application.

B. **Code Compliance**. The installation of an intermediate scale solar collector or panel, whether on the roof, integral to the building, attached to the main structure, an accessory structure, or as a detached, freestanding or ground-mounted type of installation shall meet the zoning, building code and fire code requirements as well as the requirements of this law for intermediate-scale solar energy types.

C. **Glare prevention**. All intermediate-scale solar collectors and related equipment shall be surfaced, designed, and sited so as prevent glare from reflecting onto adjacent properties and roadways. When applying for a zoning permit, the application will not be deemed complete unless it includes a certification from a licensed engineer or solar expert confirming that the installation will meet this criteria.

D. A special use permit and site plan approval by the Town of Otsego Planning Board and a building permit issued by the Code Enforcement Office of the County of Otsego, which acts on behalf of the Town, shall be required for any ground mounted intermediate-scale solar energy systems.

E. **Concurrent Reviews**. The Planning Board shall concurrently review the site plan and special use permit applications.

F. **Zoning and minimum lot size**.

1. Roof-mounted intermediate-scale solar-energy systems shall only be permitted in the RA-1, RA-2, GB-1 and GB-2 ??????? Zoning Districts.

2. Roof-mounted intermediate-scale solar-energy systems shall only be permitted in the RA-1, RA-2, GB-1 and GB-2 ??????? Zoning Districts.

4. **Initial Fee.** All applications for utility-scale solar energy systems shall be accompanied by an initial application fee to be established by the Town Board as well as the set-up of an escrow account.

## SECTION EIGHT. REQUIREMENTS FOR UTILITY-SCALE SOLAR ENERGY SYSTEMS

### A. Applications, Permits and Approvals Required and Applicable Zoning Districts

1. A special use permit and site plan approval by the Town of Otsego Planning Board and a building permit issued by the Code Enforcement Office of the County of Otsego, which acts on behalf of the Town, shall be required for any utility-scale solar energy systems.

2. **Concurrent Reviews**. The Planning Board shall concurrently review the site plan and special use permit applications.

3. **Zoning and minimum lot size**. Such systems shall only be permitted in the RA-1, RA-2, GB-1 and GB-2 Zoning Districts on lots of sixteen (16) acres or greater.

4. **Initial Fee.** All applications for utility-scale solar energy systems shall be accompanied by an initial application fee to be established by the Town Board as well as the set-up of an escrow account.

5. **Escrow Account**. The applicant shall provide a single escrow account to place funds required to pay for the town's engineering, legal and environmental review costs, for construction inspection, and for monitoring during operation of the facility. This escrow account shall be in an amount as determined by the Town Board, after consultation with the Planning Board, and it shall be replenished when required by the Town, and shall be maintained for the life of the project. Once the Planning Board has determined the initial amount of escrow, the account shall be established prior to any further Planning Board review.

6. **Pre-submission Conference**. At the earliest possible date in the project planning process, the applicant shall contact the Town's Zoning Enforcement Officer who will request the inclusion of the Uniform Code Enforcement Officer to schedule a pre-submission conference with the Planning Board in the manner set forth in the Town Land Use Law Section 8.03 (Sketch Plan Conference). At this time, the applicant shall provide the opportunity for an on-site visit by Planning Board members. A pre-submission conference is considered a public meeting under New York State law.

7. **Notice.** Upon receipt of an application, the Town will, at the applicant's expense, place a notice of the application on the town's website, and in the newspaper of record for the town, and mail a notice of the proposed project to all owners of abutting property and owners of property within a minimum of 2,500 feet of the property boundaries on which the project is proposed to be sited.

8. **Public hearing**. The public hearing that is required in connection with application for a special use permit will be held simultaneously on the proposed site plan. All adjacent property owners within 2,500 feet of the proposed project property will be notified of the public hearing on the application for special use permit and site plan approval in the manner set forth in the Town Land Use Law Section 8.05(3).

9. **Clearing or grading before review is not permitted**. Clearing and/or grading activities are subject to review by the Planning Board and shall not commence until the issuance of the SEQRA special use permit and site plan approval;

10. **Application Requirements**. All applications for utility-scale solar energy systems shall include:

A. A site plan prepared by a professional engineer registered in New York State. This site plan must include:

1)Property lines and physical dimensions of the site;

2) ) Location, approximate dimensions and types of existing structures and uses on the site, public roads, and other properties within a minimum of 2,500 feet of the boundaries of the site as well as those. Depending on the size of the project site, the Planning Board may extend this distance;

3) Location and description of all solar energy system components, whether on site or off site;

4) Existing vegetation and proposed clearing and grading of all portions of sites involved:

5) Location of all above and below-ground utility lines on the site as well as transformers, the interconnection point with transmission lines, and other ancillary facilities or structures, including accessory facilities or equipment;

6 Locations of setback distances as required by this law;

7) All other proposed facilities, including electrical substations, storage or maintenance units, fencing and laydown and storage areas to be used as part of construction;

8) All site plan application materials required under Section 8 of the Land Use Law of the Town of Otsego. The Planning Board may waive those items in Section 8 that it deems inapplicable to a solar energy system application.

B. An electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over- current devices identified.

C. Documentation of access to the project site(s), including location of all access roads, gates, parking areas, etc.

D. A storm water pollution prevention plan as per New York State DEC requirements to detail storm water runoff management and erosion control plans for the site.

E. Documentation of utility notification, including an electric service order number.

F. Decommissioning plan, including cost estimate and description and form of financial surety as described in Section Nine of this law.

G. Photo simulations shall be included showing the proposed solar energy system in relation to the building/site along with elevation views and dimensions, and manufacturer's specs and photos of the proposed solar energy system, solar collectors, and all other components.

H. Part I of the Full Environmental Assessment Form filled out.

I. A sound study providing details of the proposed noise that may be generated by inverter fans, or other noise-generating equipment that may be included in the project, including actual readings of existing daytime and night time ambient noise at the boundary of the participating properties; the sound study shall predict the potential increase in noise from the project over the existing ambient noise levels.

J. A GIS viewshed analysis of the Zone of Visual Impact (ZVI); defined as the area from which the proposed undertaking may be visible within a one-half mile (0.5) buffer around solar facility areas covering 4 to 40 acres in size, and a one-mile buffer around solar facility areas greater than 40 acres in size. Positive visibility of the solar facility area must be based upon bare-earth topography only (do not factor in vegetation). The analysis should be presented as an orthorectified aerial base map with the buffer boundary and project area indicated and ZVI highlighted.

K. The results of on-site bird and bat migration, nesting and habitat surveys. Surveys must be

conducted during the appropriate seasonal windows during the year prior to submittal of an

application. Applicants shall use the most recent New York State Department of Environmental

Conservation survey protocols for grassland birds and winter raptors. For other wildlife, applicants

shall follow New York State DEC guidance on appropriate survey methods.L A description of the characteristics and suitability for construction purposes of the site's subsurface conditions, including such factors as soil corrosivity (for both steel and concrete), bedrock competence, and subsurface hydrologic characteristics and groundwater levels. Analysis should be based on a geotechnical engineering report verifying subsurface conditions, including the results of borings and/or test pits at a subset of solar array locations that are representative of mapped soil and bedrock formations within the facility site.

M. The applicant shall identify appropriate mitigation measures required in locations with highly corrosive soils, soils with a high frost risk, and soils with high shrink/swell potential. The applicant shall provide maps, figures and analyses delineating depth to bedrock and underlying bedrock types, including vertical profiles showing soils, bedrock, water table and typical foundation depths on the facility site, based on information to be obtained from available published maps and scientific literature, review of technical studies conducted on the facility site, and on-site field observations, test pits and/or borings as available

N. Prior to final approval by the Planning Board, all engineering documents, including site plan, Stormwater Pollution Prevention Plan and Decommissioning Plan, shall be signed and sealed by a New York State-licensed professional engineer or New York State-registered architect.

**B. Permitting Requirements**

**Requirements "1" through "5" below shall apply to all utility-scale solar energy systems:**

1 Code Compliance

All utility-scale solar energy systems shall adhere to all applicable Town of Otsego building, plumbing, electrical, and fire codes. Except for conditions specified in this law, all systems shall comply with the provisions of the town zoning ordinance for the zoning district in which they are located.

2 Fencing

All electrical and control equipment, including any battery and storage cells, shall be labeled and secured to prevent unauthorized access. Such equipment shall be enclosed with a fence of sufficient height as required by applicable codes. Fencing shall be located inside the tree buffer described in Requirement "4" of this subsection.

3 Signs

Warning signage shall be placed on solar equipment to the extent appropriate. Solar equipment shall not be used for displaying advertising. All signs, flags, streamers or similar items, both temporary and permanent, are prohibited on solar equipment except:

(a) manufacturer's or installer's identification; (b) appropriate warning signs and placards; (c) signs that may be required by a federal or state agency; and (d) signs that provide a 24-hour emergency contact phone number and warn of any danger.

4 Visual Impact

The solar facility, including any proposed off-site infrastructure, shall be located and screened in such a way as to avoid visual impacts as viewed from public locations, public roads and highways, residences on neighboring parcels, or other locations identified by the Planning Board. Acceptable screening would include maintenance of existing vegetation, new vegetative barriers or berms, landscape screen or other opaque enclosures, or any combination thereof capable of fully screening the site. The applicant shall guarantee that all plantings that form part of the approved landscape and screening plan will be maintained and replaced if necessary during the life of the project.

When the site is surrounded by existing mature trees, a buffer where no trees shall be cut shall be established and maintained as a wild zone for the life of the facility. The exception to this shall be dead or diseased trees, which will be cut and removed so as to encourage healthy growth of existing trees. A tree replacement plan shall be included in the site plan approval.

Trees to be included in screening shall be native and non-invasive species of evergreen, e.g. Eastern red cedar and white spruce, a minimum of 8' tall and 3" in diameter at breast height. It shall be determined and documented by the developer if at the time of planting any species are threatened due to regional blight, disease, etc. Final decisions on appropriate plantings will be made by the Planning Board.

The solar facility shall provide for the creation of a buffer that has an offset, double row of densely growing evergreens with the addition of some smaller trees and shrubs in front to create more of a naturalized hedgerow habitat. The purpose of the double row is to provide additional screening

early while the trees are still small. While the evergreens should be the dominant tree for screening, addition of some smaller trees and shrubs are to be provided to benefit wildlife and aesthetics.

Appropriate shrubs and small trees to include to create a hedgerow could be shadbush, flowering dogwood, flowering raspberry, maple leaved viburnum, nannyberry, and choke cherry.

The plans shall show maximum buffering and screening of utility-scale solar systems that are visible from the Route 20, Route 30 or Routes 7 and I-88 corridors.

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. The Planning Board reserves the right to individually assess what they deem to be sensitive areas potentially impacted by any proposed solar facility as part of their review to ensure that negative impacts of solar ray reflection will be prevented.

All structures and devices used to support solar collectors shall be non- reflective and/or painted a subtle or earth tone color to aid in blending the facility into the existing environment.

5 Panel Height

Ground-mounted solar panel arrays shall not exceed 15 feet in height when oriented at maximum tilt.

C. Lot Coverage

The facility area of utility-scale solar energy system shall not exceed 60 percent lot coverage,.

D. Wetlands

Solar energy systems shall meet wetland requirements as provided in Title 6, Parts 663 and 664 of the New York Codes, Rules and Regulations and stream requirements as provided in Title 6, Part 608 of the NYCRR and shall meet all Clean Water Act requirements for placement of fill in Waters of the United States.

E. Lighting

Artificial lighting of solar energy systems shall be limited to lighting required for safety and operational purposes and shall be cast downward and shielded from all neighboring properties and public roads. Lighting shall be capable of manual or auto-shut off switch rather than motion detection.

F Access and Parking

A road and parking will be provided to assure adequate emergency and service access. Maximum use of existing roads, public and private, shall be made. Any new access road will be reviewed for fire safety purposes by the Town Highway Supervisor, the Code Enforcement Inspector and the chief of the fire company that serves the area containing the property. Site access shall be maintained at a level acceptable to the local fire department and emergency medical services,

including snow removal. Solar facility access road shall be no greater than 26 feet wide. All roadways associated with the solar energy system shall remain unpaved and of pervious surfaces.

G. Slopes

No solar panels shall be placed on slopes of 15 percent or greater as averaged over 50 horizontal feet. No cutting or filling may be done to alter natural slopes for placement of panel arrays.

H. Drainage

The solar energy system shall comply with New York State stormwater regulations as set forth in GP-0-20-001, as amended. The Stormwater Pollution Prevention Plan shall demonstrate that the solar system will not create adverse drainage, runoff or hydrology conditions that could impact adjoining and other non-participating properties in violation of New York State stormwater requirements. Otsego Lake Watershed and Canadarago Lake Watershed are to be protected with suitable drainage design, consistent with recommendations from established watershed protection plans.

I Road Use

Designated traffic routes for construction and delivery vehicles to minimize traffic impacts, wear and tear on local roads, and impacts on local business operations shall be proposed by the applicant and reviewed by the Planning Board and the Town Highway Superintendent.

J. Blasting

Blasting is prohibited for the construction of all utility-scale solar energy facilities.

K Cemeteries

Utility-scale solar energy systems structures and equipment are prohibited within 1000 feet of rural cemeteries and burial grounds. The applicant shall consult with the town historians and cemetery trustees to identify any such burial grounds within the project site.

L Facilities on or near Water Bodies

Utility-scale solar energy systems shall not be installed on or within 5000 feet of Otsego or Canadarago Lake.

M. Hazardous Materials

All solar panels shall have anti-reflective coating(s) not identified as a hazardous material by the U.S. Environmental Protection Agency. The applicant shall adhere to all federal and state laws, regulations and guidelines regarding PFAS and polytetrafluoroethylene (PTFE) films.

**Requirements “?” through “?” below shall apply only in the ???? Zones**

N. Deforestation

Previously cleared or disturbed areas are preferred locations for solar projects. Forested sites shall not be deforested to construct solar energy facilities. Brush and isolated trees or stands of trees in otherwise open fields or scrubland may be cut, however clear cutting of trees more than three inches in diameter at breast height in a single contiguous area exceeding 20,000 square feet is prohibited. This clearing restriction shall not apply to trees cleared for the access road.

Any portion of a property that has been clear-cut in excess of the area described in the paragraph above shall not be included in an application for a utility-scale solar project for a period of five years following such clear-cutting.

Site disturbance, including but not limited to, grading, soil removal, excavation and soil compaction in connection with installation of utility-scale solar energy facilities shall be minimized to the extent practicable.

O. Setbacks

Regardless of the setback requirements for the zone in which a utility scale energy system is sited, there shall be a minimum 200 foot buffer between any structures and equipment of the utility-scale solar energy system and the parcel boundary line with any non-participating property, public road or public area. In addition, all structures and equipment shall be set back a minimum of 450 feet from the exterior of any occupied residence located on a non-participating property. Fencing, collection lines, access roads and landscaping may occur within the setbacks.

P. Wildlife

Solar energy systems shall avoid or minimize adverse impacts to species in need of protection, as defined herein, or their occupied habitats, to the maximum extent practicable.

Q. Agriculture

a) Utility-scale solar energy systems shall not be located on prime farmland as defined in this law, or on the areas that consist of farmland of statewide importance, except under the following conditions:

1.The area of prime farmland or farmland of statewide importance on the parcel shall not have been used as prime farmland for at least the preceding three (3) years,

2. The facility site shall not exceed 20% of the area of prime farmland or farmland of statewide importance on the parcel.

3. The utility scale solar energy systems on prime farmland or farmland of statewide importance shall be required to seed 20% of the total surface area of all solar panels on the lot with native perennial vegetation designed to attract pollinators.

b) To the maximum extent practicable, utility-scale solar energy systems located on prime farmland shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets.

**(c)** Utility-scale 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.

R Underground Wiring

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 Electric Code. The Planning Board may waive this requirement if sufficient engineering data is submitted by the applicant to demonstrate that underground transmission lines are not feasible or practical. The applicant is required to show the locations of all proposed overhead and underground electric utility lines including substations, switchyards, junction boxes and other electrical components for the project on the site plan. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.

S. Noise

Noise levels from the solar energy system will comply with the noise limits for solar energy facilities contained in the New York Office of Renewable Energy Siting regulations at 19 NYCRR 900-6.5(b) by implementing the design required by 19 NYCRR 900-2.8 except that the standards applicable to existing non-participating residences shall also be met for existing participating residences.

T. Construction Hours

Pre, post and during construction working hours shall be limited to Monday through Friday between the hours of 8 a.m. and 6 p.m. The Planning Board shall have discretion on whether to allow work on Saturdays. Work shall not be done outside these hours or on Sundays and holidays, to ensure the quiet rural characteristics of the Town. Construction lighting shall be limited consistent with Requirement "E" above.

**Contractual Requirements**

Prior to obtaining site plan approval, the applicant for a utility-scale solar energy system shall execute contractual agreements with the Town on the following topics, on forms to be drafted by the Towns' attorneys:

A. Road Use

Utility-scale solar energy systems shall execute a road use agreement with the Town if town roads are to be used for the project. Prior to the issuance of the building permit and commencement of construction, an existing condition survey of the approved hauling routes using town roads shall be undertaken by the applicant at the applicant's expense. Any road damage during construction caused by the operator or its subcontractors on town roads shall be repaired or reconstructed to the satisfaction of the Town Highway Superintendent at the operator's expense.

B. Indemnification

The applicant for a utility-scale solar energy system shall execute an indemnification agreement with the Town. The agreement shall require the applicant/owner/operator to at all times defend, indemnify, protect, save, hold harmless and exempt the Town and its officers, councils, employees, attorneys, agents and consultants from any and all penalties, damages, costs or charges arising out of any and all claims, suits, demands, causes of action or award of damages whether compensatory or punitive, or expenses arising therefrom either at law or in equity, which might arise out of or be caused by the placement, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said solar energy system, excepting however any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town or its employees or agents. With respect to the penalties, damages or changes referenced herein, reasonable attorneys' fees, consultant fees and expert witness fees are included in those costs that are recoverable by the Town.

C. Decommissioning

The applicant shall execute a decommissioning agreement as described in Section Ten of this law.

D. Payment-in-Lieu of Taxes

1. The applicant for a utility-scale solar energy system shall enter into an agreement for a payment in lieu of taxes (PILOT) with the Town Board pursuant to Real Property Tax Law Section 487. This PILOT agreement shall be reviewed and approved by the Town Board. A PILOT agreement executed with the county IDA, acceptable to the Town Board, in its sole discretion, for the solar energy system may serve to meet the requirements of this section.

2. No building permit shall be issued or construction commenced for a solar energy system until such time as the PILOT agreement has been executed by all parties and recorded at the Office of the County Clerk.

3. The PILOT shall run to the benefit of the Town and be executed by the operator and the owners of the real property upon which the solar energy system is to be located and such signatures be notarized in such a way that allows the PILOT agreement to be recorded at the Office of the County Clerk. Prior to commencement of construction, the PILOT agreement shall be recorded at the Office of the County Clerk as a lien on the property and indexed against the property/properties upon which the solar energy system is to be constructed. The intent of this provision is so that should the operator of the solar energy system default with regard to the PILOT agreement, such obligation will become the responsibility of the then owner of the property upon which the solar energy system is sited and failure to satisfy the terms of such agreement will permit the Town to enforce such agreement against the owner.

E. Community Host

The applicant shall enter into a community host agreement providing a public benefit fee to mitigate the additional burdens placed on the town as a result of the project. The fee shall be utilized as a source of funding for prospective costs and expenses associated with and related to anticipated municipal services and additional infrastructure improvements to be provided as a result of the project's presence within the town. The fee shall be in an amount established by resolution of the Town Board.

**2. System Operations**

A. Safety/Emergency Response

Before any utility-scale solar energy system becomes active, the owner of the system shall arrange an on-site meeting with the fire department having primary coverage of the project area to review the components of the system, safety issues and procedures for emergency response. This shall include details on the location of labeled warnings, access to the site, and emergency disconnection of the system. In addition, the Town may require the installation of placards that provide mutual aid responders with sufficient information to protect them when responding to calls on site. The town may require the applicant to provide the fire department with safety equipment necessary to respond to fires of the type found at solar energy installations.

B. Ownership Changes

If the owner or operator of the solar energy system changes or the owner of the property changes, all requirements of the special use permit shall remain in effect. Approval to operate the system shall continue, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, decommissioning plan, security and any agreements. A new owner or operator of the solar energy system shall notify the Building Inspector and the Town Supervisor of such change in ownership or operator 30 days prior to the ownership change. Failure to submit timely submit notification of ownership change will be considered a violation of law and may result in fines of up to $300 per day for each day failure to submit the notice of changed ownership continues.

C. Annual Report

On a yearly basis, the solar energy system owner shall provide the Town a report showing the rated capacity of the system and the amount of electricity that was generated by the system and transmitted to the grid. The annual report shall be submitted on the date each year appointed by the town. Failure to submit the annual report will be considered a violation of law and may result in fines of up to $300 per day for each day the failure to submit the annual report continues.

D. Vegetation

Following construction of a utility-scale solar energy system, all disturbed areas where soil has been exposed shall be reseeded with native grasses and/or planted with low-level vegetation capable of preventing soil erosion and airborne dust. Failure to reseed will be considered a violation of law and may result in fines of up to $300 per day for each day the failure to reseed continues.

E Project Changes

Any post-approval changes to the solar energy system, except for immaterial modifications as defined herein, shall be done by amendment to the special use permit only and shall be subject to the requirements of Section Seven of this law.

Unless expressly limited by a condition imposed in the permit, the Town Zoning Officer, Code Enforcement Officer, Building Inspector or other Town designee may, during project construction, allow immaterial modifications to the design of the project as represented in the final set of site plans reviewed by the Planning Board. Such immaterial modifications shall only be allowed in response to a written request by the applicant or permittee. All such requests shall be addressed to the authorized Town designee, with copies to the Chairman of the Planning Board, other Town designee, and the Town's designated consultants.

F Certification

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. The applicant shall further provide certification from the utility that the facility has been inspected and connected. Failure to provide certification will be considered a violation of law and may result in fines of up to $300 per day for each day the failure to provide certification continues.

G Insurance

1. The holder of a Special Use Permit for a solar energy system shall agree to secure and maintain for the duration of the permit, public liability insurance as follows (unless waived by the Town Board for smaller systems):

**a)** Commercial general liability covering personal injuries, death and property damage: $5,000,000 per occurrence, $10,000,000 aggregate, which shall specifically include the Town and its officers, councils, employees, attorneys, agents and consultants as additional named insured;

**b)** Umbrella coverage: $10,000,000

**c)** The Town my require that these limits be raised on an annual basis in keeping with the cost of living.

2. Insurance Company: The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with at least a Best's rating of "A".

3. Insurance Policy Cancellation: The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days prior written notice in advance of cancellation.

4. Insurance Policy Renewal: Renewal or replacement policies shall be delivered to the Town at least 15 days before the expiration of the insurance that such policies are to renew or replace.

5. Copies of Insurance Policy: No more than 15 days after the grant of the permit and before construction is initiated, the permit holder shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

6. Certificate of Insurance: A certificate of insurance that states it is for information purposes only and does not confer sufficient rights upon the Town shall not be deemed to comply with this law.

H. Construction Inspection

The escrow account required herein shall be used to provide inspection by a town engineering consultant during construction of the solar energy system. Work shall remain accessible and exposed until inspected and accepted by the town's consultant. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to how the work fails to comply with the Uniform Code or conditions of the special use permit. Work not in compliance shall remain exposed until brought into compliance, reinspected and found satisfactory as completed. During construction, the Town Building Inspector/Code Enforcement Officer can issue a stop order at any time for violations of the special use permit.

I Groundwater Testing

Using the escrow account required herein, the Town shall provide water testing of private wells within 1,000 feet of the solar energy facility project boundary prior to construction of the system and at five-year intervals during system operation. In the event that the private property owner refuses to grant access to the property and well for collection of the data or if the well cannot be accessed for the collection of data for practical purposes, the Town will not be required to do any pre-construction or post-construction testing of the well. Testing will be done for lead, PFAS and other substances that may be determined by the Planning Board, depending on the composition of panels in particular projects. In the event groundwater contamination occurs as a result of the solar facility, the operator, at its sole expense, shall either provide a reliable alternative water source or address the contamination in accordance with all legal requirements.

J Maintenance

System equipment, grounds, fencing and buffer areas shall be maintained in good condition by the operator. Plant growth shall be controlled by mowing or grazing. The use of herbicides shall be reviewed and approved by the Planning Board. Broken panels and any other damaged or malfunctioning equipment shall be removed from the site within 30 days of discovery or notification of problem.

K Operational Inspection

Upon 24 hours advance notice to the owner/operator or designated contact person, the Town of Otsego Code Enforcement Officer/Building Inspector or his or her designee may enter the solar energy facility to verify compliance with any requirements or conditions. The solar energy system shall be inspected by a New York State licensed professional engineer, under contract with the town and paid by the escrow account required herein, to ensure that it is operating according to the conditions of the special use permit. Such inspections shall be done annually, and at any other time, upon a determination by the Town's Building Inspector that damage may have occurred. The engineer shall file an inspection report with the Town Code Enforcement Officer/ Building Inspector.

All recommendations for maintenance and repair contained in said report shall be completed by the operator within a written schedule agreed on by the Code Enforcement Officer/Building Inspector.

## SECTION NINE. BATTERY ENERGY STORAGE SYSTEMS

Battery energy storage systems with capacity of more than 600 KW are permitted in conjunction with utility-scale solar energy systems subject to the following conditions:

Code Compliance - Battery Energy Storage Systems shall comply with all applicable provisions of Section 1206 of the Uniform Code of New York State. A building permit and an electrical permit shall be required for installation.

Commissioning Plan - Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where commissioning is required by the Uniform Code, Battery Energy Storage System commissioning shall be conducted by a New York State- licensed professional engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to the town code enforcement officer prior to final inspection and approval, and maintained at an approved on-site location.

Fire Safety Compliance Plan - Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code.

Operation and Maintenance Manual - Such plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction,installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code.

System Certification - Battery Energy Storage Systems and equipment shall be listed by a nationally recognized testing laboratory to UL 9540 (Standard for Battery Energy Storage Systems and Equipment) or approved equivalent, with subcomponents meeting each of the following standards, as applicable:

3) UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail Applications),

UL 1642 (Standard for Lithium Batteries),

UL 1741 or UL 62109 (Inverters and Power Converters),

2) Certified under the applicable electrical, building and fire prevention codes as required,

2) Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 (or approved equivalent) and applicable codes, regulations and safety standards may be used to meet system certification requirements.

Safety - Battery Energy Storage Systems, components and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.

Noise - Battery Energy Storage Systems shall be located as close as practicable to the center of the solar panel array and shall not cause the Solar Energy System to exceed the noise limits specified in Section Seven of this law.

Signage - Signs shall comply with ANSI Z535 and include the type of technology associated with the Battery Energy Storage System, any special hazards, the type of suppression system installed in the area of the battery system, and 24-hour contact information, including reach-back phone number.

Vegetation and Tree-Cutting - Areas within 20 feet on each side of the Battery Energy Storage System shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees, shrubbery or cultivated ground cover such as green grass, ivy, succulents or similar plants may be used as ground cover provided they do not form a means of readily transmitting fire.

Emergency Operations Plan - The applicant shall prepare a safety/emergency response plan in cooperation with town emergency service providers.

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:

1. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.

2. Procedures for inspection and testing of associated alarms, interlocks, and controls.

3. Procedures to be followed in response to notifications from the solar energy system and/or battery energy storage system that, when provided, could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire company personnel for potentially hazardous conditions in the event of a system failure. All means of shutting down the solar energy system shall be clearly marked.

4. The property must be inspected after a National Weather Service designation of a Severe Weather Watch or Severe Weather Warning to ensure that the property did

not sustain damage. Reports of such inspection shall be filed with the Town Building Inspector.

5. Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and/ or extinguishing the fire.

6. Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.

7. Procedures for dealing with solar energy system and/or battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged equipment from the facility. System owner shall provide guaranteed non-emergency and emergency response times of a qualified subject matter expert to the Building Department and local emergency responders.

8. Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders, that shall include but not be limited to a smoke plume test for evacuation purposes.

9. Procedures and schedules for conducting drills of these procedures and for training local emergency responders on the contents of the plan and appropriate response procedures. Training shall be done annually and shall include local and mutual aid emergency responders.

10. The system owner shall notify the local fire department, county emergency management office and the town building inspector at least one week prior to any scheduled maintenance or battery swap out.

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

Retention Pond - The applicant for a utility-scale solar energy system shall consult with the fire department with primary coverage of the project area on the best fire suppression system for the planned battery technology. If the fire department determines that water is necessary, the applicant shall develop a well or retention pond(s) holding a sufficient amount of water as determined in site plan review, with dry hydrants (arrangement of piping with one end in the water and the other extending to dry land), for emergency firefighting use. The Planning Board may waive this requirement if it determines that the project area is adequately served by public water supply.

Battery Management System - Battery Energy Storage Systems shall use a Battery Management System, which will incorporate an HVAC system to maintain environmental temperature and manage humidity for optimal operating conditions for batteries. The BMS

must be capable of collecting data at the battery cell and module levels, monitoring temperature, voltage, current, state of charge, and state of health to detect abnormal battery conditions and provide information to prevent and mitigate potential emergency events.

Monitoring - Battery Energy Storage Systems shall be monitored 24 hours a day, seven days a week, from a remote operations center that can shut off project components when abnormal conditions are identified. The BESS shall also have smoke alarms and fire detection systems that will trigger audio/visual alarms on the BESS containers and be monitored remotely by the operations center, where operators will contact local personnel immediately and ensure that local emergency responders are notified in the event of an emergency.

Delivery - No batteries will be delivered to the project site until they are ready to be activated and placed into service. On-site storage of batteries for more than 72 hours prior to activation is prohibited.

## SECTION TEN. ABANDONMENT OR DECOMMISSIONING OF SYSTEMS

### 1. Decommissioning Plan

An owner or operator of a utility-scale solar energy system that has not generated electricity for a period of six consecutive months must notify the Town Supervisor and the Town Building Inspector in writing that the system is no longer operating. If the system ceases to operate for an additional 12 consecutive months, the system shall be deemed to be abandoned and shall be decommissioned within six months by the owner or operator.

A decommissioning plan shall be submitted as part of the special use permit application to the Planning Board. The decommissioning plan shall be signed by the owner and/or operator of the solar energy system, identify the anticipated life of the project, and include, but not be limited to, the following provisions:

a. The removal of all energy facilities, structures and equipment including any subsurface wires and footings from the parcel. Any access roads created for building or maintaining the system shall also be removed and re-planted with vegetation.

b. The cost of removing the entire solar energy system based upon prevailing wages and any other requirements applicable to municipalities under state or federal law and no salvage value shall be attributed to any of the components of the solar energy system and/or the solar energy equipment.

c. A schedule and methods for the removal of the solar energy system and/or the solar energy equipment, including any ancillary structures.

d. The time required to restore the property to its pre-installed condition and to repair any damage caused to the property by the installation and removal of the solar energy system.

e. A plan for restoring the property to its pre-installed condition, including grading and vegetative stabilization to eliminate any negative impacts to surrounding properties, and, where if it was previously used for farming, with vegetation suitable for farming purposes, i.e. a hay field, crops or grazing. Such restoration shall follow NEW YORK STATE Department of Agriculture & Markets Guidelines for Solar Energy Projects — Construction Mitigation for Agricultural Lands, as updated.

f. A proposed Decommissioning Agreement, which shall be provided by the applicant and approved by the Town Board. No building permit shall be issued for a solar energy system until the Decommissioning Agreement between the applicant and the town has been executed and financial security provided as below set forth.

**2. Security**

a. Security 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 of the solar energy system and restoration of the site subsequent to removal. The Security shall be an evergreen letter of credit issued by an A-rated financial institution (relating to Standard & Poor's Rating Services, Inc. ("S&P") or any successor agency thereto) or an A3 rating financial institution (relating to Moody's Investor Services ("Moody's") or any successor rating agency thereto)) on behalf of the company, substantially in the form attached hereto as Exhibit A. The amount of the security shall be 125 percent of the estimated cost of removal of the solar energy system and restoration of the property, with an escalator of 2 percent annually (or Consumer Price Index change if more than the annual escalator of 2 percent) for the life of the solar energy system, and shall not take into account the net salvage value of any such project components. The security established by the agreement shall not be subject to disclaimer or rejection in a bankruptcy proceeding.

b. In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The security shall remain in full force and effect until 90 days after the restoration of the property, as set forth in the decommissioning plan, is completed.

## SECTION ELEVEN. PUBLIC UTILITY USE

A solar energy facility shall not be considered a Public Utility Use as that term is defined in Section 3.5.119 of the Town of Otsego Zoning Ordinance adopted by the Town Board on June 11, 2015.

## SECTION TWELVE. SEVERABILITY

The invalidity of any clause, sentence, paragraph or provision of this local law shall not invalidate any other clause, sentence, paragraph or part thereof.

**SECTION THIRTEEN. EFFECTIVE DATE**

This local law shall take effect immediately upon the filing in the office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.
Date: _____