

**Town of Enfield Addendum to the Site Plan Review Law**  
**(Solar Energy Law Addendum)**

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**1. Authority**

This local law Addendum to the Site Plan Review Law for the Town of Enfield, to be titled the "Solar Energy Law Addendum", is adopted pursuant to Section ~~2010~~ of the State of New York Municipal Home Rule Law and Section 130 and Article 16 of the New York State Town Law to advance and protect the health, safety, and welfare of the community, and to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor.

**2. Statement of Purpose**

A. This Solar Energy Law Addendum is adopted to advance and protect the public health, safety, and welfare of Town of Enfield, including:

- 1) Taking advantage of a safe, abundant, and renewable energy resource;
- 2) Decreasing the cost of energy to the owners of commercial and residential properties, including single-family houses;
- 3) Increasing the benefit of solar energy to low-to-moderate income households through community solar projects;
- 4) Protecting our environment and resources for future generations by minimizing the impacts of Solar Energy Systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources;
- 5) Managing commercial renewable energy development to provide a balance between energy needs that protect our environment and respect for our rural agricultural landscape; and
- 6) Maintaining a balance between property rights of individual landowners and the community at large.

**3. Definitions**

~~CEO~~—The ~~Code Enforcement Officer~~ definitions of the ~~Town~~ Site Plan Review Law shall apply unless otherwise indicated in this Addendum.

DRAFT ~~12-4-2018~~04-03-2019

~~BUILDING-MOUNTED SOLAR ENERGY SYSTEM - A solar panel system located on the roof of any legally permitted building or structure for the purpose of producing electricity for onsite or offsite consumption. A Building-Mounted Solar Energy System shall include any Solar Thermal Energy Systems that meet the definition in the preceding sentence.~~

GROUND-MOUNTED SOLAR ENERGY SYSTEM - A Solar Energy System that is anchored to the ground and attached to a pole or other mounting system, detached from any other structure. A Ground-Mounted Solar Energy System shall include any Solar Thermal Energy Systems that meet the definition in the preceding sentence.

LARGE-SCALE SOLAR ENERGY SYSTEM - A Solar Energy System that feeds electricity directly into the grid, is ground mounted and is larger than four thousand (4,000) square feet in total area, including solar collectors, the enclosure and/or fence surrounding the Solar Energy System per each lot or per adjacent lots under common ownership or under common operation. A Large-Scale Solar Energy System shall include any Solar Thermal Energy Systems that meet the definition in the preceding sentence.

PERMITTEE – The party holding a ~~Special Use~~Solar Permit granted pursuant to this Solar Energy Law.

QUALIFIED SOLAR INSTALLER – A person who has skills and knowledge related to the construction and operation of solar electrical equipment and installations, and has received safety training on the hazards involved. Persons who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA), or who are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be qualified solar installers for the purposes of this definition. Persons who are not on NYSEDA's list of eligible installers or NABCEP's list of certified installers may be deemed to be qualified solar installers if the ~~Town of Enfield~~Planning Board determines such persons have had adequate training to determine the degree and extent of the hazard and the personal protective equipment and job planning necessary to perform the installation safely. Such training shall include the proper use of special precautionary techniques and personal protective equipment, as well as the skills and techniques necessary to distinguish exposed energized parts from other parts of electrical equipment and to determine the nominal voltage of exposed live parts.

~~ROOF-MOUNTED SOLAR ENERGY SYSTEM - A solar panel system located on the roof of any legally permitted building or structure for the purpose of producing electricity for onsite or offsite consumption. A Roof-Mounted Solar Energy System shall include any Solar Thermal Energy Systems that meet the definition in the preceding sentence.~~

SOLAR ENERGY SYSTEM - An electrical generating system composed of a combination of both Solar Panels and Solar Energy Equipment.

SOLAR PANEL - A photovoltaic device capable of collecting and converting solar energy into electrical energy.

SOLAR THERMAL ENERGY SYSTEMS - Solar hot water technology consisting of solar thermal equipment and any related Solar Energy Equipment. Thermal energy is transferred to a heat transfer system via a collector and heat exchanger.

~~SPECIAL USE SOLAR~~ PERMIT – A permit issued by the Town Board pursuant to the provisions of this law for the construction and operation of a Large-Scale Solar Energy System.

STORAGE BATTERIES: Devices that store energy and make it available in an electrical form.

#### 4. Applicability

The requirements of this law shall apply to all Solar Energy Systems installed or modified after the law's effective date, excluding general maintenance and normal repairs of such Solar Energy Systems. Any repairs that are material in nature, in the judgment of the Planning Board, shall be subject to the requirements of this law. The requirements of this law must be met and a ~~Special Use Solar~~ Permit issued prior to or simultaneously with the ~~issuance application for or receipt~~ of any required building permits.

The installation of any Solar Energy System, as provided by this law, does not carry with it a right to a clear line of sight to the sun. It is the responsibility of the applicant, installer or developer to gain any and all permits, easements or agreements to maintain a line of sight to the sun, if necessary.

#### 5. Solar as an Accessory Use or Structure

##### A. ~~Roof Building~~-Mounted Solar Energy Systems.

- 1) ~~Roof Building~~-Mounted Solar Energy Systems that use the electricity onsite or offsite are permitted as an accessory use when attached to any lawfully permitted building or primary structure.
- 2) Height. Notwithstanding anything in the ~~Town of Enfield Site Plan Review Law, Local Law #2 of 2012, (the "Site Plan Review Law")~~ to the contrary, ~~Roof Building~~-Mounted Solar Energy Systems shall require a site plan review by the Planning Board pursuant to the provisions of the Site Plan Review Law if such Solar Energy System would result in an increase of the overall structure height by six (6) feet or more.

- 3) Except as provided in paragraph 5.A.2) above or except as otherwise part of a project that is subject to review under Article II of the Site Plan Review Law, ~~Roof~~Building-Mounted Solar Energy Systems that use the energy onsite or offsite shall be exempt from site plan review under the Site Plan Review Law.

B. Ground-Mounted Solar Energy Systems.

- 1) Ground-Mounted Solar Energy Systems, other than Large-Scale Solar Energy Systems, are permitted as accessory structures for residential use and, except as provided in paragraph 5.B.2) below or except as otherwise part of a project that is subject to review under Article II of the Site Plan Review Law, shall be exempt from any site plan review under the Site Plan Review Law.
- 2) Height. Notwithstanding anything in the Site Plan Review Law to the contrary, Ground-Mounted Solar Energy Systems shall require a site plan review by the Planning Board pursuant to the provisions of the Site Plan Review Law if such Ground-Mounted Solar Energy System would exceed twenty (20) feet in height.
- 3) Setback. Any Solar Energy Equipment and any related fencing or other enclosures shall be setback at least fifty (50) feet from the side and back lines of the property owner's lot and at least one hundred twenty five (125) feet from the centerline of any road bordering on such lot. In the event the property has no road frontage or is a flag lot, the setback shall be at least fifty (50) feet from all sides of the lot.

- C. Storage Batteries. When Storage Batteries are included as a part of the Solar Energy System, they must be placed in a secure container or enclosure when in use. Storage Batteries no longer in use must be disposed of in a timely manner in accordance with the laws and regulations of the Town of Enfield, Tompkins County, New York State, and all other applicable laws and regulations.

**6. Approval Standards for Large-Scale Solar Systems ~~as for a Special-Permitted Use~~Solar Permit**

- A. Large-Scale Solar Energy Systems are permitted through the issuance of a ~~Special Use~~Solar Permit, subject to the requirements set forth in this Section and Section 7, including a site plan review pursuant to the provisions of the Site Plan Review Law. Notwithstanding anything in the Site Plan Review Law to the contrary, applications for the installation of a Large-Scale Solar Energy System shall be reviewed by the

Planning Board ~~and referred, with comments, to the Town Board for its review and action,~~ which can include approval, approval with conditions, or denial.

- B. ~~Special Use~~Solar Permit Application Requirements for a ~~Special Use~~Solar Permit. The site plan application process under the Site Plan Law is to be used as supplemented by the following provisions:

- 1) If the ~~property of the proposed~~ project is to be ~~leased, legal consent between all parties, specifying the use(s) located upon lands owned by a third party, then proof of appropriate rights of the land use for the project duration of the project, including~~ shall be submitted in their full and complete ~~copies of any leases form, whether they are licenses, easements and, leases or other agreements, shall be submitted~~ rights in title or estates in land.
- 2) Site Plans showing the layout of the Solar Energy System signed by a registered professional engineer licensed in the State of New York, ~~who shall be reasonably acceptable to the Town Board, shall be required.~~ The Town reserves the right to an applicant's engineering drawings, opinions, or conclusions reviewed by an engineer hired by the Town, the cost of which shall be reimbursed by the applicant.
- 3) The equipment specification sheets shall be documented and submitted for all significant components, including but not limited to, photovoltaic panels, mounting systems, and inverters that are to be installed.
- 4) A Property Operation and Maintenance Plan shall be submitted. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming. All chemical herbicides proposed to be used in the project shall be listed in the Property Operation and Maintenance Plan and are subject to final approval by the ~~Town~~Planning Board.
- 5) Projected production plans showing the annual amount of energy that will be generated and transmitted for each one year period during the life of the project.
- 6) A glare assessment survey and a complaint and mitigation plan reasonably acceptable to the ~~Town~~Planning Board to address glare on other parcels of land on an ongoing basis during the life of the project.
- 7) A Decommissioning Plan shall be submitted. See Abandonment and Decommissioning in Section 7.B.

- 8) A general complaint plan, with a procedure for determining mitigation, that is reasonably acceptable to the ~~Town~~Planning Board shall be submitted.
- 9) No ~~Special Use~~Solar Permit may be transferred to a new owner and/or operator of a Large-Scale Solar Energy System without the prior approval of the ~~Town~~Planning Board. Such approval shall be conditioned upon a written assumption by the new owner and/or operator of any and all requirements imposed upon the original owner and/or operator, including, without limitation, evidence that the new owner and/or operator has either assumed the existing financial surety required under Section 7.B. or has secured an equivalent financial surety, reasonably acceptable to the Town Board, in its place. Failure to comply with these requirements will be deemed an abandonment of the Large-Scale Solar Energy System pursuant to Section 7.B. shall be subject to the terms and provisions of Section 7.B. as such.

C. ~~Special Use~~Solar Permit Standards.

- 1) Height. Large-Scale Solar Energy Systems shall not exceed twenty (20) feet in height unless a variance is ~~recommended~~approved by the Planning Board pursuant to the standards set forth in Section 3.1 of the Site Plan Review Law ~~and approved by the Town Board~~ or any successor provisions.
- 2) Setbacks. Any Solar Energy Equipment and any related fencing or other enclosures of a Large-Scale Solar Energy System shall be setback at least fifty (50) feet from the side and back lines of the property owner's lot and at least one hundred twenty five (125) feet from the centerline of any road bordering on such lot. In the event the property has no road frontage or is a flag lot, the setback shall be at least fifty (50) feet from all sides of the lot.
- 3) Lot Size. Large-Scale Energy Systems shall be located on lots with a minimum lot size of 5 acres.
- 4) Lot Coverage. The enclosed or fenced in area of a Large-Scale Solar Energy System shall not exceed 60% of the lot on which it is installed.
- 5) Storage Batteries. When storage Batteries are included as a part of the Solar Energy System, they must be placed in a secure container or enclosure when in use. Storage Batteries no longer in use must be disposed of in a timely manner in accordance with the laws and regulations of the Town of Enfield, Tompkins County, New York State, and all other applicable laws and regulations.

- 6) Fencing. All Large-Scale Solar Energy Systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the emergency contact information shall be placed on the entrance and perimeter of the fencing as required in the judgment of the Planning Board ~~and approved by the Town Board.~~ The type of fencing shall be ~~recommended~~ approved by the Planning Board ~~and approved by the Town Board.~~ The fencing shall be a maximum of 8 feet and a minimum of 6 feet in height.
- 7) Screening. The Planning Board may ~~recommend further~~ require screening by landscaping to avoid adverse aesthetic impacts.
- 8) Utility Connections. To the extent reasonably practicable, all utility connections for any Large-Scale Solar Energy Systems shall be placed underground, depending upon the appropriate soil conditions, shape and topography of the site and any requirements of the utility provider. Electrical transformers for utility connections may be above ground if required by the utility provider.
- 9) Lighting. The ~~Town~~ Planning Board may permit motion-activated or staff-activated security lighting around the equipment of a Large-Scale Solar Energy System or accessory structure ~~provided such lighting does not project off the site.~~ Such lighting should only be activated when the area within the fenced perimeter has been entered. Lighting shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.
- 10) Liability Insurance during Construction. The developer of a Large-Scale Solar Energy System shall provide proof of liability insurance with a minimum coverage requirement of \$1 million per occurrence and a \$2 million aggregate coverage, that names the Town of Enfield as an additional named insured party, during the construction period of the project.
- 11) Liability Insurance during Operation. The owner and/or operator of a Large-Scale Solar Energy System shall provide annual proof of liability insurance with a minimum coverage requirement of \$1 million per occurrence and a \$2 million aggregate coverage, that names the Town of Enfield as an additional named insured party, during the operational period of the project.
- 12) Site Plan Review. Notwithstanding anything to the contrary in the Site Plan Review Law, any application under this Section shall meet any substantive provisions contained in site plan requirements of the Site Plan Review Law that, in the judgment of the Planning Board, ~~as approved by the Town Board,~~ are applicable to the system being proposed. In addition, notwithstanding anything to the contrary in the Site Plan Review Law, the Planning Board may

~~recommend~~approve waivers pursuant to the standards set forth in Section 3.1 Plan Review Law or any successor provisions ~~which must then be approved by~~

- 13) SEQRA. Permit applications shall be deemed Type I projects under SEQRA. In fulfilling the requirements of the SEQRA, the ~~Town~~Planning Board may require a Full Environmental Assessment Form for the proposed Large-Scale Solar Energy System.
- 14) ~~Notifications.~~ Notwithstanding anything to the contrary in the Site Plan Review Law or SEQRA, any notifications required pursuant to the Site Plan Review Law or SEQRA with respect to any Solar Energy System shall be sent to all landowners within one-half mile of the boundary of the parcel on which the proposed site is located.
- 15) Qualified Solar Installer. The project must be installed by a Qualified Solar Installer.
- 16) Every Solar Energy System shall be built, operated and maintained to acceptable Industry standards, including but not limited to the most recent, applicable standards of the Institute of Electric and Electronic Engineers ("IEEE") and the American National Standards Institute ("ANSI").
- 17) In order to verify that the Solar Energy System's owners and any and all lessees, renters and/or operators of the Solar Energy System place, construct, modify and maintain such Systems, including solar collectors and solar inverters, in accordance with all applicable technical, safety, fire, building codes, laws, ordinances and regulations and other applicable requirements, the Town may inspect all facets of said System's placement, construction, modification and maintenance. Any inspections required by the ~~Planning Board or Town~~ Board that are beyond its scope or ability shall be at the expense of the applicant and/or the operator of the System.
- 18) Other. The ~~Town~~Planning Board may impose conditions on its approval of any ~~Special Use~~Solar Permit under this Section in order to enforce the standards referred to in this Section or in order to discharge its obligations under SEQRA. Notwithstanding anything to the contrary in the Site Plan Review Law, the Town Board shall be designated the lead agency and the Planning Board shall be designated an interested party for purposes of any such SEQRA review unless the Town Board determines otherwise.

D. Large-Scale Solar Energy Systems shall not be located in the following areas unless otherwise approved by the ~~Town~~Planning Board in conjunction with the ~~Special Use Permit~~Solar Permit approval process provided in this section:



- 1) Prime farmlands soils as identified by the USDA-NRCS or alternative available resources;
  - 2) Areas of potential environmental sensitivity, including Unique Natural Areas as designated by the Tompkins County Environmental Management Council, flood plains, historic sites, airports, state-owned lands, conservation easements, trails, parkland, prime soils, and wetlands as identified by Tompkins County Planning Department mapping services, the New York State Department of Environmental Conservation or the United States Army Corps of Engineers; and
  - 3) On slopes of greater than fifteen percent (15%), unless the applicant can demonstrate through engineering studies and to the satisfaction of the ~~Town~~ Planning Board that the proposed development will cause no adverse environmental impact that will not be satisfactorily mitigated.
- E. The ~~Town~~ Planning Board, at the expense of the applicant, may employ its own consultant(s) to examine the application and related documentation and make recommendations as to whether the criteria for granting the ~~Special-Use~~ Solar Permit has been met, including, but not limited to, whether the applicant's conclusions regarding safety analysis, visual analysis, structural inspection, and storm water management aspects are valid and supported by generally accepted and reliable engineering and technical data and standards.

## 7. Abandonment and Decommissioning

- A. Applicability and purpose. This section governing abandonment and decommissioning shall apply to Large-Scale Solar Energy Systems. It is the purpose of this section to provide for the safety, health, protection and general welfare of persons and property in the Town of Enfield, by the Town requiring abandoned Large-Scale Solar Energy Systems to be removed pursuant to a decommissioning plan. The anticipated useful life of such systems, as well as the volatility of the recently emerging solar industry where multiple solar companies have filed for bankruptcy, closed or been acquired creates an environment for systems to be abandoned, thereby creating a negative visual impact on the Town. Abandoned commercial systems may become unsafe by reason of their energy-producing capabilities ~~and~~ serve as an attractive nuisance and/or may create an environmental hazard.
- B. Abandonment. A Large-Scale Solar Energy System shall be deemed abandoned if the system fails to generate and transmit electricity over a continuous period of one year at a rate of at least 25% of its projected production based on the application

approved by the ~~Town~~Planning Board for the project. A Large-Scale Solar Energy system also shall be deemed abandoned if following site plan approval construction of the system is not completed within 18 months of issuance of the first building permit for the project.

- 1) Extension of time. The time at which a Large-Scale Solar Energy System shall be deemed abandoned may be extended by the ~~Town~~Planning Board for an additional period of up to one year, provided the system owner presents to the ~~Planning~~ Board a viable plan, reasonably acceptable to the ~~Town~~Planning Board, outlining the steps and schedules for placing the system in service or back in service within the time period of the extension. An application for an extension of time shall be made to the ~~Town~~Planning Board by the Large-Scale Solar Energy System owner and/or operator prior to abandonment as defined herein. Extenuating circumstances as to why the Large-Scale Solar Energy System has not been operating or why construction has not been completed may be considered by the Board in determining whether to grant an extension.

C. Removal required. A Large-Scale Solar Energy System which has been abandoned shall be decommissioned and removed. The Large-Scale Solar Energy System owner and/or owner of the land upon which the system is located shall be held responsible to physically remove all components of the system within one year of abandonment. Removal of the Large-Scale Solar Energy System shall be in accordance with a decommissioning plan approved by the ~~Town~~Planning Board.

D. Decommissioning and Removal.

- 1) Decommissioning and removal of a Large-Scale Solar Energy System shall consist of:
  - (a) Physical removal of all above ground and below ground equipment, structures and foundations, including but not limited to all solar arrays, buildings, security barriers, fences, electric transmission lines and components, roadways and other physical improvements to the site related to the Large-Scale Solar Energy System;
  - (b) Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations;
  - (c) Restoration of the ground surface and soil;

(d) Stabilization and revegetation of the site with native seed mixes and/or plant species (excluding invasive species) to minimize erosion.

2) Upon petition to the ~~Town~~Planning Board, the ~~Planning~~ Board shall permit the system owner and/or landowner to leave certain underground or above ground improvements in place, provided the owner can show that such improvements are part of a plan to redevelop the site, are not detrimental to such redevelopment, and do not adversely affect community character or the environment.

E. ~~Special Use~~Solar Permit conditions. The following conditions shall apply to all ~~Special Use~~Solar Permits issued for a Large-Scale Solar Energy System. No ~~Special Use~~Solar Permit shall be issued unless the ~~Town~~Planning Board finds that the conditions have been or will be met.

1) Decommissioning plan. All applications for a Large-Scale Solar Energy System shall be accompanied by a decommissioning plan to be implemented upon abandonment and/or in conjunction with removal of the system. The decommissioning plan shall address those items listed in the above section and include:

(a) An estimate of the anticipated operational life of the system;

(b) Identification of the party responsible for decommissioning;

(c) Description of any agreement with the landowner regarding decommissioning;

(d) A schedule showing the time frame over which decommissioning will occur and for completion of site restoration work;

(e) A certified and sealed cost estimate prepared by a qualified structural engineer or professional engineer, who shall be reasonably acceptable to the ~~Town~~Planning Board, estimating the full cost of decommissioning and removal of the solar PV system, including, but not limited to, the cost of solid waste disposal and the cost to clean-up any hazardous waste leakage on the property. The ~~Town~~Planning Board shall have the sole discretion to require a structural engineer or a professional engineer and regardless of which type of engineer is chosen, such engineer shall be licensed by the State of New York. The ~~Town~~Planning Board shall have the right, in its sole discretion, to have this estimate reviewed by an independent structural engineer at the system owner's and/or operator's expense;

(f) A financial plan to ensure that financial resources will be available to fully decommission the site.

1) Financial surety. Prior to the issuance of a building permit and every two years thereafter, the Large-Scale Solar Energy System owner and/or operator shall file with the Town evidence of financial security to provide for one hundred twenty five percent (125%) of the full cost of decommissioning and removal of the solar PV system, which amount shall automatically be increased by two percent (2%) the following year, in the event the system is not removed by the system owner and/or landowner. Evidence of financial security shall be in effect throughout the life of the system and shall be, in the sole discretion of the Town Board, either in the form of an irrevocable letter of credit or cash security acceptable to the Town Board. The irrevocable letter of credit shall include an auto extension provision if possible, to be issued by an A-rated institution solely for the benefit of the Town and for the benefit of the landowner if the land is leased to the operator of the system. Any letter of credit shall provide that issuer shall notify the Town in the event such letter of credit is canceled or otherwise terminated. The Town shall be entitled to draw on the letter of credit in the event that the Large-Scale Solar Energy System owner and/or landowner is unable or unwilling to commence decommissioning activities within the time periods specified herein. In the event a demand for decommissioning is made by the Town to a landowner that leases his or her property to the operator of the system, such landowner may also be entitled to draw on such letter of credit if the owner and/or operator of such system is unable or unwilling to commence decommissioning activities within the time periods specified herein. No other parties, including the owner and/or operator shall have the ability to demand payment under the letter of credit. Upon completion of decommissioning, the owner and/or landowner may petition the Town to terminate the letter of credit. In the event ownership of the system is transferred to another party, the new owner (transferee) shall file evidence of financial security with the Town at the time of transfer, and every two years thereafter, as provided herein. Failure to keep a surety in place as required by this law shall result in the revocation of the ~~Special-UseSolar~~ Permit and the termination of the project unless and until such surety is restored; provided, however, that any lapse of a surety in excess of 180 days shall be deemed an abandonment of the project pursuant to Section 7.F. herein and subject to complete decommissioning in accordance with this law.

2) Amount. The amount of the surety shall be determined by the Town Board based upon a current estimate of decommissioning and removal costs as provided in the decommissioning plan and subsequent bi-annual reports required pursuant to paragraph 3 below. For purposes of this determination, the any bi-annual decommissioning report shall be required to meet the same requirements set forth in Section 7.E.1.e. as the original decommissioning cost estimate. The amount of the surety shall be adjusted by the Town Board as appropriate upon receipt of a bi-annual report containing an updated cost estimate for decommissioning and removal.

3) Annual report. The Large-Scale Solar Energy System owner and/or operator shall on a yearly basis provide the Town Clerk 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 over the most recent twelve-month period compared to the amount of energy that was projected to be generated in the application approved by the ~~TownPlanning~~ Board. The Town Clerk shall forward such report to the ~~TownPlanning~~ Board and the CEO within 5 business days of receipt of the report. The report shall also identify any change in ownership of the Solar Energy System and/or the land upon which the system is located and shall identify any change in the party responsible for decommissioning and removal of the system upon its abandonment. The annual report shall be submitted no later than 45 calendar days after the end of the calendar year. Every second year, to coincide with the filing of evidence of financial security, such report shall also include a recalculation of the estimated full cost of decommissioning and removal of the Large-Scale Solar Energy System in accordance with the provisions of this Section 7. The Town shall require an adjustment, as appropriate, in the amount of the surety to reflect any changes in the estimated cost of decommissioning and removal. Failure to submit a report as required herein shall be considered a violation of Section 7 of this Solar Energy Law.

F. Decommissioning and removal by Town. If the Large-Scale Solar Energy System owner and/landowner fails to decommission and remove an abandoned facility in accordance with the requirements of this section, the Town may enter upon the property to decommission and remove the system.

1) Procedure

(a) Upon a determination by the ~~TownPlanning~~ Board that a Large-Scale Solar Energy System has been abandoned, the CEO shall notify the system owner, landowner and permittee by certified mail: (a) in the case of a facility under construction, to complete construction and installation of the facility within 180 calendar days; or (b) in the case of a fully constructed facility that is operating at a rate of less than 25% of its projected production level as outlined in the application approved by the ~~TownPlanning~~ Board, to restore operation of the facility to no less than 80% of rated capacity within 180 calendar days, or the ~~TownPlanning~~ Board will deem the system abandoned and commence action to revoke the ~~Special UseSolar~~ Permit and require removal of the system.

(b) Being so notified, if the system owner, operator, landowner and/or Permittee fails to perform as directed by the CEO within the 180 day period, the CEO shall notify the system owner, operator, landowner and permittee, by certified mail, that the Large-Scale Solar Energy System has been deemed abandoned and the Town intends to revoke the ~~Special UseSolar~~ Permit within 60 calendar days of mailing said notice. The notice

shall also state that the Permittee is entitled to appeal the decision of the ~~Town Board~~Planning Board to the Town Board. The Town Board shall schedule an appeal hearing no later than 60 calendar days from the receipt of any such written request for an appeal hearing. A final determination regarding such appeal shall be made by the Town Board no later than 60 calendar days following such hearing, which determination can be further appealed pursuant to Article 78 of the New York Civil Practice Laws and Rules.

- (c) Upon a determination by the Planning Board or Town Board that a ~~Special Use Solar~~ Permit has been revoked, the decommissioning plan must be implemented and the system removed within one year of having been deemed abandoned or the Town may cause the removal at the owner and/or landowner's expense. If the owner and/or landowner fails to fully implement the decommissioning plan within one year of abandonment, the Town may collect the required surety and use said funds to implement the decommissioning plan.
- (d) Removal by Town and reimbursement of Town expenses. Any costs and expenses incurred by the Town in connection with any proceeding or work performed by the Town or its representatives to decommission and remove a Large-Scale Solar Energy System, including legal costs and expenses, shall be reimbursed either from the financial surety posted by the system owner or landowner as provided in section 7.D. Decommission and Removal Plan herein: and/or by the owner of the land upon which such Large Scale Energy System is located. Any costs incurred by the Town for decommissioning and removal that are not paid for or covered by the required surety, including legal costs, shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become part of the taxes to be levied and assessed thereon, and shall be enforced and collected, with interest, by the same officer and in the same manner, by the same proceedings, at the same time and under the same penalties as are provided by law for the collection and enforcement of real property taxes in the Town.

## 8. Enforcement

Any violation of this law shall be fully subject to the enforcement provisions of Section 5.3 of the Site Plan Review Law or any successor provisions thereunder; provided, however, that in lieu of the monetary fines and/or civil penalties specified in Section 5.3 of the Site Plan Review Law for a First, Second or Third Violation, the monetary fines and/or civil penalties for any such violations shall be Five Hundred Dollars (\$500) per day . For this purpose, any reference

to “this Local Law” in Section 5.3 of the Site Plan Review Law shall be deemed to include a reference to this Solar Energy Law as well.

#### **9. Fees and Escrow**

An application fee, as determined by the Town Board, shall accompany the application for a Large-Scale Solar Energy System. The amount of such required Large-Scale Solar Energy System fees may be revised from time to time by the Town Board in the future by resolution.

The applicant shall deliver with its application an amount as determined by the Town Board from time to time by resolution or as specifically agreed upon between the Town and the applicant to be held in escrow during the application review process. The sum shall be held by the Town in a non-interest bearing account and these funds shall be available to the Town to pay consultants engaged by the Town to assist in any review of the application. Following grant or denial of the application, the Town shall return to the applicant any excess remaining in escrow. If the escrow account has been depleted prior to grant or denial of the application, the applicant shall deposit such funds as are then necessary for the Town to pay any outstanding fees before the Town is required to proceed with any further review of the project.

#### **10. Host Community or PILOT Agreement**

Nothing in this Law shall be read as limiting the ability of the Town Board to enter into host community agreements or Paid in Lieu of Taxes (PILOT) agreements with any applicant to compensate the Town for expenses or impacts on the community.

#### **11. Severability**

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision or phrase of the aforementioned sections as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision or phrase, which shall remain in full force and effect.