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March 6, 2023

Via Email & USPS
Town of Canajoharie
Town Board
12 Mitchell Street
Canajoharie, NY 13317

Re: SunEast Comments on Proposed Utility-Scale Solar Collector Systems Law

Members of the Town Board,

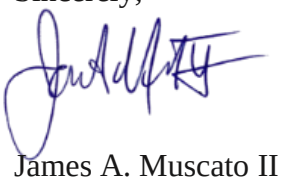
SunEast Flat Creek Solar LLC ("SunEast") is proposing the construction of a utility scale solar project within the Town of Canajoharie ("Town"). It is our understanding that the Town Board is considering repealing the Town's Utility-Scale Solar Collector System zoning regulations, contained in Article VI, Section C.14 of the Zoning Law, adopted by Local Law No. 2 of 2017, and replacing them with a new Section C.15: Utility-Scale Solar Collector Systems.

Attached please find SunEast's comments and suggested revisions to the proposed law, which are intended to provide the Town comments and suggestions regarding the proposed law based on SunEast's experience working with similar communities and regulations in New York. These comments are consistent with the stated objective of the law: to facilitate the development and adoption of a local law balance local landowners' rights to use their property for utility-scale solar energy development with reasonable restrictions intended to protect residents and properties not participating in a solar project. Our comments and suggested revisions are also intended to avoid confusion by aligning the Town's proposed law with New York State standards and practices.

We appreciate the Town's willingness to consider these comments and the edits we have proposed to the law and we look forward to working with the Town to develop siting criteria and development requirements that both address the Town's concerns and interests in promoting well-balanced land uses within its community while also working to encourage a potentially

economically beneficial use in the Town that also aligns New York's renewable energy policies and laws.

Sincerely,



James A. Muscato II
Counsel for SunEast Flat Creek Solar LLC

Enclosure

cc:

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Town of Canajoharie

A Local Law Amending the Zoning Law of the Town of Canajoharie With Respect to Utility-Scale Solar Collector Systems

Section 1. Authority, Purpose, and Intent

This Local Law is adopted pursuant to sections 261-263 of the Town Law and section 20 of the Municipal Home Rule Law of the State of New York, which authorize the Town to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with Section 263 the Town law of New York State, "to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor."

This Local Law is further adopted to advance and promote a clean, wholesome, and attractive environment; protect the community from potential hazards to property and person; protect water resources and viable farmlands; preserve the aesthetic qualities and character of the Town of Canajoharie; prevent depreciation of property; preserve the rights of property owners; and secure the public peace, health, safety and welfare of the Town of Canajoharie by creating regulations for the installation and use of solar energy systems and equipment.

Section 2. Repeal of Certain Portions of Article VI: Supplementary Regulations Section C.14: Solar Energy Systems and Equipment of the Town of Canajoharie Zoning Law

The entirety of the following portion of Article VI Section C.14 is hereby repealed: That portion beginning with "Utility-scale solar collector system" and ending with the final sentence of subsection D(c), which, in part, reads "all costs of the Town incurred to comply with this condition shall be paid using the surety provided by the applicant," and containing subsections "A. Purpose and intent," "B. Bulk and area requirements," "C. General Provisions," and "D. Removal of obsolete/unused facilities."

Section 3. Definitions

A. The following Solar Energy Equipment and Systems definitions added to Article XIII: Definitions of the Town of Canajoharie Zoning Law are hereby repealed:

Accessory Structure
A structure, the use of which is customarily incidental and subordinate to the principal building, and is located on the same lot or premises as the principal building.

Utility-Scale Solar Collector System
A solar energy system that is designed and/or built to provide energy as an ongoing commercial enterprise, or for commercial profit, or designed to distribute energy generated to a transmission system for distribution to customers rather than for use on

the site. A utility-scale solar use may include solar energy system equipment and uses, such as but not limited to supporting posts and frames, buildings and/or other structure(s), access drives, inverter equipment, wires, cables, and other equipment for the purpose of supplying electrical energy produced from solar technologies, whether such use is a principal use, a part of the principal use or an accessory use or structure.

B. The following Solar Energy Equipment and Systems definitions are hereby added to Article XIII: Definitions of the Town of Canajoharie Zoning Law:

ACTIVE AGRICULTURAL LAND

Land used in agricultural production, as the term is defined in Agriculture and Markets Law § 301(4), defined as active three (3) of the last (5) years. ~~for a Farm Operation in accordance with Agriculture and Markets Law § 301 – uses of which include production of crops, livestock, and livestock products – within the past five years.~~

Comment: The Town's proposed definition of this term is inconsistent with the way this term is defined by other state agencies. The definition adopted by the Office of Renewable Energy Siting ("ORES" – the State Agency tasked with review and permitting of major renewable energy projects) for "active agricultural lands" is "lands in agricultural production, defined as active three (3) of the (5) years."

The ORES definition of active agricultural land is consistent with SEQRA guidance for considering impacts on agricultural lands, so there would be no associated benefit to agricultural land resources by relying on the proposed definition which broadly defines the active agricultural land. Using this revised definition, which is consistent with NYSDAM and ORES of "active agricultural land" and "land used in agricultural production," will resolve confusion and inconsistencies that would result in applying some of the zoning standards in this proposed local law if they were to be implemented relying on the Town's proposed definition.

FACILITY AREA

The cumulative land area occupied during the commercial operation of the Solar Energy Equipment/System. 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 Solar Energy Equipment/System and/or Energy Storage Device(s) beyond the facility's perimeter boundary such as improvements necessary for the utility interconnection, access roads or other permanent improvements, but excluding those established off-site for impact mitigation purposes, including but not limited to tree plantings.

KILOWATT (kW)

A unit of power equal to 1,000 watts. The nameplate capacity of residential and commercial Solar Energy Equipment/Systems may be described in terms of kW.

MEGAWATT (MW)
A unit of power equal to 1,000 kW. The nameplate capacity of Solar Energy Equipment/Systems may be described in terms of MW.

Mineral Soil Groups 1-4

Soils recognized by the New York State (NYS) Department of Agriculture and Markets as having the highest value based on soil productivity and capability, in accordance with the uniform statewide land classification system developed by the NYS Agricultural Assessment Program.

~~**PRIME AND OTHER IMPORTANT FARMLANDS**~~
~~Soils recognized by the USDA Natural Resources Conservation Service (NRCS) and New York State as having the highest value based on soil productivity and capability. These soils include those soils classified as Prime Farmland, Prime Farmland (if drained), and Farmland of Statewide Significance, according to the NRCS.~~

Comment: It is not clear what would fall under the proposed definition to "Prime and Other Important Farmlands". The proposed law defines "Prime and Other Important Farmlands" as "[s]oils recognized by the USDA Natural Resources Conservation Services (NRCS) and New York State as having the highest value based on soil productivity and capability".

However, it is unclear what metric is used to characterize soil productivity and capability as this term is no longer used by State agencies involved in the utility-scale solar permitting and review process. Instead, the term used is "mineral soil groups" with a focus on "mineral soil groups 1-4" which are defined in NYSERDA's Solar Guidebook for Local Governments as "soils recognized by the New York State (NYS) Department of Agriculture and Markets as having the highest value based on soil productivity and capability, in accordance with the uniform statewide land classification system developed by the NYS Agricultural Assessment Program." NYSDAM and ORES have identified lands with these soil groups as the State's most productive farmland or viable agricultural farmland, as defined in Agriculture and Markets Law § 301. Information regarding mineral soil groups are widely available and are a common metric for assessing potential impacts from solar projects.

Based on this, we recommend that, in lieu of the current proposed definition of "Prime and Other Important Farmlands" the town rely on the "MSG 1-4" terminology to resolve confusion and allow for consistency throughout state and local regulations for the protection of highly productive agricultural lands across the State.

NAMEPLATE CAPACITY

A Solar Energy Equipment/System's maximum electric power output under optimal operating conditions. Nameplate Capacity may 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 NYS Department of Environmental Conservation.

NON-PARTICIPATING PROPERTY
Any property that is not a participating property.

NON-PARTICIPATING RESIDENCE
Any dwelling located on a nonparticipating property.

OPERATOR
The applicant for the approval of a Solar Energy Equipment/System, the owner, lessee, licensee, or other person authorized to install and operate a solar energy system on the real property of an owner, and each operator's successors, transferees, assignees, and all parties to which the solar energy system may transfer any or all of its ownership interests or contracts or subcontracts concerning the construction, management, operations, and/or maintenance in, and responsibilities of the solar energy system.

OWNER
The owner of the real property on which a Solar Energy Equipment/System is located or installed or proposed to be located or installed.

PARTICIPATING PROPERTY
A Solar Energy Equipment/System host property or any real property that is the subject of an agreement that provides for compensation to the landowner from the operator (or affiliate), regardless of whether any part of the solar energy system is constructed on the property.

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

PRODUCTIVE FARMLAND
Lands recognized by NYS Dept. of Agriculture and Markets (NYSDAM) and NYSERDA as important agricultural resources impacts to which, in decreasing order of importance, should be avoided when installing Utility-Scale Solar Collector Systems: Active rotational farmland (most important); Permanent hay land; Improved pasture; Unimproved pasture; Other support lands; and Fallow/inactive farmland (least important).

UTILITY-SCALE SOLAR COLLECTOR SYSTEM

A Solar Energy Equipment/System meeting the following criteria:
Ground-Mounted Solar Energy Systems not included under the definition of Small-Scale Solar Collector System, with a Facility Area of up to 20 acres in size, producing greater than 110% consumed on the site over the previous 12 months, and installed primarily for off-site consumption; OR Rooftop or Building Mounted Solar Collector Systems and Building Integrated Photovoltaic (BIPV) Systems producing greater than 110% consumed on the site over the previous 12 months and installed primarily for off-site consumption

STEEP SLOPES

Any area having a topographical gradient of 15% (the ratio of vertical distance to horizontal distance) or more with a minimum of 500 square feet, one dimension of which is a minimum of 10 feet. For purposes of this definition, area measurements must be made along a horizontal plane from within the boundaries of a lot.

A. Steep slope: A slope with a topographical gradient equal to or greater than 15% but less than 25%.

B. Very steep slope: A slope with a topographical gradient equal to or greater than 25% but less than 35%.

C. Excessively steep slope: A slope with a topographical gradient equal to or greater than 35%.

Section 4. Supplementary Regulations for Utility-Scale Solar Collector Systems

A new Section C.15: Utility-Scale Solar Collector Systems is hereby added to Article VI: Supplementary Regulations as follows:

A. Purpose and Intent

The purpose of these regulations is to establish regulations for Utility Scale Solar Collector Systems in accordance with the following objectives:

1. To mitigate the impacts of Utility-Scale Solar Collector Systems on environmental resources, such as important agricultural lands, forests, wildlife, and other protected resources;
2. To reduce impacts of Utility-Scale Solar Collector Systems may have on neighbors, mitigate potential depreciation of neighboring properties, and preserve the rights of property owners to install solar energy systems without conflicting with the Comprehensive Plan for the Town of Canajoharie;
3. To set provisions for the placement, design, construction, operation, decommissioning, and, ultimately, removal of Utility-Scale Solar Collector Systems consistent with the Town of Canajoharie's intent to uphold public health, safety, and welfare by promoting a clean, wholesome, and attractive environment, preserving the aesthetic qualities of the Town, and preserving the Town’s agricultural resources;

4. To, upon decommissioning and removal of Utility-Scale Solar Collector System, facilitate return of any productive agricultural lands and soils which may be impacted by installation and operation of Utility-Scale Solar Collector Systems to productive agricultural use to the maximum extent possible;
5. To accommodate and take advantage of a safe, abundant, renewable and non-polluting energy resource; and
6. To take advantage of the increased economic activity as may be occasioned by furthering the installation of Utility-Scale Solar Collector Systems .

B. Applicability

1. The requirements of this Section C.15 shall apply to all Utility-Scale Solar Collector Systems permitted, installed, or modified in Town after the effective date of this Local Law, excluding general maintenance and repair.
2. Utility-Scale Solar Collector Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Section.
3. Modifications to an existing Utility-Scale Solar Collector Systems that increase the Facility Area by more than 5% of the original Facility Area (exclusive of moving any fencing) shall be subject to this Local Law.

C. General Provisions

1. A building permit shall be required for installation of all Utility-Scale Solar Collector Systems.
2. Prior to the issuance of the building permit or final approval by the Planning Board, construction and/or site plan documents must be signed and stamped by a NYS Licensed Professional Engineer or NYS Registered Architect.
3. Issuance of permits and approvals by the Planning Board shall include review pursuant to the State Environmental Quality Review Act and regulations.
4. All Utility-Scale Solar Collector Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code ("Uniform Code"), the NYS Energy Conservation Code ("Energy Code"), and the Town's code and requirements.
5. The Town may impose, and may update as appropriate, a schedule of fees to recover expenses associated with administration, engineering, environmental, or legal services determined to be reasonably necessary in the processing of an application under this Section, and in order to ensure compliance. These fees

shall be in addition to any application fees as may be required for site plan, special use permit, and/or subdivision review and approval.

6. Review and written concurrence from the responding fire district shall be provided. In the discretion of the Planning Board, an emergency response plan and/or first responder training may be required. Final approval or issuance of Special Use and/or Building Permits subject to the discretion of the Town Board's discretion and may be subject to any appropriate and reasonable conditions to be determined upon circumstances of the application process.

7. The Planning Board and/or Zoning Board of Appeals, to the extent reasonably practical, may condition their approval of proposed developments on sites adjacent to Utility-Scale Solar Collector Systems so as to protect their Solar Access to remain economically feasible over time.

D. Permitting Requirements

All Utility-Scale Solar Collector Systems are permitted through the issuance of a special use permit and site plan approval within the Agricultural/Rural Residential District, and subject to site plan and special use permit application requirements set forth in this Section and Article VII and Article IX of the Town of Canajoharie Zoning Law.

1. Applications for the installation of Utility-Scale Solar Collector Systems shall be:

    a. Reviewed by the Planning Board for completeness in accordance with the Town of Canajoharie Zoning Law , including Art. VII Special Use Permits and Art. IX Site Plan Review.

    b. Subject to a public hearing as required by the Town of Canajoharie Zoning Law . The public hearing shall conform to the requirements set forth in Section D(4) of this Section.

2. Application & Site Plan Review Requirements. Applications for Utility-Scale Solar Collector Systems, including materials for site plan and special permit review, shall include the following:

    a. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Utility-Scale Solar Collector System. Such information of the final system installer shall be submitted prior to the issuance of building permit.

    b. Name, address, contact information, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Utility-Scale Solar Collector System.

c. Certification from the utility that the interconnection is viable.

d. Nameplate Capacity of the Utility-Scale Solar Collector System (as expressed in MW).

e. Site plan conforming to the requirements set forth at Art. IX of the Town of Canajoharie Zoning Law and also the following requirements:

   i. Zoning district designation for the parcel(s) of land comprising the Facility Area and other portions of the project site.

   ii. Any Overly Districts, including the Critical Environmental and Scenic Resources Overlay Districts applicable to the project site.

   iii. Adjacent land uses on contiguous parcels within a 1,000' radius of the site boundary, or as otherwise required by the Planning Board.

   iv. Proposed changes to the landscape of the site, including site grading, vegetation clearing and planting, the removal of any large trees.

   v. Erosion and sediment control and storm water management plans prepared to NYS Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.

   vi. Identification of the groundwater conditions in the area and all public and private wells within 1,000 feet of the site.

   vii. Trails located on the site that are part of the Statewide Snowmobile Trail System.

   viii. Historic sites listed on the National and/or State Register of Historic Places, or those Eligible for listing, within the site and those within a 1-air mile radius of the site.

f. Site Specific Soil Survey: This document shall field identify the borders of existing site soils in accordance with NRCS standards and shall be performed by an accredited Soil Scientist whose name shall be noted on the drawing. Existing published soil maps and data shall only be used as guideline information by the Soil Scientist. In addition to field identifying site soils the Soil Scientist shall document the depth of the plow layer on the site. This document shall also include mapping of Active Agriculture Lands and Productive Farmland on the parcel(s) comprising the Facility Area.

g. A three-line electrical diagram detailing the entire Utility-Scale Solar Collector System layout, including the number of Solar Panels in each ground-mount array, solar collector installation, associated components, inverters, electrical interconnection methods, and utility meter, with all National Electrical Code compliant disconnects and over current devices. The diagram should describe the location and layout of all Energy Storage Device components, if applicable, and should include applicable setback and other bulk and area standards.

h. A preliminary equipment specification sheet that documents all proposed Solar Panels, system components, mounting systems, racking system details, battery energy storage systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.

i. A Property Operation and Maintenance Plan that describes continuing site maintenance, anticipated dual-use, and property upkeep, such as mowing and trimming.

j. A Decommissioning Plan signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant. The decommissioning plan shall address the following:

   i. The time required to decommission and remove the Solar Energy System and any ancillary structures.

   ii. The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.

   iii. The cost of decommissioning and removing the Solar Energy System, as well as all necessary site remediation or restoration.

   iv. Removal of all above-ground solar energy equipment, structures and restoration of areas previously used for agricultural production, according to recommendations by the owner, the Soil and Water Conservation District, the Town Engineer, the NYSDAM, and/or other qualified entity; removal of concrete piers, footers, or other supports to a depth of 48 inches below the soil surface in agricultural land and 36 inches below the soil surface in non-agricultural land; and removal of access roads, unless otherwise specified by the owner and subject to approval during site plan review.

Comment: The proposed requirement for removal of "concrete piers, footers, or other supports to a depth of 48 inches below the soil surface" requires far more removal of components than

would typically be necessary. In most situations, removal of components up to three feet below grade is sufficient, except where, based on the NYSDAM Guidelines for Solar Energy Projects ("NYSDAM Guidelines") removal to a depth of 48 inches is recommended for the return to agricultural use after the solar project ceases operation. This 48-inch depth removal requirement is limited to agricultural land. Similarly, ORES decommissioning regulations require removal of facility components to a depth of four (4) feet (48 inches) below grade in agricultural land, but three (3) feet (36 inches) below grade in non-agricultural land. Modifying this provision to removal to a depth of up to three feet would allow components to remain in place in non-agricultural locations.

v. For solar energy systems constructed on Prime and other Important Farmland and/or Productive Farmland, the restoration of such farmland pursuant to the decommissioning guidelines of the NYSDAM Solar Energy Project Guidance.

vi. Restoration of the surface grade and soil after equipment removal and stabilization or revegetation of the site as necessary to minimize erosion.

vii. Disconnection of the solar energy system from the utility power grid.

viii. The plan to dispose or recycle all waste generated from the decommissioning of the solar energy system pursuant to local, state, and federal solid waste regulations.

ix. The provision of a decommissioning security, whether cash, an irrevocable letter of credit or another form acceptable to the Town, which shall adhere to the following requirements:

(1) The deposit, executions, or filing with the Town Clerk of cash or other form of financial security acceptable to be held in escrow by the Town, subject to the approval of the Town attorney and/or Engineer. The estimated cost of implementing the decommissioning plan will be certified by a licensed professional engineer and reviewed by the Town Engineer and shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal.

(2) The amount of the bond or security shall be 11550% of the cost of removal and site restoration for the Utility-Scale Solar Collector System and shall be revisited every 53 years and updated as needed to reflect any changes (due to inflation or other cost changes). ~~Salvage value of the Solar Energy System shall not count toward the decommissioning security.~~

Comment: The proposed structure for the amount of financial security required, including the 50% contingency, 3-year review and update requirement, and prohibition of including salvage in the cost estimate is very onerous. It is also inconsistent with other local laws being adopted by local municipalities in New York and inconsistent with the regulations adopted by ORES. A 50% contingency requires significantly more money than would ordinarily be needed for decommissioning be set aside for the life of the project. For example, assuming a decommissioning cost for a facility of $5,000,000, an applicant would need to obtain a financial security in the amount of $7,500,000 and pay the costs of maintaining that security over the life of a project, an extremely burdensome and unjustified additional expense. However, the increased contingency is not reasonable or necessary to ensure sufficient funds are available in the unlikely event the developer cannot decommission the project at the end of its useful life. A 15% contingency, particularly when combined with a 5-year review and update requirement, is more than sufficient to account for potential increases in costs associated with inflation or other cost changes.

Not including an allowance for salvage value in the decommissioning provision "penalizes" developers and does not allow materials that have real and identifiable value to be included in the decommissioning calculation. We suggest that both the 150% contingency and exclusion of salvage value be re-considered. The proposed text still provides a contingency in the event that something unforeseen occurs within a 5-year review cycle for the financial security.

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

k. Ancillary materials. Other relevant studies, reports, certifications, and approvals as may be reasonably requested by the Town of Canajoharie to ensure compliance with this local law, the Town of Canajoharie Zoning Law, and SEQRA.

3. Reimbursable Costs. The Planning Board may, under Art. IX Section F and Section L of the Town of Canajoharie Zoning Law, obtain necessary consulting services, the costs of which are to be paid by the Applicant, in accordance with Town of Canajoharie requirements.

4. Public hearing. In addition to the requirements set forth in the Town of Canajoharie Zoning Law at Art. IX Section G, notice of the public hearing and data regarding the substance of the application shall be provided to the owners of all property within two hundred (200) feet of the land involved in such application. The Town will provide a copy of the required property owner notice language to the Applicant. The mailing shall not contain any other materials. Notice shall be provided by either certified mail, return receipt requested, at least seven (7) calendar days prior to the hearing, with compliance with this notification procedure certified to by the Applicant and certified mailing receipts must be provided to the Town Clerk and Planning Board prior to any permissions being granted.

5. Special Use Permit Standards.

   The Planning Board may issue a special use permit for a Utility-Scale Solar Collector System only after it has found that all the following standards and conditions have been satisfied:

   a. Underground Requirements. All utility lines located outside of the Facility Area shall be placed underground to the maximum extent feasible and as permitted by the serving utility, with the exception of any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.

   b. Vehicular Paths. Vehicular paths within the Facility Area shall be designed in compliance with Uniform Code requirements and NYSDAM guidance to ensure emergency access, while minimizing the extent of impervious materials and soil compaction.

   c. Signage.

      i. No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted within an area acceptable to the Planning Board.

      ii. As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign

concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

d. Glare. Solar Panels shall be placed and arranged such that reflected solar radiation or glare shall not be directed onto adjacent buildings, properties or roadways. All Solar Panels shall have anti-reflective coating(s). The applicant shall demonstrate that any glare produced does not have significant adverse impact on neighboring properties or roadways. The Planning Board may require submission of a Glare Study.

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

f. Multiple lots. At the discretion of the Planning Board, where a Utility-Scale Solar Collector System's Facility Area comprises multiple lots (regardless of ownership by an individual or multiple participating landowners), the combined lots may be treated a single lot for the purposes of applying specific standards and requirements, including but not limited to lot size and setback requirements. For Utility-Scale Solar Collector Systems undergoing review pursuant to New York State Executive Law §94-c by the New York State Office of Renewable Energy Siting, where the Utility-Scale Solar Collector System's Facility area comprises of multiple lots (regardless of ownership by an individual or multiple participating landowners), adjacent lots are treated as a single lot for the purposes of applying lot size and setback requirements.

Comment: This section limits the consideration of "multiple lots" as a single lot only for projects proceeding through the local permit review process in front of the Planning Board. We recommend that the Town clarify that multiple adjacent lots can be treated as a single lot for a single project or owner so that it also applies to projects that are required by State law to go through the Section 94-c review process, by removing Planning Board discretion to make such a determination for such projects.

g. Lot size. The minimum lot size of the property on which the Utility-Scale Solar Collector System is placed shall be 20 acres. Under the circumstances identified~~outlined~~ in Section D.5.f. above, adjacent lots are treated as a single lot for the purposes of applying the lot size requirement.

Comment: In line with the previous comment on the treatment of multiple lots, we recommend that this provision clarify that multiple adjacent lots are treated as a single lot for the purposes

of determining compliance with the 20-acre minimum lot size requirement. By allowing adjacent lots to be treated in this manner and meet this minimum 20-acre lot size requirement, proposed facilities can be designed in a manner that is more compact and efficient in terms of land use, rather than being dispersed throughout the Town on acres that meet the 20-acre minimum lot size requirement.

h. Setbacks. Utility-Scale Solar Collector Systems shall meet the required yard and setback dimensions requirements in Table 1.1, below. Fencing, collection lines, access roads and landscaping may occur within the setback.

Table 1.1

	Setback Distance
~~Minimum Front Yard Setback~~	~~100'~~
~~Minimum Side Yard Setback~~	~~100'~~
~~Minimum Rear Yard Setback~~	~~100'~~
Non-participating residential property lines	100' ~~ft~~
Centerline of public roads	50'
N~~N~~on-participating property lines (non-residential)	50'
Minimum Setback from Non-participating occupied residence(s), as measured from the nearest wall of the building	250~~350~~'
~~Participating residence(s), as measured from the nearest wall of the building~~	~~100'~~

Comment: The Town has included a number of setbacks in the proposed law that apply to both participating and non-participating property. We ask the Town to clarify the proposed setbacks by indicating that they only apply to ***non-participants****. Participants are defined under the proposed law as having a contract with the developer providing compensation. Any potential issues with respect to the location of solar panels or other project components is addressed through a negotiated contract and payment to the participating landowner, and the landowner waives their rights to all setbacks as part of a lease agreement or setback agreement with the Applicant. There is no reason for the Town to apply a setback to participating landowners. With respect to non-participants, we ask that the Town consider*

the impact of setbacks on proposed projects. In particular, where setbacks are imposed, more land must be used in order to meet the generation targets to make a project financially viable. The Town should strive to utilize reasonable setbacks and ensure that as much "low impact" land can be utilized, and that land use is not unnecessarily restricted through arbitrary setbacks.

For example, in some instances, 50 ft. is a sufficient setback to property that does not have a homestead for many thousands of feet (non-residential). We have proposed a revised setback that would allow 50 ft. to the property line in this situation but would require 100 ft. to the property line where the project borders a residential property (residential). These distinctions for different types of setbacks in the ORES regulations, rather than the use of front, side and rear yard setbacks are helpful because they make clear that setbacks do not apply to property lines between adjoining participating properties. Finally, we have proposed a 250 ft. setback to non-participating residences rather than the more design restrictive 350 ft. The setback of 250 ft. is consistent with the design standards in the ORES regulations.

ORES established these standard setbacks to specific structures/uses based on careful consideration of best practices for siting renewable energy projects, engineering guidelines, what setbacks were used/in place for operating renewable projects and typical local law requirements across the State. The ORES setbacks have been set in order to avoid and minimize to the maximum extent potential impacts to the surrounding community and the environment. Relying on those setbacks is sufficient to address those concerns while also allowing for utility-scale solar facilities to be constructed in a manner that is efficient from an environmental impacts and land use management perspective while also maximizing generation capacity. There are no public health and safety benefits associated with greater setbacks, and no significant benefit in terms of viewshed reduction considering the 94-c requirements for visual impact minimization and screening. On the flip side, by creating a situation where projects are not able to efficiently place facility components across individual parcels, larger setbacks require a developer to utilize a much larger number of parcels and additional acreage to accommodate the setback requirements, leading to unnecessary disruption of environmentally sensitive areas, land used for agriculture production, forested areas, and wetlands due to inability to strategically manage land use.

i. Height. The height of the Solar Energy Equipment/System, excluding electric collection, transmission or substation/switchyard equipment, shall not exceed 2017 ~~17~~ feet. Height is measured from the lowest adjacent grade to the highest point of the structure, including any attachments (such as a lightning-protection device).

    i. This height requirement can be modified by the Planning Board if the panels are being raised to accommodate continued or new agricultural activities.

Comment: The height limit currently in the proposed local law is restrictive and may unnecessarily prohibit the use of some of the latest technologies and advancement in solar panel manufacturing. The 94-c regulations establish a height limit of 20 ft., which was set based on a careful consideration of the best practices for siting renewable energy projects, past precedent from older renewable projects and the typical local law requirements in municipalities across the State. The 20 ft limit, especially when considering the fact that under section 94-c visual impact minimization and mitigation efforts are required, is sufficient to balance visual impacts, impacts to agricultural lands, and any potential safety concerns. Allowing for a greater height of up to 20 ft also creates more of an opportunity for projects to incorporate various a range of agrivoltaics co-use options.

Based on the use of the term "Solar Energy Equipment/System" and its definition in the proposed law, it's not clear whether collection, transmission and substation/switchyard equipment were intended to be subject to this height restriction. We recommend that this provision make clear that this height restriction does not apply to collection, transmission and substation/switchyard equipment. Frequently, lighting masts, poles and other structures are required by electrical codes and utility standards to exceed 20 ft. in height. A revision to this proposed provision would make it clear that the law is not intended to apply to electrical structures that have other code provisions and best management practices dictating their heights.

j. Noise levels from the Solar Energy Equipment/System must be shown to not have adverse or unreasonable noise impacts on ~~surrounding homes or other~~ sensitive sound receptors~~, by which can be accomplished by compliance~~ complying~~e~~ with an~~n~~ . ~~The~~ 8 hour noise limit of forty-five (45) dBA ~~1 hour average noise generated from the Solar Energy Equipment/System shall not exceed a noise level,~~ as measured at the outside wall of any existing non-participating residence~~ or occupied community building, based on current (45dBA) or future recommendations from the World Health Organization.~~ Equipment and component manufacturers' noise ratings may be submitted to demonstrate compliance. The Town may require Operating Sound Pressure Level measurements from a reasonable number of sampled locations at the perimeter of the Solar Energy Equipment/System in order to demonstrate compliance. Existing background noise levels shall be taken before there is any modeling of projected noise levels.

Comment: While the numerical noise limit currently included in the proposed local law is reasonable, the other requirements of the noise provision create some technical difficulties and inconsistencies with the ORES requirements that would make it difficult to execute. We recommend that this provision be revised to clarify that compliance with the noise limit set therein is sufficient to demonstrate that there are no "adverse or unreasonable noise impacts" associated

with a proposed facility. We also recommend that it be revised to an 8-hr rather than 1-hr average noise limit for consistency with the ORES requirements. This is consistent with standard in ORES, which relies on an 8-hour Leq measure, and is also consistent with the metric that is typically used within the noise consultant industry for noise modeling within the solar development industry.

We suggest that the provisions requiring compliance with future World Health Organization ("WHO") recommendations be removed from this provision. The WHO Guidelines for Community Noise (1999) and the more recent WHO Guidance on Environmental Noise (2022) do not provide sound pressure level recommendations applicable to solar facilities. Also, requiring compliance with future WHO recommendations would be technically impossible to implement as such noise limits are taken into consideration in facility design and it would be impossible at the design stage to account for unknown future recommendations on noise limits. However, the Town always has the option to update its local laws in the future should WHO produce new guidance in this area that applies to solar facilities.

Also, the Town should note that certain requirements of this provision are considered procedural (such as requiring submission of manufacturer's noise ratings, post-construction monitoring to demonstrate compliance) and for utility-scale solar projects proceeding through 94-c would be inapplicable.

k. Lot coverage. The surface area of Utility-Scale Solar Collector Systems shall not exceed 80% of the total parcel area.

l. Fencing Requirements. All mechanical equipment, including any structure for Energy Storage Device components, shall be enclosed by fencing of a minimum height of 7-feet ~~a 7-foot fence~~, as required by NEC, with a self-locking gate to prevent unauthorized access. This height requirement shall supersede other local requirements which may be in conflict. The use of woven wire fencing or other fencing types that permit wildlife passage shall be encouraged, particularly in areas of environmental concern or where certain threatened, or endangered species, or s~~s~~pecies of special concern have been identified within an area where utility-scale solar collector system is proposed. ~~required unless otherwise prohibited by local, state, and/or federal standards~~.

Comment: We recommend that this provision be revised to clarify that the 7-foot fence requirement is a minimum, for consistency with NEC and ORES regulations. With respect to the requirement that woven wire fencing or other types of fencing that permit wildlife passage be used, we recommend that this be revised to a recommendation rather than a requirement for facility areas that have been identified as environmentally sensitive or where certain species that would benefit from such fencing, such as certain types of threatened or endangered species, or

species of special concern. Fencing for utility-scale solar facilities is typically designed to minimize fenced in areas to the extent feasible, and in the case of Flat Creek Solar's proposed facility, will be designed to fence each group of panels separately. Also, in the event that certain species are identified during the 94-c pre-application study phase, ORES, in consultation with NYSDEC, will recommend the use of fencing that allows for wildlife passage where appropriate.

m. Screening and Visibility. Utility-Scale Solar Collector Systems shall be required to:

i. Conduct a visual assessment of the visual impacts of the Solar Energy Equipment/System on public roadways, historic resources, scenic resources, important corridors, adjacent properties, and other sensitive receptors as may be identified pursuant to the application requirements and overlays, maps, and/or as identified by the Planning Board. The visual assessment shall generally conform to the most current NYSDEC policy on Assessing and Mitigating Visual and Aesthetic Impacts ("Visual Policy"). At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital viewshed report, may be required to submitted by the applicant. The Planning Board may waive or modify the requirements set forth in this section for Solar Energy Equipment/System with a Facility Area smaller than 10 acres.

ii. Submit a screening & landscaping plan, prepared by a licensed landscape architect, to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment/Systems shall be minimized as reasonably practical from public roadways and adjacent nonparticipating properties to the maximum extent feasible.

iii. The screening & landscaping plan should demonstrate that the landscaped buffer will provide year-round screening so that, to the maximum extent practicable, the visibility of the Solar Energy Equipment/System is minimized ~~not visible from~~ roadways and adjacent nonparticipating properties. The plan shall specify the locations, elevations, height, plant species and/or materials that will comprise the landscaping, berms, grading, structures, architectural features, or other screening methods that will harmonize with character of the property

and surrounding area, mitigate adverse aesthetic effects, and screen the system from important views or vistas. The plan shall use native and non-invasive plant species to promote habitat for native wildlife species and foraging habitat beneficial to game birds, song birds, and pollinators. Evergreen tree plantings may be used~~required~~ to minimize visual impacts to~~screen portions of the site from~~ nonparticipating residential properties, roadways, and other important natural resources, viewsheds, and/or receptors, ~~as may~~ based on findings of the visual impacts assessment~~be identified by the Planning Board~~. If the buffer utilizes vegetative planting, the plantings shall consist of noninvasive evergreen trees or bushes, deer and weather resistant plant species, or other noninvasive species as otherwise recommended by the landscape architect, planted with sufficient spacing, dependent on the type of species of plantings used~~and~~ , to facilitate~~allow~~ for healthy tree growth ~~andsupport healthy and mature tree growth no more than eight feet apart~~ and at least four feet tall at time of planting, or as otherwise required by the Board or as may be recommended as part of the visual impact assessment. The buffer shall obtain a height of at least 10 feet within five growing seasons. Invasive species shall not be planted as part of the landscape buffer.

iv. The Planning Board may elect to waive certain screening and landscaping requirements in select locations based on an applicant's demonstration of non-impact or impact mitigation on adjacent parcels.

v. As part of t~~T~~he vegetation management plan, the permittee shall ensure the health of screen plantings by retaining a qualified landscape architect, arborist, or ecologist to inspect the screen plantings for two years following their installation in order to identify any. The permittee shall remove and replace trees that die off within two years following the completion of installing the plantings ~~will be replaced by the following growing season~~ with the approved plantings from the screening and landscape plan.

vi. The Planning Board may require a Landscaping Maintenance Financial Security in the form of cash bond or other form

acceptable to the Town to ensure the proper maintenance of the landscaping surrounding the solar site.

Comment: We appreciate the Town's interest in ensuring a project's visual impact is minimized to the maximum extent practicable. However, some of the provisions in the screening section suggest that a project is required to be "not visible", which is not a practical requirement for many reasons. First, the visual impact of a project at a particular location is influenced by the sensitivity of the surrounding nonparticipating properties potentially impacted, number of potential views and the current topography and vegetation associated with a viewpoint. The focus of a visual impact standard should be on sensitive or other specific resources and a sliding scale of greater protection for resources more easily impacted by visual impacts and lesser so for lower visually significant resources. We have proposed a few suggested revisions to subsections (ii) & (iii) which are intended to create consistency throughout the screening and visibility provisions of the proposed law, and clarify that the requirements for visual screening are to minimize and mitigate potential visual impacts to non-participating properties and roadways, to the maximum extent practicable with greater emphasis on non-participating residences than roadway traffic where the visual impact can be far less to a moving motorist.

Also, some of the specific screening requirements are proposed in an impractical and burdensome way and may not actually achieve the stated purpose of minimizing the visual impact. For example, the eight (8) foot spacing requirement may actually make it more difficult to ensure mature growth and viability of plantings as certain tree species grow to mature widths greater than 8-ft. Instead, a general recommendation designed to support healthy and mature growth based on the types of plantings species used is more likely to result in a successful planting program. In addition, the proposed 8-foot spacing maximum does not provide sufficient flexibility to tailor a planting plan to the specific visual impact of a given location.

With respect to subsection (v), we recommend that this section be revised to require an inspection of the tree plantings for two years following installation of the plantings and requiring replacement of dead plantings within two years following their installation. This a more reasonable standard, as the current proposed requirement could be interpreted as a lifetime replacement requirement, which is unduly burdensome. A lifetime replacement requirement is beyond the average warranty on vegetation survival rates that is typically provided by landscaping companies/nurseries. As such, we recommend a 2-year inspection and replacement requirement, which is consistent with the typical vegetation survival rate warranty within the landscaping/nursery industry, and consistent with the ORES regulations which are based on the typical industry warranty as well. This is also consistent with other solar project inspection and replacement requirements which have been permitted in the State.

m. A Utility-Scale Solar Collector System proposed within 1 mile of an existing or proposed Utility-Scale Solar Collector System shall be reviewed with the additional consideration of the cumulative visual impacts and impacts to the aesthetic resources of the Town.

n. Environmental Resources

i. Tree-cutting. Existing on-site vegetation shall be preserved to the maximum extent practicable. The removal of existing non-invasive trees greater than 6 inches in diameter shall be minimized to the greatest extent possible. Clearing of stands of trees in open fields or scrublands, hedgerows, and brush is permitted. Clear-cutting of all native and non-invasive trees more than six (6) inches in diameter in a single contiguous area exceeding 20,000 square feet shall be prohibited within core forest blocks (contiguous areas one hundred fifty [150] acres or larger). This clearing restriction shall not apply to clearing for access roads or collection and transmission lines. ~~, except for agricultural and farm management practices. Removal of existing trees larger than 6 inches in diameter should be minimized to the extent possible.~~

Comments: This tree clearing limitation, as currently drafted, is extremely restrictive. It also creates a conflict with some of the other land use restrictions contained in this law, including but not limited to the lot percent coverage restrictions and agricultural lands percent coverage and maximum cover acreage restrictions contained in sections 4.D.5(i) and 4.D.5(p). This limitation severely limits the ability of a solar developer to meet generation capacity goals for a given facility, and would result in the need to sign on a much larger number of parcels and spread a proposed facility out across a much larger area in order to meet necessary energy production targets.

This limit also severely restricts an applicant's ability to design a facility in a manner that avoids and minimizes potential environmental impacts the most environmentally conscious with respect to potential impacts. Developers should be provided the necessary flexibility to assess where avoidance and minimization of impacts to potential areas within the facility site will result in the most minimal environmental impacts across the site overall.

In place of a strict prohibition on tree removal applicable across the entirety of the Town, we suggest the above language which allows for a more tailored approach designed to achieve a specific objective – i.e. the protection of a resource with measurable environmental and community benefits such as ecological and biological functions, air quality, water quality and flood resilience benefits.

ii. Utility-Scale Solar Collector System owners and/or operators 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.

(1) To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the Owner shall use native plant species and seed mixes and seed all appropriate areas within the Facility Area. Any project which is designed to incorporate agricultural or farm-related activities or uses within the Facility Area may be excluded from this requirement based on the amount of space actually occupied by the agricultural use(s). This exclusion will only be allowed based on the Planning Board's determination that these lands are being used for actual agricultural uses.

(2) Use of pesticides (including herbicides) for long-term operation and site maintenance shall be limited or avoided entirely, and the rationale for any proposed pesticide use shall be thoroughly documented by the Operator, subject to Planning Board approval.

iii. Slopes. Development on Steep Slopes, and Very Steep Slopes shall be avoided to the maximum extent practical. Development on Excessively Steep Slopes is prohibited.

iv. Compliance with applicable overlay district standards, including the Critical Environmental and Scenic Resources Overlay Districts.

o. Agricultural Resources. Utility-Scale Solar Collector Systems for which the Facility Area includes lands consisting of Prime and other Important Farmlands, or is proposed on a site with Active Agricultural Land, shall adhere to the following requirements:

i. When proposed on Active Agricultural Land located within an Agricultural District designated under Section 303 of the NYS Agricultural and Markets Law, a Utility-Scale Solar Collector System components, equipment, and associated impervious surfaces shall occupy no more than 50~~20~~% of ~~any Prime and other Important Farmlands~~Mineral Soil Group 1-4 soils~~, but in no case shall it exceed 15 acres of such Prime and other Important Farmlands~~. Utility-Scale Solar Collector Systems

shall, to the maximum extent practical, avoid impacts to Active Agricultural Land and Productive Agricultural Land.

ii. To the maximum extent practicable, Utility-Scale Solar Collector Systems located on Prime and other Important Farmlands shall be constructed, monitored, and decommissioned in accordance with the NYSDAM's "Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands."

Comments: The limitations contained in subsection (i) are extremely restrictive, and compliance with the requirement as currently proposed would require a significant amount of additional acreage within the Town to accommodate utility-scale solar facilities and meet energy production goals. Restricting the use of agricultural land in effect forces utility-scale solar facilities to be spread out a much larger area of the Town leading to even greater impact on agricultural lands and farming operations, rather than allowing projects to minimize project footprint to the maximum extent practicable while also achieving energy generation targets.

This provision also conflicts with other requirements contained in this proposed law, as discussed above with respect to section (o). Restricting utility scale solar development on active agricultural lands to no more than "20% of any Prime and other Important Farmlands" severely limits the availability of land for solar development within the Town, as a substantial portion of the Town consists of "farmland of statewide importance" and "prime farmland if drained." Also, by severely limiting development on agricultural land in this manner, the Town is restricting property owners who may want to rely on leasing such lands. Allowing property owners to enter into these leasing agreements acts as an essential tool to maintaining the economic viability of their farming operations in the long term and gives them the opportunity to put unused land to productive use and to explore opportunities to allow for farming activities to continue on portions of their properties while also gaining an additional source of income to support their ongoing operations.

As discussed in the Definitions Section above, the Town's current definition of "Active Agricultural Lands" which defines the term based on "farm operations" rather than "lands in agricultural use" is overly broad and would subject certain lands to this percent coverage limit where it isn't reasonable or beneficial to the protection of agricultural resources do so. Restricting solar development on lands that contain any farm operation, regardless of whether such farm operation falls under NYSDAM's definition of "lands in agricultural use" would not be justified from an agricultural lands protection standpoint, as solar development and various types of farm operations are not incompatible uses and lands upon which farm operations are located may not necessarily be the most productive or viable agricultural lands which the Town seeks to protect by imposing this percent coverage limit.

Also, due to the abundance of land within the Town that falls within the "farmland of statewide importance" and "prime farmland if drained" categories, relying on such an expansive definition,

"prime and other important farmlands" to set this restriction would have a detrimental effect on the development of solar with no reasonable basis for doing so. Instead of this approach, we recommend that this limitation be tailored to protecting the most valuable agricultural resources within the Town by relying on the MSG 1-4 classifications. We suggest revising this section with the suggested language which recognizes the importance of conserving highly productive agricultural lands, identifies mineral soil groups (MSG) 1-4 as the most productive farmland or viable agricultural lands, and balances opportunities for energy development and agricultural protection.

p. Ownership Changes. If the owner or operator of the Solar Energy System changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the decommissioning plan. A new owner or operator of the Solar Energy System shall notify the zoning enforcement officer of such change in ownership or operator within 30 days of the ownership change. Failure to provide this notice will result in forfeiture of all or a portion of the certificate of occupancy, special permit, and/or deposit/decommissioning fee.

q. After completion of a Utility-Scale Solar Collector System, the owner or operator shall provide documentation, certified to the Town, 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.

r. Annual Report. The Utility-Scale Solar Collector System owner shall, on a yearly basis, provide the Code Enforcement Officer 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. The report shall also identify any change in ownership of the Utility-Scale Solar Collector 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 days after the end of the calendar year. Every fifth~~third~~ year, to coincide with the filing of evidence of financial security, the annual report shall also include an update to the decommissioning financial security amount specifying changes due to inflation or other cost

increases ~~recalculation of the estimated full cost of decommissioning and removal of the Utility-Scale Solar Collector System~~. The Code Enforcement Officer may require an adjustment in the amount of the surety to reflect any changes in the estimated cost of decommissioning and removal due to inflation or other cost increases as identified in the updates prepared every fifth year after establishment of the financial security. Failure to submit a report as required herein shall be considered a violation subject to the penalties of the Town of Canajoharie Zoning Law.

Comment: For the reasons discussed above with respect to the provisions applicable to the decommissioning security in 4.D.2.j, we suggest that the reporting requirement with respect to decommissioning referenced in this provision be every 5 years instead of 3 years. We also want to point out that the requirements of this provision are considered procedural, as they are annual reporting requirements for compliance with an issued local permit for a facility. As such, utility-scale solar facilities that are reviewed and permitted under Section 94-c would not be subject to this type of procedural requirement.

s. The Utility-Scale Solar Collector System approval shall include appropriate conditions to mitigate adverse impacts of the solar energy system, including, but not limited to:

i. The decommissioning plan shall run to the benefit of the Town of Canajoharie and be executed by the operator as well as the owners and such signatures shall be notarized in a format that allows the plan to be recorded at the Office of the Montgomery County Clerk. This document shall be recorded as an irrevocable deed restriction indexed against the property upon which the solar energy system is to be constructed.

ii. Initial and annual site-specific training shall be provided for the Code Enforcement Officer, fire department, emergency response, Montgomery County emergency management system, and police department, with expenses for such training covered by the operator.

iii. The operator shall identify a responsible person with contact information for public inquiries from the commencement of construction of the solar energy system until the completion of the decommissioning plan.

iv. A certificate of Comprehensive General Liability coverage Insurance Policy with minimums of at least $300,000.00 to

$500,000.00, naming the property owner, or to the satisfaction of the reviewing Board.

6. Compliance with Site Plan and Special Use Permit

    a. Inspection of Improvements

        i. The Planning Board's designated engineer, or another responsible party as may otherwise determined by the Planning Board, shall be responsible for the overall inspection of site improvements, including coordination with the Code Enforcement Office and other officials and agencies, as appropriate.

        ii. The Planning Board may impose, as a condition of site plan approval, that the Developer and/or Owner reimburse the Town for inspection of improvements services provided in accordance with this Section.

    b. Performance Guarantee

        i. As a condition to the approval the Developer and/or Owner may be required to post financial security to insure the completion and the proper performance of the improvements with the Town. The Planning Board shall determine the adequacy of the amount sufficient to cover the cost of the required improvements. The Planning Board may consult with its designated engineer as part of determining adequacy and sufficiency of the financial security.

        ii. Such financial security shall be in a form acceptable to the Town and approved by the Town Attorney as to form, sufficiency, surety, and manner of execution.

        iii. Such performance bonds shall run for a term to be fixed by the Town, but in no case for a longer term than three (3) years.

        iv. If the Planning Board shall decide at any time during the term of the performance bond that certain improvements are no longer warranted, or that some improvements have been installed, or that additional improvements are necessary, the amount of the financial security may be reduced or increased by an appropriate amount to cover the estimated cost of the incomplete improvements or the additional improvements required by the Board.

v. In the event that any improvements have not been installed as required by the Planning Board within the term of such financial security, the Planning Board may thereupon declare the holder of the financial security to be in default and collect the sum remaining payable thereunder; upon receipt of the proceeds thereof, the Town may install the improvements covered by such financial security which are commensurate with the extent of the development of the subject site plan that has taken place, but not exceeding in cost the amount of such proceeds.

vi. If the Planning Board, or an appropriate Town officer appointed by it, shall find upon inspection that any of the required improvements have not been constructed in accordance with the site plan and conditions approved and specified by the Planning Board, then the Developer and/or Owner and the bonding company (if any) shall be severally and jointly liable for the costs of completing said improvements as originally specified by the Planning Board.

E. Safety

1. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.
2. Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Solar Energy System is located in an ambulance district, the local ambulance corps.
3. If Energy Storage Devices are included as part of the Solar Energy System, they shall meet the requirements of any applicable fire prevention and building code when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the Town, and any applicable federal, state, or county laws or regulations.
4. Where deemed necessary by the Planning Board, the Applicant shall ensure emergency access to the Facility Area for local first responders by installing an emergency lock box or similar device, in a location subject to approval by the Code Enforcement Officer and responding fire department(s).

F. Permit Timeframe and Abandonment

1. The Special Use Permit and site plan approval for a Utility-Scale Solar Collector System shall be valid for a period of 36 months, provided that construction is

commenced within that timeframe. In the event construction is not commenced in accordance with the final site plan – as may have been amended and approved – as required by the Planning Board, within 36 months, the applicant may request to extend the time to commence construction for 12 months. Approval of a request to extend the time to complete commence construction shall not be unreasonably withheld by the Town. If having, commenced construction, the owner and/or operator fails to complete construction within 36 months after having commenced construction, the approvals shall expire and a new application begun and any fees resubmitted prior to any construction recommencing. If the owner or operator fails to perform, the Town may notify the owner or operator to implement the decommissioning plan. In such instance, the decommissioning plan must be completed within 150 days of notification by the Town.

2. Cessation of electricity being generated for a period of twelve months constitutes abandonment of the Utility-Scale Solar Collector System project, unless an agreement was previously reached between the Town and the owner/operator and/or construction company in question. Upon cessation of electricity generation of a Utility-Scale Solar Collector System on a continuous basis for 12 months, the Town may notify and instruct the owner and/or operator of Utility-Scale Solar Collector System to implement the decommissioning plan. The decommissioning plan must be completed within 12 months of notification.

3. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, utilize the bond and/or security for the removal of the Utility-Scale Solar Collector System and restoration of the site in accordance with the decommissioning plan. Notwithstanding the foregoing, the Town shall first attempt to secure payment for such costs and expenses from the security made with the Town as set forth herein. In the event the costs incurred by the Town to implement the decommissioning plan are not obtained from the security, the Town shall next attempt to secure payment for such costs and expenses from the operator; however, in the event the Town is not made whole following reasonable attempts to collect such costs and expenses from the operator of the installation, the Town reserves all rights to pursue payment for such costs and expenses from the owner of the real property on which the installation in question is located. Such costs shall be assessed against the property, shall become a lien and tax upon the property, and shall be enforced and collected with interest by the same officer and in the same manner as other taxes.

4. With the consent of the owner, the Code Enforcement Officer, along with the Town Engineer and the Planning Board, may allow the operator to implement the decommissioning plan while allowing the landscaping to remain.

G. Enforcement

Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town of Canajoharie.

Section 5. 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.

Young / Sommer LLC

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April 5, 2023

Via Email & USPS
Town of Root
Town Board
Town Planning Board
1048 Carlisle Road
Sprakers, NY 12166
supervisorroot@yahoo.com
townofrootny@gmail.com

Re: SunEast Comments on Proposed Solar Energy Facilities Law

Members of the Town Board and Planning Board,

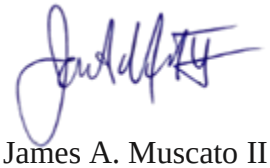
SunEast Flat Creek Solar LLC ("SunEast") is proposing the construction of a utility scale solar project within the Town of Root ("Town"). It is our understanding that the Town Board is considering adopting a new Solar Energy Facilities Law to replace the Town's current solar energy system regulations contained in Chapter 41 of the Town Code as adopted by Local Law No. 1 of 2017.

Attached please find SunEast's comments and suggested revisions to the proposed law, which are intended to provide the Town comments and suggestions regarding the proposed law based on SunEast's experience working with similar communities and regulations in New York. These comments are consistent with the stated purpose of the law: to provide for the siting, development and decommissioning of solar energy systems subject to reasonable conditions to reduce potential impacts on adjoining properties, while also promoting the effective and efficient use of solar energy resources. Our comments and suggested revisions are also intended to avoid confusion by aligning the Town's proposed law with New York State standards and practices.

We appreciate the Town's willingness to consider these comments and the edits we have proposed to the law and we look forward to working with the Town to develop siting criteria and development requirements that both address the Town's concerns and interests in promoting well-

balanced land uses within its community while also working to encourage a potentially economically beneficial use in the Town that also aligns New York's renewable energy policies and laws.

Sincerely,



James A. Muscato II
Counsel for SunEast Flat Creek Solar LLC

Enclosure

cc:

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SOLAR ENERGY FACILITIES LAW
TOWN OF ROOT
LOCAL LAW No. OF 2023

BE IT ENACTED by the Town Board of the Town of Root, in the County of Montgomery, as follows:

SECTION ONE. TITLE

This local law shall be known as the "Solar Energy Facilities Law".

SECTION TWO. PURPOSE

The purpose 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, while promoting the effective and efficient use of solar energy resources.

The town finds that well-planned and suitably located solar energy systems can be beneficial. This law seeks to foster thorough project planning and appropriate siting in support of the Town's objectives of preserving its attractive and cultural landscape, and sustaining its valuable economic and natural resources, particularly agricultural land use, open spaces, natural habitats and fresh watersheds.

SECTION THREE. AUTHORITY

This local law is adopted pursuant to Sections 10 and 22 of the Municipal Home Rule Law.

SECTION FOUR. DEFINITIONS

The following terms shall have the meanings indicated.

ANSI - American National Standards Institute

Battery Energy Storage System - One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a standalone 12-volt car battery or an electric motor vehicle.

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.

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.

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

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.

Lot Coverage - The area measured from the outer edge(s) of the arrays, inverters, batteries, storage cells and all other mechanical equipment used to create solar energy, exclusive of fencing and roadways.

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.

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 and overwintering.

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 setback requirements.

Small-Scale Solar Energy System - Any solar energy system that meets the following provisions:

(a) Is an accessory use or structure, designed and intended to generate energy primarily for a principal use located on site.

(b) Produce up to ten kilowatts (kW) per hour of energy or solar-thermal systems which serve the building to which they are attached, and do not provide energy for any other buildings beyond the lot. Small-scale solar energy systems located on a farm operation (as per AML §301(11) definition of that term) and located in a New York State Agricultural District can produce up to 110% of the farm's needs as per the Department of Agriculture and Markets guidance document.

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 Panel - A photovoltaic device capable of collecting and converting solar energy into electricity.

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.

Utility-Scale Solar Energy System - Solar energy generation facility designed and intended to supply energy into a utility grid for off-site consumption.

SECTION FIVE. APPLICABILITY

1. The requirements herein shall apply to all solar energy system and equipment installations modified or installed after the effective date of this law, excluding general maintenance and repair.

2. Solar energy system installations for which a valid building permit has been issued, or, if no building permit is presently required, for which installation has commenced before the effective date of this law shall not be required to meet the requirements of this law.

3. Modifications to an existing solar energy system that increase the system's area by more than 5 percent (exclusive of moving any fencing) shall be subject to this law.

4. All solar energy systems shall be designed, erected and installed in accordance with all applicable codes, regulations and industry standards as referenced in the State Building Code.

5. To the extent that any other town 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.

6. 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, shall be subject to all substantive provisions of this law and any other applicable laws, codes, ordinances and regulations of the Town of Root, and any other applicable state or federal laws.

SECTION SIX. REQUIREMENTS FOR SMALL-SCALE SOLAR ENERGY SYSTEMS

1. Prior to installing a small-scale solar energy system, a building permit shall be obtained from the Code Enforcement Officer of the Town of Root.

2. The installation of a solar collector or panel, whether attached to the main structure, an accessory structure, or as a detached, freestanding or ground-mounted solar collector, shall meet all requirements of this section.

3. All solar collectors and related equipment shall be surfaced, designed, and sited so as not to reflect glare onto adjacent properties and roadways.

4. A ground-mounted accessory solar energy system shall comply with 100-foot setback requirements.

5. A roof-mounted accessory solar energy system shall be mounted as flush as possible to the roof. To achieve proper solar orientation, panels may exceed the roofline by five feet. Ground-mounted or freestanding solar collector height shall not exceed 15 feet when oriented at maximum tilt.

6. All solar collectors and their associated support elements shall, at the time of installation, be designed according to generally accepted engineering practice to withstand 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.

7. Photovoltaic systems that are integrated directly into building materials such as roof shingles, and that are a permanent and integral part of and not mounted on the building or structure are exempt from the requirements of this article. However, all applicable building codes shall be met and necessary permits obtained. The Code Enforcement Officer may request assistance from the Planning Board to determine whether a solar energy system should be considered exempt or not.

8. In order to ensure firefighter and other emergency responder safety, except in the case when solar panels are installed on an accessory structure less than 1,000 square feet in area, there shall be a minimum perimeter area around the edge of the roof and pathways to provide space on the roof for walking around all solar collectors and panels.

9. Free standing or ground mounted solar collectors are permitted as accessory structures in all zoning districts of the Town subject to the following additional conditions:

    - A minimum 100-foot perimeter buffer, consisting of natural and undisturbed vegetation, shall be provided around all mechanical equipment and solar panel arrays to provide screening to adjacent properties and roadways. The Planning Board may, at its discretion, reduce the buffer to a minimum of 25 feet where sufficient screening exists or is proposed.

    - The total surface areas of all ground-mounted and freestanding solar collectors shall not exceed the area of the ground covered by the building structure of the largest building on the lot measured from the exterior walls, not including patios and decks.

10. 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 Uniform Code of New York state. A building permit and an electrical permit shall be required for installation of Small-Scale Battery Energy Storage Systems.

SECTION SEVEN. REQUIREMENTS FOR UTILITY-SCALE SOLAR ENERGY SYSTEMS

1. Applications, Permits and Approvals Required

A. An application for a solar permit and site plan approval by the Town of Root Planning Board and a town building permit shall be required for all utility-scale solar energy systems. The Planning Board shall concurrently review the application for a solar permit and the site plan.

B. At the earliest possible date in the project planning process, the applicant shall contact the Town's Uniform Code Enforcement Officer to schedule a pre-submission conference with the Planning Board. At this time, the applicant shall provide the opportunity for an on-site visit by Planning Board members.

C. All applications for utility-scale solar energy systems shall be accompanied by applicable fees as may be established by the Town Board. When the Planning Board determines that a review will require engineering, legal, environmental or planning costs, the applicant shall provide an escrow account to pay for such costs. The escrow account shall be in an amount as determined by the Planning Board and shall be replenished when required by the Planning Board. Once the Planning Board has determined the amount of escrow, the account shall be established prior to any further Planning Board review.

D. A public hearing is required in connection with application for a solar permit and site plan review for the solar project and such public hearing will cover both approvals simultaneously to give the public an opportunity to comment on all aspects of the Application. All adjacent property owners within 1000 feet will be notified of the public hearing on the application for site plan approval by receipted mail by the Applicant no later than 10 days before the date of the public hearing and proof of such mailing shall be provided to the Planning Board prior to the public hearing.

E. All applications for utility-scale solar energy systems shall include the following:

i. A site plan prepared by a professional engineer registered in New York State including:
    a. Property lines and physical dimensions of the site;
    b. Location, approximate dimensions and types of existing structures and uses on the site, public roads, and other properties within 1,000 feet of the boundaries of the site;
    c. Location and description of all solar energy system components, whether on site, existing vegetation and proposed clearing and grading of all sites involved. Clearing and/or grading activities are subject to review by the Planning Board and shall not commence until the issuance of the solar permit and site plan review approval, including the completion of the SEQRA process and the filing of the NOI associated with the approved SWPPP;
    d. 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;
    e. Locations of setback distances as required by this law;
    f. All other proposed facilities, including electrical substations, storage or maintenance units, fencing and laydown and storage areas to be used as part of construction;

g. All site plan application materials required by the Site Plan Review Law of the Town of Root. The Planning Board may waive those any items that it deems inapplicable to a solar energy system application.

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

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

iv. A storm water pollution prevention plan (SWPPP) as per NYS DEC requirements to detail storm water runoff management and erosion control plans for the site.

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

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

vii. 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.

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

ix. 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 nighttime 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.

x. 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 fields covering 4 to 40 acres in size, and a one-mile buffer around solar fields greater than 40 acres in size. Positive visibility of the solar field 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 ZVA highlighted.

xi. The results of on-site bird and bat migration, nesting and habitat surveys. Surveys must be conducted during the appropriate seasonal windows during one 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 NYSDEC guidance on appropriate survey methods.

2. Permitting Requirements

Requirements "A" through "O" below shall apply to all utility-scale solar energy systems:

A. Code Compliance

All utility-scale solar energy systems shall adhere to all applicable Town of Root building, plumbing, electrical, and fire codes. Utility scale solar energy systems shall comply with conditions specified in this law.

B. 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 not less than 7 feet in height ~~n eight feet high fence~~ as required by the National Electrical Code. Fencing shall be located inside the tree buffer described in Requirement "D" of this subsection where such tree buffer is established, to the extent practicable.

Comment: This provision should be revised to reflect consistency with the National Electrical Code requirements for fence height, and Section 94-c regulations, which require a fence height of not less than 7 feet. With respect to the provision requiring that fencing be located within the tree buffer described in section "D", it is unclear whether the Town is referring to the tree "buffer" described in section D.1, or vegetation screening buffers described in D.2 and D.3. The Town should clarify which "tree buffer" it is referencing in this provision or whether it generally applies to both. We also suggest that the provision be revised to note that this requirement applies where a tree buffer has been established, and to the extent practicable, as there may be circumstances where an applicant may not be able to comply with this requirement, such as certain safety and security setbacks related to fencing requirements, or wildlife fencing requirements that may be dictated by ORES and/or DEC for avoidance and minimization measures for certain species.

C. 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.

D. Visual Impact

The solar facility, including any proposed off-site infrastructure, shall be located and screened in such a way as to minimize ~~avoid~~, to the extent practical, visual impacts as viewed from adjacent nonparticipating residences, public locations (such as publicly dedicated parklands, rail trails, public hiking paths) and ~~,~~ public dedicated roads and highways~~, residences located on contiguous parcels, or other locations identified by the Planning Board~~. Acceptable screening would include maintenance of existing vegetation, new native vegetative barriers or berms, landscape screen or other opaque enclosures, or any combination thereof acceptable to the Town capable of minimizing and mitigating visual impacts to the above identified locations.~~fully screening the site.~~ The applicant shall ensure the health of ~~guarantee that~~ all plantings that form part of the approved landscape and screening plan by retaining a qualified landscape architect, arborist, or ecologist to inspect the screen plantings for two (2) years following installation in order to identify any plant material that did not survive, appears unhealthy, and/or otherwise needs to be replaced. The applicant will remove ~~be maintained~~ and replace~~d~~ if necessary, plantings that fail in materials, workmanship or growth within two (2) years following the completion of installing the plantings. ~~during the life of the project.~~

Comment: We acknowledge the Town's interest in ensuring a project's visual impact is minimized to the maximum extent practicable. However, some of the provisions in the screening section suggest that a project is required to be "not visible" (such as use of the language "avoid" and "fully screen"), which is not a practical requirement for many reasons. The visual impact of a project at a particular location is influenced by the sensitivity of the surrounding nonparticipating properties potentially impacted, number of potential viewers and the current topography and vegetation associated with a viewpoint. The revisions proposed are intended to create consistency throughout the visual impact provisions of the proposed law, clarify that the requirements for siting facility components and screening are to minimize and mitigate potential visual impacts to non-participating properties and roadways.

With respect to the screening guarantee, the suggested revisions require inspection and replacement of dead or unhealthy plantings that need replacement within a two (2) year timeframe from installation. The proposed revision is consistent with the typical industry warranty, consistent with ORES regulations, which are based on the typical industry warranty and is also consistent with other solar project inspection and replacement requirements permitted in the State. A lifetime replacement standard is overly burdensome and is beyond the average warranty on vegetation survival rates that is typically provided by landscaping companies/nurseries.

~~1. 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.~~

Comment: It is unclear what purpose this provision serves, and what environmental benefits, if any, the Town seeks to achieve by requiring maintenance of a "wild zone" buffer for facility sites that are surrounded by "existing mature trees." A number of other provisions in the proposed law

already address minimization of impacts and do so in a manner more tailored to specific impacts than this provision would. For example, visual impacts are specifically addressed by D. 2. and D.3. and this provision would not provide any additional benefit in terms of visual screening than would the other proposed visual impact/screening provisions. In terms of mitigation of impacts to important ecological resources, proposed section 2.P. below specifically addresses protection of important forest ecosystems, and section 2.G. as well as applicable state and federal regulations provide sufficient protections for wetland and water resources. Also, this provision would require solar developers/operators to control land outside of the solar facility's fenceline to maintain these "wild zones." This unjustifiably restricts the level of landowner control in terms of activities they can conduct on their parcel outside the limits of the solar facility. We suggest that this provision be removed as there are no clear environmental or community benefits that would be added by such a requirement.

~~2.~~1. 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 6~~8~~' tall and 3" in diameter at breast height. It shall be determined and documented by the developer if at the time of planting if any species are threatened due to regional blight, disease, etc. Final decisions on appropriate plantings will be made by the Planning Board.

~~3.~~ Where necessary to minimize and mitigate the visual impacts described in D. above, ~~T~~he solar facility shall provide for the creation of screening ~~a buffer that has an offset~~, ~~double row~~ of densely growing evergreens with the addition of some smaller trees and shrubs where necessary ~~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 or other appropriate shrubs and small trees as determined by a qualified, licensed, arborist, landscape architect, or ecologist.

Comment: These screening requirements as proposed, and more specifically the double row requirement, are impractical and burdensome, and may not actually produce any additional measurable benefit in terms of visual impact minimization and mitigation. While the Town states that "the purpose of the double row is to provide additional screening early while trees are still small", screening can be designed to be effective without the use of a "double row." The double row requirement may in practice, result in overcrowding and make it more difficult to ensure mature growth and the viability of plantings as they grow, and does not allow for the flexibility necessary to tailor a planting plan to the specific visual impact of a given location.

~~4.~~2. The plans shall show maximum buffering and screening of utility-scale solar.

3. The applicant shall demonstrate that the solar energy system will be designed~~, construction, operation, and maintenance of any solar energy system shall~~ to avoid and minimize solar glare exposure at nonparticipating ~~prevent the misdirection and/or~~

~~reflection of solar rays onto~~ neighboring residences~~properties~~, public roads, and public parks~~, and will not result in complaints, impede traffic or create safety hazards in excess of that which already exists~~. The Planning Board reserves the right to individually assess what they deem to be sensitive areas on any proposed solar facility site as part of their review to ensure that negative impacts of solar ray reflection will not result in complaints, impede traffic or create safety hazards~~be prevented~~. All solar panels shall have anti-reflective coating(s) not identified as a hazardous material by the U.S. Environmental Protection Agency, unless an applicant demonstrates the hazardous material is unlikely to cause harm to people, plants or animals when released into the environment. The applicant shall adhere to all federal and state laws, regulations and guidelines regarding PFAS and polytetrafluoroethylene (PTFE) films.

Comments: This provision is overly burdensome and as currently drafted could be interpreted to prohibit any glare from a solar facility, which although may have been unintended, could essentially result in a ban on solar within the Town. To address this, we have proposed revisions that require avoidance and minimization of glare to certain types of properties and clarifies what the impacts intended to be avoided are.

~~5.~~4. All ~~structures and devices~~solar panels used ~~to support solar collectors~~ shall have industry standard~~be~~ anti-~~non~~-reflective coatings. The applicant shall also incorporate other strategies into its assessment of visual impact minimization and mitigation strategies, such as facility color and design and use of wood or steel pole structures for electrical collection and transmission; steel poles shall be self-weathering ~~and/~~or painted a subtle or earth tone color to aid in blending the facility into the existing environment.

Comment: This section does not clarify what should be covered in anti-reflective coating and does not provide any context for the statement "to aid in blending the facility into the existing environment." SunEast's suggested revisions clarify how these requirements would apply to a proposed facility and what the scope of "blending the facility into the existing environment" by framing within the context of specific facility components and the applicant's assessment of visual impact minimization and mitigation strategies.

~~6. Fencing installed for visual screening shall be eight-foot (8') tall, comprised of natural wood poles that mimic the rural aesthetics of the community. Chain link and barbed wire are prohibited.~~

Comment: We suggest that this requirement be removed, as it could be interpreted as a prohibition of chain link or barbed wire fencing in general for solar facilities. Prohibiting chain link or barbed wire fencing for solar facilities would be in direct conflict with other applicable requirements, such as the NEC, and may in some cases conflict fencing requirements that may be required by ORES and NYSDEC to allow for wildlife passage as where appropriate.

E. Panel Height

Ground-mounted solar panel arrays shall not exceed 2015 feet in height when oriented at maximum tilt. ~~except where Solar Energy Systems shall provide sufficient clearance for agrovoltaic or agricultural use of the land.~~

Comment: The height limit currently in the proposed local law is restrictive and may unnecessarily prohibit the use of some of the latest technologies and advancement in solar panel manufacturing. The 94-c regulations establish a height limit of 20 ft., which was set based on a careful consideration of the best practices for siting renewable energy projects, past precedent from older renewable projects and the typical local law requirements in municipalities across the State. The 20 ft limit, especially when considering the fact that under section 94-c visual impact minimization and mitigation efforts are required, is sufficient to balance visual impacts, impacts to agricultural lands, and any potential safety concerns.

Allowing for a greater height of up to 20 ft also creates more of an opportunity for projects to incorporate various a range of agrivoltaics co-use options. While we recognize that the Town has drafted this provision to allow heights greater than 15 ft where the additional height is necessary for agrivoltaics or other agricultural use of the land, under the Section 94-c review process the Town would not have the authority to waive the 15 ft requirement and this provision could create confusion throughout the review of local law compliance/waiver requests under Section 94-c, so we suggest the 20 ft requirement to avoid such confusion.

F. Lot Coverage

A utility-scale solar energy system shall not exceed 80 percent lot coverage, as defined herein.

G. 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.

H. 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 to the extent practicable. Lighting shall be capable of manual or auto-shut off switch rather than motion detection.

I. Access and Parking

Access roads ~~and parking~~ will be provided to assure adequate emergency and service access, and sufficient parking shall be available. Maximum use of existing roads, public and private, shall be made to the extent practicable. Any new access road will be reviewed for fire safety purposes by the Town Building 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 at a level sufficient to allow fire department and emergency medical services access to the solar facility. 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.

Comment: This provision could be interpreted to require a dedicated parking area or lot for solar facilities, so SunEast has suggested a revision which makes clear that sufficient parking shall be made available to clarify that this provision doesn't necessarily require a designated parking area or lot within a facility. Requiring an applicant to have a dedicated parking area or lot within the Facility area may negatively impact the ability of an applicant to effectively maximize generation capacity of the facility, and can create additional environmental and land use impacts associated with the potential clearing and maintenance that may be required creation of a parking area. With respect to snow removal, we suggest that the provision clarify that snow removal is only required to a level sufficient/necessary to allow for fire department and emergency services to access to a facility. This revision is proposed in order to minimize unnecessary snow removal to in turn minimize the impacts associated with snow removal (e.g. soil compaction).

J. 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.~~

Comment: The proposed prohibition on placement of panels on slopes of 15% or greater is unnecessarily restrictive as it limits the available land within the Town on which a solar project can be constructed. It is unclear what this provision is attempting to address, and what community or environmental benefit would be achieved by it. Solar facilities can safely be built on slopes greater than 15%. Furthermore, this provision, when combined with some of the other restrictive land use requirements such as forest/tree clearing, excessive setbacks and the agricultural land cover requirements contained herein, severely restricts the amount of available land where solar is permitted and can be constructed within the Town.

With respect to the prohibition on grading and filling, again, this requirement severely limits the ability of a solar facility to be developed within the Town and on areas that may be optimal for siting while also avoiding impacts to other important resources. Prohibiting grading and filling to alter natural slopes for placement of panel arrays may result in the unintended consequences for example pushing developers to site panel arrays within areas that may be more desirable for agricultural, instead of allowing developers to utilize land with slopes that may make them undesirable for agricultural use.

K. 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.

L. 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.

M. Blasting

Blasting ~~is prohibited~~ for the construction of all utility-scale solar energy facilities shall be minimized to the maximum extent practicable and shall only be permitted where use of alternative technologies/or location of structures is not feasible. Blasting shall be prohibited within five hundred (500) feet of any known existing, active water supply well or water supply intake on a non-participating property.

Comment: Completely prohibiting blasting for the development of all utility-scale solar facilities is unduly burdensome. We suggest that this provision be revised to allow for blasting only in certain, very limited circumstances, where the applicant has demonstrated that blasting cannot be avoided through the use of alternative technologies or alternative locations of the proposed structures. This way, this local law will allow some flexibility to developers to conduct blasting where absolutely necessary for certain facility components, rather than potentially limiting the viability of an entire proposed project that only requires blasting for a specific facility component or area. We have proposed some language for prohibiting blasting within a certain distance of non-participating property water supplies, which may achieve the Town's objective in terms of community benefits/environmental protection without unduly viability of solar development within the Town.

N. Cemeteries

Utility-scale solar energy systems structures and equipment shall avoid rural cemeteries and burial grounds. The applicant shall consult with the town historian to identify any such burial grounds within the project site.

O. Facilities of Water

Utility-scale solar energy systems shall not be installed on town-owned bodies of water.

P. Deforestation

Previously cleared or disturbed areas are preferred locations for solar projects. Core forest blocks (contiguous areas one hundred fifty [150] acres or larger) shall be avoided to the extent practicable. ~~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 and hedgerows may be cut, however clear cutting of trees more than six (6)~~three~~ inches in diameter at breast height in a single contiguous

area exceeding 20,000 square feet is prohibited within core forest blocks. This clearing restriction shall not apply to trees cleared for the access road or collection and transmission lines.
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.

Comment: This tree clearing limitation, as currently drafted, is extremely restrictive. This provision creates a conflict with other land use restrictions proposed in this law, such as the excessive 500 ft setback requirements, slope limitations, and agricultural land use restrictions. As noted elsewhere throughout our comments, when combined these restrictions severely limit the amount of land within the Town where solar can be sited and constructed and could potentially even result in an unintended ban on solar within the Town. This limitation severely limits the landowner's rights on the property, ability of a solar developer to meet generation capacity goals for a given facility, and would result in the need to sign on a much larger number of parcels and spread a proposed facility out across a much larger area in order to meet necessary energy production targets.

Not only does the limit itself negatively impact efficient and smart land use by requiring a facility to spread development out over a much larger area, it also severely restricts an applicant's ability to design a facility in a manner that avoids and minimizes potential environmental impacts the most environmentally conscious with respect to potential impacts and the landowner's rights. Developers should be provided the necessary flexibility to assess where avoidance and minimization of impacts to potential areas within the facility site will result in the most minimal environmental impacts across the site overall, and this provision restricts an applicant's ability to do so by unnecessarily and severely restricting available land for solar, and without achieving any measurable community and environmental benefits in return.

In place of this strict prohibition on tree removal applicable across the entirety of the Town, SunEast suggests the above language which allows for a more tailored approach designed to achieve a specific objective – i.e. protection of a resource with measurable environmental and community benefits such as ecological and biological functions, air, water quality and flood resilience benefits.

Q. Setbacks

There shall be a minimum 100-foot setback ~~500-foot buffer for~~ between any utility scale ground mounted solar panel structures and equipment and the parcel boundary line with any non-participating residential property, 50-foot setback from non-participating non-residential property lines, 50-foot setback from the centerline of a public road, and 250-foot setback from non-participating occupied residences/ ~~or public area~~. Fencing, collection lines, access roads and landscaping may occur within the setbacks.

Comment: As SunEast has stated in comments on other provisions of this proposed law, this requirement, when combined with some of the other limitations (forest clearing limitations, agricultural land use restrictions, slope limitations etc.) severely limits the availability of land within the Town for solar development and could even result in an unintended ban on solar. The

proposed 500-foot blanket setback is extremely limiting, and would require a substantial amount of additional acreage for a proposed facility to meet its energy production goals to make a project financially viable, and would result in unnecessary impacts to sensitive resources which could otherwise be avoided or minimized due to the need to spread a facility out across larger acreage. Therefore, the Town should strive to utilize reasonable setbacks and ensure that as much "low impact" land can be utilized and is not unnecessarily restricted through arbitrary setbacks.

For example, in some instances, 50 ft. is a sufficient setback to property that does not have a homestead for many thousands of feet (non-residential). We have proposed a revised setback that would allow 50 ft. to the property line in this situation but would require 100 ft. to the property line where the project borders a residential property (residential). Finally, we have proposed a 250 ft. setback to non-participating residences rather than the more design restrictive 350 ft. The setback of 250 ft. is consistent with the design standards in the ORES regulations. These distinctions for different types of setbacks in the ORES regulations, rather than the use of single blanket distance setback from all property and structure types, are helpful because they make clear that setbacks have been carefully designed to address potential impacts based on the type of adjoining use/structure.

The standard setbacks set by ORES were established after carefully considering the best practices for siting renewable energy projects, engineering guidelines, what setbacks were used/in place for operating renewable projects and typical local law requirements across the State. The ORES setbacks have been set in order to avoid, minimize to the maximum extent potential impacts to the surrounding community and the environment, and as such relying on those setbacks is sufficient to address those concerns while also allowing for utility-scale solar facilities to be constructed in a manner that is efficient from an environmental impacts and land use management perspective while also maximizing generation capacity. There are no public health and safety benefits associated with greater setbacks, and no significant benefit in terms of viewshed reduction considering the 94-c requirements for visual impact minimization and screening. Larger setbacks require a developer to utilize a much larger number of parcels and additional acreage to accommodate the setback requirements, leading to unnecessary disruption of environmentally sensitive areas, land used for agriculture production, forested areas, and wetlands due to inability to strategically manage land use. Additionally, in the case of an excessively large 500-foot can create long term impacts by creating large unused and oddly shaped sections of land that may be less practicable or economic for continued agricultural use or other potential future uses.

R. 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.

S. Agriculture

Solar energy systems shall limit the use of agricultural areas within their project limits by occupying ~~to no more than~~ no more than 5~~4~~0 percent of the area of soils ~~of the total acreage and~~

~~10 percent of soils~~ classified by the NYS Department of Agriculture and Markets' Agricultural Land Classification as mineral soils groups 1 through 4 within the facility area. All solar energy systems shall adhere to the Department of Agriculture and Markets' Guidelines for Construction Mitigation for Agricultural Lands.

a. Solar Energy System may exceed the fifty ~~forty~~ percent [5~~4~~0%] ~~coverage~~ threshold if it incorporates an onsite activity or program which provides for the use of the land as a Farming Operation. Exceedance beyond the 5~~4~~0% threshold will only be allowed based on the Planning Board determination that the land is being used for a Farm Operation (ex. growing crops or raising livestock). An eighty percent [80%] maximum threshold~~lot coverage~~ will be permitted for solar energy systems that accommodate farming operations, subject to the following conditions:

   i. Fencing shall include gates large enough to accommodate farming equipment; and

   ii. A maintenance barn or shed shall be provided to store farming equipment and supplies; and, if raising livestock

   iii. A barn and shaded areas shall be provided for livestock; and

   iv. A sixty-foot by sixty-foot (60'X60') pond shall be provided for livestock. The pond shall be usable for extinguishing fires on the property.

b. Subject to discretion of the Planning Board, if the landowner demonstrates that – notwithstanding the classification as MSG 1-4~~Prime Farmland~~ – the land cannot reasonably be made profitable as a farming operation due to flooding, high water table, wetlands, saturated soils, erosion, rocky conditions, lack of minerals, poor soil temperature, steep slopes, or similar conditions as approved by the Planning Board, the Solar Energy Facility shall be permitted to occupy eighty percent [80%] of the ~~Prime Farmland~~MSG 1-4 soils within the Facility Area.

c. To the maximum extent practicable, utility-scale Solar Energy Systems located on MSG 1-4 soils~~Prime Farmland~~ shall be constructed, monitored, and decommissioned in accordance with the NYS Department of Agriculture and Markets' "Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands."

Comment: The percent cover requirements proposed in the draft law are inconsistent throughout this section, and it is unclear whether the Town's percent cover requirement in this section applies to "prime farmland" or "mineral soil groups 1-4." SunEast suggests that the Town rely on one of these metrics, the mineral soil groups or MSG 1-4 metric, to resolve confusion and allow for consistency throughout state and local regulations for the protection of highly productive agricultural lands across the State. The term "prime farmland" is no longer the metric that is used within this context, instead the MSG 1-4 metric, which are defined in NYSERDA's Solar Guidebook for Local Governments as "soils recognized by the New York State (NYS) Department of Agriculture and Markets as ***having the highest value based on soil productivity and capability****, in accordance with the uniform statewide land classification system developed by the NYS*

Agricultural Assessment Program." Furthermore, NYSDAM and ORES identified lands with these soil groups as the State's most productive farmland or viable agricultural farmland, as defined in Agriculture and Markets Law § 301. Information regarding mineral soil groups are widely available and are a common metric for assessing potential impacts from solar projects.

Also, SunEast's revisions propose that a 50% threshold be applied for MSG 1-4 soils, rather than the 40% (presumably) prime farmland and 10% MSG 1-4 thresholds proposed in the draft. The limitations contained in this section are extremely restrictive, and assuming it was actually the Town's intent to include both a 40% prime farmland and a 10% MSG 1-4 threshold, could potentially result in solar development being unfeasible within the Town due to the excessive amount of acreage that would be required for a proposed solar development to meet generation capacity targets while attempting to meet the extremely restrictive percent coverage thresholds. Restricting the use of agricultural lands in this manner could result in even greater impacts to agricultural lands and farming operations by requiring facilities to be proposed over much greater areas of land, rather than allowing projects to minimize project footprint to the maximum extent practicable while also achieving energy generation targets.

This provision is also at odds with other requirements contained in this law, such as the forest/tree clearing limitation, 500-foot setbacks, and slope restrictions, and as has been noted throughout the comments, when considered together with these provisions could result in essentially prohibiting solar development within the Town. Also, by severely limiting development on agricultural land in this manner, the Town is restricting property owners personal land plans, who may want to rely on leasing such lands. Allowing property owners to enter into these leasing agreements acts as an essential tool to maintaining the economic viability of their farming operations in the long term and gives them the opportunity to put unused land to productive use and to explore opportunities to allow for farming activities to continue on portions of their properties while also gaining an additional source of income to support their ongoing operations. It also preserves their land for future agricultural operations following the decommissioning of the solar project.

Please consider replacing this section with the suggested language which recognizes the importance of conserving highly productive agricultural lands, identifies mineral soil groups (MSG) 1-4 as the most productive farmland or viable agricultural lands, and balances opportunities for energy development and agricultural protection.

T. Underground Wiring

All transmission lines and wiring associated with a utility-scale solar energy system shall be buried, to the extent practicable, 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.

Comment: Based on the language of this provision, it appears that the Town acknowledges that a developer may not be able to, in all circumstances, place transmission lines underground, and understands that there are certain engineering, construction and environmental constraints that may require the placement transmission lines overhead. Because the Planning Board will not have discretion to waive this requirement itself within the context of Section 94-c review, SunEast proposes the above revisions to address this issue and allow for flexibility within the Section 94-c context.

U. 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.~~

Comment: The Town's proposed provision requires the treatment of participating and nonparticipating residents similarly with respect to noise limits. While the Town may be proposing this requirement out of concern for public health and safety, the Town should note that the distinction between participating and non-participating residences with respect to noise contained in the ORES regulations does not result in any additional associated public health or safety impacts to participating residences and is based on annoyance levels.

Based on past precedents and scientific literature, annoyance for participating residents receiving compensation has been found to be lower than for non-participating residences when exposed to the same noise levels. Furthermore, evidence also shows that a 55 dBA noise level annoyance for participating residents receiving compensation is not greater than annoyance for nonparticipating residents when exposed to a lower 45 dBA noise level. In addition, review of the evidence discussed in WHO's 2009 guidelines showed a zero risk for cardiovascular disease for people exposed to long-term noise levels between 50 dBA Lnight and 55 dBA Lnight during the nighttime period. ORES, in setting its noise standards and distinguishing between participating and nonparticipating residents carefully considered public health and safety concerns and set these standards on the basis that no additional public health or safety risk is posed by allowing for the increased noise limit for participating residences. As such, we recommend that the town revise this provision accordingly.

V. Construction Hours

C~~Pre, post and during c~~onstruction working hours shall be limited to Monday through Saturday ~~Friday~~ between the hours of 7~~8~~ a.m. and 8~~6~~ p.m., and 8 a.m. to 8 p.m on Sunday ~~The Planning Board shall have discretion on whether or not 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 "H" above.

Comment: *While SunEast understands that the Town seeks to limit construction noise to within certain hours of day/days, by limiting the amount of hours/day and days per week that construction is permitted, construction of a proposed facility will take longer overall than it would if construction hours were extended. As such, SunEast proposes that this provision be amended to reflect the construction hour limits as set from in the ORES Section 94-c regulations, as such requirements facilitate expedient construction of a facility which in turn shortens the overall duration of potential construction related impacts on the community. Additionally, as noted throughout other comments, because the Planning Board lacks discretionary authority to render such decision as the one proposed in this provision in the Section 94-c process, we recommend the provision be revised.*

3. Contractual Requirements

The Planning Board may impose such reasonable conditions as are directly related and incidental to the issuance of ~~Prior to obtaining~~ site plan approval of a utility-scale solar energy system. Such conditions may include the execution of the following agreements between~~,~~ the applicant for a utility-scale solar energy system and ~~shall execute the following contractual agreements with~~ the Town, where such agreements are necessary to provide compensation for project impacts that are not otherwise addressed by compliance with Section 94-c regulations (19 NYCRR Part 900) for utility-scale projects subject to Executive Law Section 94-c.

Comment: *Generally, SunEast recommends that this section and its subsections (A through E) be revised to ensure that the agreements that are required are agreements that are necessary to mitigate associated project impacts rather than simply required to demonstrate good faith dealings or act in the form of some type of permit fee or fee assed against the applicant for off-site improvements. While legislative authority exists for the placement of conditions on site plan approvals and special use permits, pursuant to New York Town Law §§ 274-a(4) and 274-b(4), such conditions must be for the purposes of protecting the public health, safety and welfare, relate to the use of the land, are reasonable and otherwise constitutional. However, such authority does not grant the Town the ability to engage in contract zoning where execution of these agreements provides the basis for approval of a proposed facility, the use of these agreements in lieu of impact fee agreements where fees are assess on developers for off-site improvements, which are not statutorily authorized in New York, or the use of zoning to create a de facto tax against a developer.*

A. Road Use

The Planning Board may require the execution of ~~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~~pursuant to the terms of the Road Use Agreement.

Comment: *We recommend that this provision be revised to make this requirement permissive – i.e. where appropriate, an Applicant may be required to enter into a Road Use Agreement. Again, while the Town has the authority to control its property, including its roads, for example by requiring roadways to be maintained in a safe condition throughout project construction, these agreements should provide fair compensation to the Town and should not be used as a form of de facto tax against utility-scale solar developers or provide a basis for approval of the facility.*

~~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.~~

Comment: *SunEast recommends that this subsection be removed in its entirety from the proposed local law. Zoning ordinances that are not within the pattern prescribed by the State's enabling acts have been consistently disapproved by New York courts, including instances where municipalities imposed unauthorized conditions on issuance of site plan approval. The type of indemnification described herein do not relate to an applicant's use of land, and does not appear to be related in any way to the protection of public health, safety and welfare, as authorized by the placement of conditions on special use permits and site plan approvals pursuant to Town Law.*

C. Decommissioning

The applicant shall execute a decommissioning agreement as described in Section Nine 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 requiring a PILOT 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 the above provisions is so that should the operator of the solar energy system default with regard to such PILOT agreement, that such obligation will become the responsibility of the then owner of the property upon which the solar energy system is sited and that failure to satisfy the terms of such agreement will permit the Town to enforce such agreement as against the owner.

E. Community Host

The applicant may~~shall~~ enter into a community host agreement to compensate the Town for specific impacts a utility-scale solar system will have on the Town, including impacts to municipal services and infrastructure, in the event there are specific associated impacts identified other than impacts to roads that are already addressed through the Road Use Agreement described in section 3.A above. ~~providing a public benefit fee to mitigate the additional burdens placed on the town as a result of the project~~. The community host agreement~~fee~~ shall provide a mechanism to enforce and finance mitigation of utility-scale solar system impacts ~~be utilized as a source of funding for prospective costs and expenses~~ associated with and related to anticipated municipal services and additional infrastructure improvements, if any, other than those addressed by the Road Use Agreement. ~~to be provided as a result of the project's presence within the town~~.

Comment: Again, as noted above, while the Town has the authority to place conditions on issuance of site plan approvals to regulate public health, safety and welfare, the requirement of an Host Community Agreement should not constitute a mandate for payment as a prerequisite for zoning approval. As such, SunEast recommends the above revisions to clarify that the purpose of the Host Community Agreement is to provide compensation to the Town for impacts directly associated with the project, other than those already addressed by a Road Use Agreement.

4. 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.

B. Ownership Changes

If the owner or operator of the solar energy system changes or the owner of the property changes, the special use permit shall remain in effect, 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.

C. Annual Report

On a yearly basis, for compliance with its special use permit, 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 report shall be submitted no later than 30 days after the end of the calendar year.

Comment: SunEast proposes this revision to clarify that this provision is intended to apply to solar facilities that have obtained local permits and approvals for development and operation/are not permitted through the Section 94-c process. Local permit compliance and reporting requirements of this nature are not applicable to facilities that have obtained Section 94-c siting permits from ORES, as such facilities are overseen by ORES and subject to compliance and other supplemental filing requirements pursuant to Section 94-c's implementing regulations.

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.

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 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.

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

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.

SECTION EIGHT. ENERGY STORAGE SYSTEMS

A. Energy Storage. Solar Thermal Systems are encouraged for the storage of energy in lieu of Battery Energy Storage Systems. The method and specifications shall be shown on the site plans and described in a project narrative to include the potential

environmental impacts of the storage system. The decommissioning plan shall include removal of the proposed storage system.

B. Battery energy storage systems with capacity of more than 600 KWh 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:

i. UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail Applications),
ii. UL 1642 (Standard for Lithium Batteries),
iii. UL 1741 or UL 62109 (Inverters and Power Converters),
iv. Certified under the applicable electrical, building and fire prevention codes as required.
v. 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 NINE. 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 reasons other than force majeure events, curtailment or other events dictated by the utility or the New York Independent System Operator (NYISO), for an additional 12 consecutive months, the system shall be deemed to be abandoned and shall be decommissioned within twelve (12) ~~six~~ months by the owner or operator. A decommissioning plan shall be submitted as part of the solar 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:

Comment: SunEast proposes the time to complete decommissioning be extended from the proposed six (6) months to a twelve (12) month period, to allow for sufficient time for a facility owner to implement its decommissioning and site restoration plan. This recommendation is in line with what has been proposed in other local solar laws and is consistent with the recommended timeframe in NYSERDA's Solar Guidebook – Model Solar Energy Local Law. We also suggest the addition of proposed language to clarify that the cessation of system operations due to force majeure events, curtailment or other events dictated by the utility or the NYISO, should not be considered abandonment triggering decommissioning, as ordering equipment and repairs necessary to remedy damages caused to the system by a force majeure event may in some cases take longer than 12 months, and curtailment of system operations by the utility or NYISO may be necessary in certain situations outside the control of the system operator.

a. The removal of all energy facilities, structures and equipment including any subsurface wires and footings from the parcel to a depth of four (4) feet below grade. Any access roads created for building or maintaining the system shall also

be removed and re-planted with vegetation where appropriate, unless otherwise specified by the landowner.

*Comment: The proposed requirement for removal of **all** facility components is unduly burdensome and can result unnecessary environmental impacts and soil disturbance to a facility site with no added benefit from enforcing such a requirement. This requirement is much more stringent than what is required by NYSDAM for decommissioning of projects within agricultural lands, which requires removal of all above ground structures, underground utilities, concrete piers, footers or other supports to a depth of 48 inches. As such, we recommend that this provision be revised to require removal to a depth of four feet below grade which is sufficiently protective of land resources/soil without causing associated environmental and soil disturbance impacts that are not necessary.*

Furthermore, with respect to the requirement for removal of access roads, we recommend that the language be revised slightly to allow for flexibility. There maybe some instances where there is some other beneficial use associated with keeping certain access roads in place after the life of the has ended, or a landowner may request to have specific access roads kept in place for future use of the property and does not want to expend their own resources to develop them after decommissioning.

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.~~

Comment: Not including an allowance for salvage value in the decommissioning provision "penalizes" developers and does not allow materials that have real and identifiable value from being included in the decommissioning calculation. Furthermore, if exclusion of salvage is based on concerns relating to fluctuations in the estimates used, this can be addressed through a review requirement by a professional engineer (5-yr proposed in revisions below), which allows for updates to salvage estimates should those estimates change in the future. For these reasons, we suggest that the exclusion of salvage value be reconsidered.

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

~~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.~~

d. A plan containing specific measures to be implemented to achieve final site restoration of~~for restoring~~ the property ~~to its pre-installed condition~~, including grading and vegetative stabilization ~~to eliminate any negative impacts to surrounding properties~~, and, where facility is located on agricultural lands such plan

shall be in compliance with NYSDAM Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands.~~if it was previously used for farming, with vegetation suitable for farming purposes, i.e. a hay field, crops or grazing.~~

Comment: The suggested revisions for subsections (c) through (d) are intended to provide clear, measurable metrics for site restoration. The Town's current use of the terms "restore the property to its pre-installed condition," "repair any damage caused to the property" do not clearly outline what is required in terms of site restoration. ORES has set requirements contained in 19 NYCRR §900-2.14 that thoroughly address the requirements for site restoration, including requirements that such plan address safety and removal of hazardous conditions, aesthetics, environmental impacts, and potential future uses for the site, among other factors, and utility scale solar that undergoes review through the Section 94-c review process must comply with those requirements.

Specifically, with respect to the requirement that lands previously used for farming be seeded with vegetation suitable for farming purposes, we recommend that this be revised to require compliance with NYSDAM Guidelines which outline decommissioning and site restoration standards for projects on agricultural lands. The proposed provision restricts the ability of a landowner/agricultural producer to make their own determination as to how they would like their property seeded for future use. NYSDAM Guidelines allows for landowner/agricultural producer participation in this determination, by requiring all agricultural areas from which vegetation was removed or destroyed be seeded with seed mix ***specified by the landowner/agricultural producer*** *or as otherwise recommended in NYSDAM's fertilizer, lime and seeding guideline.*

e. 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 bond or security shall be 11~~2~~5 percent of the estimated cost of removal of the solar energy system and restoration of the property, less the projected salvage value of facility components, and shall be updated every fifth year to adjust for inflation or other cost increases. ~~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.

Comment: The proposed structure of the amount of financial security required, including the 25% contingency requirement, 2% annual escalation fee, and prohibition of including salvage in the cost estimate is onerous and also inconsistent with other local laws being adopted by local municipalities in New York and inconsistent with the regulations adopted by ORES. A 25% contingency requires significantly more money than would ordinarily be needed for decommissioning be set aside for the life of the project. For example, assuming a decommissioning cost of $5,000,000, an applicant would need to obtain a financial security in the amount of $6,250,000 to account for the 25% contingency requirement and pay the costs of maintaining that security over the life of a project, an extremely burdensome and unjustified additional expense. This does not include the increased costs that would result from the 2% annual escalation fee which would further increase this amount and the cost associated with management of the security. However, the increased contingency is not reasonable or necessary to ensure sufficient funds are available in the unlikely event the developer cannot decommission the project at the end of its useful life. A 15% contingency, particularly when combined with a 5-year review and update requirement, is more than sufficient to account for potential increases in costs associated with inflation or other cost changes. SunEast has proposed text that continues to provide a contingency in the event that something unforeseen occurs within a 5-year review cycle for the financial security and new text providing for salvage calculation.

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 TEN. MAINTENANCE

1. Annual Update

a. The owner / operator shall present a facility update to the Town Board annually, in the month of March.

b. One month prior to the March Town Board meeting the owner / operator shall submit an updated registration form for the facility which provides contact information for all responsible parties: the owner, operator, engineer, and local property management.

2. Maintenance

a. The applicant, or a designated representative, shall~~A Property Management company with a business address within fifty miles of the site shall~~ be responsible for receiving town notices and performing maintenance at the facility.

Comment: It is unclear what the purpose requiring a property management within a business address within 50 miles is. Applicants proceeding through the Section 94-c review process are required to have a vegetation management plan in place for the life of a facility that addresses all aspects of facility maintenance. Restricting an applicant to hiring a property management company within 50 miles of the facility could pose challenges in terms ensuring that an applicant is able to hire/subcontract professionals to address all of its facility maintenance needs, and could potentially lead to negative impacts on facility maintenance.

b. The Facility shall be maintained in accordance with the approved Site Plan and Special Use Permit, as well as provisions in the Town of Root Solar Law and the New York State Uniform Code.

c. The Facility landscaping shall be properly maintained. An arborist, landscape architect, or ecologist shall be hired for two (2) years following installation of vegetation screening to inspect screen plantings and remove and replace plantings that failed, as further described in Section 2.D. ~~to ensure that trees shall be trimmed, pruned or replaced in-kind as necessary~~. The applicant shall also have a vegetation management plan in place, which shall include vegetation management recommendations based on on-site surveys of vegetation cover types. Proof of maintenance shall be submitted to the Town Code Enforcement Officer and to the Town Board during the annual update.

Comment: We have proposed revisions to make this provision consistent with recommended changes to 2.D. above, which aligns the Towns requirements with landscape/arborist industry standards. Please refer to our comment above on 2.D.

d. Damage to the Solar Energy Storage facility shall be addressed promptly and contingency plans shall be implemented in response to occurrence of a fire emergency or a hazardous substance incident, as outlined in the Facility's safety response plan. ~~and testing performed for the potential leaching of chemicals into groundwater or nearby water bodies. Testing results shall be~~ Proof of implementation of appropriate contingency plans shall be submitted to local emergency management officials~~the Town Code Enforcement Officer~~.

Comment: The Town's requirement to test for potential leachate into groundwater and nearby water bodies is overly burdensome and is included here without any reference to its purpose or when it is required. For this reason, SunEast recommends that this provision be revised to require implementation of response to a fire or hazardous substance incident in a manner consistent with a safety response plan, and reporting on such implementation to local emergency management officials rather than the CEO.

This is based on the assumption that, by including a testing requirement in the event of "damage" to the facility, the Town's intent is to ensure that in the event certain incidents occur at a facility, the appropriate measures are being taken to properly address the situation and ensure public health and safety are protected. A blanket requirement for "testing for potential leaching of chemicals into groundwater or nearby waterbodies" in the event of "damage" would not be the

appropriate method to achieve this goal. As such, we've recommended that demonstration of compliance with safety response plan protocol be required, as a safety response plan would lay out the required procedures applicable to each specific type of incident based on state and federal requirements and industry standards, and is better designed to ensure environmental, public health and safety standards are met than a general groundwater/waterbody testing requirement.

3. Annual Inspections

a. Annual inspections of the site shall be conducted by the Code Enforcement Officer. The owner / operator shall make the Facility available to the Town for inspection and the Property Manager shall be available to provide access to the Facility, address any maintenance issues, submit proof of compliance and to schedule inspections.

4. Penalties

a. In the event the facility does not meet the standards of the Town of Root solar law or NYS Uniform Code provisions, the Town code enforcement officer is authorized to administer and enforce the provisions.

SECTION ELEVEN. 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 TWELVE. 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.

Young / Sommer LLC

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January 12, 2024

Via Email and USPS
Town of Root
Town Board
1048 Carlisle Road
Sprakers, NY 12166
supervisorroot@yahoo.com
townofrootny@gmail.com

Re: Flat Creek Solar Project, Local Law Consultations

Dear Town Board,

SunEast Flat Creek Solar LLC ("Flat Creek Solar" or "Applicant") is proposing to construct and operate the Flat Creek Solar Project (the "Project"), an up to 300 MW AC solar photovoltaic facility (the "Facility") in the Towns of Canajoharie and Root, Montgomery County, New York. The Facility is anticipated to include single-axis tracker solar panels, power inverters to convert electricity from direct current (DC) to alternating current (AC), permanent access roads, and collection lines. The Facility will also include a substation and switchyard to deliver electricity to the existing New York Power Authority 345 kV transmission line #352.

The Facility is consistent with State policy encouraging the development of clean energy and renewable resources as a tool in combating climate change, curbing harmful air pollution, and greening New York State's economy. The Facility is expected to also provide an economic stimulus to the area during construction by providing jobs and local contracts for goods and services. During operation, the Facility is expected to offer long-term highly skilled operational positions and significant long-term economic benefits through lease revenue to local landowners and property tax revenue to the community.

In April 2020, New York enacted the Accelerated Renewable Energy Growth and Community Benefit At (the "Act"). The Act builds upon the State's Climate Leadership and Community Protection Act of 2019 ("CLCPA") which was established to fight climate change and establish nation-leading requirements for achieving 70% of statewide electrical generation from renewable energy sources by 2030. The Act also includes a new process for reviewing permitting

applications for renewable energy projects, the Section 94-c process (which provides an alternative to the Article 10 process for renewable energy projects) and establishes the Office of Renewable Energy Siting (the "Office" or "ORES"), which is devoted to the siting of large-scale renewable energy generation facilities. The Flat Creek Solar Project is proceeding through the Section 94-c process to obtain a siting permit for the proposed Facility from ORES.

Section 94-c expressly preempts local procedural requirements, such as permits and approvals, which would otherwise be required by the host municipalities for construction and operation of the Facility (i.e., site plan, special use permit or variance approvals). However, local substantive requirements (i.e., setbacks, height limits, lot coverage requirements) will still be applied to the Facility, unless ORES elects to not apply the requirements because it finds them, as applied to the Facility, to be unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the proposed Facility.

Section 94-c requires applicants to consult with local municipalities to determine what local substantive requirements apply to the Facility and whether design changes to the Facility can avoid the need to request waivers of certain local laws from ORES. Flat Creek Solar has reviewed potentially applicable local ordinances, laws, resolutions, regulations, standards and other requirements of a substantive nature applicable to the construction or operation of the proposed Facility. We understand that the Town is proposing the adoption of a new Solar Energy Facilities Law and is in the final stages of the local law review process. As such we have identified provisions of the proposed law (version 2023-08-02), in the list below as containing potentially applicable substantive law provisions. We have not identified any other Town of Root applicable local laws, ordinances, resolutions, regulations or standards in our review. We appreciate the Town reviewing this list and confirming, in writing, that there are no other applicable local laws and that the relevant substantive requirements have been accurately identified. We have also identified potentially applicable provisions of the Town's current solar energy systems law, *Local Law No. 1 of 2017 a Local Law to Regulate Solar Energy Systems*, from which the Applicant may need to seek waivers in the event the proposed Solar Energy Facilities Law is not adopted prior to Flat Creek Solar's Section 94-c Application. This list is attached in Appendix A.

In addition, this letter is intended to provide you with an overview of the Facility's compliance with substantive provisions of applicable local laws and identifies the laws the Applicant may need to seek a waiver from ORES.

Solar Energy Facilities Law
(Proposed Version 2023-08-02)

SECTION ONE. TITLE *through* **SECTION THREE. AUTHORITY**

These sections are procedural and/or do not contain substantive requirements applicable to the Facility.

SECTION FOUR. DEFINITIONS

This section contains the definitions used in the Solar Law. There are no substantive requirements applicable to the Facility in this section.

Based on the definitions of terms used in this local law the Facility would be classified as a "Utility-Scale Solar Energy System" which is defined as a "[s]olar energy generation facility designed and intended to supply energy into a utility grid for off-site consumption." Other definitions are addressed where relevant throughout this letter.

SECTION FIVE. APPLICABILITY

1. The requirements herein shall apply to all solar energy system and equipment installations modified or installed after the effective date of this law, excluding general maintenance and repair.
2. Solar energy system installations for which a valid building permit has been issued, or, if no building permit is presently required, for which installation has commenced before the effective date of this law shall not be required to meet the requirements of this law.
3. Modifications to an existing solar energy system that increase the system's area by more than 5 percent (exclusive of moving any fencing) shall be subject to this law.

   These sections are procedural and/or do not contain substantive requirements applicable to the Facility.

4. All solar energy systems shall be designed, erected and installed in accordance with all applicable codes, regulations and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code ("Uniform Code"), the NYS Energy Conservation Code ("Energy Code"), and the Town's code and requirements.

   Facility Status: The Applicant anticipates that the Facility will be designed in compliance with the Uniform Code and the Energy Code, to the extent applicable, and the Town's code and requirements, to the extent applicable and with the exception of local law provisions for which the Applicant is granted waivers from ORES.

5. To the extent that any other town 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.

   This section is procedural and/or does not contain substantive requirements applicable to the Facility.

6. Issuance of approvals by the Planning Board shall include review pursuant to the State Environmental Quality Review Act and regulations.

   This section is procedural and is superseded by Section 94-c.

7. Review and written concurrence from the responding fire district shall be provided. In the discretion of the Planning Board, an emergency response plan and/or first responder training may be required. Final approval or issuance of Building Permits subject to the discretion of the Planning Board's discretion and may be subject to any appropriate and reasonable conditions to be determined upon the circumstances of the application process.

   This section is procedural and is superseded by Section 94-c.

8. 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, shall be subject to all substantive provisions of this law and any other applicable laws, codes, ordinances and regulations of the Town of Root, and any other applicable state or federal laws.

This section is procedural and/or does not contain substantive requirements applicable to the Facility. Pursuant to Section 94-c, ORES may elect to not apply, in whole or in part, any local law or ordinance which would otherwise be applicable if it makes a finding that, as applied to the proposed Facility, it is unreasonably burdensome in view of the CLCPA targets and the environmental benefits to the proposed Facility. In compliance with the requirements of the Section 94-c regulations, through this letter, the Applicant is initiating consultations with the Town of Root on applicable substantive provisions of local laws and has identified the substantive local law provisions for which it anticipates the need to seek waivers for from ORES.

SECTION SIX. REQUIREMENTS FOR SMALL-SCALE SOLAR ENERGY SYSTEMS

This section does not apply to the Facility, as the Facility is a Utility-Scale Solar Energy System under the Solar Law.

SECTION SEVEN. REQUIREMENTS FOR UTILITY-SCALE SOLAR ENERGY SYSTEMS

1. Applications, Permits and Approvals Required

Subsections A. through E. are procedural permit application requirements and are superseded by Section 94-c.

While the application requirements for utility-scale solar energy systems identified in Subsection F. are largely procedural, to the extent that some of those requirements also contain substantive provisions, they are addressed below.

F. All applications for utility-scale solar energy systems shall include the following:

i. A site plan prepared by a professional engineer registered in New York State including:
   a. Property lines and physical dimensions of the site;
   b. Location, approximate dimensions and types of existing structures and uses on the site, public roads, and other properties within 1,000 feet of the boundaries of the site;
   c. Location and description of all solar energy system components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved. Clearing and/or grading activities are subject to review by the Planning Board and shall not commence until the issuance of the solar permit and site plan review approval, including the completion of the SEQRA process and the filing of the NOI associated with the approved SWPPP;
   d. 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;

e. Locations of setback distances as required by this law;
f. All other proposed facilities, including electrical substations, storage or maintenance units, fencing and laydown and storage areas to be used as part of construction;
g. Erosion and sediment control and storm water management plans prepared to NYS Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.
h. Trails located on the site that are part of the Statewide Snowmobile Trail System.
i. Historic sites listed on the National and/or State Register of Historic Places, or those Eligible for listing, within the site and those within a 1-air mile radius of the site.
j. All site plan application materials required by the Site Plan Review Law of the Town of Root. The Planning Board may waive those any items that it deems inapplicable to a solar energy system application.

ii. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Utility-Scale Solar Collector System. Such information of the final system installer shall be submitted prior to the issuance of a building permit.
iii. Name, address, contact information, and signature of the project applicant, as well as the property owners, demonstration their consent to the application and the use of the Utility-Scale Solar Collector System.
iv. Certification from the utility that the interconnection is viable.
v. Nameplate Capacity of the Utility-Scale Solar Collector System (as expressed in MW).
vi. A three-line electrical diagram detailing the entire Utility-Scale Solar Collector System layout, including the number of Solar Panels in each ground-mount array, solar collector installation, associated components, inverters, electrical interconnection methods, and utility meter, with all National Electric Code compliant disconnects and over current devices. The diagram should describe the location and layout of all Energy Storage Device components, if applicable, and should include applicable setback and other bulk and area standards.
vii. A preliminary equipment specification sheet that documents all proposed Solar Panels, system components, mounting systems, racking system details, battery energy storage systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of a building permit.
viii. Documentation of access to the project site(s), including location of all access roads, gates, parking areas, etc.

Subsections (i) through (viii) are procedural and are superseded by Section 94-c.

ix. A storm water pollution prevention plan (SWPPP) as per NYS DEC requirements to detail storm water runoff management and erosion control plans for the site.

Facility Status: To the extent that this section contains a substantive provision requiring the Applicant to prepare a SWPPP, the Applicant will comply by complying with the requirements of the Section 94-c regulations. Pursuant to 19 NYCRR §900-2.14(c)(1), the Applicant will prepare a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the applicable New York State Pollution Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity and the New York State Standards and Specifications for Erosion and Sediment Control. Additionally, to the extent not covered by the requirement to prepare a SWPPP in accordance with the applicable New York SPDES General Permit for Stormwater Discharges from Construction Activity and the New York State Standards and Specifications for Erosion and Sediment Control, the Applicant will prepare a preliminary plan, in accordance with the New York State Stormwater Management Design Manual identifying post-construction stormwater management practices, per 19 NYCRR §900-2.14(c)(2).

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

This section is procedural and is superseded by Section 94-c.

xi. A Property Operation and Maintenance Plan that describes continuing site maintenance, anticipated dual-use, and property upkeep, such as mowing and trimming.

Facility Status: To the extent that this section requires the Facility to have an Operation and Maintenance Plan in place, the Facility will be in compliance with this section by complying with Section 94-c regulations. 19 NYCRR §900-10.2(e)(2) and (3) require the Facility to have a Construction Operations Plan and a Facility Maintenance and Management Plan in place, which must be submitted to ORES as pre-construction compliance filings.

xii. A Decommissioning Plan signed by the owner and/or operator of the Solar Energy System that shall address the following:

Facility Status: To the extent that this section requires the Applicant to have a Decommissioning Plan in place, the Applicant will comply with this requirement by preparing a Decommissioning and Site Restoration Plan which it will submit as part of its Section 94-c Application. In compliance with 19 NYCRR §900-2.24, the Applicant will prepare a Decommissioning and Site Restoration Plan which will address: (1) safety and the removal of hazardous conditions; (2) environmental impacts; (3) aesthetics; (4)

recycling; (5) potential future uses for the site; (6) funding; and (7) schedule.

1. Cost estimate and description and form of financial surety as described in Section Nin of this law.
2. The time required to decommission and remove the Solar Energy System and any ancillary structures.
3. The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.
4. The cost of decommissioning and removing the Solar Energy System, as well as all necessary site remediation or restoration.

   Subsections (xii)(1) through (4) are procedural and are superseded by the requirements for the Decommissioning and Site Restoration Plan contained in Section 94-c regulations at 19 NYCRR §900-2.24.

5. Removal of all above-ground solar energy equipment, structures, and restoration of areas previously used for agricultural production, according to recommendations by the owner, leasing agricultural provider, the Soil and Water Conservation District, the Town Engineer, the NYSDAM, and/or other qualified entity; remove of concrete piers, footers, or other support to a depth of 48 inches below the soil surface; and removal of access roads, unless otherwise specific by the owner and subject to approval during site plan review.

   Facility Status: To the extent this section contains substantive provisions requiring the removal of all above-ground solar energy equipment,[1] structures, and access roads, the Applicant anticipates that it will comply with this requirement. The Applicant also anticipates compliance with the substantive provision requiring removal of below ground piers, footers or other support to a depth of 48 inches below soil surface.

   To the extent that this section requires proposed restoration to be in accordance with recommendations of the owner, leasing agricultural provider, the Soil and Water Conservation District, the Town Engineer, NYSDAM and/or other qualified entities, this requirement is procedural and is superseded by Section 94-c. ORES is the entity authorized under Section 94-c to review and approve the Applicant's Decommissioning and Site Restoration Plan. The Applicant notes that the Decommissioning and Site Restoration Plan will be in compliance with the NYSDAM "Guidelines for Solar Energy Projects-Construction Mitigation for Agricultural Lands" date 10/18/2019, to the extent applicable.

[1] Section Four of the Solar Law defines "solar energy equipment" as "[e]lectrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity."

6. Restoration of the surface grade and soil after equipment removal and stabilization or revegetation of the site as necessary to minimize erosion.

   Facility Status: To the extent that this section contains a substantive requirement for site restoration as part of decommissioning to minimize erosion, the Applicant anticipates that the Facility will comply with this requirement.

7. The plan to dispose or recycle all waste generated from the decommissioning of the solar energy system pursuant to local, state, and federal solid waste regulations.

   This section is procedural and superseded by Section 94-c. As noted above, the Applicant's Decommissioning and Site Restoration Plan will include the information required by the Section 94-c regulations, at 19 NYCRR §900-2.24, which address recycling.

8. The provision of a decommissioning security, whether cash, an irrevocable letter of credit or another form acceptable to the Town, which shall adhere to requirements of Section 9 (2) of this law.

   Facility Status: The Applicant will comply with the requirement to establish a decommissioning security, but to the extent this section requires compliance with Section 9(2) of the Solar Law, please refer to the discussion relevant to that section regarding the need for a waiver.

xiv. 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.

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

Subsections (xiv) and (xv) are procedural and are superseded by Section 94-c.

xvi. 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 nighttime 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. The 1-hour average noise generated from the Solar Energy Equipment/System shall not exceed a noise level, as measured at the outside wall of any non-participating residence or occupied community building, based on current (45dBA) or future recommendations from the World Health Organization. Noise levels must not have adverse or unreasonable impacts on surrounding homes or properties.

Facility Status: The procedural provisions in this section, which specify the methodology for the sound study to be conducted, are procedural and

superseded by Section 94-c. The Applicant is conducting a noise study consistent with the methodology specified in the Section 94-c regulations at 19 NYCRR §900-2.8.

The Applicant anticipates the need to seek a waiver from the substantive provision in this section, which prohibits the 1-hour average noise level generated at the Facility from exceeding a noise level, as measured at the outside wall of any non-participating residence or occupied community building, based on current (45dBA) or future recommendations from the World Health Organization. This requirement does not provide a clear, measurable standard with which the Applicant can demonstrate compliance. In addition to the fact that the WHO Guidelines for Community Noise (1999) and the more recent WHO Guidance on Environmental Noise (2022) do not provide sound pressure level recommendations applicable to solar facilities, requiring compliance with future WHO recommendations would be technically impossible to implement since noise limits are taken into consideration in facility design and it would be impossible at the design stage to account for unknown future WHO recommendations on noise limits. The numerical noise limit is also inconsistent with the noise limit requirement set by ORES.

The Applicant anticipates that, by designing the Facility to meet the Section 94-c noise standards, the Facility will be in compliance with the general requirement that noise levels must not have adverse or unreasonable impacts on surrounding homes or properties. The Section 94-c limits include, among others, a maximum noise limit of forty-five (45) dBA Leq (8-hour) at the outside of any existing non-participating residence and a maximum noise limit of 40dBA Leq (1-hour) at the outside of any non-participating residence from the collector substation equipment. ORES developed these noise limits to protect public health and safety as well as property rights, carefully considering the best practices for siting renewable energy projects and past precedent from prior renewable energy permit proceedings.

xvii. Utility-Scale Solar Systems shall be required to submit documentation addressing Screening and Visibility including the following:

1. 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 fields covering 4 to 40 acres in size, and a one-mile buffer around solar fields greater than 40 acres in size. Positive visibility of the solar field 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 ZVA highlighted.

   This section is procedural and is superseded by Section 94-c.

2. A visual assessment of the visual impacts of the Solar energy Equipment/System on public roadways, historic resources, scenic resources, important corridors, adjacent properties, and other sensitive receptors as may be identified pursuant to the application requirements and overlays, maps, an/or as identified by the Planning Board. The visual assessment shall generally conform to the most current NYS DEC policy on Assessing and Mitigating Visual and Aesthetic Impacts ("Visual Policy"). At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital viewshed report, may be required to be submitted by the applicant. The Planning Board may waive or modify the requirements set forth in this section for Solar Energy Equipment/System with a Facility Area small than 10 acres.

   Facility Status: The procedural provisions of this section, specifying the methodology for conducting the visual impact assessment (VIA) and discretion of the Planning Board to identify sensitive receptors, modify requirements of and approve the VIA, are superseded by Section 94-c.

   To the extent that this section contains a substantive requirement requiring the Applicant to prepare a VIA that assess visual impacts on visually sensitive resources, by complying with the requirements of Section 94-c, the Applicant will comply with this section. Pursuant to 19 NYCRR §900-2.9, the Applicant will prepare a VIA to determine the extent and assess the significance of facility visibility. The VIA will address various factors, including but not limited to: (1) the character and visual quality of the existing landscape; (2) the visibility of the Facility and glare; (3) the visibility of all above ground interconnections and roadways; (4) proposed facility lighting; (5) the nature and degree of visual change resulting from construction and operation of the facility; (6) a description of all visual resources that would be affected by the Facility.

   Prior to submitting its Section 94-c Application, the Applicant will consult with the Town in selecting important or representative viewpoints to include in the VIA. Viewpoint selection will be based on various criteria, including but not limited to: (1) representative or typical views from unobstructed or direct line of sight views; (2) significance of viewpoints, designated scenic resources, areas or features, which typically include but are not limited to landmark landscapes; conservation easement lands; Federal and State scenic byways; State parks; sites listed or eligible for listing on the National or State Registers of Historic Places; high use public areas.

3. A screening & landscaping plan that demonstrates the landscaped buffer will provide year-round screening so that, to the maximum extent practicable, the Solar Energy Equipment/System is not visible from

roadways and adjacent nonparticipating properties, The plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the landscaping, berms, grading, structures, architectural features, or other screening methods that will harmonize with character of the property and surrounding area, mitigate adverse aesthetic effects, and screen the system from important views or vistas. The plan shall use native and noninvasive plant species to promote habitat for native wildlife species and foraging habitat beneficial to game birds, songbirds, and pollinators. Evergreen tree plantings may be required to screen portions of the site from residential properties, roadways, and other important natural resources, viewsheds, and/or receptors, as may be identified by the Planning Board. If the buffer utilizes vegetative planting, the plantings shall conform to the requirements of Section 7(2)(D)(2) of this law. The buffer shall obtain a height of at least 10 feet within five growing seasons. Invasive species shall not be planted as part of the landscape buffer.

Facility Status: To the extent that this section includes procedural provisions (i.e., discretion of Planning Board to determine where evergreen plantings may be required, and the information that must be covered by the plan), these procedural provisions are superseded by Section 94-c, as ORES is the entity that will be approving the planting plan. As noted in subsection (2), the Applicant will consult with the Town in assessing visual impacts.

As part of its Section 94-c Application, the Applicant will develop a planting plan, subject to ORES approval, designed to screen the Facility substation, POI switchyard and Facility components from sensitive resources, as appropriate to the Facility setting. While the Applicant anticipates that the planting plan will comply with certain requirements in this section, including the requirement that the buffer obtain a height of at least 10 feet within five growing seasons, that vegetation included in proposed screening consist of native and noninvasive species/invasive species not be planted as part of the landscape buffer, the Applicant may need to seek a wavier from the remaining requirements of this section.

The requirement, that the Applicant, to the maximum extent practicable, provide year-round screening that ensures that the Facility will not be visible from roadways and adjacent non-participating properties, is unduly burdensome and impossible to demonstrate compliance therewith for several reasons. The visual impact of a project at a particular location is influenced by the sensitivity of the surrounding nonparticipating properties potentially impacted, number of potential views and the current topography and existing vegetation associated with a viewpoint. The focus of visual impact minimization and mitigation efforts should be on sensitive resources, and not every roadway or adjacent nonparticipating property with visibility of the

Facility is necessarily a sensitive resource that would be negatively impacted by such visibility. Furthermore, the planting plan will be designed to minimize and mitigate potential visual impacts to sensitive resources but cannot be designed to guarantee that the Facility will be completely invisible from roadways and adjacent nonparticipating properties.

Additionally, this section states that the Planning Board may require evergreen plantings to screen the Facility from residential properties, roadways, and other important natural resources, viewsheds, and/or receptors, as may be identified by the Planning Board. As noted above, the Planning Board's discretionary authority is superseded by the Section 94-c process. As a result, it is unclear based on this provision whether/to what extent evergreen plantings are required. If this provision is to be interpreted to require all screening to consist of evergreens or require evergreen screening to be installed where existing vegetative screening provides sufficient minimization to sensitive receptors, the Applicant may need to seek a waiver from ORES.

4. The Planning Board may elect to waive some or all screening and landscaping requirements in select locations based on the applicant's demonstration of non-impact or impact mitigation on adjacent parcels.

   This section is procedural and is superseded by Section 94-c.

5. A vegetation management plan which ensures that any landscaping and tress that will die off will be replaced by the following growing season with the approved plantings from the screening and landscape plan.

   Facility Status: To the extent that this section requires the Applicant to replace trees that die off by the following growing season for the life of the Facility, the Applicant will need to seek a waiver of this section. The Applicant will prepare a vegetation management plan as required by the Section 94-c regulations, which will be submitted to ORES as a pre-construction compliance filing. However, a lifetime replacement requirement is unreasonably burdensome and is beyond the average warranty based on vegetation survival rates that is typically provided by landscaping companies or nurseries. This requirement is also inconsistent the Section 94-c regulations, which requires the Applicant, pursuant to 19 NYCRR § 900-6.4(l)(3), to retain a qualified landscape architect, arborist or ecologist to inspect the screen plantings for two (2) years following installation to identify any plant material that did not survive, appears unhealthy, and/or otherwise needs to be replaced, and to remove and replace plantings that fail in materials, workmanship or growth within two (2) years following the completion of the installation of the plantings.

6. The Planning Board may require a Landscaping Maintenance Financial Security in the form of cash bond or other form acceptable to the Town to ensure proper maintenance of the landscaping surrounding the solar site.

This section is procedural and is superseded by Section 94-c.

xviii. The results of on-site bird and bat migration, nesting and habitat surveys. Surveys must be conducted during the appropriate seasonal windows during one 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 NYSDEC guidance on appropriate survey methods.

This section is procedural and is superseded by Section 94-c. The Applicant will conduct pre-application environmental studies, including NYS threatened and endangered species studies consistent with the requirements of the Section 94-c regulations at 19 NYCRR §1.3(g).

xix. Documentation detailing ongoing or historical (i.e., during the preceding 5 years) use of the site as Active Agricultural Lands and production of foods, natural resources found on the site which support agriculture, and a plan for the integration of farming into the site shall be submitted as follows:

1. An inventory that includes mapping, narrative, imagery, and other information sufficient to document all Active Agricultural Lands, Productive Farmland, viable agricultural lands, and activities relating to the production of foods on the site.
2. A site-specific soil survey shall be conducted. The borders of existing site soils shall be field-identified in accordance with NRCS standards and shall be performed by an accredited Soil Scientist whose name shall be noted on the drawing. Existing published soils maps and data shall only be used a s guideline information by the Soil Scientist. In addition to field identifying site soils the Soil Scientist shall document the depth of the plow layer on the site. This document shall also include mapping of Prime and Important Farmland and mineral soil groups 1 through 4 on the parcel(s) comprising the Facility Area.
3. A description of and plan for how the project will integrate into the agriculture and supporting natural resources inventoried on the parcel(s) comprising the site. The plan shall address how promoting farm viability has been incorporated into the project, including, e.g., site layout, construction activities, project operations, postconstruction restoration of impacted Active Agricultural Lands and Productive Farmland to be returned to production, decommissioning, etc. Any proposed agricultural dual use activities shall also be included.

Subsections (xix)(1) through (3) are procedural and are superseded by Section 94-c. Pursuant to the Section 94-c regulations, at 19 NYCRR §900-2.16, the Applicant will prepare an assessment of agricultural resources

which will address, among other matters, potential temporary and/or permanent impacts to agricultural production areas within the Facility footprint.

2. Permitting Requirements

Requirements "A" through "O" below shall apply to all utility-scale solar energy systems:

A. <u>Code Compliance</u>

All utility-scale solar energy systems shall adhere to the regulations and industry standards referenced in the NYS Uniform Fire Prevention and Building Code, the NYS Energy Conservation Code, and all applicable Town of Root building, plumbing, electrical, and fire codes.

Facility Status: The Applicant anticipates that the Facility will be designed in compliance with the Uniform Code and the Energy Code, to the extent applicable, and the Town Code, to the extent applicable and with the exception of local law provisions for which the Applicant is granted waivers from ORES.

Utility scale solar energy systems shall comply with conditions specified in this law.

Facility Status: The Applicant anticipates that the Facility will be designed in compliance with the requirements specified in this law, with the exception of local law provisions for which the Applicant is granted waivers from ORES.

The solar panels shall be affixed to the ground using support pipes that are driven or screwed into the ground and shall not be placed on concrete anchored or coated support pipes.

Facility Status: The Applicant anticipates that the Facility will be designed in compliance with this section.

1. Compliance with Site Plan and Solar Permit

    a. Inspection of Improvements
        i. The Planning Board's designated engineer, or another responsible party as may otherwise be determined by the Planning Board, shall be responsible for the overall inspection of site improvements, including coordination with the Code Enforcement Office and other officials and agencies, as appropriate.
        ii. The Planning Board may impose, as a condition of site plan and solar permit approval, that the Developer and/or Owner reimburse the Town for inspection of improvement services provided in a *[sic]*

    b. Performance Guarantee
        i. As a condition to the approval the Developer and/or Owner may be required to post financial security to insure the completion and the proper performance of the improvements with the Town. The Planning Board shall determine the adequacy of the amount sufficient to cover the cost of

required improvements. The Planning Board may consult with its designated engineer as part of determining adequacy and sufficiency of the financial security.

ii. Such financial security shall be in a form acceptable to the Town and approved by the Town Attorney as to form, sufficiency, surety, and manner of execution.

iii. Such performance bonds shall run for a term to be fixed by the Town, but in no case for a longer term than three (3) years.

iv. If the Planning Board shall decide at any time during the term of the performance bond that certain improvements are no longer warranted, or that some improvements have been installed, or that additional improvements are necessary, the amount of financial security may be reduced or increased by an appropriate amount to cover the estimated cost of the incomplete improvements or the additional improvements required by the Board.

v. In the event that any improvements have not been installed as required by the Planning Board within the term of such financial security, the Planning Board may thereupon declare the holder of the financial security to be in default and collect the sum remaining payable thereunder; upon receipt of the proceeds thereof, the Town my install the improvements covered by such financial security which are commensurate with the extent of the development of the subject site plan that has taken place, but not exceeding in the cost the amount of such proceeds.

vi. If the Code Enforcement Officer shall find upon inspection that any of the required improvements have not been constructed in accordance with the site plan and conditions approved and specified by the Planning Board, then the Code Enforcement Officer shall commence an enforcement action against the Applicant and the Applicant shall be responsible for the costs of completing said improvements as originally specified by the Planning Board or the decommissioning of what has been built.

These sections, A(a)(1) and (2), are procedural and superseded by Section 94-c.

B. <u>Fencing</u>

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 an eight-feet high fence as required by the National Electrical Code. Fencing shall be located inside the tree buffer described in Requirement "D" of this subsection. For large arrays, involving 1000 acres or more, the Town Planning Board may direct that there be breaks in the fencing to allow for corridors for wildlife to move through the fenced area every 200 acres or as the Planning Board determines is beneficial to the wildlife occupying the area.

Facility Status: The Applicant anticipates that the Facility will be designed in compliance with the eight-foot height fence requirement, and the requirement that fencing be located inside the tree buffer.

The procedural provisions of this section, granting the Town Planning Board authority to require breaks in fencing to allow for corridors for wildlife in the case of large systems involving 1000 acres or more, is procedural and is superseded by Section 94-c. Absent such discretionary authority, the Applicant has interpreted this requirement as applicable to facilities involving a single fenced in area of 1000 acres or more. The Applicant respectfully requests that the Town confirm this interpretation, i.e. that this requirement applies to facilities that involve a single fenced in area of 1000 acres or more. As the Facility does not contain a single fenced in area of 1000 acres or more, this provision does not apply to the proposed Facility.

C. 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.

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

*Facility Status: The Applicant has reviewed applicable requirements of the NEC and notes that the NEC **does not** require disconnect and other emergency shutoff to be displayed on a **light reflective surface.** The Applicant respectfully requests that the Town confirm that compliance with the requirements of the NEC is sufficient to demonstrate compliance with this provision. In the event the Town requires that disconnect and other emergency shutoff information be displayed on a light reflective surface despite the fact that it is not an NEC requirement, the Applicant may need seek a waiver of this requirement from ORES.*

The Applicant anticipates that the Facility will be designed in compliance with the remaining substantive requirements in this section.

D. 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 dedicated roads and highways, residences located on contiguous parcels, or other locations identified by the Planning Board. Acceptable screening would include maintenance of existing vegetation, new native vegetative barriers or berms, landscape screen or other opaque enclosures, or any combination thereof acceptable to the Town capable of fully screening the site.

Facility Status: The procedural provisions of this section, granting the Planning Board discretion to require screening of specific locations and determine the acceptability of proposed screening, are superseded by Section 94-c. Pursuant to Section 94-c regulations, the Applicant will consult with the Town in selecting important or

representative viewpoints to include in the visual impact assessment (VIA) it must conduct as part of its Section 94-c Application.

While the Applicant will prepare a planting plan as part of its Visual Impacts Minimization and Mitigation Plan designed to screen the Facility substation, POI switchyard and Facility components from sensitive resources, as appropriate to the Facility setting, the Applicant may need to seek a waiver from this screening requirement. If strictly interpreted, the use of the terms "avoid visual impacts" and "capable of fully screening the site" would require the Facility to be completely invisible. While the planting plan will be designed to minimize and mitigate potential visual impacts to sensitive resources, it cannot be designed to guarantee that visual impacts to sensitive resources will be completely avoided.

Furthermore, to the extent that this section requires screening from participating residences and contiguous participating parcels, and from public locations, public dedicated roads and highways, and nonparticipating contiguous parcels and residences that do not contain sensitive resources, the Applicant also anticipates the need for a waiver. The Section 94-c regulations require the Applicant to identify viewpoints for the VIA based on various criteria, including, but not limited to: (1) representative or typical views from unobstructed or direct line of sight views; (2) significance of viewpoints, designated scenic resources, areas or features, which typically include but are not limited to landmark landscapes; conservation easement lands; Federal and State scenic byways; State parks; sites listed or eligible for listing on the National or State Registers of Historic Places; high use public areas; public parks or recreation areas; locally designated historic or scenic districts and scenic overlooks; (3) level of view exposure.

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.

Facility Status: The Applicant anticipates the need to seek a waiver of this requirement. A lifetime replacement requirement is unreasonably burdensome and is beyond the average warranty based on vegetation survival rates that is typically provided by landscaping companies or nurseries. This requirement is also inconsistent the Section 94-c regulations, which requires the Applicant, pursuant to 19 NYCRR § 900-6.4(l)(3), to retain a qualified landscape architect, arborist or ecologist to inspect the screen plantings for two (2) years following installation to identify any plant material that did not survive, appears unhealthy, and/or otherwise needs to be replaced, and to remove and replace plantings that fail in materials, workmanship or growth within two (2) years following the completion of the installation of the plantings.

1. When the site is surrounded by existing mature trees, trees within the buffer shall not be cut and shall be 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.

   Facility Status: It is unclear how this section would be implemented and how the Applicant would determine compliance with this section, as it's unclear what the

buffer referenced in this section is within which the cutting of trees would be prohibited. The Applicant respectfully requests that the Town provide clarification regarding the definition of the term "buffer" referenced in this section.

Assuming this section is intended to require the establishment/maintenance of some form of a "wild zone" by preserving existing, mature trees abutting the fence line of the Facility, the Applicant anticipates the need to seek a waiver of this requirement. While the Applicant is designing the Facility to avoid and minimize environmental impacts, including impacts to forested areas, to the extent reasonably practicable, complete avoidance of tree clearing is impossible as the Facility must also be designed to avoid impacts to other environmental (such as wetlands, threatened and endangered species habitat) and environmental resources. Furthermore, such a requirement would require the Applicant to control land outside of the Facility's fence line in a manner that unjustifiably restricts the level of landowner control over the types of activities they could conduct on land outside of the limits of the Facility.

2. Trees to be included in screening shall be native and non-invasive species of evergreen, e.g. White Spruce, White Pine, Larch, red cedar, juniper, 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 if any species are threatened due to regional blight, disease, etc. Final decisions on appropriate plantings will be made by the Planning Board.

   Facility Status: The procedural provision of this section, granting the Planning Board discretion to determine the appropriate plantings, is superseded by Section 94-c.

   The Applicant anticipates that the Facility will be designed in compliance with the requirement that screening include native and non-invasive species of evergreen. It is unclear whether the minimum 8' height and 3" diameter at breast height applies at time of planting or after several growing seasons. Section Seven(1)(F)(xvii)(3) requires landscaped buffer obtain a height of at least 10 feet within five growing seasons. As such, the Applicant has interpreted the minimum 8' height and 3" diameter breast height in this section to apply at time of planting. The Applicant respectfully requests that the Town confirm whether this interpretation is accurate. In the event the Town intends the minimum 8' height and 3" diameter at breast height requirements to apply at the time of planting, the Applicant may need to seek a waiver from ORES, as such requirement would jeopardize the survival of the plantings.

3. The solar facility shall provide for the creation of a mixed-species 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 Elderberry, American Plum, Hazelnut, Witch Hazel, Blueberry, Dogwoods

(Pagoda, Flowering, Silky, Gray), Sumac, Buttonbush, Pear, Apple, Lilac, Shadbush, Pussywillow, Raspberry, Maple leaved viburnum, nannyberry, chokecherry.

Facility Status: The Applicant anticipates that the Facility will be designed in compliance with the requirement to include mixed species in the proposed screening buffer. With respect to the double row requirement, the Applicant anticipates compliance, assuming that a landscaping plan that proposes staggered mixed species plantings, in a shadow box configuration would be sufficient to meet this double row requirement. Staggering plantings in this manner ensures sufficient space for more successful growth of mature plantings and creates a more natural appearance.

4. Existing on-site vegetation shall be preserved to the maximum extent practicable. The removal of non-invasive tress greater than 6 inches in diameter shall be minimized to the greatest extent possible. Clear-cutting of all native and non-invasive tress in a single contiguous area exceeding 20,000 square feet shall be prohibited, except for agricultural and farm management practices. Removal of existing trees larger than 6 inches in diameter should be minimized to the extent possible.

   Facility Status: In designing the Facility, the Applicant must demonstrate to ORES that it has attempted to minimize and avoid impacts to various types of resources, including wetlands, threatened and endangered species habitats, impacts to mineral soil groups 1 through 4, among others. While the Applicant has designed the Facility to minimize impacts to native and non-invasive trees to the greatest extent possible, particularly tree clearing within core forest blocks, impacts to native and non-invasive trees cannot be entirely avoided considering that impacts to other resources must be balanced. As such, the Applicant anticipates the need to seek a waiver of this section from ORES.

5. The plans shall show maximum buffering and screening of utility-scale solar. The plan shall demonstrate that screening is provided year-round, to the fullest extent possible and will not have visual adverse impacts on roadways or adjacent properties.

   Facility Status: As discussed above in the first paragraph of Section D, the Applicant anticipates the need to seek a waiver of this requirement to the extent that it requires the Facility to be fully not visible from roadways and adjacent properties, and to the extent it requires installation of screening for avoidance of visual impacts irrespective of whether roadways or adjacent properties are identified as visually sensitive resources.

6. 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 on any proposed solar facility site as part of their review to ensure that negative impacts of solar ray reflection will be prevented. 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. The applicant shall provide a certificate to the Town attesting to the fact that the entire solar installation is non-toxic and will not result in harmful chemicals leaching into the soils under and within the solar installation.

Facility Status: The procedural provisions of this section, granting the Planning Board authority to individually assess what they deem to be sensitive areas on any proposed solar facility site and requiring the Applicant to provide the Town certificate(s) attesting that Facility components are non-toxic and will not result in harmful chemicals leaching into the soils and within the solar installation, are superseded by Section 94-c.

The Applicant will comply with the requirement that the solar panels have anti-reflective coating. However, the Applicant may need to seek a waiver of the requirement prohibiting any and all glare onto neighboring properties, public roads, and public parks. Pursuant to Section 94-c regulations, the Applicant will prepare a glare analysis to demonstrate that solar glare exposure at any non-participating residence, airport or public roadway will be avoided or minimized, to avoid complaints, impeding traffic movements, or creating safety hazards. The Town's requirement is unduly burdensome as it completely prohibits solar glare exposure at any neighboring property, public road, or public park.

The Applicant also anticipates the need to seek a waiver from the requirement that solar panel anti-reflective coating(s) not contain any hazardous materials as identified by the EPA.

The Applicant will comply with the requirement that it adhere to all federal and state laws, regulations and guidelines regarding PFAS and polytetrafluoroethylene (PTFE) films, to the extent applicable to the proposed Facility.

7. 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.

   Facility Status: The Applicant cannot determine compliance with this requirement as it is not clear what Facility components fall under "devices used to support solar collectors." The Applicant respectfully seeks clarity as to which specific Facility components this requirement is intended to apply to.

   Pursuant to Section 94-c regulations at 19 NYCRR §900-2.9(d), the Visual Impacts Minimization and Mitigation Plan prepared by the Applicant as part of its Section 94-c Application, must incorporate various measures, including but not limited to: electric collection and transmission facilities design that uses either wood poles or steel pole structures, steel poles must be self-weathering (such as Corten or equivalent) or other surface finish in dark brown or green color, non-glare finish. Assuming the requirements of this section are intended to address the types of

measures required by 19 NYCRR §900-2.9(d), the Applicant anticipates that the Facility will be designed to comply with the requirements of this section.

8. Fencing installed for visual screening shall be seven-foot (7') tall, comprised of natural wood poles that mimic the rural aesthetics of the community. Chain link and barbed wire are prohibited.

   Facility Status: The Applicant respectfully requests that the Town confirm that this section is specifically applicable to fencing installed for visual screening purposes only. Assuming this section applies to fencing proposed for screening purposes, the Applicant anticipates that the Facility will be designed in compliance with this section, to the extent applicable.

   However, if this section applies to fencing used throughout the Facility generally, the Applicant anticipates the need to seek a waiver from this requirement. This section is inconsistent with the requirements of Section Seven(2)(B) Fencing. To the extent that this section prohibits the use of chain link fencing, the Applicant anticipates the need to seek a waiver in the event this section applies across the Facility and not just to fencing proposed for screening.

E. <u>Panel Height</u>

Ground-mounted solar panel arrays shall not exceed 17 feet in height when oriented at maximum tilt except where Solar Energy Systems shall provide sufficient clearance for agravoltaic or agricultural use of the land as may be approved by the Planning Board.

Facility Status: The Applicant anticipates that the Facility will be designed in compliance with the substantive requirement in this section.

F. <u>Lot Coverage</u>

A utility-scale solar energy system shall not exceed 80 percent lot coverage, as defined herein.

Facility Status: Section Four. Definitions defines "Lot Coverage" as "[t]he area measured from the outer edge(s) of the arrays, inverters, batteries, storage cells and all other mechanical equipment used to create solar energy, exclusive of fencing and roadways.

Based on the current level of Facility design, the Applicant anticipates that the Facility will be designed in compliance with this section. In the event modifications to Facility design necessitate exceedance of the 80% lot coverage requirement on certain parcels, the Applicant may need to seek a waiver.

G. <u>Wetlands</u>

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.

Facility Status: The Applicant anticipates that the Facility will comply with this section, to the extent applicable. Under Section 94-c, ORES is responsible for determining jurisdiction over, permitting, and requiring compensatory mitigation for Article 24 regulated NYS wetlands. The Applicant will meet the wetland requirements as set forth in the Section 94-c regulations. With respect to Army Corps of Engineers (USACE) wetlands, the Applicant is coordinating with USACE to determine jurisdiction and will obtain the appropriate federal approvals.

H. 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 dark sky compliant. Lighting shall be capable of manual or auto shut off switch rather than motion detection.

Facility Status: The Applicant anticipates that the Project substation will be designed in compliance with this section.

With respect to substation equipment to be owned and operated by the New York Power Authority (NYPA), the Applicant is still in the process of confirming whether compliance with this requirement meets NYPA standards. In the event it is inconsistent with NYPA standards, the Applicant may need to seek a waiver for the substation to be owned and operated by NYPA.

I. 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 Building 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. All solar facility access roads shall be of sufficient width to accommodate the equipment to be used at the solar installation to maintain the installation, for any farming activities proposed and for life safety, i.e. fire-fighting. All roadways associated with the solar energy system shall remain unpaved and of pervious surfaces.

Facility Status: The Facility will be designed to maximize the use of existing roads, public and private, to the extent feasible. Access roads will be designed to allow for adequate, emergency, firefighting, and service access, and will consist of a gravel surface.

The Applicant will consult with the Fire Department and Fire Code Official to determine the level of snow removal that is sufficient to allow adequate access of fire apparatus.

With respect to parking, although the Applicant will not be proposing the construction of a parking area as part of the Facility, the Applicant will comply with the requirement to assure adequate parking. As required by Section 94-c, the Applicant will hold a pre-

construction meeting, which will include the Town Supervisor and Highway Department, and will identify the location of construction worker parking.

Vehicular Paths within the Facility area shall be designed in compliance with Uniform Code requirements and NYSDAM guidance to ensure emergency access, while minimizing the extent of impervious materials and soil compaction.

Facility Status: The Applicant anticipates that the Facility will be designed in compliance with the Uniform Coe and NYSDAM guidance, to the extent applicable.

J. 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.

Facility Status: The Applicant anticipates that the Facility will be designed in compliance with the requirement that no solar panels be placed on slopes of 15 percent or greater as averaged over 50 horizontal feet. With respect to the requirement that no cutting or filling may be done to alter natural slopes for placement of arrays, the Applicant is in the process of determining whether the Facility can be designed in compliance with this requirement and may need to seek a waiver from ORES for areas within the Facility where compliance with this requirement may be unreasonably burdensome.

K. 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.

Facility Status: The Applicant anticipates that the Facility will be designed in compliance with this section. Pursuant to 19 NYCRR §900-2.14(c)(1), the Applicant will prepare a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the applicable New York State Pollution Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity and the New York State Standards and Specifications for Erosion and Sediment Control. Additionally, the extent not covered by the requirement to prepare a SWPPP, the Applicant will prepare a preliminary plan, in accordance with the New York State Stormwater Management Design Manual identifying post-construction stormwater management practices, per 19 NYCRR §900-2.14(c)(2).

L. 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.

Facility Status: The procedural provisions of this section, requiring traffic routes be proposed for review of the Town Planning Board, are superseded by Section 94-c. To the extent that this section includes a substantive requirement that the Applicant minimize traffic impacts, wear and tear on local roads, and impacts on local business operations associated with traffic, the Applicant anticipates that the Facility will comply with this section by complying with the requirements of the Section 94-c regulations.

Pursuant to the Section 94-c regulations at 19 NYCRR §900-2.17, as part of its Section 94-c Application, the Applicant must prepare a traffic assessment, which, among other things, will assess the adequacy of the road system to accommodate the projected traffic for both peak construction impacts and typical operation of the completed facility, an assessment of over-size load deliveries and the adequacy of the roadway system to accommodate oversize or overweight deliveries, and identification of potential mitigation measures for traffic and transportation impacts. In addition, the Applicant must prepare a Traffic Control Plan, as a pre-construction compliance filing pursuant to 19 NYCRR § 900-10.2(e)(8), which will be in effect during facility construction to ensure safety and minimize potential delays to local traffic during construction.

M. <u>Blasting</u>

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

Facility Status: The Applicant is still in the process of completing Facility design and cannot anticipate at this stage whether blasting will be required for the construction of the Facility as there may be areas that prior to or during construction are determined to require blasting due to geological conditions (e.g. areas of shallow bedrock). As such, the Applicant anticipates the need to seek a waiver of this requirement.

N. <u>Cemeteries</u>

Utility-scale solar energy systems structures and equipment are prohibited in cemeteries and burial grounds. The applicant shall consult with the Town historian and with the NYS Office of Parks Recreation and Historic Preservation to identify any such burial grounds within the project site.

Facility Status: The procedural provisions of this section, requiring consultation with the Town and SHPO, are procedural and are superseded by Section 94-c. Pursuant to Section 94-c, the Applicant has conducted the required archaeological resources assessments in consultation with ORES and SHPO. The Applicant anticipates that the Facility will be designed in compliance with this section.

O. <u>Facilities of Water</u>

Utility-scale solar energy systems shall not be installed on Town-owned bodies of water.

Facility Status: The Applicant anticipates that the Facility will be designed in compliance with this section.

P. 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 10-11 inches in diameter at breast height in a single contiguous area exceeding 20,000 square feet is prohibited subject to Planning Board discretion to approve boundaries of clearing sites. This clearing restriction shall not apply to trees cleared for the access road.

Facility Status: The procedural provision allowing the Planning Board discretion over whether to approve boundaries of tree clearing sites greater than 20,000 is superseded by Section 94-c. As such this section is interpreted to prohibit clearing of trees more than 10-11 inches in diameter at breast height in a single contiguous area exceeding 20,000 square feet. As discussed above in Section Seven(2)(D)(4), the Applicant anticipates the need to seek a waiver from this requirement.

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.

Facility Status: The Applicant anticipates that the Facility will be designed in compliance with this section. As noted throughout this letter, the Applicant has designed the Facility with the objective of minimizing impacts to various resources, including wetlands, threatened and endangered species habitats, MSG 1 through 4 soils, among other resources, and in doing so has attempted to design the Facility as efficiently and effectively as possible limiting site disturbance to the extent practicable.

Q. Setbacks

There shall be a minimum 500-foot buffer between any utility scale ground mounted solar panel structures and equipment and the parcel boundary line with any non-participating property, public road or public area. Fencing, collection lines, access roads and landscaping may occur within the setbacks.

Facility Status: The Facility cannot be designed to comply with this section. The requirements of this provision are substantially more restrictive than the requirements under Section 94-c, and in some instances may be 10 times the setback required by Section 94-c. They also do not distinguish between residential and non-residential property lines. 19 NYCRR §900-2.6 (d) provides for a setback of fifty (50) feet from centerline of public roads, one hundred (100) feet from non-participating residential property lines, fifty (50) feet from non-participating non-residential property lines, and two hundred fifty (250) feet from non-participating occupied residences. These ORES setbacks have been established based on careful consideration of best practices for siting renewable facilities, engineering guidelines, and setbacks that have been used for renewable projects in operation across the State. The ORES setbacks have been set in order to avoid and minimize impacts to the surrounding community and the environment, and they are sufficient to address those concerns while also allowing for utility scale solar facilities to be constructed in a manner that is efficient from an

environmental impacts and land use management perspective while also maximizing generation capacity.

The Applicant is currently in the process of identifying locations where the Town's setback requirement is unduly burdensome and waivers from ORES may be needed to ensure that the Facility is sited efficiently and effectively to maximize the Facility layout while minimizing environmental impacts.

R. <u>Wildlife</u>

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.

Facility Status: Section Four. Definitions, defines "species in need of protection" as species listed in Title 6, Part 182 of the New York Code, Rules and Regulations as Endangered, Threatened or of Special Concern.

The Applicant anticipates that the Facility will be designed in compliance with this requirement. Consistent with the requirements of the Section 94-c regulations, the Applicant has conducted threatened and endangered species habitat assessments, in consultation with ORES. The Applicant has designed the Facility to avoid and minimize adverse impacts to species, and to address unavoidable adverse impacts will implement a Net Conservation Benefit Plan to compensate for any adverse impacts.

S. <u>Agriculture</u>

Solar energy systems shall limit the use of agricultural areas within their project limits to no more than 40 percent of the total acreage and 10 percent of soils classified by the NYS Department of Agriculture and Markets' Agricultural Land Classification as mineral soils groups 1 through 4.

Facility Status: The Town does not define the term "agricultural areas" used with respect to the 40% total acreage limit in this section. However, based on the reference to "Prime Farmland" in subsections (b) and (c) of this section, the Applicant understands this 40% limit to apply to Prime Farmland, while the 10% limit as applicable to MSG 1 through 4 soils. The Applicant respectfully requests that the Town confirm this interpretation.

Assuming that this section requires the use of Prime Farmland be limited to no more than 40% of land within the Facility and no more than 10% of MSG 1 through 4 soils, the Applicant anticipates that the Facility will be designed in compliance with this section.

All solar energy systems shall adhere to the Department of Agriculture and Markets' Guidelines for Construction Mitigation for Agricultural Lands.

Facility Status: Refer to subsection S(c) below regarding adherence to NYSDAM Guidelines.

a. Solar Energy System may exceed the forty percent [40%] coverage threshold if it incorporates an onsite activity or program which provides for the use of the

land as a Farming Operation and related agravoltaics. Exceedance beyond the 40% threshold will only be allowed based on the Planning Board determination that the land is being used for a Farm Operation (ex. growing crops or raising livestock) and related agravoltaics. An eighty percent [80%] maximum lot coverage will be permitted for solar energy systems that accommodate farming operations, subject to the following conditions:

i. Fencing shall include gates large enough to accommodate farming equipment; and
ii. A maintenance bam or shed shall be provided to store farming equipment and supplies; and, if raising livestock
iii. A barn and shaded areas shall be provided for livestock; and
iv. A sixty-foot by sixty-foot (60'X60') pond with a depth between 10 to 15 feet at its lowest point with appropriately tapering sides shall be provided for livestock. The pond shall be usable for extinguishing fires on the property.

Facility Status: The discretionary authority granted to the Planning Board to allow exceedance of the 40% threshold is procedural and is superseded by Section 94-c, since the Town Planning Board will not have any discretionary authority over the review of the Applicant's Section 94-c Application. As such, the Applicant has interpreted this section to allow a facility to exceed the 40% threshold if agricultural co-use is proposed.

Based on current design, the Applicant does not anticipate that the Project will exceed the 40% threshold for Prime Farmland, and as such this section does not apply to the proposed Facility.

b. Subject to discretion of the Planning Board, if the landowner demonstrates that - notwithstanding the classification as Prime Farmland- the land cannot reasonably be made profitable as a farming operation due to flooding, high water table, wetlands, saturated soils, erosion, rocky conditions, lack of minerals, poor soil temperature, steep slopes, or similar conditions as approved by the Planning Board, the Solar Energy Facility shall be permitted to occupy eighty percent [80%] of the Prime Farmland within the Facility Area.

This section is procedural and/or does not contain any substantive provisions applicable to the Facility.

c. To the maximum extent practicable, utility-scale Solar Energy Systems located on Prime Farmland shall be constructed, monitored, and decommissioned in accordance with the NYS Department of Agriculture and Markets' "Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands."

Facility Status: The Applicant anticipates that the Facility will be designed in compliance with the NYSDAM Guidelines, to the extent applicable.

T. <u>Underground Wiring</u>

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.

Facility Status: The procedural provisions of this section, granting the Planning Board authority to waive this requirement and specifying the information that must be included in a site plan application to the planning board, are superseded by Section 94-c.

The Applicant respectfully requests that the Town confirm that this section applies to collection lines only, and that panel wiring, and transmission infrastructure required to connect the Facility to the grid are not subject to this belowground requirement. Assuming this section applies to the electrical collection system only, the Applicant anticipates that the Facility will be designed in compliance with this section. Consistent with the requirements of Section 94-c, the Applicant will design the electrical collection system to be located underground, to the extent practicable. Should the Applicant determine that, based on the following but not limited to engineering, construction, or environmental or wetland conditions, a specific section of system must be constructed overhead, the Applicant may need to seek a limited waiver from ORES.

In the event the Town interprets this section to apply to all lines, including transmission lines connecting the Facility to the grid, which must be overhead, the Applicant will need to seek a limited waiver from ORES.

U. <u>Noise</u>

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.

Facility Status: This section is inconsistent with the noise standard set forth in Section Seven (F)(xvi). The Applicant respectfully requests clarification from the Town as to which noise standard is applicable.

This section would require that the Facility be designed to have a maximum noise limit of 45 dBA Leq (8-hour) at the outside of any existing residence, participating and non-participating, and a maximum noise limit of 40 dBA Leq (1-hour) at the outside of any existing residence, participating and non-participating from the collector substation. A waiver from ORES may be needed for the requirement that standards applicable to existing non-participating residences also be applied to existing participating

residences. The Applicant will comply with the noise limits for non-participating as set in the ORES regulations. The maximum noise level limit at the outside of existing participating residences per ORES regulations is 55 dBA Leq (8-hour).

V. <u>Construction Hours</u>

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 or not 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 "H" above.

Facility Status: The procedural provisions of this section, granting the Planning Board discretion whether or not to allow work on Saturdays, is superseded by Section 94-c.

As such, this section is interpreted as limiting construction working hours from Monday through Friday between the hours of 8 a.m. and 6 p.m. The Solar Law does not provide a definition of "construction" nor does the Town appear to have a generally applicable noise law that contains a definition of the term construction. The Applicant will adhere to the ORES construction hours requirement of 7 a.m. to 8 p.m. Monday through Saturday, and 8 a.m. to 8 p.m. on Sunday and national holidays and *will need to seek a waiver of the Town's construction hour limits to ensure that, construction activities are not unnecessarily delayed, minimize the overall duration of construction, and to perform the necessary construction and maintenance safely and efficiently.*

3. Contractual Requirements

Prior to obtaining site plan approval, the applicant for a utility-scale solar energy system shall execute the following contractual agreements with the Town:

The requirements of this section are largely procedural and superseded by Section 94-c, since the Applicant will not be required to obtain site plan approval from the Town for the Facility. Furthermore, as discussed below, some of these requirements are unlawful and in exceedance of the authority granted to Towns for the placement of conditions on site plan approvals and special use permits, pursuant to New York Town Law §§ 274-a and 274-b, as such conditions must be for the purposes of protecting the public health, safety and welfare, relate to the use of the land, be reasonable and otherwise constitutional.

A. <u>Road Use</u>

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.

Facility Status: As noted above, since the Applicant is not required to obtain local permits from the Town as they are superseded by Section 94-c, this section is superseded by Section 94-c.

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.

This section is procedural and is superseded by Section 94-c.

C. Decommissioning

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

Facility Status: The Applicant anticipates entering into a Decommissioning Agreement with the Town. Refer to Section Nine for a discussion of the specific requirements for the terms of the Decommissioning Plan as to whether the Applicant can demonstrate compliance or will seek a waiver from ORES.

D. Community Host

The applicant shall enter into a community host agreement providing a public benefit fee of $1,000 per kW 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.

As noted above, while the Town has the authority to place conditions on the issuance of site plan approvals to regulate public health, safety and welfare, the requirement of a Host Community Agreement should not constitute a mandate for payment as a pre-requisite for zoning approval, as such mandate is unlawful. See e.g. CSG-Gutami LLC and 3 Sisters Solar Farm, LLC, v. Town Borad of the Town of Chemung and Town of Chemung, Index No. 2023-5505 (Supreme Court Chemung County, October 3, 2023).

However, the Applicant will provide benefits to the host community consistent with the requirements of Section 94-c.

4. 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.

Facility Status: The procedural provisions of this section are superseded by Section 94-c. To the extent that this section contains a substantive provision requiring emergency responder training before the Facility becomes operational, the Applicant anticipates that it will comply with this section. As required by Section 94-c, Pursuant to Section 94-c requirements, the Applicant must conduct training drills with emergency responders at least once per year, and also requires consultation with local emergency responders assessing whether proposed safety response contingency plans to be implemented in response to occurrence of emergencies can be fulfilled by existing local emergency response capacity and identify any specific equipment or training deficiencies in local emergency response capacity.

B. <u>Ownership Changes</u>

If the owner or operator of the solar energy system changes or the owner of the property changes, the special use permit shall remain in effect, 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 provide this notice will result in the commencement of an enforcement proceeding against the Applicant by the Code Enforcement Officer.

This section is procedural and is superseded by Section 94-c.

C. <u>Annual Report</u>

The solar energy system owner shall, on a yearly basis, provide the Town with 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. 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 days after the end of the calendar year. Every third year, to coincide with the filing of evidence of financial security, the annual report shall also include a recalculation of the estimated full cost of decommissioning and removal of the solar energy system. The Town may require an adjustment in the amount of the surety to reflect changes in the estimated cost of decommissioning and removal. Failure to submit a report as required herein shall be considered a violation subject to the penalties of the Town of Root local law.

Facility Status: The procedural provisions of this section, requiring annual reporting to the Town and granting the Town the authority to adjust the financial security are procedural and superseded by Section 94-c.

The substantive provisions of this section, requiring the recalculation of the estimated decommissioning and removal costs every third year, are inconsistent with the Section 94-c regulations. Pursuant to 19 NYCRR §900-10.2(b)(2), the Applicant must update the decommissioning financial security every fifth year following its establishment, and specify any changes made to the structure of the security due to inflation or other cost increases. As such, the Applicant will be seeking a waiver of this requirement from ORES.

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 native vegetation capable of preventing soil erosion and airborne dust.

Facility Status: The Applicant anticipates that the Facility will be designed in compliance with this section. Generally, the Applicant anticipates that disturbed areas where soil has been exposed will be restored utilizing a native herbaceous seed mix or the pre-existing grassland vegetative conditions by re-grading and re-seeding with an appropriate native seed mix after disturbance activities are completed, unless returning to agricultural production or otherwise specified by the landowner. With respect to wetlands and wetland adjacent areas, the Applicant anticipates that disturbed areas where soil has been exposed will be seeded with an appropriate native wetland seed mix, shrubs, live stakes or tree planting as site conditions and design allow, as appropriate for existing land uses.

E. Project Changes *through* **Insurance**

These sections are procedural and are superseded by Section 94-c.

SECTION EIGHT. ENERGY STORAGE SYSTEMS

This section does not apply to the proposed Facility.

SECTION NINE. 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 solar permit application to the Planning Board. The decommissioning plan shall run to the benefit of the Town of Root and be executed by the Applicant and such signatures shall be notarized in a format that allows the decommissioning plan to be recorded at the Office of the Montgomery County Clerk. The plan should 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.
f. A proposed Decommissioning Agreement (the "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. 1) The decommissioning agreement will require that all solar panels are reused elsewhere or recycled to the greatest extent practicable.
g. The operator shall identify a responsible person with contact information for public inquiries from the commencement of the construction of the solar energy system until the completion of the decommissioning plan.
h. Failure of the Applicant to comply with the approved decommissioning plan upon abandonment shall allow the Town the option to utilize the security for the removal of the utility-scale solar energy system.

Facility Status: The requirements of this section are largely procedural, including the notice requirements to the Town Supervisor and Building Inspector, submission of the Decommissioning Plan to the Planning Board, the specific requirements for execution, format, and filing of the Decommissioning Agreement, and the requirements for the content of the Decommissioning Plan. As procedural requirements, they are superseded by Section 94-c. The Decommissioning Plan is subject to ORES approval and will contain the information required by 19 NYCRR §900-2.23, which includes but is not limited to: funding, schedule, potential future uses for the site, recycling, safety and removal of hazardous conditions.

Although subsection (h) is procedural, the Applicant notes that pursuant to Section 94-c, the Applicant will establish a financial security that will remain in full force and effect until the Facility is fully decommissioned, will be irrevocable, and will be held by and for the sole benefit of the Town.

To the extent that this section includes substantive provisions that the Facility is deemed abandoned after 18 months of cessation of electricity being generated by the Facility and

that decommissioning be initiated within 6 months of abandonment, the Applicant anticipates compliance with these requirements.

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 bond or 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.

      Facility Status: The Applicant anticipates the need to seek a limited waiver from this section to the extent that it requires the amount of the bond or security to 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 and prohibits the estimate from taking into account net salvage value.

      Consistent with the decommissioning and site restoration financial security requirements of the Section 94-c regulations, the amount of the financial security will be equal to the net decommissioning and site restoration estimate; the net decommissioning and site restoration estimate is equal to the gross decommissioning and site restoration estimate (which is the overall decommissioning and site restoration estimate plus a fifteen (15) percent contingency cost) less the total projected salvage value of the facility components.

   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.

      Facility Status: The procedural provisions of this section regarding notice, and proper cure periods, are superseded by Section 94-c.

      As noted in prior sections of this letter regarding decommissioning, the security will remain active until the Facility is fully decommissioned, will be irrevocable and state on its face that it is expressly held by and for the sole benefit of the Town.

c. The Town Board shall, each year prior to the adoption of the annual budget, review all security instruments provided to the Town in connection with utility scale solar projects to insure that the security remains in effect.

This section is procedural and is superseded by Section 94-c.

3. **Abandonment**

a. The approval for a Utility-Scale Solar Collector System shall be valid for a period of 36 months, provided that construction is commenced within that timeframe. In the event construction is not commenced in accordance with the site plan approval and solar permit within 36 months, the Applicant may request to extend the time to commence construction for 12 months. Approval of a request to extend the time to commence construction shall not be unreasonably withheld by the Town Planning Board. If having, commenced construction, the Applicant fails to complete construction within 36 months after having commenced construction, the Planning Board site plan approval and solar permit shall expire and a new application begun and any fees resubmitted prior to any construction recommencing. If the Applicant fails to perform, the Town Planning Board or the Code Enforcement Officer may notify the Applicant to implement the decommissioning plan. In such instance, the decommissioning plan must be completed within 12 months of notification by the Town Planning Board or the Town Building Inspector.

This section is procedural and is superseded by Section 94-c.

b. Cessation of electricity being generated for a period of twelve months constitutes abandonment of the Utility-Scale Solar Collector System project, unless an agreement was previously reached between the Town Planning Board and the Applicant. Upon cessation of electricity generation of a Utility-Scale Solar Collector System on a continuous basis for 12 months, the Town Planning Board or the Town Building Inspector may notify and instruct the Applicant to implement the decommissioning plan. The decommissioning plan must be completed within 12 months of notification.

Facility Status: The procedural provisions of this section, relating to notice of decommissioning and agreement with the Town Planning Board for an extension, are procedural and are superseded by Section 94-c.

To the extent that this section requires decommissioning to be completed in a 12-month period, the Applicant compliance with this requirement. However, the abandonment period in this section is inconsistent with the definition of abandonment in Section Nine.1. above. This section states that a utility scale solar system is deemed abandoned after it ceases to generate electricity on a continuous basis for a 12-month period, while Section Nine.1. above defines abandonment as cessation of operation for a period of 18 months (stating "a utility-scale ***solar energy system 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"). The Applicant respectfully requests that the Town confirm that abandonment is as defined in Section Nine.1. above.*

SECTION TEN. MAINTENANCE

1. Annual Update

This section is procedural and is superseded by Section 94-c.

2. Maintenance

a. Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Solar Energy System is located in an ambulance district, the local ambulance corps.

Facility Status: The Applicant anticipates that the Facility will be maintained in compliance with this section. As required by the Section 94-c regulations, at 19 NYCRR §900-10.2(e)(3), the Applicant will have a Facility Maintenance and Management plan in place, which must be submitted to ORES as a pre-construction compliance filing. With respect to snow removal, the Applicant will consult with the Fire Department and Fire Code Official to determine the level of snow removal that is sufficient to allow adequate access of fire apparatus.

b. If Energy Storage Devices . . .

This section does not apply to the proposed Facility.

c. Where deemed necessary by the Planning Board, the Applicant shall ensure emergency access to the Facility Area for local first responders by installing an emergency lock box or similar device, in a location subject to approval by the Code Enforcement Officer and respond fire departments(s).

Facility Status: The procedural provisions of this section are superseded by Section 94-c.

The Applicant will comply with the requirement to provide access to local first responders. The Applicant will develop a Safety Response Plan, as required by Section 94-c, which will address access to the Facility Site in the event of emergencies by emergency responders when necessary. The Applicant will provide the Safety Response Plan to local emergency responders for consultation prior to submitting the Section 94-c Application to ORES.

d. A Property Management company with a business address within fifty miles of the site shall be responsible for receiving town notices and performing maintenance at the facility.

This section is procedural and is superseded by Section 94-c, as the Applicant is not required to obtain local approvals from the Town and is not required to submit the Maintenance and Management Plan to the Town for local permit approvals. The Applicant will prepare a Facility Maintenance and Management Plan consistent with the requirements of Section 94-c regulations at 19 NYCRR §900-10.2(e)(3), which will be submitted to ORES as a pre-construction compliance filing.

e. The Facility shall be maintained in accordance with the approved Site Plan and Special Use Permit, as well as provisions in the Town of Root Solar Law and the New York State Uniform Code.

Facility Status: As noted above, the procedural provisions of this section are superseded by Section 94-c. To the extent that the Town of Root Solar Law contains applicable substantive requirements, the Applicant has addressed each substantive requirement in this letter. To the extent that the New York State Uniform Code contains any requirements applicable to Facility maintenance, the Applicant will comply with such requirements.

f. The Facility landscaping shall be properly maintained. An arborist shall be hired to ensure that trees shall be trimmed, pruned or replaced in-kind as necessary. Proof of maintenance shall be submitted to the Town Code Enforcement Officer and to the Town Board during the annual update.

Facility Status: The procedural provisions of this section requiring proof of maintenance be submitted to the Town are superseded by Section 94-c.

The Facility will have a Vegetation Management Plan in place which will address, among other matters, techniques for managing undesirable vegetation. However, to the extent that this section requires in kind replacement of screening plantings for the life of the Facility, the Applicant is respectfully referred to the waiver requested for Section Seven (2)(D) above.

g. Damage to the Solar Energy Storage facility shall be addressed promptly and testing performed for the potential leaching of chemicals into groundwater or nearby water bodies. Testing results shall be submitted to the Town Code Enforcement Officer.

This section is procedural and is superseded by Section 94-c. The Applicant's Facility Maintenance and Management Plan will address procedures and criteria for inspections, maintenance, repairs of solar panels, inverters, and associated equipment, including conformance with manufacturer's required maintenance schedules, and safety inspections, and is subject to ORES review as a required pre-construction compliance filing. The Applicant will also prepare a Safety Response Plan which will address all contingency plans to be implemented in response to the occurrence of an emergency or hazardous substance incident.

3. Annual Inspections *and* **4. Penalties**

These sections are procedural and are superseded by Section 94-c.

SECTION ELEVEN. SEVERABILITY *and* **SECTION TWELVE. EFFECTIVE DATE**

These sections are procedural and are superseded by Section 94-c.

After you have had an opportunity to review this list, we look forward to discussing any questions you may have regarding local law applicability and compliance at the upcoming consultation meeting scheduled for January 24, 2024 at 1:00 P.M. As noted above, Flat Creek Solar appreciates the Town's review of this list and looks forward to working with the Town

through the 94-c process. We also ask the Town to please note our public comments that were submitted on April 5, 2023 on the draft solar law during the earlier stages of the Town's development of this proposed solar law for additional context. There are also a number of provisions that we seek clarification on to confirm we have correctly interpreted certain requirements, and respectfully request that the Town carefully review the requests for:

- Section 7(2)(B) Fencing
- Section 7(2)(C) Signs
- Section 7(2)(D) Visual Impacts
  - (1) Tree Buffer
  - (2) Screening height & diameter at time of planting
  - (7) Structures & devices supporting solar collectors
  - (8) Fencing
- Section 7(2)(S) Agriculture
- Section 7(2)(T) Underground Wiring
- Section 7(2)(U) Noise
- Section 9(3)(b) Abandonment

Ultimately, we hope that the Town can confirm that we have provided a complete list of all applicable local laws and correctly identified the applicable substantive requirements. Over the past year Flat Creek Solar has been attentive to the Town's process of moratorium extensions and the ongoing revisions of the current solar law. Flat Creek Solar is seeking to develop the Facility in accordance with the applicable substantive requirements of local law to the extent practicable and within the standards of the 94-c process. Flat Creek Solar is dedicated to working closely with the Town and the local community as it proceeds through the Section 94-c process.

Sincerely,

/s/ Ayah F. Badran

James M. Muscato II
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Appendix A

Local Law to Regulate Solar Energy Systems[1]
(Local Law No. 1 of 2017)

Section 4. Utility-Scale Solar Energy System

B. Bulk and Area Requirements

2. Setbacks.

All utility-scale solar energy systems and associated buildings, accessory structures and equipment shall have a minimum setback from any property line of 100 feet.

Facility Status: The requirements of this provision are more restrictive than the requirements under Section 94-c for certain types of property lines, and do not distinguish participating and non-participating properties, or residential and non-residential property lines. 19 NYCRR §900-2.6(d) provides for a setback of 100 feet from non-participating residential property lines, 50 feet from non-participating non-residential property lines, 250 feet from non-participating occupied residences and 50 feet from the centerline of public roads. Flat Creek Solar is currently identifying locations where the Town's setback may be unduly burdensome and waivers from ORES would be needed to ensure that the Facility is sited efficiently and effectively to maximize the Facility layout while minimizing environmental impacts.

3. Minimum Acreage.

The minimum acreage allowance for a utility-scale solar energy system is ten (10) acres.

Facility Status: The Applicant anticipates the need to seek a waiver from this section to allow for Facility siting on a limited number of parcels under 10 acres in size.

5. Visual.

a. Utility-scale solar energy systems shall be sited in a matter to have the least, possible practical visual effect on the environment. Appropriate landscaping and/or screening material may be required to help screen the facility and its accessory buildings, structures and equipment from major roads and neighboring residences.

Facility Status: The Applicant may need to seek a waiver of this section to the extent that it requires the Facility to be completely screened from all major roads and neighboring residences, irrespective of whether they have been identified as visually sensitive resources.

11. Glare and heat.

No direct or unreasonable glare or transmission of heat shall be produced that is perceptible beyond the boundaries of the lot on which such use is situated.

Facility Status: The Applicant may need to seek a waiver of this section to the extent it prohibits any and all glare beyond the Facility boundaries. Pursuant to Section 94-c

[1] Chapter 41 of the Code of the Town of Root.

regulations, the Applicant will prepare a glare analysis to demonstrate that solar glare exposure at any non-participating residence, airport or public roadway will be avoided or minimized, to avoid complaints, impeding traffic movements, or creating safety hazards.

C. Decommissioning and Abandonment

1. Decommissioning Plan.

The applicant shall submit a Decommissioning Plan for review and approval by the Planning Board and Town Attorney during Site Plan Review. The Decommissioning Plan shall identify the anticipated life of the project, method and process for removing all components of the utility-scale solar energy system and returning the site to its pre-existing condition, and estimated decommissioning costs, including any salvage value.

Facility Status: While the procedural provisions of this section are supplanted by Section 94-c, the Applicant will prepare a Decommissioning and Site Restoration Plan in compliance with 19 NYRR §§ 900-2.24(a) and 900-10.2(b) which will address the safety and removal of hazardous conditions, environmental impacts, aesthetics, recycling, potential future uses for the site, funding and schedule.

To the extent that this section requires removal of all below ground facility components, the Applicant may need to seek a waiver from ORES because compliance would be unduly burdensome.

2. Required Sureties for Construction maintenance and Removal of Utility-Scale Solar Energy Systems.

b. Removal.

The utility-scale solar energy system, including any accessory structures and/or equipment, shall be dismantled and removed from the site when the system has been inoperative or abandoned for twelve (12) consecutive months and the site shall be restored to pre-development conditions. The full cost of the removal and site restoration shall be paid by the performance bond or other security posted by the owner/operator as required in Section 2(a). Abandonment shall be assumed by the Town id the annual documentation as required in Section 4.B (16) is not provided by the owner/operator for one (1) year to the Town of Root Code Enforcement Officer. The Code Enforcement Officer shall then provide written notice to the owner/operator to remove the utility-scale solar energy system, who shall have three (3) months from written notice to remove the utility-scale solar energy system, including any associated accessory structures and/or equipment, and restore the site to the condition approved by the Planning Board, all costs of the Town incurred to comply with this condition shall be paid using the surety provided.

Facility Status: While the procedural provisions of this section are supplanted by Section 94-c, as discussed above in sections C.1 and C.2.a, the Applicant will prepare a Decommissioning and Site Restoration Plan and provide for financial security pursuant to the applicable 19 NYCRR Part 900 regulations.

To the extent that this section requires of all above and below ground facility components and requires removal and site restoration to be completed within a 3-month time period, the Applicant may need to seek a waiver from ORES because compliance would be unduly burdensome. Additionally, to the extent that this section requires removal of all below ground facility components, the Applicant may need to seek a waiver from ORES because compliance would be unduly burdensome.

c. The owner/operator shall remove the collector, mount and associated equipment by no later than ninety (90) days after the end of the twelve-month period-inoperative period.

Facility Status: To the extent that this section requires of all below ground facility components and requires removal and site restoration to be completed within a 3-month time period, the Applicant may need to seek a waiver from ORES because compliance would be unduly burdensome.