TOWN BOARD
TOWN OF GERMANTOWN
COLUMBIA COUNTY, NEW YORK

Local Law No. 1 of 2021

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF GERMANTOWN AS FOLLOWS:

1. TITLE

This Local Law shall be referred to as "Solar Energy and Battery Energy Storage System Local Law."

2. AUTHORITY

This Solar Energy and Battery Energy Storage System 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 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."

3. THE ZONING AND SUBDIVISION LAW FOR THE TOWN OF GERMANTOWN IS HEREBY REVISED BY ADDING SECTION BB TO ARTICLE VI AND AMENDING SCHEDULE A: PERMITTED USES

BB. Solar Energy and Battery Energy Storage Systems

1. Purpose

The purpose of this Section is to advance and protect the public health, safety, and welfare of the Town by creating regulations for the installation and use of solar energy generating systems and equipment and battery energy storage systems, with the following objectives:

a. To take advantage of a safe, abundant, renewable and non-polluting energy resource;

b. To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of Battery Energy Storage Systems;

c. To decrease the cost of electricity to the owners of residential and commercial properties, including single-family houses;

d. To increase employment and business development in the Town to the extent reasonably practical, by furthering the installation of Solar Energy and/or Battery Energy Storage Systems;

e. To mitigate the impacts of Solar Energy and Battery Energy Storage Systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources; and

f. To ensure the provision of adequate sunlight necessary therefor; to balance the potential impacts on neighbors when solar collectors are installed near their property, while preserving the right of property owners to install solar energy systems in accordance with applicable laws and regulations; and to recognize solar energy as a priority for current and long term sustainability.

2. Definitions

BATTERY(IES): A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this section, batteries utilized in consumer products are excluded from these requirements.

BATTERY ENERGY STORAGE 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 detected.

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 stand-alone 12-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1 or Tier 2 Battery Energy Storage System as follows:

a. Tier 1 Battery Energy Storage Systems have an aggregate energy capacity less than or equal to 80kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.

b. Tier 2 Battery Energy Storage Systems have an aggregate energy capacity greater than 80kWh or are comprised of more than one storage battery technology in a room or enclosed area.

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM: A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system such as

vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for onsite consumption.

CELL: The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.

COMMISSIONING: A systematic process that provides documented confirmation that a battery energy storage system functions according to the intended design criteria and complies with applicable code requirements.

DEDICATED-USE BUILDING: A building that is built for the primary intention of housing battery energy storage system equipment, is classified as Group F-1 occupancy as defined in the International Building Code, and complies with the following:

a. The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.

b. No other occupancy types are permitted in the building.

c. Occupants in the rooms and areas containing battery energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.

d. Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage systems, provided the following:

    (1) The areas do not occupy more than 10 percent of the building area of the story in which they are located.

    (2) A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy system equipment.

FARMLAND OF STATEWIDE IMPORTANCE: Land, designated as "Farmland of Statewide Importance" in the U.S. Department of Agriculture Natural Resources Conservation Service's (NRCS) Soil Survey Geographic (SSURGO) Database on Web Soil Survey that is of state wide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of Statewide Importance may include tracts of land that have been designated for agriculture by state law.

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 anchored to the ground via a pole or other mounting system, detached from any other structure, that generates electricity for onsite or offsite consumption.

MATURE FORESTED LAND: A forested area where the canopy layer is comprised of at least 50% of trees having an average diameter at breast height of 15 inches or greater.

NATIVE PERENNIAL VEGETATION: native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for pollinators and shall not include any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation.

NON-DEDICATED-USE BUILDING: All buildings that contain a battery energy storage system and do not comply with the dedicated-use building requirements.

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

NON-PARTICIPATING RESIDENCE: Any residence located on non-participating property.

OCCUPIED COMMUNITY BUILDING: Any building in Occupancy Group A, B, E, I, R, as defined in the International Building Code, including but not limited to schools, colleges, daycare facilities, hospitals, correctional facilities, public libraries, theaters, stadiums, apartments, hotels, and houses of worship.

PARTICIPATING PROPERTY: A battery energy storage system host property or any real property that is the subject of an agreement that provides for the payment of monetary compensation to the landowner from the battery energy storage system owner (or affiliate) regardless of whether any part of a battery energy storage 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.

PRIME FARMLAND: Land, designated as "Prime Farmland" in the U.S. Department of Agriculture Natural Resources Conservation Service's (NRCS) Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.

ROOF-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or offsite consumption.

SOLAR ACCESS: Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive Solar Energy Systems on individual properties.

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: The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. The area of a Solar Energy System includes all the land inside the perimeter of the Solar Energy System, which extends to any interconnection equipment. A Solar Energy System is classified as a Tier 1, Tier 2, or Tier 3 Solar Energy System as follows:

a. Tier 1 Solar Energy Systems include the following:
   Roof-Mounted Solar Energy Systems
   Building-Integrated Solar Energy Systems

b. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems with system capacity up to 25 kW AC and that generate no more than 110 % of the electricity consumed on the site over the previous 12 months.

c. Tier 3 Solar Energy Systems include all Solar Energy Systems which are not Tier 1 or Tier 2.

SOLAR LOT: One or more parcels under direct control (ownership or lease) of a common owner.

SOLAR LOT COVERAGE: Includes all land under or between any system components within the general perimeter of the Solar Energy System as a whole and extends to any interconnection equipment, but shall not include the area within the buffer between the system components and the surrounding security fencing.

SOLAR PANEL: A photovoltaic device capable of collecting and converting solar energy into electricity.

3. Applicability

   a. The requirements of this Section shall apply to all Solar Energy and Battery Energy Storage Systems permitted, installed, or modified in the Town after the effective date of this Section, excluding general maintenance and repair. This Section also applies to physical modifications that materially alter the type, configuration, or size of a Solar Energy or Battery Energy Storage System or related equipment.

   b. Solar Energy and/or Battery Energy Storage Systems constructed or installed prior to the effective date of this Section shall not be required to meet the requirements of this Section.

c. All Solar Energy and Battery Energy Storage 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 Building Code"), the NYS Energy Conservation Code ("Energy Code"), and the Zoning and Subdivision Law for the Town of Germantown.

4. General Requirements

a. A building permit shall be required for installation of all Battery Energy Storage and Solar Energy Systems.

b. Local land use boards are encouraged to condition their approval of proposed developments on sites adjacent to Solar Energy Systems so as to protect their access to sufficient sunlight to remain economically feasible over time.

c. Issuance of permits and approvals by the Planning Board or Zoning Board of Appeals shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA")].

d. All new or modified Solar Energy Systems and Battery Energy Storage Systems shall be registered with the local fire department, and upon decommissioning, must notify the fire department of the change in presence of on-site power sources.

5. Permitting Requirements for Tier 1 Solar Energy Systems

All Tier 1 Solar Energy Systems within the Scenic Viewshed Overlay (SVO) District are permitted when attached to any lawfully permitted building subject to a Special Use Permit pursuant to Article XII and Site Plan approval pursuant to Article XIII. Tier 1 Solar Energy Systems outside of the SVO District are permitted when attached to any lawfully permitted building and are exempt from Site Plan review under the local zoning code or other land use regulation. All Tier 1 Solar Energy Systems are subject to the following supplementary conditions for each type of Solar Energy Systems:

a. Roof-Mounted Solar Energy Systems

(1) Roof-Mounted Solar Energy Systems shall incorporate the following design requirements:

(a) Solar Panels on roofs shall be mounted no taller than the height necessary for their proper functioning.

(b) Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.

(c) Solar Panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.

(2) Height: All Roof-Mounted Solar Energy Systems shall be subject to the maximum height regulations specified for principal buildings in Article IV, Section C.2.

b. Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system.

6. Permitting Requirements for Tier 2 Solar Energy Systems

All Tier 2 Solar Energy Systems within the SVO District are permitted subject to a Special Use Permit pursuant to Article XII and Site Plan approval pursuant to XIII. Tier 2 Solar Energy Systems outside of the SVO District are permitted as accessory structures and are exempt from Site Plan review under the local zoning code or other land use regulations. All Tier 2 Solar Energy Systems are subject to the following supplementary conditions:

a. Glare. Solar panels shall be installed so as to minimize the potential for glare to significantly impact neighboring properties. The Planning Board may require landscaping or screening consistent with Article VII, Section C to mitigate for glare.

b. Setbacks. Tier 2 Solar Energy Systems shall be subject to the setback regulations specified for the accessory structures within the underlying zoning district.

c. Height. Tier 2 Solar Energy Systems shall be subject to the height limitations specified for accessory structures in Article IV, Section C.2.

d. Screening and Visibility.

(1) All Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable.

(2) Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.

(3) Within the SVO, the Planning Board may require landscaping or screening consistent with Article VII, Section C to mitigate for glare.

e. Solar Lot Coverage. Tier 2 Solar Energy Systems shall comply with the existing Lot Coverage requirement of the underlying zoning district as specified in Schedule B. Lot Coverage shall be calculated per the definition of "Solar Lot Coverage" in this section.

7. Permitting Requirements for Tier 3 Solar Energy Systems

All Tier 3 Solar Energy Systems are prohibited in Natural Resource (NR), Hamlet Residential (HR), Hamlet Mixed-Use (HMU), Hamlet Commercial (HC) zoning districts, as well as properties within the Scenic Viewshed Overlay (SVO) zoning district. All Tier 3 Solar Energy Systems are permitted in the Agricultural and Resource (AR), Rural Residential (RR), and Business Development (BD) zoning districts, subject to a Special Use Permit pursuant to Article XII, Site Plan approval pursuant to Article XIII, and the following supplementary conditions:

a. Applications for the installation of Tier 3 Solar Energy Systems shall be:

(1) reviewed by the CEO for completeness prior to substantive review by the Planning Board; and

(2) subject to a public hearing to hear all comments for and against the application. The Planning Board of the Town shall have notice of the public hearing printed in the Official Newspaper of the Town at least 5 days in advance of such hearing. Applicants shall deliver said notice by first class mail to adjoining landowners and landowners within 200 feet of the property at least 10 days prior to such a hearing. Proof of mailing shall be provided to the Planning Board at or prior to the public hearing.

b. Underground Requirements. Reasonable efforts, as determined by the Planning Board, shall be made to place all on site power lines underground, depending on the appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. On-site transformers and the utility interconnection equipment shall, to the maximum extent practicable, be placed on the ground and not on utility poles. The location of all proposed equipment, including the proposed utility interconnection, shall be shown on the Site Plan. If at the time of the Site Plan approval the final utility interconnection has not been designed and/or approved by the utility company, the Planning Board may conditionally approve the Site Plan with the condition that, if the design changes significantly from the approved Site Plan in a way that increases visual impact, the applicant return for final Site Plan review once the interconnection has been designed..

c. Vehicular Paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.

d. Signage. 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 no more than 8 square feet. In addition, "no trespassing" or other safety signs required by the Uniform Building Code may be posted and may exceed the total area limit. All signage shall be maintained in legible condition and contain accurate information.

e. Glare. Solar panels shall be installed so as to minimize the potential for glare to significantly impact neighboring properties. The Planning Board may require a glare analysis be submitted for review, and may require landscaping or screening consistent with Article VII, Section C.

f. Lighting. Lighting of the Solar Energy Systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.

g. Tree-cutting. Previously cleared or disturbed areas are preferred locations for Solar Energy Systems. Removal of existing trees larger than 6 inches in diameter should be minimized to the extent possible. Further, removal of existing trees shall not exceed 10% of Mature Forested Land on a Solar Lot without adequate mitigation, to be approved by the Planning Board. In determining whether mitigation is required, the Planning Board shall consider the trees existing one year prior to submission of the application to the CEO.

h. Operations and Maintenance. An operations and maintenance plan signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant, addressing the following:

(1) Methods to manage vegetation at the site, including mowing, maintenance of vegetative screening, and tree trimming (if anticipated) to reduce array shading; and

(2) Fire mitigation plans, where required by the National Electrical Code.

i. Safety. The Solar Energy System owner or operator shall provide a copy of the blueprints and Site Plan to the local fire chief(s). Upon request, the owner or operator shall cooperate with local emergency services to develop an emergency response plan. All means of shutting down the Solar Energy System shall be clearly marked.

j. Decommissioning.

(1) Decommissioning Plan. To ensure the proper removal of Solar Energy Systems, a decommissioning plan that meets the following requirements shall be required for all Tier 3 Solar Energy Systems:

(a) Compliance with this plan shall be made a condition of Site Plan approval.

(b) Decommissioning requires removal of the Solar Energy System, including but not limited to removal of all Solar Energy Equipment, associated buildings, cabling, electrical components, and any other associated facilities above ground and below grade to a minimum depth of 48-inches below the soil surface in accordance with NYS Department of Agriculture and Markets Guidelines for Solar Energy Projects unless an applicant demonstrates below grade removal would cause significant adverse environmental impact, and as described in the approved decommissioning plan.

(c) The decommissioning plan must:

(i) specify that after the Solar Energy System has been abandoned or can no longer be used, it shall be removed by the applicant or any subsequent owner;

(ii) describe how the removal of all infrastructure and the remediation of soil and vegetation shall be conducted to return the site to its original state prior to construction. For purposes of this section, "original state" requires restoration of vegetative cover;

(iii) provide for the removal of all hazardous materials from the property and disposition of hazardous material in accordance with federal and state law;

(iv) describe the anticipated life of the Solar Energy System;

(v) include a cost estimate, which takes into account inflation, prepared by a Professional Engineer detailing the projected cost of executing the decommissioning plan; and

(vi) include a timeline for execution, not to exceed one (1) year.

(d) Prior to the issuance of a certificate of compliance from the CEO, the applicant must provide the Town with a performance guarantee as provided below. The amount of the guarantee shall be 1.25 times the estimated decommissioning cost, which shall include any required restoration and disposal costs, minus the salvageable value, with an escalator of 2% annually for the life of the Solar Energy System.

(i) The following types of performance guarantees are permitted:

1. A surety or performance bond that renews automatically, includes a minimum 60-day notice to the Town prior to cancellation, is approved by the Town attorney, and is from a company on the U.S. Department of Treasury's Listing of Certified Companies.

2. A certified check deposited with the Town to be deposited by the Town in an interest bearing account, with all interest accruing to the applicant. The Town shall be permitted to draw from the account in the event that the applicant fails to carry out the decommissioning plan. Funds deposited will be returned when the Solar Energy System is decommissioned and any required site restoration is completed.

3. A no-contest irrevocable letter of credit issued by a banking corporation licensed to do business in the State of New York. The terms of the letter must include the absolute right of the Town to withdraw funds from the bank upon certification by the CEO that the terms of the performance guarantee have been breached. The letter of credit must be valid up to 12 months from the date the performance guarantee was approved and shall be continuously renewed or extended until the decommissioning plan is carried out.

(ii) The full amount of the surety or bond, certified check, or letter of credit must remain in full force and effect until the Solar Energy System is decommissioned and the necessary site restoration is complete. Any successor in interest to the applicant shall be subject to these provisions to the same extent as the original applicant.

k. Site Plan Application. Any application under this Section shall meet any substantive provisions contained in Article XIII that, in the judgment of the Planning Board, are applicable to the Solar Energy System being proposed. In addition, the following documentation shall be submitted:

(1) A one- or three-line electrical diagram detailing the Solar Energy System layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.

(2) A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.

(3) Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.

(4) Name, address, phone number, 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 Solar Energy System.

(5) Zoning district designation for the parcel(s) of land comprising the project site.

(6) Property Operation and Maintenance Plan that meets the requirements of Article VI, section BB(7)(h).

(7) Decommissioning Plan that meets the requirements of Article VI, section BB(7)(j).

(8) Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.

(9) Prior to the issuance of the building permit or final approval by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a New York State (NYS) Licensed Professional Engineer or NYS Registered Architect.

(10) If the property of the proposed project is to be leased, documentation of legal consent between all parties, specifying the use of the land for the duration of the project, including easements and other agreements.

(11) A Site Plan, showing the following elements, in addition to the elements listed in Article XIII as applicable to the project:

(a) the location of proposed and existing overhead and underground utility and transmission lines;

(b) the location of any proposed or existing substation, inverter, transformer or equipment enclosures on the site;

(c) if requested, a description of any necessary upgrades or modifications to existing substations or the necessity for a new substation;

(d) a description of how the Solar Energy System's generated energy will connect to the electrical distribution or transmission system or the intended user's electrical system;

(e) the location and elevations of all transmission lines, support structures, and attachments to the substation(s); and

(f) proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures.

l. Special Use Permit Application. In making a determination for a Special Use Permit, the Planning Board shall consider the criteria in Article XII. In addition, the following standards must be met:

(1) Lot size. The property on which the Tier 3 Solar Energy System is placed shall meet the Minimum Lot Area of the underlying zoning district.

(2) Setbacks. The Tier 3 Solar Energy Systems shall comply with the setback requirements of the underlying zoning district for principal structures.

(3) Height. The Tier 3 Solar Energy Systems shall comply with the building height limitations for principal structures specified in Article IV Section C.2 .

(4) Solar Lot coverage. Solar Lot Coverage shall not exceed 50%. The Planning Board, in its discretion, may waive the maximum lot coverage

area of 50% up to a maximum of 70% of the area of the solar lot if the applicant can show that increasing the lot coverage will not result in significant additional environmental or visual impacts.

(5) Impervious Surfaces. The total amount of impervious surfaces shall not exceed the maximum impervious surface limit of the underlying zoning district.

(6) Fencing Requirements. All mechanical equipment, including any structure for storage batteries, shall be enclosed by a fence compliant with National Electrical Code requirements, with a self-locking gate to prevent unauthorized access. Except in locations with exposed, uninsulated equipment, such as collection substations, fencing shall be "wildlife friendly". Wildlife friendly fencing shall not have barbed wire installed at the top, and shall have 5"-12" openings at ground level spaced no more than 100ft apart (or along the full perimeter) to allow unencumbered travel by small animals. The Planning Board may waive the requirement for wildlife friendly fencing if the property is adjacent to locations deemed to be a safety concern, such as adjacent to a children's playground or school.

(7) Screening and Visibility.

(a) Tier 3 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.

(b) Tier 3 Solar Energy Systems shall be required to:

(i) Conduct a visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. 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.

(ii) Submit a screening & landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized as reasonably practical from public roadways and adjacent properties to the extent feasible.

1. The screening & landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system, following the applicable rules and standards established by the Town.

(8) Agricultural Resources. For projects located on agricultural lands:

(a) Any Tier 3 Solar Energy System located on the areas that consist of Prime Farmland or Farmland of Statewide Importance shall not exceed 50 % Solar Lot Coverage of the area of Prime Farmland or Farmland of Statewide Importance on the Solar Lot.

(b) To the maximum extent practicable, Tier 3 Solar Energy Systems located on Prime Farmland shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets.

(c) Tier 3 Solar Energy System owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes.

m. 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, and decommissioning plan. A new owner or operator of the Solar Energy System shall notify the CEO of such change in ownership or operator within 30 days of the ownership change.

8. Permitting Requirements for Tier 1 Battery Energy Storage Systems

All Tier 1 Battery Energy Storage Systems within the SVO District are permitted subject to a Special Use Permit pursuant to Article XII and Site Plan approval pursuant to XIII. Tier 1 Battery Energy Storage Systems outside of the SVO shall be permitted in all zoning districts, subject to the Uniform Building Code and exempt from Site Plan review.

9. Permitting Requirements for Tier 2 Battery Energy Storage Systems

All Tier 2 Battery Energy Storage Systems are permitted subject to a Special Use Permit pursuant to Article XII and Site Plan approval pursuant to XIII. All Tier 2 Battery Energy Storage Systems are further subject to the Uniform Building Code and the following supplementary requirements:

a. Applications for the installation of Tier 2 Battery Energy Storage System shall be:

(1) reviewed by the CEO for completeness prior to substantive review by the Planning Board; and

(2) subject to a public hearing to hear all comments for and against the application. The Planning Board of the Town shall have notice of the public hearing printed in in the Official Newspaper of the Town at least 5 days in advance of such hearing. Applicants shall deliver the notice by first class mail to adjoining landowners and landowners within 200 feet of the property at least 10 days prior to such hearing. Proof of mailing shall be provided to the Planning Board at or prior to the public hearing.

b. Utility Lines and Electrical Circuitry. Reasonable efforts, as determined by the Planning Board, shall be made to place all on site power lines underground, depending on the appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. On-site transformers and the utility interconnection equipment shall, to the maximum extent practicable, be placed on the ground and not on utility poles. The location of all proposed equipment, including the proposed utility interconnection, shall be shown on the Site Plan. If at the time of the Site Plan approval the final utility interconnection has not been designed and/or approved by the utility company, the Planning Board may conditionally approve the Site Plan with the condition that, if the design changes significantly from the approved Site Plan in a way that increases visual impact, the applicant return for final Site Plan review once the interconnection has been designed.

c. Signage.

(1) The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of suppression system installed in the area of battery energy storage systems, and 24-hour emergency contact information, including reach-back phone number.

(2) As required by the National Electrical Code, 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. Lighting. Lighting of Battery Energy Storage Systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.

e. Vegetation and tree-cutting. Areas within 10 feet on each side of Battery Energy Storage Systems 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 used as ground covers shall be permitted provided that they do not form a means of readily transmitting fire. Previously cleared or disturbed areas are preferred locations for Battery Energy Storages. Removal of existing trees larger than 6 inches in diameter should be minimized to the extent possible. Further, removal of existing trees shall not exceed 10% of Mature Forested Land on a Solar Lot without adequate mitigation, to be approved by the Planning Board. In determining whether mitigation is required, the Planning Board shall consider the trees existing one year prior to submission of the application to the CEO.

f. Noise. The 1-hour average noise generated from the Battery Energy Storage Systems, components, and associated ancillary equipment shall not exceed a noise level of 60 dBA as measured at the outside wall of any non-participating residence or occupied community building. Applicants may submit equipment and component manufacturers noise ratings to demonstrate compliance. The applicant may be required to provide Operating Sound Pressure Level measurements from a reasonable number of sampled locations at the perimeter of the Battery Energy Storage System to demonstrate compliance with this standard.

g. Decommissioning.

(1) Decommissioning Plan. To ensure the proper removal of Battery Energy Storage Systems, a decommissioning plan that meets the following requirements shall be required for all Tier 2 Battery Energy Storage Systems:

(a) Compliance with this plan shall be made a condition of Site Plan approval.

(b) Decommissioning requires removal of the Battery Energy Storage System, including but not limited to removal of all Battery Energy Storage equipment, associated buildings, cabling, electrical components, and any other associated facilities above ground and below grade to a minimum depth of 48-inches below the soil unless an applicant demonstrates below grade removal would cause significant adverse environmental impact, and as described in the approved decommissioning plan.

(c) The decommissioning plan must:

(i) specify that after the Battery Energy Storage System has been abandoned or can no longer be used, it shall be removed by the applicant or any subsequent owner;

(ii) describe how the removal of all infrastructure and the remediation of soil and vegetation shall be conducted to return the site to its original state prior to construction. For purposes of this section, "original state" requires restoration of vegetative cover;

(iii) provide for the removal of all hazardous materials from the property and disposition of hazardous material in accordance with federal and state law;

(iv) describe the anticipated life of the Battery Energy Storage System;

(v) include a cost estimate, which takes into account inflation, prepared by a Professional Engineer detailing the projected cost of executing the decommissioning plan;

(vi) include a timeline for execution, not to exceed one (1) year;

(vii) The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed; and

(viii) A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.

(d) Prior to the issuance of a certificate of compliance from CEO, the applicant must provide the Town with a performance guarantee as provided below. The amount of the guarantee shall be 1.25 times the estimated decommissioning cost, which shall include any required restoration and disposal costs, minus the

salvageable value, with an escalator of 2% annually for the life of the Solar Energy System.

(i) The following types of performance guarantees are permitted:

1. A surety or performance bond that renews automatically, includes a minimum 60-day notice to the Town prior to cancellation, is approved by the Town attorney, and is from a company on the U.S. Department of Treasury's Listing of Certified Companies.

2. A certified check deposited with the Town to be deposited by the Town in an interest bearing account, with all interest accruing to the applicant. The Town shall be permitted to draw from the account in the event that the applicant fails to carry out the decommissioning plan. Funds deposited will be returned when the Battery Energy Storage System is decommissioned and any required site restoration is completed.

3. A no-contest irrevocable letter of credit issued by a banking corporation licensed to do business in the State of New York. The terms of the letter must include the absolute right of the Town to withdraw funds from the bank upon certification by the CEO that the terms of the performance guarantee have been breached. The letter of credit must be valid up to 12 months from the date the performance guarantee was approved and shall be continuously renewed or extended until the decommissioning plan is carried out.

(ii) The full amount of the surety or bond, certified check, or letter of credit must remain in full force and effect until the Battery Energy Storage System is decommissioned and the necessary site restoration is complete. Any successor in interest to the applicant shall be subject to these provisions to the same extent as the original applicant.

h. Site Plan Application. Any application under this Section shall meet any substantive provisions contained in Article XIII that, in the judgment of the

Planning Board, are applicable to the Battery Energy Storage System being proposed. In addition, the following documentation shall be submitted:

(1) Property lines and physical features, including roads, for the project site.

(2) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.

(3) An electrical line diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.

(4) A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.

(5) Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information of the final system installer shall be submitted prior to the issuance of building permit.

(6) Name, address, phone number, 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 battery energy storage system.

(7) Zoning district designation for the parcel(s) of land comprising the project site.

(8) 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 Building Code. Where commissioning is required by the Uniform Building Code, Battery energy storage system commissioning shall be conducted by a New York State (NYS) 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 Building Code shall be provided to CEO prior

to final inspection and approval and maintained at an approved on-site location.

(9) 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 Building Code.

(10) 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 Building Code.

(11) Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.

(12) Prior to the issuance of the building permit or final approval by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a NYS Licensed Professional Engineer.

(13) Emergency Operations Plan. 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:

(a) 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.

(b) Procedures for inspection and testing of associated alarms, interlocks, and controls.

(c) Procedures to be followed in response to notifications from the Battery Energy Storage Management System, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure. 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 extinguishing the fire.

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

(e) Procedures for dealing with battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility.

(f) Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.

(g) Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.

i. Special Use Permit Application. In making a determination for a Special Use Permit, the Planning Board shall consider the criteria in Article XII. In addition, the following standards must be met:

(1) Lot size. The property on which the Tier 2 Battery Energy Storage System is placed shall meet the Minimum Lot Area of the underlying zoning district.

(2) Setbacks. Tier 2 Battery Energy Storage Systems shall comply with the setback requirements of the underlying zoning district for principal structures.

(3) Height. Tier 2 Battery Energy Storage Systems shall comply with the building height limitations for principal structures of the underlying zoning district.

(4) Fencing Requirements. Tier 2 Battery Energy Storage Systems, including all mechanical equipment, shall be enclosed by a fence with a self-locking gate to prevent unauthorized access unless housed in a dedicated-use building and not interfering with ventilation or exhaust ports.

(5) Screening and Visibility. Tier 2 Battery Energy Storage Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfering with ventilation or exhaust ports.

j. Ownership Changes. If the owner of the battery energy storage 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, and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the CEO of such change in ownership or operator within 30 days of the ownership change. A new owner or operator must provide such notification to the CEO in writing. The Special Use Permit and all other local approvals for the battery energy storage system would be void if a new owner or operator fails to provide written notification to the CEO in the required timeframe. Reinstatement of a void Special Use Permit will be subject to the same review and approval processes for new applications.

10. Safety

a. Solar Energy Systems, Solar Energy Equipment, and Battery Energy Storage Systems shall be certified under the applicable electrical and/or building codes as required by the Uniform Building Code.

b. Solar Energy and Battery Energy Storage 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.

c. If Storage Batteries 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.

11. Permit Time Frame and Abandonment

a. The Special Use Permit and Site Plan approval for a Solar Energy or Battery Energy Storage System shall be valid for a period of 18 months, provided that a building permit is issued for construction. In the event construction is not completed in accordance with the final Site Plan, as may have been amended and approved, as required by the Planning Board, within 18 months after approval, the applicant or the Town may extend the time to complete

construction for 180 days. If the owner and/or operator fails to perform substantial construction after 24 months, the approvals shall expire.

b. Upon cessation of electricity generation of a Solar Energy or Battery Energy Storage System on a continuous basis for 12 months, the Town may notify and instruct the owner and/or operator of the Solar Energy or Battery Energy Storage System to implement the decommissioning plan. The decommissioning plan must be completed within one (1) year of notification or the time period provided in the decommissioning plan, whichever is less.

c. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, in addition to the Town's other available remedies, remove the system, restore the property, utilize the bond/security and/or impose a lien on the property to cover these costs to the Town.

SCHEDULE A: PEMITTED USES

SCHEDULE A: PERMITTED USES P = Permitted as of right SP = Special Permit Required Blank = Prohibited								
USE CATEGORY	**NR**	**AR**	**RR**	**HR**	**HMU**	**HC**	**BD**	**Additional Standards**
RESIDENTIAL USES								
Dwelling, single-family	P	P	P	P	P		P	
Dwelling, two-family		SP	P	P	P			
Dwelling, multi-family				SP	SP			Article VI, O
Dwelling, new conversion of existing single family to two or multi-family	SP	SP	SP	SP	SP			
Dwelling, seasonal cottage, cabin	P	SP	SP					
Dwelling, units above first floor commercial	P	P	P	P	P	P		
Manufactured Home Park						SP		Article VI, M
Residential Care Facility			SP	P				
Townhouses			SP	P				
COMMUNITY USES								
Cemetery		SP	SP	SP				
College, University, Vocational School			SP		P	P	P	
Community Center	SP	SP	SP	P	P	P	P	
Cultural facility		SP	SP	SP	P	P		
Daycare, child/family daycare facility		P	P	P	P	P		
Municipal facility	SP	P	P	P	P	P	P	
Park and recreation, public	P	P	P	P	P	P		
Public Transportation Shelter		SP	SP	SP	SP	SP	SP	
Public utility (unless otherwise listed)	SP	SP	SP	SP	SP	SP	SP	
Religious institution and related facilities	P	P	P	P	P	P	P	
Schools, elementary/secondary, public or private		SP	SP	SP	SP	SP		

Wireless Communications Towers			SP					Article VI, AA
COMMERCIAL USES								
Adult Uses							SP	Article VI, A
Agriculture, excluding animal husbandry	P	P	P	P			P	Article VI, F
Animal Husbandry (raising of livestock)	P	P	P				P	Article VI, I
Art Gallery				SP	P	P		
Artist Studio, Artist Loft	P	P	P	P	P	P	P	
Assembly and meeting facility					SP	P		
Bar or tavern					SP	SP		
Battery Energy Storage System, Tier 2	SP*	SP*	SP*	SP*	SP*	SP*	SP*	Article VI, BB
Bed and Breakfast	SP	SP	SP	P	P	P		
Broadcasting facility, radio or television						P	P	
Car Wash						SP		Article VI, B
Entertainment and recreation, indoor, commercial					SP	P	P	
Entertainment and Recreation, outdoor, commercial						SP	SP	Article VI, E
Extraction, private (quarries, clay, sand and gravel pits)		SP						
Funeral homes				P	P	P		

SCHEDULE A: PERMITTED USES P = Permitted as of right SP = Special Permit Required Blank = Prohibited								
USE CATEGORY	**NR**	**AR**	**RR**	**HR**	**HMU**	**HC**	**BD**	**Additional Standards**
Gasoline Station, with/without Convenience Store						SP		Article VI, G
Greenhouse, plant nursery	P	SP	SP			P		
Hotel or Inn					P	P		
Kennel or Animal Shelter		SP	SP			P		Article VI, K
Light Industry (not listed separately in Schedule A)							P	
Membership Club	SP	SP	SP	SP	P	P	P	
Motel						P		
Motorized Vehicle Sales, Lease or Rental Establishment						P		
Motor Vehicle Repair Garage						P	P	Article VI, N
Office, Professional or General				SP	P	P	P	
Research and Development Facility					P	P	P	
Restaurant				SP	P	P		
Retail and Service Establishment (not listed separately in Schedule A)					P	P		
Riding Academy	SP	SP	SP					Article VI, H
Saw Mill		SP						Article VI, T
Self Storage Unit Facility							SP	Article VI, U
Solar Energy Storage System, Tier 3		SP*	SP*				SP*	Article VI, BB
Sportsman's Club and Outdoor Firing Ranges	SP	SP						Article VI, P
Trucking Terminal							P	Article VI, X

Veterinarian, Veterinary Hospital or Clinic		SP	SP			P		
Warehouse							P	
Wholesale and Distribution Facility						SP	P	
ACCESSORY STRUCTURES AND USES								
Accessory Apartment to single family dwelling	SP	SP	SP	SP	SP	SP		Art. IV, C.3.b
Battery Energy Storage System, Tier 1	P*	P*	P*	P*	P*	P*	P*	Article VI, BB
Customary accessory structure or use	P	P	P	P	P	P	P	
Drive-through windows						SP		Article VI, C
Elder Cottage Housing (ECHO Unit)	SP	SP	SP	SP				Article VI, D
Farm Stands, temporary	P	P	P	P	P	P	P	Article VI, F
Farm Stands, permanent	SP	SP	SP	SP	P	P	P	Article VI, F
Greenhouse, commercial, accessory to residence	SP	SP	SP	SP	P	P		
Home Occupation, Minor or Major	P	P	P	P	P	P	P	Article VI, H
Housing, temporary for farm workforce	SP	SP	SP	SP				Article VI, J
Outdoor Storage, commercial use							P	Article VI, Q
Outdoor Storage, residential	P	P	P	P	P	P	P	Article VI, R
Outdoor Wood Furnace/Boiler	P	P	P					Article VI, S
Solar Energy System, Tier 1 and Tier 2	P*	P*	P*	P*	P*	P*	P*	
Tractor trailers, tandem–axle, tri-axle, other vehicles of 18,000 pounds or more, except foragricultural use	SP	SP	SP	SP				Article VI, Y
Wind Energy System, Small	SP	SP	SP	SP	SP	SP	SP	Article VI, Z

***Within the SVO, SP and Site Plan required.**
****Prohibited within the SVO.**

4. 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.

5. EFFECTIVE DATE

This Local Law shall take effect immediately upon passage and filing with the Secretary of State.