

ADOPTED 9/10/2019

Town of Potsdam, St. Lawrence County, New York

Local Law no. 2 of the year 2019
Regulation of Solar Photovoltaic (PV) Systems.

A local law adding a section to the Potsdam Town Code titled, Solar Photovoltaic (PV) Systems.

Be it enacted by the Town Board of the

Town of Potsdam as follows:

Section 1: Authority.

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

Section 2: Purpose.

It is the purpose of this section of the Town Code to encourage and promote the safe, effective and efficient use of installed solar photovoltaic (PV) systems that reduce on-site consumption of utility-supplied energy while protecting the health, safety and welfare of adjacent and surrounding land uses and properties.

Section 3: Intent. It is the intent of these regulations to:

- (1) Support green economy innovations;
- (2) Support New York State in meeting its renewable energy goals established by the 2015 New York State Energy Plan as implemented through the Reforming the Energy Vision Institute;
- (3) Promote and enhance agricultural viability and preserve productive agricultural land resources

and minimize the displacement of prime, and prime if drained soils that are in agricultural production; and

- (4) Provide public utilities, facilities and services that efficiently meet present needs and anticipate future needs of the residents of the Town of Potsdam.

Section 4: Definitions.

The following terms are hereby added to Article VI, Section 110-19, Appendix A: Definitions of the Town Zoning Code and are inserted in alphabetical order and shall have the following meanings in this Chapter of the Town Code:

AGRICULTURAL LANDS - Lands currently used or otherwise suitable for agricultural operations.

AGRICULTURAL OPERATIONS - Any activity, including the cultivation of land, the raising of crops, the raising of livestock, poultry, horticulture, timber, fur-bearing animals; the production, whether for sale to others or home use or consumption, of plants and animals, fruit, vegetable and field crops, plantations, orchards, nurseries, greenhouses, stables and horse-boarding facilities or other similar agricultural practices used primarily for the raising, marketing or sales of on-premises-produced agricultural or horticultural commodities.

BUILDING-INTEGRATED SOLAR PV SYSTEM - A solar PV system that is designed and constructed as an integral part of a principal or accessory building. Components of a building-integrated system are designed to replace or substitute for architectural or structural elements of a building and generally complement, blend with or form part of a building's architectural appearance. Such components will generally maintain a uniform plane with and/or form a part of the walls, window openings, roofing and/or other building elements into which they are integrated. Such a system is used in lieu of a separate solar PV system where components of the system are designed and attached to a building independent of building architecture. A building-integrated system may occur within vertical facades, replacing view glass, spandrel glass or other facade material, with semitransparent skylight systems, within

roofing systems, replacing traditional roofing materials, or within other building envelope systems.

BUILDING-MOUNTED SOLAR PV SYSTEM - A solar PV system that is attached to the roof of a building.

COLLECTIVE SOLAR: Installations of Solar Energy Systems that are owned collectively through a homeowner's association, community or municipal system, "adopt-a-solar-panel" programs, or other similar arrangements.

ENVIRONMENTAL MANAGER (EM) - An individual possessing the skills and knowledge to effectively develop a site for use as a solar PV system and then reclaim the site restoring it, to the greatest extent practical, to its original use.

GLARE - Reflections of light with an intensity sufficient to cause annoyance, discomfort, or loss of visual performance or visibility in any material respect.

GROUND-MOUNTED SOLAR PV SYSTEM - A solar PV system, including its specialized solar racking or other mounting system, which is installed on or in the ground and not attached to any other structure.

GROUND-MOUNTED SOLAR PV SYSTEM, LARGE-SCALE - A ground-mounted solar PV system that (a) has a system capacity greater than 25kW or (b) the ability to generate more than 110% of the kWhs of electricity consumed over the previous twelve-month period by land use(s) existing on the lot or parcel of land where the system is located or for new construction, 110% of the estimated annual kWh usage calculated based on a calculation using data available from the U.S. Energy Information Administration, the U.S. Department of Energy or a usage calculator made available by a public utility (e.g., <https://www.cpi.coop/my-account/online-usage-calculator/>). In applying this standard, electricity consumption for existing land usage shall be determined by submission of utility bills showing electric usage over said twelve-month period.

GROUND-MOUNTED SOLAR PV SYSTEM, SMALL-SCALE - A ground-mounted solar PV system with a system capacity of less than or equal to 25 kW and which shall have the ability to generate no more than 110% of the kWh's of electricity consumed over the previous twelve-month period by land

use(s) existing on the lot or parcel of land where the system is located or for new construction, 110% of the estimated annual kWh usage based on a calculation using data available from the U.S. Energy Information Administration, the U.S. Department of Energy or a usage calculator made available by a public utility (e.g., <https://www.cpi.coop/my-account/online-usage-calculator/>). In applying this standard, electricity consumption shall be determined by submission of utility bills showing electric usage for existing land over said twelve-month period.

KILOWATT (kW) - A unit of electrical power equal to 1,000 watts, which constitutes the basic unit of electrical demand. A watt is a metric measurement of power (not energy) and is the rate (not the duration) at which electricity is used; 1,000 kW is equal to one megawatt (MW).

KILOWATT-HOUR (kWh) - A unit of energy equivalent to one kilowatt of power expended for one hour of time.

NET METERING - Any system or agreement by which the energy or any portion of the energy generated by an on-site Solar Array is distributed to the public-utility power grid and the distributed kWhs can be credited in kWhs towards the off-site use of energy at a different location or towards on-site consumption of non-Solar Array generated kWh, allowing the public utility customer to offset the cost of power drawn from the public utility.

SOLAR ARRAY - Any number of electrically connected solar photovoltaic (PV) panels that are connected to the same inverter.

SOLAR PANEL - A large, flat piece of equipment containing photovoltaic cells that use the sun's light or heat to create electricity.

SOLAR PHOTOVOLTAIC (PV) SYSTEM - A solar energy collection system consisting of solar photovoltaic cells, panels and/or arrays, and other related equipment, which rely upon solar radiation as an energy source for collection, inversion, storage and distribution of solar energy for electricity generation. A solar PV system may be building-mounted, ground-mounted or building-integrated. Any such system or related equipment shall not constitute a "public

utility structure" or a "private utility structure" as such terms are defined or used elsewhere in this Code.

VALUE OF DISTRIBUTED ENERGY RESOURCES (VDER) TARIFFS - Any system or agreement by which the energy or any portion of the energy generated by an on-site Solar Array is distributed to the public-utility power grid and the owner of the Solar Array is compensated for the value of the distributed kWhs pursuant to the terms of a Value Stack or other such valuation mechanism as adopted by the New York State Public Service Commission (PSC) or any successor entity to the PSC.

Section 5: Applicability.

- (1) This section applies to any solar photovoltaic (PV) systems installed and constructed after the effective date of this Section of the Code.
- (2) This section also applies to any upgrade, modification or structural change that alters the physical size, electric generation capacity, location or placement of an existing solar PV system.
- (3) Nonconforming solar PV systems. Nonconforming solar PV systems, existing on the effective date of this section may only be altered or expanded in conformance with the limitations and requirements imposed by Chapter 110, Article IV, § 110-10, of the Town of Potsdam Town Code, which regulates "Nonconforming lots, buildings or uses."
- (4) Properties with approved site plan. Notwithstanding the requirements of Chapter 110, Article V, §110-13.1 of this Chapter, entitled Site Plan Review, for any lot or parcel of land that has an approved site plan, the installation of a "By-right" solar PV system on the lot shall not be considered a change to the approved site plan. This provision shall not be interpreted to exempt lots with an approved site plan from other requirements of this the Town of Potsdam Town Code.

Section 6. Solar PV Systems Permitted By-right.

(1) By-right solar PV systems.

In order to encourage use of solar PV systems in the Town of Potsdam, the following systems shall be permitted by right in any zoning district in the Town, provided the system (i) is generating electricity only for the land use(s) located on the same lot as the system; (ii) system capacity is less than or equal to 25 kW and shall not have the ability to generate more than 110% of the kWh's of electricity consumed over the previous twelve-month period by land use(s) existing on the lot or parcel of land where the system is located or for new construction, 110% of the estimated annual kWh usage based on a calculation using data available from the U.S. Energy Information Administration, the U.S. Department of Energy or a usage calculator made available by a public utility (e.g., <https://www.cpi.coop/my-account/online-usage-calculator/>); and (iii) the system meets the standards for By-right systems identified in section (2) below.

- [a] Building-integrated solar PV systems installed on the existing principal building.
- [b] Building-mounted solar PV systems installed on the existing principal building.
- [c] Small Scale Ground-Mounted Solar PV Systems.

(2) Standards for By-right systems.

- [a] Accessory use. All By-right solar PV systems shall be considered an accessory use.
- [b] Building Permit. All By-right PV systems require receipt of a building permit.
- [c] In no event shall Lot Coverage for a By-right Solar Photovoltaic (PV) System exceed fifty percent (50%) of the Lot Area.

- [d] Glare. All solar panels shall have anti-reflective coatings.
- [e] For any building-mounted PV system installed on a sloped roof:
 - [1] The highest point of the system shall not exceed the highest point of the roof to which it is attached.
 - [2] Solar panels shall be parallel to the roof surface, or tilted with no more than an eighteen-inch gap between the module frame and the roof surface. This measurement shall not be taken from any parapet which might be considered part of a roof.
- [f] For any building-mounted system installed on a flat roof, the highest point of the system shall not extend more than five feet above the height of the roof.
- [g] Location in front yard. Notwithstanding the requirements regulating the location of accessory structures found elsewhere in the chapter, ground-mounted solar PV Systems shall be prohibited in a front yard, including location in any front yard of a corner lot.
- [h] Every By-right solar PV system shall comply with all applicable Uniform Fire Prevention and Building Code provisions, the State of New York Energy Conservation Construction Code, and National Electric Code, NFPA 70.

For all building mounted or building integrated By-right solar PV systems, the building owner(s) and operator(s) shall affix a decal or sign notifying Emergency Response Personnel that the building is equipped with a photovoltaic power source. The required decal or sign shall be available through the office of the Code Enforcement Officer and the cost of such decal or sign shall be

assessed to the owner or operator of the premises. electric power source.

Section 7: Solar PV Systems requiring a Special Use Permit.

(1) Solar PV systems requiring a special use permit.

Excluding any Building-integrated solar PV system, Building-mounted solar PV systems, and Small Scale Ground-mounted solar PV systems subject to regulation as a By-right PV solar system pursuant to section 6, no other type of solar PV system shall be constructed or installed without first obtaining a special use permit and site plan approval from the Planning Board pursuant to Article V of this Chapter. The following solar PV systems require a special use permit and site plan approval ("Permitted System(s)"):

- [a] Large-scale Ground-mounted solar PV systems.
- [b] Building-mounted and building-integrated solar PV systems that have a system capacity greater than 25kW or the capacity to generate more than 110% of the kWh's of electricity consumed over the previous twelve-month period by land use(s) existing on the lot or parcel of land where the system is located or for new construction, 110% of the estimated annual kWh usage calculated based on a calculation using data available from the U.S. Energy Information Administration, the U.S. Department of Energy or a usage calculator made available by a public utility (e.g., <https://www.cpi.coop/my-account/online-usage-calculator/>). In applying this standard for existing structures, electricity consumption shall be determined by submission of utility bills showing electric usage over said twelve-month period.
- [c] Solar PV systems, regardless of size or location, that generate and distributes

energy (1) to the public-utility power grid pursuant to a net metering agreement, a Value Of Distributed Energy Resources (VDER) tariff and/or other such arrangement or (b) to an off-site location(s) pursuant to a power purchase agreement, a lease or contract(s) for community distributed generation, collective solar and/or other such arrangement.

[d] Solar PV systems, regardless of size, mounted on any free-standing structure that does not constitute the principal use of or a portion of the principal building located on the subject property.

[e] Any Solar PV system not eligible to be permitted By-right pursuant to Section 6.

(2) Classifications: Solar PV systems requiring a special use permit may be classified as either a principal use or an accessory use as set forth below.

[a] Principal use. A solar PV system constructed on a lot or parcel of land and providing electricity to an off-site user or users pursuant to a net metering agreement, a Value Of Distributed Energy Resources (VDER) tariff and/or other such arrangement or (b) to an off-site location(s) pursuant to a power purchase agreement, a lease or contract for community distributed generation and/or other such arrangement shall be classified as a principal use.

[b] Accessory use/accessory structure. A solar PV system shall be considered an accessory use/accessory structure when generating electricity for the sole consumption of a principal use or building(s) located on the same lot or parcel of land as the system.

Section 8. Standards for facilities requiring a special use permit ("Permitted System(s)").

Solar PV systems requiring a special use permit ("Permitted System(s)") shall be subject to the following standards:

- (1) Minimum lot size. All Permitted Systems shall adhere to the minimum lot size requirements for the zoning district in which the system is located, except that for residential districts, the minimum lot size for ground-mounted solar PV systems shall be one acre.
- (2) Utility connections. Utility lines and connections from the Permitted System shall be installed underground, unless otherwise authorized by the Planning Board for reasons that may include poor soil conditions, topography of the site, and requirements of the utility provider. Any authorized above-ground utility lines shall be affixed to utility poles tall enough to provide 20 feet of clearance as measured from the shortest distance between the lowest electrical and/or utility line mounted on the pole and the final grade. Electrical transformers for utility interconnections may be above ground if required by the utility provider.
- (3) Glare. All solar panels shall have anti-reflective coatings.
- (4) Fences. Fences not exceeding six feet in height, including open-weave chain-link fences and solid fences, shall be permitted for the purpose of screening or enclosing a Permitted System regardless of the district in which the system is located.
- (5) Height. Ground-mounted solar PV systems may not exceed 12 feet in height.
- (6) Maintenance. Excluding building-mounted and building-integrated solar PV systems, all Permitted Systems shall to the greatest extent possible use native, pollinator friendly plantings for ground cover instead of gravel,

impervious surfaces or turfgrass and all such plantings shall be maintained without the use of pesticides or herbicides.

- (7) Signs. Solar equipment and any system-related fencing shall not be used for displaying any advertising. All signs, flags, streamers or similar items, both temporary and permanent, are prohibited on solar equipment except: (a) the manufacturer's or installer's identification; (b) appropriate warning signs and placards; (c) signs that may be required by a federal, state or local agency or any potential first responders; and (d) signs that provide a 24-hour emergency contact phone number and warn of any danger.
- (8) Location in front yard. Notwithstanding the requirements regulating the location of accessory structures found elsewhere in the chapter, Permitted large-scale ground-mounted solar PV Systems classified as an accessory use shall be prohibited in a front yard, including location in any front yard of a corner lot.
- (9) Compliance with Codes. Every Permitted System shall comply with all applicable Uniform Fire Prevention and Building Code provisions and the State of New York Energy Conservation Construction Code and National Electric Code, NFPA 70.
- (10) Ground-mounted solar PV systems.
 - [a] Setbacks. No part of a ground-mounted system shall extend into the required yards and/or setbacks due to a tracking system or short-term or seasonal adjustment in the location, position or orientation of solar PV related equipment or parts.
 - [b] Setbacks in a residential district and a residential-agricultural district. The location of solar collectors shall meet all applicable setbacks for accessory structures in the residential or residential

agriculture zoning district where the project is to be located, but not less than twenty-five (25) feet from any public highway right-of-way or utility easement, and natural vegetation shall be preserved within this buffer zone and, where possible, augmented with additional plantings.

The setbacks are intended to provide a visual buffer between the PV system and adjacent dwellings or uses. Plantings within this area are to be at a height so as to provide, as much as practicable, a visual screen of the Permitted System from residential uses. The species type, location and planned height of such landscaping shall be subject to the approval of the Planning Board and to the extent possible shall consist of native plantings.

- [c] Agricultural Lands. Permitted Systems shall be allowed on lands currently used or otherwise suitable for agricultural operations.

Excluding building-mounted and building-integrated solar PV systems, the following standards are to be implemented by the Planning Board as part of site plan approval for any land currently used or suitable to be used for agricultural purposes:

- [1] If the size of the project is at least 20 acres, the project owner shall hire an Environmental Monitor (EM) to oversee the construction, restoration and follow-up monitoring in agricultural fields. The EM is to be on-site whenever construction or restoration work is occurring.
- [2] Fencing and watering systems associated with rotational grazing systems and reduction in farmland viability due to the reduction in remaining productive farmland are to be assessed and mitigated to the greatest extent

- possible, including to the greatest extent possible by using native, pollinator friendly plantings for ground cover instead of gravel, impervious surfaces or turfgrass; and all such plantings shall be maintained without the use of pesticides.
- [3] Structures for overhead collection lines are to be located upon the nonagricultural areas and along field edges where possible.
 - [4] Access roads are to be located along the edge of agricultural fields, in areas next to hedgerows and field boundaries and in the nonagricultural portions of the site.
 - [5] There shall be no cut and fill so as to reduce the risk of creating drainage problems by locating access roads, which cross agricultural fields, along ridge tops and by following field contours to the greatest extent possible.
 - [6] The width of access roads along agricultural fields is to be no wider than sixteen (16) feet so as to minimize the loss of agricultural lands and comply with the state of New York fire access code.
Access roads on agricultural fields shall be constructed at grade with the use of geotextile fabric so that it does not interfere with the continued use of farm equipment on any surrounding farmland.
 - [7] Maintain all existing drainage and erosion control structures such as diversions, ditches, and tile lines or take appropriate measures to maintain the design and effectiveness of these structures. Repair any structure disturbed during construction to as close to original condition as possible, unless such structures are to be eliminated based upon a new site plan.

- [8] The surface of solar farm access roads to be constructed through agricultural fields should be level with the adjacent field surface where possible.
- [9] Culverts and waterbars are to be installed to maintain natural drainage patterns.
- [10] All top soil areas to be used for vehicle and equipment traffic, parking, and equipment laydown and storage areas, are to be stripped.
- [11] All vehicle and equipment traffic and parking to the access road and/or designated work areas, such as laydown areas, are to be limited in size to the greatest extent practical.
- [12] No vehicles or equipment are to be allowed outside the work area without prior approval from the landowner and the EM.
- [13] Where an open trench is required for cable installation, topsoil stripping from the entire work area may be necessary. As a result, additional work space may be required as part of site plan approval.
- [14] All topsoil stripped from work areas (parking areas, electric cable trenches, along access roads) is to be stockpiled separate from other excavated materials (rock and/or subsoil).
- [15] A maximum of 50 feet of temporary workspace is to be provided along "open cut" electric cable trenches for proper topsoil segregation. All topsoil will be stockpiled immediately adjacent to the area where stripped/removed and shall be used for restoration on that particular site. No topsoil shall be removed from the site. The site plan shall clearly designate topsoil stockpile areas in the field and on the construction drawings.

- [16] Electric interconnect cables and transmission lines are to be buried in agricultural fields wherever practical.
- [17] Interconnect cables and transmission lines installed above ground shall be located outside agricultural field boundaries. When above ground cables and transmission lines must cross agricultural fields, taller structures that provide longer spanning distances and locate poles on field edges shall be used to the greatest extent practicable. All utility poles shall be tall enough to provide 20' of clearance as measured from the shortest distance between the lowest electrical and/or utility line mounted on the pole and final grade.
- [18] All buried electric cables in cropland, hayland and improved pasture shall have a minimum depth of forty-eight (48) inches of cover.
- [19] The St. Lawrence County Soil and Water Conservation District is to be consulted concerning the type of intercept drain lines to be used whenever buried electric cables alter the natural stratification of soil horizons and natural soil drainage patterns.
- [20] In pasture areas, it is necessary to construct temporary or permanent fences around work areas to prevent livestock access, consistent with landowner agreements.
- [21] Excess concrete used in the construction of the site is not to be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas.
- [22] All permits necessary for disposal under local, State and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.

(d) Restoration Requirements for agricultural land temporarily disturbed by construction. As necessary, all agricultural land shall be restored as follows:

- [1] Decompact soil to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. Soil compaction results should be no more than 250 pounds per square inch (PSI) as measured with a soil penetrometer. In areas where the topsoil was stripped, soil decompaction should be conducted prior to topsoil replacement. Following decompaction, remove all rocks 4 inches in size or greater from the surface of the subsoil prior to replacement of topsoil. Replace the topsoil to original depth and re-establish original contours where possible. Remove all rocks 4 inches and larger from the surface of the topsoil. Subsoil decompaction and topsoil replacement shall be avoided after October 1st of each year.
- [2] Regrade all access roads to allow for farm equipment crossing.
- [3] Restore original surface drainage patterns, or other drainage patterns incorporated into the approved site design by the Planning Board.
- [4] Seed all restored agricultural areas with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.
- [5] All damaged subsurface or surface drainage structures are to be repaired to preconstruction conditions, unless said structures are to be removed as part of the site plan approval. All surface or subsurface drainage problems resulting from construction of the solar energy project shall be addressed with the appropriate mitigation as determined by the EM, Soil and Water

Conservation District, and the Landowner.

- [6] Postpone any restoration practices until favorable (workable, relatively dry) topsoil/subsoil conditions exist. Restoration is not to be conducted while soils are in a wet or plastic state of consistency. Stockpiled topsoil should not be regraded, and subsoil should not be decompacted until plasticity, as determined by the Atterberg field test, is adequately reduced. No Project restoration activities are to occur in agricultural fields between the months of October through May unless favorable soil moisture conditions exist.
- [7] Following site restoration, remove all construction debris from the site.
- [8] Following site restoration, the Project owner is to provide a monitoring and remediation period of no less than 365 days. General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed subsurface drain lines, fences, etc.
- [9] Mitigate any topsoil deficiency and trench settling with imported topsoil that is consistent with the quality of topsoil on the affected site. All excess rocks and large stones are to be removed from the site.
- [10] At the time of abandonment and removal, as such are defined in Section 9 below:
 - (A) All above ground solar array structures are to be removed and all areas previously used for agricultural production, are to be restored to the fullest extent possible to the condition that existed prior to the installation of any solar array structures.

- (B) All concrete piers, footers, or other supports are to be removed to a depth of 48 inches below the soil surface.
- (C) Underground electric lines are to be abandoned in place.
- (D) Access roads in agricultural areas are to be removed, unless otherwise specified by the landowner.

Section 9. Placement on nonconforming buildings.
Notwithstanding the area, lot and bulk requirements of this chapter, building-mounted and building-integrated solar PV systems may be installed on nonconforming buildings as follows:

- (1) On the roof of a nonconforming building that exceeds the maximum height restriction, provided the system does not extend above the peak or highest point of the roof to which it is mounted.
- (2) On a building that does not meet the minimum setback or yard requirements, provided there is no increase in the extent or degree of nonconformity with said requirement.
- (3) On a building that exceeds the maximum lot coverage requirements, provided there is no increase in the extent or degree of nonconformity with said requirement.

Section 10. Abandonment and removal.

- (1) Applicability and purpose. This section governing abandonment and removal shall apply to (a) any Permitted System classified as a Principal Use and (b) all ground-mounted Permitted Systems.

Abandoned ground-mounted or Primary Use Solar PV Systems create a negative visual impact upon the Town, may become unsafe by reason of their energy-producing capabilities and serve as an attract nuisance. It is the purpose of this section to provide for the safety, health,

protection and general welfare of persons and property in the Town of Potsdam by requiring abandoned ground-mounted or Primary Use Solar PV Systems to be removed pursuant to a decommissioning plan.

- (2) Applications. All applications for a ground-mounted or Primary Use solar PV system that requires a Special Use Permit shall be accompanied by a decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of the facility, prior to issuance of a building permit. The decommissioning plan must ensure the site will be restored to a useful, nonhazardous condition without delay, including, but not limited to, the following:
 - (a) Except as required by Section 8(d)[10] regarding agricultural lands, the physical removal of all aboveground and below-ground equipment, structures and foundations, including but not limited to all solar arrays, buildings, security barriers, fences, electric transmission lines and components, roadways and other physical improvements to the site.
 - (b) Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations.
 - (c) Restoration of the ground surface and soil.
 - (d) Stabilization and revegetation of the site with native seed mixes and/or plant species (excluding invasive species) to minimize erosion.
- (3) Abandonment. A ground-mounted or Primary Use solar PV system that requires a Special Use Permit may be deemed abandoned and require implementation of the decommissioning plan to the extent applicable if:

- (a) The applicant begins but does not complete construction of the project within 18 months after receiving final site plan approval, the Town may notify the operator and/or the owner to complete construction and installation of the facility within 180 days. If the owner and/or operator fails to perform, the Town may notify the owner and/or operator to implement the decommissioning plan;
- (b) In the event the facility is not completed and functioning within 18 months of the issuance of the final site plan approval, the Town may notify the operator and/or the owner to complete construction and installation of the facility within 180 days. If the owner and/or operator fails to perform, the Town may notify the owner and/or operator to implement the decommissioning plan; and
- (c) Upon cessation of all activity at a constructed facility for a period of one year or if the constructed facility fails to generate or transmit more than 10% of its rated capacity over a continuous period of twelve months, the Town may notify the owner and/or operator of the facility to implement the decommissioning plan. Within 180 days of notice being served, the owner and/or operator can either restore operation equal to 80% of approved capacity or implement the decommissioning plan.
- (d) If after receiving a notice pursuant to subsection (a), (b) or (c) above, the owner and/or operator fails, within 180 days of receipt of the notice, to, if applicable, restore operation equal to 80% of approved capacity or fully implement the decommissioning plan, the Town may, at its discretion, provide for the restoration of the site in accordance with the decommissioning plan and may recover all expenses incurred for such activities from

the defaulted owner and/or operator. The cost incurred by the Town shall be assessed against the property on which the system was located, shall become a lien and tax upon the subject property, and shall be enforced and collected with interest by the same officer and in the same manner as other taxes.

- (e) Upon petition to the Planning Board at the time the decommissioning plan is to be implemented, the Board may permit the system owner to leave certain underground or aboveground improvements in place, provided the owner can show that such improvements are part of a plan to redevelop the site, are not detrimental to such redevelopment, and do not adversely affect community character or the environment.

(4) Special use permit conditions. The following conditions shall apply to all Permitted Systems, as defined above in Section 4. No Special Use Permit shall be issued unless the Planning Board finds that the following conditions have been or will be met.

- (a) A licensed engineer's estimate of the anticipated operational life of the system.
- (b) Identification of the party responsible for decommissioning.
- (c) Description of any agreement regarding decommissioning between the responsible party and the landowner (e.g., an escrow account, a decommissioning trust, removal or surety bonds or a letter of credit, etc.).
- (d) Excluding building integrated systems, a schedule showing the time frame over which decommissioning of the system will occur and the site restoration work completed.
- (e) Excluding building integrated systems, a cost estimate prepared by a licensed professional engineer estimating the full

cost of decommissioning and removal of the solar PV system.

- (f) Annual report. Excluding building integrated systems, the solar PV system owner shall annually provide the Town Code Enforcement Officer a written report stating the rated capacity of the system and a sworn statement indicating whether the system did or did not generate and transmit electricity at a rate equal to or greater than 10% of its rated capacity over each twelve month period of operation. The report shall also identify any change of ownership of the solar PV 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 first annual report shall be submitted no later than 45 days after the first twelve months of operation, and thereafter, annually within 45 days of each successive twelve month period.

- (5) Notification, failure to perform.

If either the system owner, landowner and/or permittee fails to complete the required decommissioning plan or restore operations as directed by the Code Enforcement Officer within the applicable 180-day period, the Code Enforcement Officer shall notify the system owner, landowner and permittee, by certified mail, that the subject Solar PV System has been deemed abandoned and the Town intends to revoke the special use permit within 60 days of mailing said notice. The notice shall also state that the permittee may appeal the Code Enforcement Officer's determination to the Town Board and request a public hearing upon the matter.

- (a) Said appeal and request for hearing must be made and received by the Town Board within 30 days of the mailing of the notice.

Failure by the permittee to submit an appeal and request for hearing within the 30-day period will result in the special use permit being deemed revoked as stated herein.

- (b) In the event the permittee appeals the determination of the Code Enforcement Officer and requests a hearing, the Town Board shall schedule and conduct said hearing within 60 days of receiving the appeal and request. In the event a hearing is held, the Town Board shall determine whether the solar PV system has been abandoned, whether to continue the special use permit with conditions as may be appropriate to the facts and circumstances presented to the Board or whether to revoke the special use permit and order removal of the solar PV system.
- (c) If the Town Board determines the subject Large-Scale or Net Metering System has been abandoned, the system owner, landowner and/or permittee shall commence implementation of the decommissioning plan within 45 days. If the system owner, landowner and/or permittee fail to commence the implementation of the decommissioning plan within 45 days, the Town may, at its discretion, provide for the restoration of the site in accordance with the decommissioning plan and may recover all expenses incurred for such activities from the defaulted owner and/or operator. The cost incurred by the Town 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.

Section 11: If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgement shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence,

paragraph, section or part thereof directly involved in the controversy in which such judgement shall have been ordered.

Section 12: This local law shall take effect immediately upon filing with the Secretary of State.