

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

☐ County ☐ City ☒ Town ☐ Village
(Select one)

of Tyrone

FILED
STATE RECORDS

FEB 18 2020

Local Law No. # 1 of the year 20 20

DEPARTMENT OF STATE

A local law

(Insert Title)

Solar Energy Facilities Law

Be it enacted by the

Town Board

of the

(Name of Legislative Body)

☐ County ☐ City ☒ Town ☐ Village
(Select one)

of

Tyrone

as follows:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of Tyrone was duly passed by the Tyrone Town Board on February 11 2020, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20____, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20____.

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

(City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 26 _____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20 _____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20 _____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____ above.

Deborah B. Tyler
Clerk of the county legislative body, City, Town or Village Clerk or
officer designated by local legislative body

Date: February 13, 2020

(Seal)

MOTION JOE
SECOND TOM

FEBRUARY 11, 2020
RESOLUTION NO. 4, 2020
TOWN OF TYRONE

RE: LOCAL LAW NO. 1 OF THE YEAR 2020 ON SOLAR ENERGY FACILITIES

WHEREAS, a law known as "SOLAR ENERGY FACILITIES LAW" was introduced to the public for public viewing at our Town Hall meeting held January 14, 2020, advertised in the Town newspaper twice, posted at local businesses through out town, and put in the minutes made public on our Town Web Site, and

WHEREAS, a public meeting was held on February 11, 2020 for public comment, and

NOW, THEREFORE, BE IT RESOLVED, that Local Law NO. 1 of the year 2020, in the form hereto annexed be, and hereby is passed, adopted, and enacted, and

BE IT FURTHERE RESOLVED, that the Town Clerk of the Board duly cause the publication of the passage, enactment and adoption of Local Law 1 of the Year 2020, together with the required text thereof in the official town newspaper.

ROLL CALL VOTE:

Troy Eyer - AYE

Edward Perry - AYE

Joe Sevier - AYE

Tom Allen - AYE

Donald Desrochers - AYE

Solar Energy Facilities Law

SECTION 1. TITLE

This Local Law may be cited as the "Solar Energy Facilities Law" of Town of Tyrone, New York.

SECTION 2. NEED

Upstate New York and the Town of Tyrone have become and are likely to remain an area of intensive interest by Solar Energy Facilities developers who have solicited and entered into land leases with upstate landowners for the purpose of establishing Solar Energy Facilities. Such facilities, their locations and their uses, are currently unregulated by the Town's zoning ordinance. The environmental, health, economic, cultural, and technological impacts of such industrial solar energy facilities are varied, long lived, complex and cumulative. The consequences of these impacts will be borne by the land, air, water, wildlife, and people of the Town of Tyrone. A comprehensive local law providing for the detailed examination, acceptable mitigation and/or elimination of the aforementioned impacts is and always will be necessary.

SECTION 3. PURPOSE

The Town Board of the Town of Tyrone adopts this Local Law to regulate the siting, use, construction, decommissioning, disposal, and restoration of the site of industrial Solar Energy Facilities (SEFs) to protect the public health, safety and welfare of its citizens and visitors; to minimize the adverse impacts on the Town's character and economy; to minimize negative impacts on the community's unique scenic resources including, but not limited to adjacent lands and waterways; to minimize the adverse impacts on property values of nearby citizens; to minimize the adverse impacts on the Town's farming communities; and to minimize the adverse impacts on the Town's environment and ecosystems.

This law does not address residential solar use, or a minor solar array that is on a farm or other business, exclusively for onsite energy usage. This ordinance is not intended to abridge safety, health or environmental requirements contained in other applicable codes, standards, or ordinances so long as said codes, standards, and ordinances are stricter than this law.

SECTION 4. AUTHORITY AND REFERENCES

The Town Board of the Town of Tyrone enacts this Local Law under the authority granted by:

4-1 Article IX of the New York State Constitution.

4-2 New York Statute of Local Governments, §10(1), (6), and (7).

4-3 New York Municipal Home Rule Law, §10(1)(i) and (ii) and §10(1)(a)(6), (11), (12), and (14).

4-4 The supersession authority of New York Municipal Home Rule Law, §10(2)(d)(3), specifically as it relates to determining which body shall have power to grant variances under this Local Law, and what variances may be granted to the extent such grant of power is different than under Town Law §267 and §274-b, and as it relates to the power of the Town Board to regulate land use within the Town to the extent the provisions of this Local Law differ from the authority granted to the Town by Article 16 of the Town Law.

4-5 New York Town Law, Article 16 (Zoning).

4-6 New York Town Law §130(1)(Building Code), (3)(Electrical code), (5) (Fire Prevention), (7) (Use of streets and highways), (7-a) (Location of Driveways), (11) (Peace, good order and safety), (15) (Promotion of public welfare), (15-a) (Excavated lands), (16) (Unsafe buildings), (19) (Trespass), and (25) (Building lines).

4-7 New York Town Law §64(17-a) (preservation of historic places/protection of aesthetic interests), (23) (General powers).

4-8 New York Real Property Tax Law §412-a and §487.

4-9 United States Department of Defense Instruction: Air Installation Compatible Use Zones.

SECTION 5. FINDINGS

The Town Board Members of Town of Tyrone find and declare that:

5-1 That the New York State Constitution's "Bill of Rights for Local Governments" (Article B2-10) Legally obligates local legislators to protect the health, safety and well-being of their community.

5-2 That the Town of Tyrone has determined that the potential benefits of Solar Energy Facilities must be balanced against possible negative impacts to protect the interests of the Town, its residents, and its businesses and that comprehensive regulations regarding the development of Solar Energy Facilities are necessary.

5-3 That the Town intends to promote the effective and efficient use of solar energy resources; set provisions for the placement, design, construction, and operation of such systems consistent with the Town of Tyrone's desire to uphold the public health, safety, and welfare; and to ensure that such systems will not have a significant adverse impact on the environment, or the aesthetic qualities and character of the Town.

5-4 That the Town of Tyrone has many scenic viewsheds, that could be negatively impacted by industrial solar energy facilities, and consideration of these viewsheds must be addressed in the siting of solar energy facilities.

5-5 That it is necessary to prioritize sites for siting SEF's and parking lots, decommissioned solid waste facilities, flat rooftops, untillable fields, formal gravel mines, former industrial sites and sites where the natural environment has already been destroyed or severely degraded should be considered first in the siting of SEF's'

SECTION 6. PERMIT REQUIRED

Solar Energy Facilities shall be permitted within Town of Tyrone only in areas and at sites therein which are consistent with the Findings above.

Such facilities shall be subject to the requirements and permitting process of this Local Law, in addition to other applicable local, state and federal laws.

Notwithstanding anything to the contrary herein, the cumulative environmental, health, economic, cultural,

and technological impacts of siting, use, construction, decommissioning, disposal, and restoration of the SEF and the reasonable possibility of alternate sites (regardless of whether located in the Town or not) shall in each application, without exception, be studied, examined, considered, addressed, and materially mitigated before any permit shall be issued.

A finding that the best site, based on the detrimental impacts of the proposed SEF, may be somewhere else, or a finding that the impacts may outweigh the benefits to the Town and its people, shall be sufficient grounds to deny a permit.

This Local Law shall apply to all of the Town of Tyrone.

SECTION 7. DEFINITIONS

As used in this chapter, the following terms shall have the meanings indicated. Words not defined in this Local Law shall be given their ordinary and common meaning:

Accessory Building: A building that is located on the Solar Energy Facility (SEF) property.

Accessory Equipment: Any equipment serving or being used in conjunction with a SEF. The term includes utility or transmission equipment, power supplies, generators, batteries, equipment buildings, and storage sheds, shelters or similar structures.

Administrative Approval: Approval that the Planning Board is authorized to grant after Administrative Review.

Board of Appeals: The Board of Appeals is comprised of the members of the Zoning Board of Appeals that is established by the Local Zoning Law.

Completed Application: An application that contains all information and/or data required and requested, to enable an informed decision to be made with respect to that application.

Concentrated Solar Power (CSP): See Thermal Solar Conversion.

Conservation Area: Such areas include natural areas protected by law, such as wetlands that meet the definition in the Clean Water Act 33 USC Sec. 1251 et seq.; shore land areas; water bodies; riparian buffers; populations of endangered or threatened species, or habitat for such species; archaeological sites, cemeteries, and burial grounds; important historic sites; other significant natural features and scenic viewsheds; and existing trails or corridors that connect the tract to neighboring areas.

Electrical Transmission Tower: An electrical transmission structure used to support high voltage overhead power lines. The term shall not include any utility pole.

FAA: The Federal Aviation Administration or successor agency.

Maintenance: The cleaning, painting, repair, or replacement of defective parts (including plumbing,

electrical, or mechanical work that might require a building permit) in a manner that does not alter the basic design or composition of a structure, such as a solar array.

Modification or Modify: Any change, addition, removal, swap-out, exchange, and the like that does not qualify as "Repairs and/or Maintenance" as defined herein is a Modification. Also included is any change, addition, swap-out, exchange, and the like that requires or results in changes and/or upgrades to the structural integrity of a solar array.

Necessary: What is technologically required for the equipment to function as designed by the manufacturer. Anything less will restrict or inhibit the provision of service as intended and described in the Application. Necessary does not mean what may be desired or preferred technically.

Ordinary Maintenance: Actions that ensure that the SEF is kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity and structural integrity. Ordinary Maintenance does not include Modifications.

Person: An individual, trustee, executor, receiver, other fiduciary, corporation, firm, partnership, association, organization, club, etc. acting as an entity.

Photovoltaic Solar Conversion (PV): An active solar energy system that directly converts sunlight into electricity by what is known as the photovoltaic process.

Repair: The replacement of existing work with the same kind of material used in the existing work, not including additional work that would change the structural safety of the structure or that would affect or change required existing facilities, a vital element of an elevator, plumbing, gas piping, wiring, or heating installations, or that would be in violation of a provision of law or this Local Law. The term "Repair" or "Repairs" shall not apply to any change in construction.

Solar Array: An active solar energy system that converts sunlight into electricity using either Thermal or Photovoltaic methods. Such a system has multiple solar collectors, and might include transformers, generators, batteries, and other appurtenant structures and/or facilities.

Solar Collector: A device that converts sunlight into electricity using either Thermal or Photovoltaic methods.

Solar Energy: There are two general ways sunlight is converted into useful energy: passive and active. Passive refers to such actions as opening a window shade to let sunlight in to heat a room. Active uses mechanical devices to collect, convert, store and distribute solar energy. The two most common Active conversions of sunlight into electricity are Thermal and Photovoltaic.

Solar Energy Facility (SEF): A commercial electricity-generating facility (PV or CSP), whose primary purpose is to supply electricity. This consists of one or more solar arrays and other accessory structures and buildings, including substations, electrical infrastructure, generators, transmission lines, and other

appurtenant structures and/or facilities.

Solar Farm: A marketing term for a SEF and which term shall not be used on the application of the permit

State: The State of New York.

Temporary: Something intended to exist or does exist for fewer than 180 days.

Thermal Solar Conversion: An active solar energy system that converts sunlight into electricity by collecting and concentrating heat to drive a conventional steam generator. For a commercial application this is called Concentrated Solar Power (CSP).

Utility Pole: A structure owned and/or operated by a public utility, municipality, electric membership corporation, or rural electric cooperative that is designed specifically for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

SECTION 8. PERMIT REQUIREMENTS

General

Before a building permit may be issued for a SEF, a verified Solar Energy Permit Application must first be approved by the Town Board.

Any individual resident or land owner in the town shall have the right to report to the town Code Enforcement officer if there is a belief of a violation of the permit.

8-1 Transfer of the Permit: The Permit shall not be transferrable without the permission of the Town Board after a thorough review of the financial character and condition of the proposed transferee by the Planning Board along with a finding that the Permitted is not already in violation of the Permit in any way, that the proposed transferee has the necessary financial resources, management experience, skill, and creditable ability to perform according to the terms of the Permit.

The Planning Board and the Town Board shall have the authority to impose new conditions on the proposed permittee's permit as a condition of approval of the transfer. Such conditions may be related to financial concerns and/or any studies or data (post the date of the original permit) which may show an increased environmental or health impact on the town, its people and/or its wildlife.

No transfer of the Permit shall release any present or future permittee from the decommissioning obligations, both financial and performance related.

8-2 Permit Application: Throughout the permit process, the Applicant shall promptly notify the Planning Board of any changes to the information contained in the permit application. Changes which do not materially alter the initial site plan may be administratively accepted. Any changes which materially or substantively add to or affect the environmental, health, economic, cultural, scenic, pastoral/rural, cumulative, and technological impacts shall be included in an amended EIS. The application for a SEF shall consist of 10 hard copies and an electronic (digital) filing that contains at least the following:

8-2.1 Summary: A narrative overview of the SEF, including its likely actual operating generating performance at the site on a monthly basis, apart from its 'nameplate' generating capacity.

8-2.2 Inventory: A tabulation describing the:

- A. Number and type of each proposed solar array, including their generating capacity.
- B. Dimensions and respective manufacturers.
- C. Appurtenant structures and/or facilities.

8-2.3 Vicinity Map: Identification of the property on which the proposed SEF will be located as well as a topographical and soils map of the area of the drainage area of the site including the downstream drainage to the border of the Town.

8-2.4 Site Plan: A plan showing the:

- A. Planned location of each solar array.

- B. All property lines within 1000 feet of the property lines of the proposed site.
- C. Each array's setback distance from the closest SEF boundary.
- D. Access road and turnout locations.
- E. Substation(s) and ancillary equipment, buildings, and structures.
- F. Electrical cabling from the SEF to the substation(s), and from the substation(s) to where the electricity will leave the site, and associated transmission lines including the rating in kilovolts for any line.
- G. Conservation Areas, including natural areas protected by law, such as wetlands that meet the definition in the Clean Water Act; shore land areas; water bodies; riparian buffers; populations of endangered or threatened species (federal or state), or habitat for such species; flyways; archaeological sites, cemeteries, and burial grounds; important local historic sites; existing healthy, native forests consisting of at least one acre of contiguous area; individual existing healthy trees that are at least 100 years old; other significant natural features and scenic view sheds; existing trails or corridors that connect the tract to neighboring areas.
- H. A landscaping plan that shows proposed screening and buffering of all arrays, buildings and other non-array structures on the site or sites.
- I. The location of roads, easements, rights of way, air rights, and restrictions on plant growth or building construction on or off the site, used or to be used, acquired, and/or affected by construction, operation, and restoration of the site, whether in existence at the time of the application or to come into existence in the future.
- J. To provide for at least minimal operational safety for persons and property located outside of a SEF, all SEFs shall comply with the following: five hundred (500) feet from residential property lines, two hundred fifty (250) feet from non-residential property lines, and maximum height of fifteen (15) feet.
- K. Such minimum setback for a SEF shall be measured from its outermost extension that is nearest the SEF property line, public or private right-of-way, and access easement.
 - 1. Height is measured from the lowest adjacent grade to the highest point of the structure, including any attachments (such as a lightning protection device).
 - 2. The location of present and proposed storm drainage systems, including drain lines, culverts, catch basins, headwalls, endwalls, hydrants, manholes and drainage swales.

8-2.5 Misc: The Applicant shall provide the following information to the Planning Board:

- A. Certification that the proposal is designed to meet all NY Building Codes.
- B. A Stand-down Plan for high wind conditions.
- C. Signed copies of all leases, deeds, easements, rights of way, 'good neighbor' agreements, and any other documents relating to the SEF or the permit process, including but not limited to those affecting land in the town used now or in the future for or as part of the SEF in anyway. Such documents must be delivered free from any claim of confidentiality.
- D. Any other materials needed to satisfy the requirements of this permit.

8-2.6 Economic Impact Study: The Town shall hire independent experts paid by the Applicant, which experts perform a thorough, conservative assessment of the SEF's net economic impact on the community. This shall include but not be limited to possible tourism reduction, property devaluations

(and the commensurate loss in tax base), cost to community due to possible adverse health effects, the risk of Permittee's financial failure or abandonment of the SEF due to the end of subsidies to the SEF, and the higher cost of electricity.

8-2.7 Environmental Impact Study: At the applicants expense an environmental impact assessment must be completed in accordance with 6 NYCRR Part 617 State Environmental Quality Review (SEQR).

8-2.8 SEF Airspace Impacts: If any portion of a SEF will be located within five (5) miles of any civilian or military airport runway, or heliport, the Applicant shall provide a copy of the FAA determination resulting from the filing of FAA Form 7460-1. The Applicant shall also demonstrate compliance with all Local, State and Federal airport related laws.

If requested by the Town Planning Board, the SEF Applicant shall use the latest version of the Solar Glare Hazard Analysis Tool (SGHAT), per its user's manual to evaluate the solar glare aviation hazard, as indicated in D (i) and D (ii). The full report for each flight path and observation point, as well as the contact information for the zoning administrator, shall be sent to the appropriate authority at least 30 days prior to site plan approval. Proof of delivery of notification and date of delivery shall be submitted with permit application.

8-2.9 Visual Impacts: The Applicant shall furnish a visual impact assessment to the Planning Board, which shall include:

- A. Pictorial representations of "before and after" views from 360-degree viewpoints within 1000 feet of the proposed SEF boundaries, as well as lines of site from any elevation from which the SEF can be seen. These will include major roads; state and local parks; other public lands; historic districts; preserves and historic sites; and private homes and overlooks. The Applicant shall provide a map showing the locations of where the pictures were taken and the distance of each location from the proposed SEF.
- B. If any portion of a proposed SEF will be located within 1000 feet of the right-of-way of a Federal or State-designated Scenic Route/By-way, the Applicant shall describe the proposed measures to be taken to eliminate and/or minimize the visual impact of the proposed SEF upon a Scenic Route/By-way.
- C. A computer-generated "zone of visibility map" (covering at least a one [1] mile radius from the proposed SEF) shall be created to illustrate locations from which the proposed installation may be seen, with and without foliage.

8-2.10 Agricultural Resources: For projects located on agricultural lands:

- A. Any Solar Energy Facility located on the areas that consist of Prime Farmland or Farmland of Statewide Importance shall not exceed 25% of the area of Prime Farmland or Farmland of Statewide Importance on the parcel.
- B. SEFS located on Prime Farmland shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets.

- C. SEF 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.
- D. The Town of Tyrone reserves the right to have New York State Department of Agriculture and Markets to review any project involving prime farmland.

8-2.11 Maintenance Plan:

The Applicant's maintenance plan shall include a process and plan to comply with the following, which will be enforced by the Town Code Enforcement Officer.

- A. The Applicant shall detail storm follow-up, and other actions that will be taken to keep the SEF operating quietly, efficiently, and not polluting land, water, or air.
- B. The Applicant shall conduct preventive maintenance inspections at least once every season, and after any significant storm event, or seismic event as determined by the Town Board.
- C. Each inspection shall look for such things as metal fatigue, nut loosening, and other potential failures that might impact the public health and safety. Such inspection reports shall be provided to the Planning Board and the landlord of the premises if there is one, within thirty (30) days of the inspection.
- D. The Applicant's plan shall not alter the stormwater runoff pattern of the land in such a way as to increase or redirect the flow of water onto another's land or on to roads, rights of way, or easement areas. The site shall be so engineered to slow runoff in the event of any wind, rain or flooding event mentioned above.
- E. The Permittee shall at all times secure the permitted area to prevent children and adult humans and animals from entering the site and shall not permit any wires or electrical conduit to be exposed or easily exposed and shall prominently mark the property by signs approved by the Town warning of the electrical danger of direct current.

8-2.12 Decommissioning Plan: A detailed and footnoted description of how the structural and array materials will be disposed of, how the site will be restored, as well as:

- A. Anticipated life of the proposed panels and of the SEF itself, based on the actual panels which will be placed on the property. Any change in the character, make, model or composition of any panels shall require an amendment to the EIS with a full and complete review of how such change affects the conclusions made in support of any permit which is actually granted.
- B. Estimated decommissioning costs including contingency costs of at least 20% (in current dollars), as provided by an appropriately experienced licensed engineer.
- C. A verifiable means of determining if the decommissioning plan needs to be activated due to cessation of use, such as a letter from the electric utility stating that it will notify the Code Enforcement Officer within ten (10) business days if electricity is not received from any array within the SEF for any thirty (30) consecutive days.
- D. The Applicant's plan to legally dispose offsite all hazardous waste contained in the SEF.
- E. Method for ensuring that funds will be available for decommissioning and restoration as set

forth in section 9-5.

- F. Under no circumstance shall the Decommissioning Plan call for abandonment in place.

8-2.13 Ancillary Materials: Other relevant studies, reports, certifications, and approvals as may be reasonably requested by the Town to ensure compliance with this Local Law, or to protect the health, safety and well-being of the Town's citizens, or local ecosystems. The inputs of local citizens will be solicited in at least one (1) public hearing on this application.

8-2.14 The SEF shall:

- A. Be a non-obtrusive color that blends with the surrounding foliage, as determined by the Planning Board, nor be artificially lighted, except as approved by the Planning Board, with motion sensor lighting required.
- B. Not contain any advertising (including flags, streamers or decorative items or any identification of the array manufacturer, SEF owner and operator). This does not include any identification plaques or warning notices that are required by the electric utility or a governmental agency.
- C. Have a minimum landscape buffer of 25 feet on all four sides. The buffer shall contain evergreen bushes planted no more than 8 feet apart and at least 4 feet tall at time of planting. The buffer shall obtain a height of 10 feet within 3 growing seasons. The trees may be trimmed but no lower than a height of 10 feet.
- D. Have a continuous opaque, unperforated barrier (inside the buffer tree line) extending 6" from the surface of the ground to a uniform height of not less than six (6) feet from the ground at any given point, constructed of stone, steel, or other metal, or any substance of a similar nature and strength which will hide the SEF.
- E. Be sited and operated so as to not interfere with television, Internet service, telephone (including cellular and digital), microwave, satellite (dish), navigational, or radio reception in neighboring areas. The Applicant and/or operator of the SEF shall be responsible for the full cost of any remediation necessary to correct any problems or provide equivalent alternate service, within thirty (30) days of being given notice. This includes relocation or removal of a problematic array, or any other equipment, transmission lines, transformers, and other components related thereto.
- F. Prepare an incident response plan that ensures that local emergency responders have the necessary equipment and training to effectively handle emergencies such as fires, structural damage (or collapse) of equipment, including access to equipment needed for rescue of trapped personnel. The Escrow Fund will be used to reimburse all local emergency responders for any necessary equipment or training required by a SEF and must be coordinated through the Schuyler County Fire Coordinators Office.
- G. Shall produce no sound greater than 40dBA within 25 feet from the fence surrounding the panels, including but not limited to inverters.
- H. The Applicant shall submit design plans to verify that the SEF is:
 - 1. Located, fenced, or otherwise secured so as to prevent unauthorized access.
 - 2. Installed in such a manner that they are accessible only to persons authorized to operate or service them, and inaccessible to non-authorized individuals.

8-3 SEF Escrow Account: The Applicant shall pay to the Town a non-refundable Application Fee (see paragraph 8-6). The Town Planning Board reserve the right to obtain engineering, economic impact, environmental impact, or other professional services to aid it in the review of any submitted SEF application. These costs (and other expenses incurred by the Town) are reimbursable only from the Escrow Account, not the Application Fee.

8-3.1 The Applicant shall reimburse the Town for all oversight expenses incurred relating to the SEF, from application through decommissioning.

8-3.2 These SEF-related oversight expenses include (but are not limited to) amounts required for Building Permits, Licensing, Re-Licensing, and Decommissioning - e.g. administration, engineering, expert health and wildlife evaluations, handling complaints, legal, etc. "Legal" includes reasonable attorney fees for the Town if the Town has to sue the Applicant.

8-3.3 Any Escrow Account interest shall stay with the account and be considered new principle.

8-3.4 This Escrow Account will be setup by the Applicant at the time of the SEF permit Application. This Escrow Account will be at a financial institution approved by the Town, solely in the name of the Town, to be managed by the Town Supervisor (or designee). The Applicant will make an initial deposit of \$20,000. A SEF Permit Application will not be processed until the Applicant has provided proof of deposit. A SEF Permit Application determination will not be made until all costs incurred by the Town to date, have been reimbursed by the Applicant.

8-3.5 If the SEF Application is denied, all Escrow Account funds will be returned to the Applicant, less related expenses incurred by the Town. The money will be returned, along with a statement as to these costs, within 30 days of the Application being formally denied, or receipt of a Letter of Withdrawal. Permit Fees are non-refundable.

8-3.6 This Escrow Account will be funded during the life of the SEF by the Applicant/Owner/Operator. The Applicant/Owner/Operator will replenish any Escrow funds used by the Town within 14 days of being sent written notification (and explanation) of said withdrawals. Failure to maintain the Escrow Account at \$10,000 (within 30 days of being given notice) shall be cause for revocation (or denial of renewal) of the SEF Permit. Said account shall, at a minimum, be maintained at a level to assure complete removal, disposal and restoration at the cost thereof each year.

8-3.7 Once the Owner believes that they have satisfactorily complied with the decommissioning conditions specified herein, they will send the Town written notification. The Town then has sixty (60) days to verify to their satisfaction that all decommissioning conditions have been complied with. If there is material non-compliance, the Town will so notify the Owner and the process starts over. Otherwise the Town will return all Escrow Account funds to the Owner, less related expenses incurred by the Town, along with an explanatory statement. If the town seeks and wins court approval of any contest by the Permittee of any dispute regarding this account and its balance or use, the Permittee

shall be responsible for all court costs, disbursements and attorney fees incurred by the Town.

8-4 SEF Liability Insurance:

8-4.1 The holder of a permit for a SEF shall agree to secure and maintain for the duration of the permit public liability insurance, as follows:

- A. *Commercial general liability covering personal injuries, death and property damage:*
\$1,000,000 per occurrence (\$2,000,000 aggregate), which shall specifically include the Town and its officers, councils, employees, committee members, attorneys, agents and consultants as additional named insureds.
- B. *Umbrella coverage:* \$2,000,000.

8-4.2 The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with at least a Best's rating of "A".

8-4.3 The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days prior written notice in advance of a cancellation.

8-4.4 Renewal or replacement policies shall be delivered to the Town at least 15 days before the expiration of the insurance that such policies are to renew or replace.

8-4.5 No more than 15 days after the grant of the permit and before construction is initiated, the permit holder shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

8-4.6 A certificate of insurance that states that it is for informational purposes only and does not confer sufficient rights upon the Town, shall not be deemed to comply with this Law.

8-5 SEF Indemnification: Any application for a SEF within the Town shall contain an indemnification provision. The provision shall require the Applicant to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town, and its officers, councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said SEF, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town, or its employees or agents. With respect to the penalties, damages, or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.

8-6 SEF Permit Fees: The non-refundable Permit Application Fee shall be \$1,000 per megawatt (MW-AC) of rated maximum capacity. A renewal Permit Application Fee shall be \$500 per megawatt (MW-AC) of rated maximum capacity.

8-7 Town Board Decision: The Permit shall run from the date of the approval by the Town Board. Failure by the Permittee to complete the construction and to commence operations within 12 months of the date of approval shall cause the permit to expire. Upon good cause shown and after a public hearing the Town Board may grant a one-time extension of 9 months. No further extensions are allowed. Upon termination of the Permit under this paragraph, the decommissioning and restoration shall commence immediately upon the day after such termination.

8-7.1 Standards for Town Board's SEF Permit Application Decision: The Town Board may disapprove a SEF Permit Application for a variety of legal reasons, including but not limited to, the following:

- A. Conflict with safety and safety-related codes and requirements.
- B. The operation of a SEF would be a net economic liability to the community.
- C. The operation of a SEF would create unacceptable health or environmental risks to the public.
- D. The placement and operation of a SEF that would create unacceptable risks to
- E. wildlife and/or regional ecosystems.
- F. The placement and location of a SEF would result in a conflict with, or compromise or change in, the nature or character of the surrounding area and/or that other sites in the Town or outside of the town should be used before the proposed site.
- G. The SEF application requests for a permit which is inconsistent with the
- H. Findings set forth at Section 5 of this Local Law.
- I. Conflicts with any provisions of this Local Law.

SECTION 9.

9-1 SEF Post-Permit Approval Requirements SEF Certification: Prior to operation of any approved and constructed SEF, the Applicant must provide a certification that the project complies with all applicable laws, rules and regulations, 'best practices' standard in the industry, and all conditions in the Permit.

9-2 Reservation of Authority to Inspect SEF: In order to verify that the holder of a permit for a SEF and any and all lessees, renters, and/or licensees of it, have placed and constructed such facilities in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, Local Laws and regulations and other applicable requirements, the Town may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, and maintenance of such facilities, including all solar arrays, buildings, and other structures constructed or located on the site.

9-2.1 Solar Energy Facilities shall not begin operation until all approvals required under this Local Law shall have been obtained, and all required certifications are provided.

9-2.2 Following the issuance of any approval required under this Local Law, the Code Enforcement Officer or its designee shall have the right to enter onto the Site upon which a SEF has been placed, at reasonable times in order to inspect such SEF and its compliance with this Law.

9-2.3 After undertaking such inspection, the Code Enforcement Officer or its designated representative

shall provide notice of any non-compliance with the terms of this Local Law or the conditions of approval of any permit issued hereunder, and shall provide the owner or Applicant with a reasonable time frame to cure such violation, such time frame to be determined based upon the seriousness of the violation, its actual and/or potential impact upon public safety, and the actual and/or potential impact of the violation upon Town residents and/or local ecosystems.

9-3 SEF Construction Related Damage: The owner of any permitted SEF shall, to the extent practicable, repair or replace all real or personal property, public or private, damaged during the SEF construction. The Applicant shall reimburse the NY DOT and/or Town (as appropriate) for any and all repairs and reconstruction to roads that are necessary due to the construction or decommissioning of the SEF. A qualified independent third party or other qualified person, agreed to by the NY DOT and/or Town (as appropriate) and the Applicant, shall be hired to pre-inspect the roadways to be used during construction and/or decommissioning. This third party shall be hired to evaluate, document, and rate the roads condition prior to construction or decommissioning of the SEF, and again 30 days after the SEF is completed or removed.

- A. Any road damage during construction that is done by the Applicant and/or one or more of its subcontractors that is identified by this third party shall be repaired or reconstructed to the satisfaction of NY DOT and/or Town (as appropriate) at the Applicant's expense, prior to the final inspection. In addition, the Applicant shall pay for all costs related to this third-party pre-inspection work prior to receipt of the final inspection.
- B. The surety for removal of a decommissioned SEF shall not be released until the Town Board is satisfied that any road damage that is identified by this third party during and after decommissioning that is done by the Applicant and/or one or more of its contractors or subcontractors has been repaired or reconstructed to the satisfaction of the NY DOT and/or Town at the Applicant's expense. In addition, the Applicant shall pay for all costs related to work of this third party's inspection prior to receipt of the release of the surety.

9-4 SEF Environmental Monitoring: The Applicant will permit post-construction environmental studies deemed appropriate by the Town Planning Board, which will be funded by the Escrow Account (Section 8-3). These studies will include periodic hydro-geological monitoring, especially of wells and drinking water supplies, for any and all chemical residue from the SEF, especially future components.

The Applicant is responsible to see that the Town has a current written list of all chemicals used for maintenance and upkeep of the SEF (e.g. pesticides, herbicides, cleaners). This list shall include quantity and frequency of application of each of these chemicals. If at the time that any information provide is out of date, then Town Board may levy a fine against the Applicant under Section 10-2.2.

9-5 SEF Decommissioning: The Town Board will recalculate the projected Decommissioning costs every five (5) years. The SEF owner will promptly adjust their financial security fund to meet the recalculated figure.

If the Town Building Codes official condemns any portion of a SEF, or if no electricity generated from the SEF has been placed on the grid for four (4) consecutive months, the Permittee shall commence the

decommissioning of the SEF, according to the approved plan.

9-5.1 The Code Enforcement Officer and Town Board may grant extensions of time for repair and/or maintenance, for good cause, such as the need to back-order parts that are not currently available from the supplier or the need to repair a SEF damaged by a storm.

9-5.2 Decommissioning shall include the complete removal of solar arrays, buildings, electrical components, cabling, roads, and any other associated facilities and/or structures, including below-ground items (e.g. foundations and conduit).

9-5.3 Roads, rights of way and easements shall be decompacted and restored to their original condition including soil composition, drainage patterns, fertility, permeability, and surface and subsurface hydrology, except that the landowner can request, in a writing signed after decommissioning has begun, that the access roads or other land surface areas not be restored.

9-5.4 The Town Board shall pay (from the Escrow Account) for at least ten representative soil sample tests primarily from the drainage area, to assure that no new contaminants are left behind. If evidence of new contaminants from the baseline are found, the SEF owner is obligated to remedy the situation to the baseline standard.

9-6 SEF Surety for Removal, when Decommissioned: The Applicant shall place with the Town an acceptable letter-of-credit, bond, or other form of security that is sufficient to cover the cost of removal at the end of each SEF array's useful life, as detailed in the decommissioning plan. Such surety shall be at least \$10,000 for each acre of a solar array. The Town Board may approve a reduced surety amount that is not less than 150% of a cost estimate that is certified by an Engineer, salvage company, or other expert acceptable to the Planning Board. This calculation will not take into account any estimated salvage values.

The Town shall use this surety to assure the faithful performance of the decommissioning terms and conditions of the Applicant's plan and this law. The full amount of the bond or security shall remain in full force and effect until all necessary site restoration is completed to return the site to a condition comparable to what it was prior to the SEF, as determined by the Town Board. The Applicant will be responsible for assuring that any subsequent assigns of the SEF, will provide acceptable surety to the Town, prior to any transfer of ownership. If the town seeks and wins court approval of any contest by the Permittee of any dispute regarding this account and its balance or use, the Permittee shall be responsible for all court costs, disbursements and attorney fees incurred by the Town.

9-7 SEF Complaints: The Town shall set up a procedure for filing and handling SEF complaints. The SEF owner shall initially be given a reasonable opportunity to resolve all complaints. The cost of such resolution shall be borne by the SEF owner. If resolution is not made in a reasonable time (as determined by the Town), the Town may utilize its Escrow Account to attempt to resolve any SEF issues. The Town may establish a monitoring committee to oversee resolution of complaints regarding SEFs.

Section 10. Miscellaneous

10-1 SEF Tax Exemption: The Town reserves the right to opt out of the Tax Exemption provisions of Real Property Tax Law. Further, the Town and County reserves the right to assess any and all parts of the SEF at their full current market value. That value will be determined by the documented construction cost. As a condition of the permit, the Permittee stipulates and forever agrees that the solar panels and the structures holding them and all other infrastructure and improvements at the site or used as part of the operations of the SEF are fixtures which constitute real property for tax and assessment purposes.

10-1.1 Community Host Benefit: A community host benefit will be required for all projects over 2MW-AC

10-2 Enforcement; Penalties and Remedies for Violations

10-2.1 The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce and implement this Local Law.

10-2.2 Any person owning, controlling or managing any building, structure or land related to a SEF, shall be legally and financially responsible for any and all violations of this Local Law.

- A. Any person, firm, corporation, or association who shall fail to comply with a written order of the Code Enforcement Officer or Town Board, within the time fixed for compliance therewith, and any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or any other person taking part or assisting in the construction or use of any building, who shall knowingly violate any of the applicable provisions of this chapter or any lawful order, notice, directive, permit or certificate of the Code Enforcement Officer or the Town Board made thereunder, shall be punishable by a fine utilizing the following schedule;
 - 1. Not less than twenty-five (\$25.00) dollars per day for the first thirty (30) days.
 - 2. On the thirty-first (31) day continuing to the ninetieth (90th) day after the initial violation in the amount of seventy-five (\$75.00) dollars per day.
 - 3. For the ninety-first (91st) day thereafter in the amount of not less than one hundred fifty (\$150) dollars per day.
 - 4. Each day that violation continues shall be deemed to be a separate violation.
- B. Any person removing any notice provided for herein and found guilty thereof shall be fined a sum not exceeding one hundred (\$100.00) dollars for each offense.
- C. Code Enforcement Officer is authorized to issue appearance tickets for local Town Justice Court proceedings.

10-2.3 In case of any violation (or threatened violation) of any of the provisions of this Local Law, including the terms and conditions imposed by any permit issued pursuant to this Local Law, in addition to other remedies and penalties herein provided, the Town may institute any appropriate legal action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, operation, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

10-3 Fiscal Responsibility

10-3.1 The Town Board may, at its discretion, request the most recent annual audited financial report of the permittee prepared by a duly licensed Certified Public Accountant, during the review process. If such report does not exist, the Planning Board may, in its sole discretion, require a suitable alternative to demonstrate the financial responsibility of the Applicant and its ability to comply with the requirements of this Local Law.

10-3.2 No transfer or sale of any SEF, including the sale of more than 30% of the stock of such entity (not counting sale of shares on a public exchange) shall occur without written acceptance by such entity of the obligations of the permittee under this Local Law. Any such transfer shall not eliminate the liability of any entity for any act occurring during its ownership or status as permittee.

SECTION 11. APPLICABILITY

The requirements of this Local Law shall apply to all SEFs proposed, operated, modified or constructed after the effective date of this Local Law.

SECTION 12. SEVERABILITY

Should any provision of this Local Law be declared by any Court, administrative body, or board, or any other government body or board, to be unconstitutional, invalid, preempted, void, or otherwise inapplicable for any reason, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional, invalid, preempted, void, or otherwise inapplicable.