

# 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 Ischua

FILED  
STATE RECORDS

MAR 15 2022

DEPARTMENT OF STATE

Local Law No. 1 of the year 20<sup>22</sup>

A local law SOLAR ENERGY FACILITIES LOCAL LAW  
(Insert Title)

Be it enacted by the Town Board of the  
(Name of Legislative Body)

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

of Ischua 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. 1 of 2022 of the (County)(City)(Town)(Village) of Town of Ischua was duly passed by the Town Board on December 14 2021, 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) (Name of Legislative Body) (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted (Elective Chief Executive Officer\*) 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) (Name of Legislative Body) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. (Elective Chief Executive Officer\*)

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) (Name of Legislative Body) (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.

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

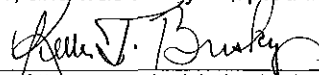
I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority 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.



Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date:

March 10, 2022

(Seal)

**TOWN OF ISCHUA, NEW YORK**

**LOCAL LAW NUMBER 2 OF 2021**

**SOLAR ENERGY FACILITIES LOCAL LAW**

This Local Law Number 2 of 2021, entitled "2021 SOLAR ENERGY FACILITIES LOCAL LAW," is hereby adopted by Resolution of the Town Board of the Town of Ischua Resolution dated DECEMBER 14, 2021, and reads in its entirety as follows:

**1. Authority**

**SOLAR ENERGY LOCAL LAW TOWN OF ISCHUA**

a. This Solar Energy Local Law is adopted pursuant to section 130 of the Town Law and section 10 of the Municipal Home Rule Law of the State of New York, section 10(1)(ii)(d)(3), which authorize the Town to adopt local laws that advance and protect the health, safety and welfare of the community notwithstanding a general law on the same subject and that protect and enhance the Town's physical and visual environment.

**2. Statement of Purpose**

a. The Town supports the State's renewable energy goals and wishes to make a fair and reasonable contribution to achieving those goals. According to the Solar Energy Industries Association, a utility-scale solar power plant requires between 5 and 10 acres per megawatt (MW) of generating capacity. Assuming 10 acres per MW, the Town Board finds that if the 932 towns comprising the State of New York each allowed 100 acres of land to be devoted to a utility-scale solar power plant, the State's current goal for solar energy (six gigawatts of photovoltaic solar generation by 2025) would be met and substantially exceeded.

b. This Solar Energy Local Law is adopted to advance and protect the public health, safety, and welfare of the Town of Ischua by creating regulations for the installation and use of solar energy generating systems and equipment, with the following objectives:

- i. To take advantage of a safe, abundant, renewable and non-polluting energy resource;
- ii. To decrease the cost of electricity to the owners of residential and commercial properties, including single-family houses;
- iii. To increase employment and business development in the Town, to the extent reasonably practical, by furthering the installation of Solar Energy Systems;

- iv. To mitigate the impacts of Solar Energy Systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources and to protect and promote scenic and environmental resources by minimizing Solar Energy Systems' siting impacts on environmental resources including flood plains, historic sites, conservation easements, trails, parklands, wetlands, wildlife and scenery, and areas for recreational and outdoor activities;
- v. To decrease the use of fossil fuels, thereby reducing the carbon footprint of the Town;
- vi. To invest in a locally generated source of energy and to increase local economic value, rather than importing non-local fossil fuels;
- vii. To align the laws and regulations of the community with several policies of the State of New York, particularly those that encourage distributed energy systems;
- viii. To become more competitive for state and federal grants and tax benefits;
- ix. To make the community more resilient during storm events;
- x. To aid in the energy independence of the community as well as the country;
- xi. To diversify energy resources to decrease dependence on the grid;
- xii. To improve public health;
- xiii. To encourage a sense of pride in the community;
- xiv. To encourage investment in public infrastructure supportive of solar, such as generation facilities, grid-scale transmission infrastructure, and energy storage sites;
- xv. Encouraging the development of local power generation capacity in a manner consistent with the Town of Ischua's rural character and quality of life;
- xv. Encouraging the development of local power generation capacity in a manner consistent with the Town of Ischua's rural character and quality of life.

### **3. Definitions**

- a. **APPLICANT:** Any person, firm, partnership, association, corporation, company or organization of any kind who or which requests any approval or permit to construct a Solar Energy System.
- b. **BATTERY ENERGY STORAGE SYSTEM (BESS):** One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1 or Tier 2 Battery Energy Storage System as follows:
  - i. Tier 1 Battery Energy Storage Systems have an aggregate energy capacity less than or equal to 600kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.

- ii. Tier 2 Battery Energy Storage Systems have an aggregate energy capacity greater than 600kWh or are comprised of more than one storage battery technology in a room or enclosed area.
- c. BUILDING-INTEGRATED SOLAR ENERGY SYSTEM: A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for onsite consumption.
- d. FARMLAND OF STATEWIDE IMPORTANCE: Land, designated as "Farmland of Statewide Importance" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that is of state wide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of Statewide Importance may include tracts of land that have been designated for agriculture by state law.
- e. GLARE: The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.
- f. GROUND-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System that is anchored to the ground via a pole or other mounting system, detached from any other structure, that generates electricity for onsite or offsite consumption.
- g. INTELLIGENT MIRROR ARRAY (IMA) - Solar panels with mirrors to reflect sunlight into a receiver, which concentrates the light further, shining it onto an absorber, for example, a pipe carrying a fluid to be super-heated (up to 400 degrees F) into an industrial plant for use.
- e. NATIVE PERENNIAL VEGETATION: native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for pollinators and shall not include any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation.
- f. OFFSITE USE - A solar energy system designed to be used primarily for export of solar energy to be used primarily by parcels other than the parcel it is located on.
- g. ONSITE USE - A solar energy system designed to be used primarily by the building and/or parcel on which it is located.
- h. OWNER - Any person, firm, partnership, association, corporation, company or organization of any kind who or which: 1) owns a Solar Energy System, or 2) owns real property upon which a Solar Energy System is constructed or proposed.
- i. POLLINATOR: bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.
- j. PRIME FARMLAND: Land, designated as "Prime Farmland" in the U.S. Department of Agriculture

Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.

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

l. **RESIDENCE -** For the purpose of this Law shall mean any dwelling suitable for habitation existing in the Town of Ischua on the date an application is received. This includes any dwelling not attached to public utilities, does not have running water or is hooked to a sewer or septic system. A residence may be part of a multi-dwelling or multipurpose building, and shall include buildings such as seasonal residences, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools or other buildings used for educational purposes, or correctional institutions

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

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

o. **SOLAR ENERGY EQUIPMENT:** Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity.

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

i. Tier 1 Solar Energy Systems are for on site solar energy consumption or net metering only and includes the following:

(1) Roof-Mounted Solar Energy Systems on residential or farm structures.

## **(2) Building-Integrated Solar Energy Systems**

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

iii. Tier 3 Solar Energy Systems are systems that are not included in the list for Tier 1 and Tier 2 Solar Energy Systems.

q. SOLAR INVERTER: Converts the variable direct current (DC) output of a photovoltaic (PV) solar panel into a utility frequency alternating current (AC) that can be fed into a commercial electrical grid or used by a local, off-grid electrical network

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

2. STORAGE BATTERY: A device that stores energy and makes it available in an electrical form.

## **4. Applicability**

a. The requirements of this Local Law shall apply to all Solar Energy Systems permitted, installed, or modified in the Town after the effective date of this Local Law, excluding general maintenance and repair.

b. Solar Energy Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.

c. Modifications to an existing Solar Energy System that increase the Solar Energy System area by more than 5% of the original area of the Solar Energy System (exclusive of moving any fencing) shall be subject to this Local Law.

d. All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code ("Building Code"), the NYS Energy Conservation Code ("Energy Code"), and the Town Code.

## **5. General Requirements**

a. A Building permit shall be required for installation of all Solar Energy Systems.

b. Issuance of permits and approvals by the Town Board shall include review pursuant to the State Environmental Quality Review Act (SEQRA) (ECL Article 8 and its implementing regulations at 6 NYCRR Part 617).



c. Notice to adjacent landowners. For Tier 3 Solar Energy Systems, project sponsors must provide notice of the signing of a lease of land, option to lease land, or any other contract for compensation for anticipated adverse impacts with a landowner associated with a project proposal, to all landowners within 2,000 feet of the land under contract. "Notice" shall be deemed sufficient if such notice is mailed by registered mail, postage prepaid, and deposited into the exclusive care and custody of the United States Postal Service within fifteen (15) business days of the signing of the contract.)

## **6. Permitting Requirements for Tier 1 and Tier 2 Solar Energy Systems**

a. All Tier 1 and Tier 2 Solar Energy Systems shall be permitted in the entire town and in any zoning district which may hereafter be adopted.

b. Permits shall be handled as regular Building Permits.

c. Permit fees shall be governed by any applicable law, rule or resolution setting building permit fees. All applications shall be accompanied by the appropriate fee.

d. All such applications shall be subject to the following conditions:

i. All such applications shall be accompanied by engineer stamped plans.

ii. Solar Panels on pitched roofs shall be mounted with a maximum distance of 8 inches between the roof surface the highest edge of the system.

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

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

v. Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 24 inches above the flat surface of the roof, whichever is higher.

vi. All Solar Panels shall have anti-reflective characteristics.

vii. All Solar Energy Systems shall be designed and located in order to prevent reflective glare to the maximum extent practicable. Any glare produced by the Solar Energy System shall not impair or make unsafe the use of contiguous properties and their structures, any vehicles on or off the road, any airplanes, or determined by the Town Board.

viii. Setbacks: Tier 1 Solar Energy Systems shall be subject to a setback requirement of 25 feet from the lot line bordering on a public road and 15 feet from any other lot line. Tier 2 Solar Energy Systems shall be subject to a setback requirement of 35 feet from any lot line.

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

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

xi. Solar Energy Systems and Equipment shall be marked in order to provide emergency responders with appropriate warning and guidance with respect to isolating the solar electric system. Materials used for marking shall be weather resistant. The marking may be placed within the main service disconnect. If the main service disconnect is operable with the service panel closed, then the marking should be placed on the outside cover.

xii. A Solar Energy System connected to the utility grid shall provide written proof from the local utility company acknowledging the solar energy facility will be interconnected to the utility grid.

xiii. Any connection to the public utility grid must be inspected by the appropriate public utility.

xiv. Solar energy systems and equipment shall be permitted only if they are determined by the Town not to present any unreasonable safety risks, including, but not limited to, the following:

- (a) Weight Load, inclusive of snow and ice loads;
- (b) Wind resistance;
- (c) Ingress and egress in the event of fire or other emergency;
- (d) Seismic activity

xv. The Town Code Enforcement Officer shall have authority to determine compliance with the requirements set forth in this section. Consideration shall be made regarding glare or other adverse effects on neighboring properties when determining compliance with this provision.

xvi. Freestanding or ground mounted solar collectors are permitted as accessory structures in all of the Town of Ischua, subject to the following conditions:

- (a) The solar collector meets all applicable setback requirements;
- (b) No unit shall exceed 14 feet in height from the ground;
- (c) Freestanding and ground mounted solar energy collectors shall be screened as possible and practicable through the use of architectural features, earth berms, landscaping, or other screening which will harmonize with the character of the property and surrounding area. The code enforcement officer needs to approve the location so as to minimize the shading and /or glares caused by the Solar Panels.

xvii. Any freestanding, ground mounted or pole mounted solar collectors to be installed in a non-residential area shall require site plan review and approval by the Board prior to the issuance of any building permit.

xviii. If solar storage batteries are included as part of the solar collector system, they must be placed in a secure container or enclosure meeting the requirements of applicable residential, building, fire and electric codes when in use, and when no longer used shall be disposed of in accordance with the laws and regulations of the Town of Ischua and other applicable laws and regulations.

xix. Decommissioning Requirements for Tier 2 Solar Energy Systems Using Freestanding or Ground Mounted Solar Collectors: If a freestanding or ground mounted solar collector(s) ceases to perform its originally intended function for more than twelve (12) consecutive months, the property owner shall remove the collector, mount and associated equipment by no later than ninety (90) days after the end of the twelve-month period. In the event that the property owner fails to remove the aforesaid non-functioning system within the time prescribed herein, the Town may require removal of the non-functioning system freestanding or Ground Mounted solar collector at the owners expense.

xx. All Solar Energy Systems shall be maintained in good working order and if damaged must be repaired, removed or replaced to proper safe working order.

xxi. Inverter location and sound limits: Applicant must provide location of inverter equipment. Beyond the project property boundary, this equipment shall not produce average daytime sound levels greater than 35 dBA Leq, and at the exterior wall of any residence or occupied structure the equipment shall not produce average nighttime sound levels greater than 25 dBA Leq, or maximum sound level of 35 dBA (LfMax) measured using 1/8th second samples. If audible tones are present a 5 db penalty shall be applied to all sound measurements.

## **7. Permitting requirements for Tier 3 Solar Energy Systems**

a. References to the Town Board shall be deemed to refer to the Zoning Board of Appeals or the Site Plan Review Board (as the context may indicate) in the event that such boards are hereafter created by the Town.

b. All Tier 3 Solar Energy Systems are permitted through the issuance of a permit by the Town Board anywhere within the Town, subject to the requirements of this local law, limitations by zone in any zoning law hereinafter adopted by the Town Board and subject to site plan application requirements set forth in this local law.

c. Applications:

**i. Contents.** Applications must contain, at a minimum, the following:

- (1) Appropriate fee as established by resolution of the Town Board from time to time.
- (2) Engineered stamped plans.

- (3) Site Plan as hereinafter described.
- (4) Proposed Decommissioning plan, as hereinafter described, with confirmation of appropriate security and calculation of amount of security required.
- (5) Proof of interconnectability with local electric service provider.
- (6) Proposed notice of public hearing. List of all property owners within 200 feet of the property borders of the proposed site.
- (7) SEQRA documentation reasonably acceptable to the Town's attorney and Town's engineer.

## **ii. Initial Review**

- (1) The Town Code Enforcement Officer shall conduct the initial review of the application for completeness.
- (2) Applicants shall be advised within 15 business days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.
- (3) Tier 3 Solar Energy Systems shall be built, operated, and maintained to include but not limited to the most recent, applicable standards of the Institute of Electric and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI).
- (4) The Town, at the expense of the Solar Energy Applicant, may employ its own consultant(s) to examine the application and related documents and make recommendations as to whether the criteria for granting the Permit have been met, including whether the Solar Energy Applicant's conclusions regarding safety analysis, visual analysis, structural integrity and inspection, sound limits, deicing, land use and management, wildlife management, and stormwater management aspects are valid and supported by generally accepted and reliable engineering and technical data and standards.
- (5) The Town Board may impose conditions on its approval of any Permit under this section to enforce the standards referred to in this Local Law or to discharge its obligations under SEQRA.
- (6) Upon review of the application, the Town Board may approve, approve on conditions, or deny the application.
- (7) The Town Board shall have the discretion to deny an application for a Permit for a Tier 3 Solar Energy System that is proposed on land within 2,000 feet of an existing solar, wind, BESS, wind/solar hybrid system or approved Tier 3 Solar Energy System.

### **iii. Referral to County Planning Board**

(1) The application shall be referred to the County Planning Department pursuant to General Municipal Law § 239-m if required by that statute.

### **iv. Public Hearing**

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

(2) Upon closing of the public hearing, the Town Board shall take action on the application within 62 days of the public hearing, which can include approval, approval with conditions, or denial. The 62-day period may be extended upon consent by both the Town Board and applicant.

### **v. Decision**

(1) Issuance of permits and approvals by the Town Board shall include review pursuant to the State Environmental Quality Review Act (SEQRA) (ECL Article 8 and its implementing regulations at 6 NYCRR Part 617).

### **vi. Life of Permit**

(1) The Permit and approval for a Solar Energy System shall be valid for a period of 18 months, provided that a building permit is issued for construction or construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Town Board, within 18 months after approval, the applicant may request that the Town extend the time to complete construction for an additional time period up to an additional 18 months (36 months total). If the owner/operator fails to substantially complete the project within the time period granted, then the permit shall expire.

### **vii. General Requirements**

(1) **Underground Requirements.** All on-site utility lines shall be placed 48 inches underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new interconnection equipment, including without limitation any poles, with new easements and right-of-way.

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

(3) Advertising Signage.

(a) No advertising signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, Said information shall be depicted within an area no more than 8 square feet.

(4) Safety Signage.

(a) Safety signage shall include equipment specification information, safety information, and 24-hour emergency contact information including a toll free telephone number.

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

(c) The marking shall be placed adjacent to the main service disconnect in a location clearly visible from the location where the lever is operated.

(5) Glare. All Solar Panels shall have anti-reflective characteristics and shall be designed and located in order to prevent reflective glare to the maximum extent practicable. Any glare produced by the Solar Energy System shall not impair or make unsafe the use of contiguous properties and their structures, any vehicles on or off the road, any airplanes, or determined by the Town Board.

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

(a) Motion-activated or staff-activated security lighting around the Project Site or accessory structure entrance may be installed, provided that such lighting does not project off the Project Site. Such lighting should only be activated when the area within the fenced perimeter has been entered

(b) Any exterior lighting installed shall be motion activated to provide the least visual effect practical on the contiguous properties and their structures, any vehicles on or off the road, any airplanes, or uses by other possible impacted entities and shall be approved by the Town Board.

(7) SetBack. A setback of two hundred (200) feet from town roads, from the right of way of any public road or private right of way. A setback of two hundred (200) feet from existing non-residential structures and five hundred (500) feet from residential

structures, shall be required. A one-hundred fifty (150) foot setback from all property lines shall also be required.

(8) Fencing Requirements. All mechanical equipment, including any structure for storage batteries, shall be enclosed by a 7-foot-high fence, as required by NEC, with a self-locking gate to prevent unauthorized access.

(9) Any Tier 3 Solar Energy System located on the areas that consist of Prime Farmland or Farmland of Statewide Importance shall not exceed 50% of the entire lot. All Tier 3 Solar Energy Systems located on Prime Farmland shall be constructed in accordance with the construction guidelines of the New York State Department of Agriculture and Markets.

(10) Tier 3 Solar Energy System owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes. Landscape screening shall be non-invasive. Ground cover under and between the rows of solar panels shall be low-maintenance, drought-resistant, shall not require chemical weed control, and be non-fertilizer-dependent.

(11) Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.

(12) Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 3 Solar Energy System is located in an ambulance district, the local ambulance corps.

(13) A Solar PV panel deicing plan shall not include application of chemicals. Use of chemical-based cleaning for panels is prohibited.

(14) If Storage Batteries are included as part of the Solar Energy System, they shall meet the requirements of any applicable fire prevention and building code when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the Town and any applicable federal, state, or county laws or regulations.

(15) Applicant/Owner/Operator is required to pay for initial and on-going fire fighter training of the fire department's choice from a qualified resource in addition to the training provided by the Applicant/Owner/Operator, and pay for any special fire-fighting equipment. In addition, it is also required that all mutual aid departments will receive the same training at the Applicant/Owner/Operator's expense. Evidence that a copy of the site plan application has been submitted to the Fire Chief of the Town of Ischua Fire

Department. All means of shutting down the photovoltaic solar energy system shall be clearly marked on the site plan and building permit applications.

(16) Project noise when added to pre-construction ambient sound levels in conformity with subparagraph (a) below may not exceed forty (40) dBA Leq (1-hour) at the property boundary of any sensitive receptor. Projects may not increase the environmental sound level at the property line of any sensitive receptor by five (5) dB or more, determined by comparing the measured ambient pre-construction (or baseline) sound level in the community near the project to the modeled future noise levels during construction and operation of the facility, respectively. The comparison must conform to the following standards:

(a) The evaluation and reporting of ambient pre-construction noise conditions must use the L90 statistical and the Leq energy-based noise descriptors, and must follow the methods and recommendations included in ANSI/ASA S3/SC 1.100-2014-ANSI/ASA S12.100-2014 American National Standard entitled Methods to Define and Measure the Residual Sound in Protected Natural and Quiet Residential Areas. Ambient sound surveys shall be conducted for, at a minimum, a four (4) day-long period.

(b) The evaluation of future noise levels during construction of the facility including predicted A-weighted (dBA) sound levels must use computer noise modeling as follows:

(1) The model must follow the methods and recommendations included in ANSI/ASA S12.62-2012/ISO 9613-2:1996 or the ISO-9613-2:1996 propagation standard for the main phases of construction, and from activities at any proposed batch plant area/laydown area, with no meteorological correction (Cmet);

(2) The model shall include, at a minimum, all noise sources and construction sites that may operate simultaneously to meet the proposed construction schedule for the most critical timeframes of each phase, including substation transformers, inverters, voltage transformers, energy storage systems, HVAC equipment, and emergency generators;

(3) Project sounds will be assumed to be tonal and prominent, and must be evaluated in accordance with ANSI/ASA S12.9-2013/Part 3 Annex B, Section B.1, including application of the "prominent discrete tone" constant level differences (Kt) specified in the standard as follows: fifteen (15) dB in low-frequency one-third-octave bands (from twenty-five (25) up to one hundred twenty-five (125) Hz); eight (8) dB in middle-frequency one-third-octave bands (from one hundred sixty (160) up to four hundred (400) Hz); and five (5) dB in high-frequency one-third-octave bands (from five hundred (500) up to ten thousand (10,000) Hz).

(4) The model shall:

(i) Set all noise sources operating simultaneously at maximum sound power levels;



- (ii) Use a ground absorption factor of no more than  $G=0.5$  for lands and  $G=0$  for water bodies;
  - (iii) Use a temperature of ten (10) degrees Celsius and seventy (70) percent relative humidity;
  - (iv) Report, at a minimum, the maximum A-weighted dBA Leq (1-hour or 8-hour) sound pressure levels in a year, and the maximum linear/unweighted/Z dB (Leq 1-hour) sound pressure levels in a year from the thirty-one and one-half (31.5) Hz up to the eight thousand (8,000) Hz full-octave band, at all sensitive receptors within the radius of evaluation;
  - (v) Report the maximum A-weighted dBA Leq sound pressure levels in a year (Leq (8-hour)) at the most critically impacted external property boundary lines of the facility site;
  - (vi) Report the information in tabular and spreadsheet compatible format, and report a summary of the number of receptors exposed to sound levels greater than thirty-five (35) dBA, grouped in one (1)-dB bins;
  - (vii) Report sound impacts with sound level contours indicating the difference between measured ambient sound levels and ambient and modeled construction sound levels combined;
  - (viii) Provide the information required under subsections (iv) through (vii) on a map in 1:12,000 scale showing the location of sensitive receptors in relation to the facility (including any related substations).
- (c) The Applicant must evaluate future noise levels during operation of the facility including any related substations, using modeled A-weighted (dBA) sound levels.
- (i) The evaluation must adhere to the specifications and reporting requirements provided under subsection (b) of this Section, except “facility operation” will replace references to “construction” sound levels.
  - (d) The comparison to ambient sound levels must be made separately under subsections (b) and (c) of this Section respectively.
  - (e) Project noise sources shown to exceed an increase of 5 dB or more during construction or operations must be relocated or mitigation measures must be proposed that would achieve an increase of less than 5 dB at any sensitive receptor.
- (17) Testing Prior to Project Start. In order to determine whether environmental contamination is present and to establish a baseline prior to construction, the following environmental testing is required prior to the commencement of any project:

(a) Applicant/Owner/Operator must test for chemicals exhibiting a toxicity characteristic, as found in 40 CFR 261.24 (D-Listed Contaminants).

(b) Applicant/Owner/Operator must test for discarded commercial chemical products, off-specification species, container residues, and spill residues thereof as described in 40 CFR 261.33 (p-Listed and U-Listed Contaminants) except if previous testing on these contaminants has been completed in the previous five (5) years, or the landowner can attest that no such contaminants have ever been present on the property.

(c) If any contaminant is found to be above permissible levels, NYS DEC and US EPA will be notified to determine proper remediation actions.

(18) Construction and maintenance. Prior to final approval for a Tier 3 Solar Energy System and any associated accessory structures, the owner and/or operator shall post a surety in an amount and form acceptable to the Town for the purposes of construction and maintenance. The amount shall be up to 40% of the construction value. Acceptable forms shall include, in order of preference: cash; irrevocable letter of credit; or a bond that cannot expire; or a combination thereof. Such surety will be used to guarantee compliance with the conditions of the approval for the Tier 3 Solar Energy System. If the owner of the site fails to comply with any conditions of the approval during construction or as part of the long-term maintenance of the site, all costs of the Town incurred to ensure compliance with conditions of the approval shall be paid using the surety provided by the owner and/or operator.

(19) Appearance and Buffering.

(a) Tier 3 Solar Energy Systems shall have the least visual effect practical on the environment, as determined by the Town Board. Based on site specific conditions, including topography, the use of contiguous properties and their structures, any vehicle on or off the road, any airplanes, or uses by other possible impacted entities, reasonable efforts shall be made to minimize visual impacts by preserving natural vegetation, and providing landscape screening abutting residential properties and roads, but screening should minimize the shading of Solar Panels.

(b) Any glare produced by the Solar Energy System shall not impair or make unsafe the use of contiguous properties and their structures, any vehicles on or off the road, any airplanes, or determined by the Town Board.

(c) Any exterior lighting installed shall be motion activated to provide the least visual effect practical on the contiguous properties and their structures, any vehicles on or off the road, any airplanes, or uses by other possible impacted entities and shall be approved by the Town Board.

(d) The Town Board may require additional information, such as line-of-sight drawings,

detailed elevation maps, visual simulations, before and after renderings, and alternate designs to more clearly identify adverse impacts for the purpose of their mitigation.

(e) Motion-activated or staff-activated security lighting around the Project Site or accessory structure entrance may be installed provided that such lighting does not project off the Project Site. Such lighting should only be activated when the area within the fenced perimeter has been entered.

(f) A locked gate at the intersection of the access way a public road may be required to obstruct entry by unauthorized vehicles. Such gate must be located entirely upon the lot and not on the public right-of-way.

(20) Right To Inspect. Large Scale Solar Energy System's owner or operator and any and all lessees, renters and/or operators of the Solar Energy System shall place, construct, modify, and maintain the Solar Energy System in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances, and regulations, and the Solar Energy System's placement, construction, modifications, and maintenance shall be inspected at the Town's discretion and at required intervals during and after construction to verify compliance.

(21) Any inspections required by the Town that are beyond the Town's scope or ability shall be at the expense of the Solar Energy Applicant or subsequent owner;

d. Site plan. A site plan approval shall be required. Any site plan application shall include the following information:

- i. Property lines and physical features, including roads, for the project site;
- ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures;
- iii. A one- or three-line electrical diagram detailing the Solar Energy System layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices;
- iv. A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit;
- v. Name, address, and contact information of proposed Qualified Solar Installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit;

- vi. Name, address, phone number, and signature of the project applicant;
- vii. Names, addresses, phone numbers, and signatures of the property owners where the project will be located, demonstrating their consent to the application and the use of the property for the Solar Energy System;
- viii. Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming;
- ix. Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Town Board;
- x. A visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital view shed report, shall be required to be submitted by the applicant. The Board may impose requirements to ameliorate any issues if it is determined that the Solar Energy System adversely affects a significant view shed.

**(1) Site Plan Requirements:**

The following is a suggested format for organizing a management plan into a three-ring binder. At a minimum, the plan should contain the sections below. These sections can be marked in the binder with colored index tabs for easy access:

- (a) Wildlife Management Plan: The applicant shall provide a site-specific wildlife management plan as part of its application for a Permit for a Tier 3 Solar Energy System;
- (b) General Description of the Entire Property: Includes a brief description of the entire property such as location in the county, number of acres, past and current land uses, general forest and vegetation conditions, and number of compartments;
- (c) Land Use and Management Objectives: Includes a priority listing of wildlife and other land use and management objectives. This section should also include a brief index of each compartment's management objectives;
- (d) Sketch Maps: Provides a visual description (sketch) of the property. Will include several maps such as:
  - (i) a base map that shows boundaries, roads, and other man-made features;
  - (ii) a type map that differentiates cover types (timber stands, agricultural fields, and open fields);

- (iii) a soils map that shows the location of different soil types;
- (iv) a compartment map that indicates where habitat improvement practices have or will take place;
- (v) Solar array(s) locations to scale. Inverter location(s) to scale.
- (e) Details of the Solar Energy System including but not limited to:
  - (i) An equipment specifications sheet for all Solar Panels, Solar Energy Equipment, interconnection equipment and extensions thereto, mounting systems and any other significant components that are to be installed;
  - (ii) The Solar Energy System's proposed Solar Energy System's capacity;
  - (iii) The basis for the calculation of the Solar Energy System's capacity;
  - (iv) Modeling of projected Solar Energy System's capacity for this location.
- (f) Location, type, and intensity of any lighting on the site;
- (g) Property boundaries and names of all adjacent landowners;
- (h) Compartment Record Sheets: Contains descriptive information and wildlife habitat improvement recommendations for each compartment. Also includes a schedule of recommended management activities for the compartment for a 10-year period;
- (i) Field Notes Section: Provides a commentary of impacts of management activities and wildlife observations taken directly from log books and archived in the three-ringed binder. The most appropriate method for storing field notes is by compartment;
- (j) Resource Materials Section: Contains copies of aerial photographs, topographic and soil maps used to draw the base map. This section should also include reference materials such as bulletins, leaflets, and articles on wildlife habitat management. The names, addresses, and telephone numbers of resource professionals who helped prepare the management plan and who will be conducting management practices should be included here;
- (k) Fencing and Screening: Tier 3 Solar Energy Systems shall be enclosed by perimeter fencing with a minimum height of at least six (6) feet to restrict unauthorized access. Fencing shall comply with the minimum setback requirements set forth in Section 7c vii. (7) above. Additional architectural features, earth berms, landscaping or other screening may also be required. All fencing and any additional architectural features, earth berms, landscaping or other screening that is required shall be in harmony with the neighborhood character and consistent with the findings and requirements of the site-specific wildlife management plan included as part of the application for a

Permit for a Tier 3 Solar Energy System;

(l) Leases: If real property for the proposed project is to be leased, then the legal consent between the parties, specifying the use(s) of the land, including all easements and other agreements, must be submitted. Additionally, a document must be submitted that clearly delineates the party responsible for decommissioning including if the owner or operator of the Solar Energy System abandons it for any reason. Examples of such document are a Lease, Memorandum of Lease, or Letter of Agreement;

(m) Deicing plan: A deicing plan must be submitted by the applicant for the Town Board to review;

(n) Inverter locations and sound limits: Applicant must provide location of inverter equipment. This equipment (including HVAC) shall not produce average daytime sound levels at a non-participating property line greater than 35 dBA Leq, or average nighttime sound levels greater than 25 dBA Leq, or maximum sound level of 35 dBA (L<sub>f</sub>Max) measured using 1/8th second samples. If audible tones are present a 5 db penalty shall be applied to all sound measurements. If the ambient noise level measured exceeds the standard, the standard shall be equal to the ambient noise level plus 3 dBA. The ambient noise level shall be expressed in terms of the minimum sound pressure level measured during any one-hour span over a twenty-four-hour period in L<sub>90</sub> A- weighted decibels (dBA). Ambient noise levels shall be measured at least ten feet from the exterior of a representative set of potentially affected existing residences, schools, hospitals, places of worship and public buildings to be determined by the town. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. For this purpose, the term "ambient noise level" is defined as the composite of sound pressure level from all sources near and far being the normal or existing level of the environmental sound pressure at the given subject location;

(o) Stormwater, Erosion: A stormwater, erosion, and slope analysis of the land shall be required to be assessed by a New York State licensed professional engineer for the site and any road used to access the site. The total area of the face of the solar panels shall be calculated and considered impervious surface. The applicant shall comply with the State Pollutant Discharge Elimination System guidelines. A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared, if determined to be required, and all local stormwater regulations shall be complied with.

e. Decommissioning.

A Decommissioning and Site Restoration Plan (the "Plan") for site restoration, in substantially the same form and with the same content as required by 19 NYCRR § 900-10.2 (2021), is required in the event the facility cannot be completed, the facility ceases operations for one year

or more, or after end of the useful life of the facility. Applicants for a Tier 3 Permit must accompany their application with a \$10,000.00 fee to defray the costs of an engineering consultant retained by the Town to review the Applicant's decommissioning and site restoration estimate in accordance with section (v) of this subdivision. If this cost is less than \$10,000.00, the Town will return the balance to the Applicant.

(i) The Plan must include a decommissioning and site restoration estimate, excluding projected salvage value.

(ii) The Plan must provide that all facility components will be removed four (4) feet below grade in agricultural land and three (3) feet below grade in non-agricultural land.

(iii) The Plan must provide for removal and restoration of access road locations, where appropriate, based on the facility layout.

(iv) The Plan must provide an overall decommissioning and site restoration estimate that adds a fifty (50) percent contingency cost to the decommissioning and site restoration estimate. The overall amount should be allocated among all municipalities hosting any portion of the project based on the estimated cost associated with the removal and restoration of the facilities located in each municipality.

(v) The Plan must provide that all hazardous waste will be properly disposed of upon decommission in accordance with all applicable requirements.

(vi) The Town may review the Applicant's decommissioning and site restoration estimate for accuracy and reasonability with the assistance of a third-party consultant at the Applicant's expense. The estimate must be modified by adopting any recommendations made on the basis of this review.

(vi) Security.

(1) A deposit, execution, or filing with the Town Clerk of a letter of credit held by the Town, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of security shall at a minimum be 125% of the decommissioning cost estimate with an escalator of 2% annually for the life of the Solar Energy System. The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the Solar Energy System.

(2) Any letter of credit must be provided by a financial institution licensed and authorized to do business in the State of New York with an A.M. Best rating of A or better (or equivalent). In any event, the institution and the letter of credit must be acceptable to the Town Attorney, in his or her sole discretion.

(3) The letter of credit shall continue to secure the decommissioning plan despite any

subsequent changes in ownership or management of the project.

(4) In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the letter of credit shall be called by the Town. The Letter of Credit shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.

(5) Upon cessation of electricity generation of a Solar Energy System on a continuous basis for 12 months, the Town may notify and instruct the owner and/or operator of the Solar Energy System to implement the decommissioning plan, or the Town may do so. The decommissioning plan must be completed within 360 days of notification.

(6) If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, utilize the proceeds from the letter of credit for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan.

(vii) Ownership Changes.

(1) The Owner or the Operator of the project shall give written notice to the Town Board of any proposed change in ownership or change in operation of the project as soon as possible but not later than 90 days prior to the change in ownership or operation. Such notice shall contain:

(a) A statement signed by the successor owner or operator that such person/entity assumes all of the obligations of the permit including the site plan approval, and the decommissioning plan.

(b) Acknowledgment by the letter of credit that the obligations of the financial institution shall continue despite the proposed change in ownership or operation. In the alternative the notice may contain a new letter of credit in full compliance with all requirements of this local law.

(2) In the event of failure to give notice the permit shall be deemed terminated and the project shall be deemed abandoned. The Town may immediately give notice to commence decommissioning pursuant to the Decommissioning Plan.

(3) In the event that such notice is given, then the permit shall remain in effect.

(4) The Decommissioning Plan must be recorded with the County Clerk as an irrevocable deed restriction on properties where project components are sited for the benefit of the Town.



f. Property value protection.

Tier 3 solar energy projects may add local revenue through agreements for payments in lieu of taxes, but such projects may also subtract from local revenue if adjacent properties are blighted by the project and lose taxable value. The Applicant for a Tier 3 Solar Energy project, by agreement with any landowner wishing to take advantage of this provision, will assure such landowners that they will be fairly compensated should the value of their real property be diminished by the presence of the Applicant's project, by satisfying the following elements for establishing market values for the properties in question in accordance with generally accepted market-based valuation methods. All expenses of compliance with this subsection must be paid by the Applicant. Properties subject to this subsection must be offered for sale within seven (7) years after approval for the commencement of construction of the Applicant's project.

(1) Establishing the baseline value of real property.

(i) Two neutral real estate appraisers licensed in the State of New York and conducting business in the region of the project area will be selected, one by the landowner and one by the Applicant. Each property owner must pay for his or her own appraisals, and the developer/Applicant must pay of its appraisals.

(ii) Each appraiser shall perform a comparative market analysis ("CMA") of the property in its current state, in the real estate market as it existed in the year prior to the Applicant's submission of an application. The appraisal shall compare the property, considering its size and improvements, to no less than three similar properties in Cattaraugus County, New York, sold within the previous six months, and no less than three similar properties listed for sale, using accepted CMA methods. Any appraisal conducted pursuant to this Section must conform to the Code of Professional Ethics and Uniform Standards of Professional Appraisal Practice of the Appraisal Institute.

(iii) The average of each appraiser's property valuation will be the baseline property value (or baseline CMA). The property owner must agree to permit access to the property as required to perform a CMA inspection, and must provide full disclosure of known defects to the property as may be required under New York law.

(iv) Each appraiser must provide a written copy of his or her report to both the property owner and the Applicant, either of whom may reject the results only in the instance of a clear mistake by the appraiser.

(v) The Applicant must pay the property owner a flat amount of \$1,500 for the time and convenience and/or future expenses of the property owner when the agreement identified in the preamble to this subsection is executed.

(2) Establishing the future value of the property if listed for sale.

(i) If at any time within the seven-year period after approval for the commencement of construction the property owner lists the property for sale with a qualified realtor from the Board of Realtors of Cattaraugus County, then an updated CMA will be prepared using the same procedure as the baseline CMA.

(ii) The updated CMA will take into account any changes in local market conditions for comparable properties unaffected by the Applicant's project, and any improvements to the real property since the baseline CMA. The realtor may not be an employee or contractor with a firm that employed either appraiser identified in subdivision (1) of this subsection.

(iii) If the property was offered for sale and did not sell within 165 days of listing, the Applicant must pay the difference in value between the baseline CMA and the highest bona fide offer. If no bona fide offers are received within 165 days of listing, the Applicant must pay the difference in value between the baseline CMA and the updated CMA. In either case, subject to paragraph (v) of this subdivision, the property owner's selling agent must provide reasonable certification that the lack of an acceptable offer or sale was attributable solely to the proximity of the property to the Applicant's project, and not as a result of limited market conditions, specific deficiencies related to the property otherwise assumed to be satisfactory, or any other reason unrelated to proximity to the project.

(iv) If the property did not sell within 165 days of listing, the Applicant will have the discretion to purchase the property at the updated CMA value, upon agreement with the property owner.

(3) Additional limitations.

Subject to the Applicant's waiver of any of the following exclusions, the property value protection provided in this Section does not apply under any of the following conditions.

(i) the property owner does not have clear and marketable title;

(ii) the property is sold pursuant to a foreclosure, bankruptcy or condemnation;

(iii) the property is destroyed or significantly damaged by fire or other casualty;

(iv) if the Applicant provides Multiple Listing Service statistics demonstrating that the median marketing time for all Cattaraugus County and adjacent counties' residential properties is in excess of 165 days, as of the property owner's listing date, the Applicant may extend the listing period or enter into a separate listing agreement with a new realtor for an additional 90 days, upon prior notice to the property owner; if a bona-fide sale agreement is not executed within the additional 90 days, the Applicant must compensate the property owner in accordance with this subsection;

- (v) agreements between applicants and landowners pursuant to this subsection may not be conditioned on confidentiality regarding the existence or the terms of the agreement;
- (vi) agreements between applicants and landowners pursuant to this subsection may include additional provisions, provided that all required elements of this subsection are included in the agreement;
- (vii) agreements between applicants and landowners pursuant to this subsection must be made binding on the parties' successors and assigns.

g. Variances and Appeals

(1) Variances. Where the Town Board finds that, due to the special circumstances of a particular case, a variance or modification of certain requirements is justified, such variance may be granted upon the following terms and conditions:

(i) The Town Board finds and the Town Clerk records in the minutes that: (1) granting the variance would be keeping with the intent and spirit of this 2021 Local Law, and is in the best interests of the community; (2) there is no adverse effect upon the welfare of the neighborhood; (3) there are special circumstances involved in the particular case; (4) denying the variance would result in undue hardship to the Applicant or Operator, provided that such hardship has not been self-imposed; and (5) the variance is the minimum necessary degree of variation from the requirements of this 2021 Local Law;

(ii) The Town Board may attach such conditions as it deems appropriate to variance approvals to minimize the impact of the variance, including conditions precedent to the effectiveness or validity of the variance;

(2) The Enforcement Officer may revoke any variance for reasonable cause should the Applicant or Operator fail to comply with any non-waived provision of this 2021 Local Law, or fail to comply with the terms and conditions stated in any granted variance; if the Applicant or Operator believes the revocation was improper an administrative appeal may be filed in accord with this 2021 Local Law;

(3) Appeals. Any person(s) aggrieved by the failure to issue or renew any variance, or permit, by any determination, interpretation, or decision of the Town, the Town Board, the Planning Board, or the Enforcement Officer, including by any conditions attached to any permit, variance, or the revocation or suspension of any permit variance, shall have a right to appeal such matter pursuant to a court proceeding under Article 78 of New York's Civil Practice Law and Rules.

## 8. Enforcement

1. Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for by the Town of Ischua,

including but not limited to the issuance of appearance tickets and imposition of civil penalties by the Town Code Enforcement Officer.

2. If the Owner and/or the Operator of the project/site fails to comply with any conditions of the approval during construction or as part of the long-term maintenance of the site, all costs of the Town incurred to ensure compliance with conditions of the approval shall be paid using the surety provided by the owner and/or operator. Failure to comply with the conditions of the approval or to maintain an acceptable level of surety will result in revocation of the certificate of occupancy.

#### **9. Host Community Agreements.**

Nothing in this Local Law shall be read as limiting the ability of the Town to enter into Host Community Agreements with any Applicant to compensate the Town for expenses or impacts on the community. The Town shall require any Applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA. Notwithstanding anything to the contrary provided herein, any and all Town agreements or permit conditions pertaining to a Tier 3 Solar Energy System shall be filed with the Town and in place prior to the issuance of the Solar Permit, unless the approval for such Tier 3 Solar System permit expressly provides otherwise, including Host Community Agreement, Decommission Plan and proof of funds or escrow accounts, if required.

#### **10. Fees**

The Town Board may set such application fees and review fees as it deems reasonable by resolution from time to time. In the alternative, the Town Board may determine to make the applicant pay the Town's actual costs with respect to review, including but not limited to attorney and engineering fees.

#### **11. Severability**

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

#### **12. Battery Energy Storage System (BESS)**

Tier 2 Battery Energy Storage Systems, as defined, are inconsistent with the community character of the Town of Ischua and are not a permitted use within the Town, this includes stand alone or those alongside Tier 3 Scale Solar Energy Systems.

#### **13. Intelligent Mirror Array (IMA)**

Solar panels with mirrors to reflect sunlight into a receiver, which concentrates the light further, shining it onto an absorber, for example, a pipe carrying a fluid to be super-heated (up to 400 degrees F) into an industrial plant for use are inconsistent with the community character of the Town of Ischua and are not a permitted use within the Town.