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(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 of Farmington**

Village

Local Law No. \_\_\_\_\_ of the year **2022**

**A local law “Amending: Chapter 165, Article II, Terminology, Section 9 B. Administrative terms defined; Chapter 165, Article II, Section 10 Definitions; Chapter 165, Article IV, District Regulations, Sections 165-18, -28, -29 and -30; Chapter 165, Article V (Solar Photovoltaic (PV) Systems), Section 165-63.3; Creating Chapter 165, Article VI, Special Permit Uses, Section 85, Large-scale ground-mounted solar PV systems; and Amending portions of Chapter 165, Article VIII, Section 165-99 Appointment of Planning Board; powers and duties, and portions of Section 165-100 Site development plan of the Code of the Town of Farmington”**

(Insert Title)

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

County

City

**Town of Farmington** as follows:

Village

**Section 1.** Chapter 165, Article II, Section B. Administrative terms defined is hereby amended by adding the following terms in alphabetical order:

**ZONING ENFORCEMENT OFFICER**

The official designated and appointed by the Town Board to enforce the provisions of this chapter. The term includes Zoning Inspector.

**Section 2.** Chapter 165, Article II, Definitions, is hereby amended by adding the following definitions, in alphabetical order, as used in this chapter:

#### DECOMMISSIONING

The removal and disposal of all Solar Panels, Solar Energy Equipment, Structures, equipment and accessories, including subsurface foundations and all other material, concrete, wiring, cabling, or debris, installed in connection with a large-scale ground-mounted (PV) solar system and the restoration of the parcel of land to the original state prior to construction on which the large-scale ground-mounted is built to either of the following, at the landowner's sole option: (i) the condition of such lands were in prior to the development, construction and operation of a large-scale ground-mounted (PV) solar system, including but not limited to restoration, regrading and reseeded; or (ii) the condition designed by the landowner(s) and the Town. Details of the approved Decommissioning activities and costs are described in the Decommissioning Plan and Decommissioning Agreement as provided for in Chapter 165, Article VI, Special Permit Uses, Section 85, Large-scale ground-mounted solar (PV) systems.

#### DECOMMISSIONING AGREEMENT

A written Agreement between an Applicant, landowner and Town that sets forth the obligations of the Applicant and/or landowner to properly decommission the large-scale ground-mounted (PV) solar system when such system has been determined by the Town Code Enforcement Officer to be discontinued, abandoned, or inoperable.

#### FARMLAND PRIME

Soils designated as "Prime Farmland" in the U.S. Department of Agriculture Natural Resources Conservation Service Soil Survey Geographic Database 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 uses. It has the soil quality, growing season, and moisture supply needed to produce economically sustained high yields of crops when treated and managed according to acceptable farming methods, including water management. In general, Prime Soils have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium contents, and few or no rocks. They are permeable to water and air. Prime Soils are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding.

#### FARMLAND OF STATEWIDE IMPORTANCE

Soils designated by the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) in the Soil Survey Geographic Database on Web Soil Survey, this is of statewide importance for the production of food, feed, fiber, forage and oilseed crops as determined by the appropriate state agency or agencies.

#### 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.

#### LOT WIDTH

The distance between the side lot lines measured along the front lot line, as listed in Chapter 165 Attachment 1, Town of Farmington Schedule 1, entitled Lot Area, Bulk and Coverage Requirements, except in the case of lots located on the turning circle of a cul-de-sac, where the respective lot width requirement shall not apply and where said lot width requirement shall be determined by the Town Planning Board as part of subdivision plat approval.

#### ROOF-MOUNTED LARGE-SCALE SOLAR (PV) ENERGY SYSTEM

A large-scale roof-mounted solar (PV) system is prohibited from being mounted upon the roof of any legally permitted Building or Structure in any zoning district. The term includes any roof-mounted commercial building solar (PV) energy system intended to produce energy for offsite sale to and consumption by one or more customers.

#### ROOF-MOUNTED SMALL-SCALE SOLAR (PV) ENERGY SYSTEM

A small-scale roof-mounted solar (PV) system mounted upon the roof of any legally permitted Building or Structure and wholly contained within the limits of the roof surface, intended to produce energy for onsite consumption or credit for onsite consumption for a building, a single-family detached dwelling, a multi-family structure, a commercial or industrial building, or a farm building.

#### SOLAR (PV) ENERGY SYSTEM EQUIPMENT

Electrical energy devices, material, hardware, inverters, or other electrical equipment and conduit, not to include any type of battery energy storage system or similar device, that are used with a Solar Photovoltaic (PV) System to produce and distribute electricity.

#### SOLAR (PV) PANEL TILT

The vertical angle, where zero degrees minimum tilt means the tilt of the solar panel is lying flat, and ninety degrees maximum tilt means that the solar panel is vertical.

**Section 3.** Chapter 165, Article IV, District Regulations, Sections 165-18, -28, -29 and -30 are hereby amended as follows:

§ 165-18. A-80 Agriculture District (80,000 square feet lot size), subsection D. Special permit uses, (7) Large-scale ground-mounted solar PV systems; and

§ 165-28. GB General Business District, subsection D. Special permit uses, (19) Large-scale ground-mounted solar PV systems; and

§ 165-29. LI Limited Industrial District, subsection D. Special permit uses, (13) Large-scale ground-mounted solar PV systems.

**Section 4.** Chapter 165, Article V, Section 165-65.3 (Solar Photovoltaic [PV] Systems) of the Code of the Town of Farmington is hereby repealed in its' entirety and a new Section 165-65.3is hereby established to read as follows:

§ 165-65.3 Solar Photovoltaic (PV) Systems.

A. Purpose. It is the purpose of this section of the Town Code to encourage and promote the safe, effective and efficient use of installed solar photovoltaic (PV) system that reduce on-site consumption of utility-supplied energy and/or produce new and additional electricity services generated by solar energy that help meet the present and anticipated future energy needs of Town residents and others.

B. Intent. It is the intent of these regulations to:

(1) Meet the goals and objectives of the Town of Farmington Comprehensive Plan (hereinafter referred to as the "Plan") to: enhance continued agricultural operations and protect viable agricultural land resources; and provide public utilities, facilities and energy services that efficiently meet present needs and anticipate future needs of residents in accordance with the goals and objectives of the Plan; and

(2) Support green economy innovations; and

(3) Support New York State in meeting its renewable energy goals established by the 2015 New York State Energy Plan as implemented through the Reforming the Energy Vision Institute; and

(4) Support New York State Climate Leadership and Community Protection Act (hereinafter referred to as CLCPA) which went into effect January 1, 2020.

### C. Applicability.

- (1) This section applies to building-mounted, building-integrated and ground-mounted solar photovoltaic (PV) systems installed and constructed after the effective date of this section of the Code.
- (2) This section also applies to any upgrade, modification or structural change that alters the physical size, electric generation capacity, location or placement of an existing solar PV system.
- (3) Nonconforming solar PV systems. Nonconforming solar PV systems existing on the effective date of this section may be altered or expanded, provided such alteration or expansion does not increase the extent or degree of nonconformity.
- (4) Properties with approved site plan. Notwithstanding the requirements of §165-85 and §165-100 of this chapter, for any lot or parcel of land that has an approved special use permit and an approved site plan, the installation of a by-right solar PV system on the lot shall not be considered a change to the special use permit, or the approved site plan. This provision shall be interpreted to exempt lots with an approved site plan from other requirements of this chapter.
- (5) Prohibition. Solar PV systems attached to the side of a building are prohibited unless they are designed as a building-integrated system.

### D. Solar PV Systems Permitted by Right.

- (1) By-right solar PV systems. To encourage use of solar PV systems in the Town of Farmington, the following Building-integrated and Building-mounted solar PV systems shall be permitted by right as an accessory structure in any zoning district, provided the system is generating electricity only for the land use located on the same lot as the system, and further provided that the system is located in the following yard areas:
  - (a) By-right building-integrated solar PV systems. Building-integrated solar PV systems are permitted to face any rear, side and/or front yard area.
  - (b) By-right building-mounted solar PV systems. Building-mounted solar PV systems are permitted to face any rear, side and/or front yard area.
  - (c) By-right large-scale ground-mounted solar PV systems shall only be installed in the side or rear yard portion of a lot in any zoning district.

(2) Standards for by-right solar PV systems.

Any By-right solar PV system shall meet the following standards:

- (a) Accessory use. All building-mounted or building-integrated by-right solar PV system shall be considered an accessory use and shall require a building permit.
- (b) By-right small-scale large-scale ground-mounted solar PV systems. Only small-scale large-scale ground-mounted solar PV systems, as defined herein, shall be considered as by-right systems. Such by-right systems shall be limited to a capacity of 25kW and shall generate no more than 110% of the kWh's of electricity consumed over the previous twelve-month period by land use(s) existing on the lot or parcel of land where the system is located. In applying this standard, electricity consumption shall be determined by submission of utility bills showing electric usage over said twelve-month period.
- (c) By-right facilities shall comply with all applicable New York State building codes.
- (d) In no event shall lot coverage for a by-right solar PV system exceed 50% of the lot area.
- (e) All by-right solar PV system panels shall have anti-reflective coating(s).

(3) By-right building-mounted solar PV systems.

- (a) For a building-mounted solar PV system installed on a sloped roof, the following design requirements shall be met:
  - [1] Solar panels on pitched roofs shall be mounted with a maximum distance of eight (8) inches between the roof surface and the highest edge of the system.
  - [2] Solar panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
  - [3] Solar panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
  - [4] Solar panels on flat roofs shall not extend above the top of the surrounding parapet, or more than twenty-four (24) inches above the flat surface of the roof, whichever is higher. The support structure design for these panels shall be approved by the Town Fire Marshall to ensure access paths.

[5] All solar panels shall have anti-reflective coating(s).

[6] All roof-mounted solar PV systems shall comply with the zoning district's height limitations.

(4) By-right building-integrated solar PV systems.

(a) For a by-right building-integrated solar PV System:

[1] Solar PV panels may be integrated into various parts of the building, including façade; rooftops; roof shingles and skylight glazing.

[2] Solar PV panels may be integrated into building components such as awnings.

(5) By-right building-mounted and building-integrated solar PV systems. [note: this section was originally listed under large scale large-scale ground-mounted solar PV systems special use permit criteria. It is being relocated here.] Notwithstanding the area, lot and bulk requirements of this chapter, building-mounted and building-integrated solar PV systems may be installed on nonconforming buildings as follows:

(a) On the roof of a nonconforming building that exceeds the maximum height restriction, provided the building-mounted system does not extend above the peak or highest point of the roof to which it is mounted.

(b) On a building that does not meet the minimum setback or yard requirements, provided there is no increase in the extent or degree of nonconformity with said requirement.

(c) On a building that exceeds the maximum lot coverage requirements, provided there is no increase in the extent or degree of nonconformity with said requirement.

E. Solar PV Systems requiring a Special Use Permit and Site Plan Approval.

Solar PV Systems requiring both a Special Use Permit and Site Plan Approval.

- (1) Except as provided in § 165-65.3D above, Solar PV systems permitted by-right, no other type of large-scale ground-mounted solar PV system shall be constructed or installed without first obtaining a special use permit and site plan approval from the Planning Board, pursuant to Articles VI and VIII of this chapter. In addition, all large-scale ground-mounted solar PV systems shall require a building permit. Solar

PV systems requiring a special use permit and site plan approval shall include, but not be limited to:

- (a) Large-scale ground-mounted solar PV systems.
  - (b) Solar PV systems, regardless of size, that generate and provide electricity, through a remote net metering agreement or other arrangement, to an off-site utility or user or users located on a lot or parcel of land other than the lot or parcel of land on which the system is located.
- (2) Classifications. Solar PV systems requiring a special use permit may be classified as either principal or an accessory use as set forth below.
- (a) Principal use. A solar PV system constructed on a lot or parcel of land and providing electricity to an off-site utility or user or users through a remote net metering agreement or other arrangement shall be classified as a large-scale solar PV system and shall be considered a principal use. All large-scale ground-mounted solar PV systems that are classified as a principal use shall adhere to the area, yard and build requirements of the zoning district in which the system is located, unless modified herein by § 165-65.3F below.
  - (b) Accessory use/accessory structure. A large-scale ground-mounted solar PV system shall be considered an accessory use/accessory structure when generating electricity for the sole consumption of a principal use or building(s) located on the same lot or parcel of land as the system.

#### F. Solar Systems Not Allowed.

The following types of large-scale building-mounted and building-integrated solar PV systems are not allowed in any zoning district.

- (a) Building-mounted and building-integrated large-scale solar PV systems that have a system capacity greater than 25 kW or generate more than 110% of the kWh's of electricity consumed over the previous twelve-month period by land use(s) existing on the lot or parcel of land where the system is located. In applying this standard, electricity consumption shall be determined by submission of utility bills showing electric usage over said twelve-month period.
- (b) Building-mounted solar PV systems, regardless of size, mounted on carports or canopy structures covering parking facilities.



G. Major Renewal Electric Solar PV Systems exempt from Town Review and Approval.

The following Major Renewal Electric Solar PV Systems are exempt from review under the regulations contained in chapter of the Farmington Town Code:

- (1) Permit applications for major renewable energy facilities, as defined by the State of New York, pursuant to Chapter 388 of the Laws of 2011 enacted Article 10 of the New York State Public Service Law. Article 10 provides for the siting review of new and repowered or modified major electric generating facilities in New York State by the State Board on Electric Generation Siting and the Environment. Under the provisions of Chapter 388 a major renewable electric generating facility is defined as facilities capable of generating annually 25 megawatts or more. Additionally, new large-scale ground-mounted solar PV system projects, generating between 20 -25 MW and existing projects in the initial phases of the Article 10 review process may opt-in to the State-level siting process administered by the Office of Renewable Energy Siting (ORES).
- (2) Permit applications for major renewable energy facilities as defined in Subpart 900-1.2 (a–f) of Chapter XVIII, Title 19 of NYCRR Part 900, Office of Renewable Energy Siting, requires applications for permits for the siting, design, construction, operation, compliance, enforcement and modification of such facilities pursuant to Section 94-c of the New York State Executive Law.

H. Standards for facilities requiring a special use permit. Large-scale large-scale ground-mounted solar PV systems, those systems under 25 mega watt (MW) in capacity, require a special use permit subject to the standards and criteria contained in Article VI, Section 165-85 of this chapter.

**Section 5.** There is hereby established a new Section 165-85 within Article VI of Chapter 165 of the Town of Farmington Code to read in its entirety as follows:

§ 165-85 Large-Scale Ground-Mounted Solar (PV) Systems.

- § 165-85.1. Special use permit and site plan approvals. Large-scale ground-mounted solar PV systems, as principal uses, may be allowed upon the issuance of a special use permit and site plan approvals that are granted by the Planning Board, upon lots located within the A-80 Agricultural District, the RR-80 Rural Residential District, the GB General Business District, the LI Limited Industrial District, and the GI General Industrial District and as further provided for in this section.

§ 165-85.2. Conditional approval required. No special use permit shall be issued unless the Planning Board finds that the following conditions are met:

- (1) The special use permit granted shall be valid only for the anticipated life of the ground-mounted large-scale solar PV system as documented in the application to the Planning Board, or upon Abandonment of said system by the operator.
- (2) The special use permit may be amended or extended in time upon application to the Planning Board setting forth the reasons for such amendment of time or amendment to the conditions of approval; and a determination by the Planning Board whether any other amendments to the Special Use Permit, the Final Site Plan, the Decommissioning Plan and the surety on file need to be made as part of the amendment approvals.
- (3) The special use permit shall be valid only for the approved period of time provided further that the applicant continues compliance with the conditions of special use approval.
- (4) The special use permit shall be valid only for as long as the applicant complies with the conditions of final site plan approval.
- (5) The special use permit shall be valid only for as long as the applicant has received Town Board acceptance of the Decommissioning Plan and an acceptable form of surety that remains in effect with the Town.

§ 165-85.3. Criteria for accepting a special use permit application. No special use permit application shall be deemed to be complete by the Planning Board until the following conditions are met:

- A. Submission of a detailed site-specific Operation and Maintenance Plan that identifies all party(ies) responsible for the operation and maintenance of the proposed large-scale ground-mounted solar PV system(s) on the subject lot(s)/ parcel(s).
- B. Identification of the party responsible for decommissioning of a large-scale ground-mounted solar PV system accompanied by a written acknowledgement by the land-owner(s) of his/her/their responsibilities.
- C. Written acknowledgement by a public utility to enter into an agreement with the applicant to purchase the electricity to be generated by the proposed large-scale ground-mounted solar PV system on the subject lot(s)/parcel(s).

- D. A description of any agreement(s) regarding decommissioning between the responsible party(ies), the Town and the landowner(s) which includes the duration of the lease for a solar system to enable the Planning Board to assess the likely lifecycle of the solar system and plan for possible decommissioning at such time. Disclosure of any agreement regarding decommissioning between the responsible party(ies), the Town and the landowner(s) may redact specific financial terms.
- E. A detailed soils classification map of the entire lot(s)/parcel(s) of land has been prepared in accordance with the requirements of the provisions of the New York State Department of Agriculture and Markets Law for determining Agricultural Use Value Exemptions shall be provided for any application involving land being actively farmed, land located within the established Ontario County Consolidated Agricultural Use District No. 1, or land identified on the Strategic Farmland Protection Map, Map No. 8, as contained in the latest edition of the adopted Town of Farmington Farmland Protection Plan.
- F. Where a proposed large-scale ground-mounted solar PV system involves a lot/parcel identified in subsection D. above, a soil sampling program acceptable to the Planning Board is to be provided which establishes relevant benchmark soil conditions over representative sections of the lot/parcel on which the solar system will be sited, and then provides for periodic sampling comparisons to monitor conditions of the soils beneath and around the solar arrays used.
- G. A schedule prepared by a licensed engineer is to be included, reviewed and accepted by the Planning Board identifying all items to be removed during decommissioning of a Large-Scale Photovoltaic (PV) Solar Site which identifies ~~showing~~ the time frame over which decommissioning will occur, including a date for completion of site restoration work.
- H. ~~A~~ Cost estimates for both site development and decommissioning of the site are to be prepared by a licensed engineer, and then reviewed and accepted by the Town Engineer. These estimates are to include the full cost of constructing the solar site and decommissioning and removal of the solar PV system from the site.

§ 165-85.4. Criteria for accepting and approving an application for site plan approval for a large-scale ground-mounted solar PV system. No application for site plan approval for a large-scale ground-mounted Solar Photovoltaic (PV) System shall be deemed to be complete by the Planning Board until the following conditions are met:

- A. Setbacks to non-residential districts. Large-scale ground-mounted solar PV systems are subject to the minimum yard and setback requirements for the non-residential zoning district (e.g., RB, NB, GB, LI and GI Districts) in which the system is located. No part of a large-scale ground-mounted solar PV system shall extend into the required yards and/or setbacks due to a tracking system or short-term or seasonal adjustment in the location, position or orientation of solar PV related equipment or parts.
- B. Setback to residential districts. The location of large-scale ground-mounted solar PV collectors shall meet the setbacks specified below herein but shall not be less than forty (40) feet from any public highway right-of-way and/or utility easement; and said natural vegetation (e.g., landscaping) buffer shall be provided within this area in a manner to be effectively and exclusively used as a visual barrier between the solar system site and adjacent residential property(ies). The setbacks established herein are intended to provide space for planting a visual buffer of natural vegetation to be created between the large-scale ground-mounted PV solar site's security fence surrounding such a PV solar system and adjacent property lines where residential dwellings either exist or are permitted to exist. Plantings within this area are to be, at the time of installation, at a height to provide as much as practicable, a visual screening of the large-scale ground-mounted PV system from adjacent residential properties. The species type, location, and planned height of such natural vegetation (landscaping) shall be subject to further approval by the Planning Board as part of the required Site Plan Approval application. Such heights may be further subject to changing topography on the ground-mounted PV solar site from that of adjacent properties.
- C. Large-scale ground-mounted solar PV systems located in a zoning district where residential dwellings are permitted. Such solar PV Systems shall be set back an additional 120 feet from the minimum yard setback along all property lines that abut a lot or parcel of land located in the zoning district(s) permitting residential dwellings, unless said property contains soils classified as "prime" or "unique" (Soils Groups 1 through 4) and the land is being actively farmed or used for livestock. In this instance, the minimum setback shall be forty (40) feet from the property line. This additional set back dimension shall also apply to the front yard portion of the lot or parcel of land located on the opposite side of the street which is also located in a zoning district allowing residential dwellings.
- D. Large scale ground-mounted solar PV systems located in restricted business, commercial or industrial districts. Such solar PV systems shall be set back an additional 110 feet from the minimum yard setback along all property lines that abut a lot located in the A-80, RR-80 and other zoning districts permitting residential dwellings, or an IZ Incentive Zoning District. This additional setback dimension shall also apply to the front yard setback when the lot on the opposite side of the street is located in a residential or an incentive zone district.

- E. Large scale ground-mounted solar PV systems located upon Strategic Farmland. Large scale ground-mounted solar PV systems that are to be developed upon land identified on the Town of Farmington Active Farmland—Strategic Farmland Map, Map Number 8, of the adopted *Town of Farmington Farmland Protection Plan*, shall be allowed on soils classified as Class 1 through 4, as documented upon the Soil Group Worksheets prepared by the Ontario County Soil and Water Conservation District and used by the Town of Farmington Assessor in calculation of the agricultural use exemption values, a part of the New York State Department of Agriculture and Markets Agricultural District Law, once it can be determined, by the Planning Board, that there is no feasible alternative location on the lot/parcel at issue to place the proposed solar system. Where there is no feasible alternative location on the lot/parcel at issue then the solar system applicant shall provide an Agricultural Conservation Easement (ACE) on another lot/parcel of land, containing Class 1 through 4 Soils, which is shown on the above referenced Map Number 8 and said acreage is to be in the total amount of acreage equal to the acreage of Class 1 through 4 Soils that are proposed to be used as part of a proposed large-scale ground-mounted solar PV system. Said ACE shall be placed only upon land having Class 1- 4 Soils and fronting along a public highway and shall not be in some remote interior portion of a lot/parcel. Said ACE shall remain in effect for the same period associated with the time limit specified in the Special Use Permit that is granted for a proposed large-scale ground-mounted solar PV system. Said ACE may be terminated once the subject solar PV system has been decommissioned, or upon a determination by the Town Board that said solar system is no longer operating under the terms of the original submission.
- F. The following standards are to be implemented by the Planning Board as part of site plan approval for any large-scale ground-mounted solar PV system:
- (1) Where large-scale ground-mounted solar PV systems are to be located on Class 1 through 4 Soils, then the following shall apply to the construction, follow-up monitoring of a solar PV system during its' useful life and restoration of these portions of the site in accordance with the latest *Guidelines for Agricultural Mitigation for Solar Energy Projects* promulgated by the New York State Department of Agriculture and Markets; and
  - (2) Requirement for an environmental monitor (EM). Depending upon the total acreage of the large-scale ground-mounted solar PV system, any system occupying ten (10) or more acres in total shall have an environmental monitor (EM) retained by the solar PV system operator(s) to oversee the construction, follow-up monitoring of the solar PV system, decommissioning of the system and restoration of the agricultural field(s) to their original state, to the extent practical. The EM is to be on site whenever construction, decommissioning or restoration work is occurring on the Class 1 through 4 Soils; and his/her work is to be coordinated with staff at the Ontario County Soil and Water Conservation District, the New York State Department of Agriculture and Markets, and the Town Code Enforcement Officer and

other Town Officials. Said work is to be based upon a schedule for inspections during each of the above referenced phases to assure the soils are being protected to the greatest extent possible.

- (3) Solar PV system(s) located upon more than one (1) lot. In the event a large-scale ground-mounted solar PV system is to be located upon more than one lot/parcel then the total acreage involved as part of such system is to be based upon the overall acreage of the system and not its individual pieces of land.
- (4) Requirement for an EM on more than one (1) lot. Where a large-scale ground-mounted solar PV system is located upon more than one lot/parcel then each lot/parcel may have its' own EM. Where there is more than one EM associated with a large-scale ground-mounted solar PV system, then it shall be the responsibility of the system's operator to coordinate the duties and responsibilities of each EM with the State, County and Town Officials referenced above in § 165-85. F. (b).
- (5) Security fence. Each large-scale ground-mounted solar PV system site is to be completely enclosed by security fence having a minimum number of gates and a height not to exceed eight (8) feet above existing ground elevation. Said security fence shall also display the project's contact information sign and safety warning signs to be spaced around the perimeter of the site. Any security fence enclosure shall not unnecessarily interfere with or impede watering systems associated with rotational grazing systems of an established agricultural operation. In addition, such security enclosure shall not create an excessive and unnecessary reduction in the amount of acreage remaining for farmland operations. Design details for the proposed fence are to be shown on the site plan drawings; and photographs showing the perimeter of the installed fence are to be filed in the Town Development Office. Public information sign and warning signs shall be provided on a security fence as further regulated in § 165.85. N. below. The site plan drawings shall identify the locations, size and number(s) of such signage.
- (6) Visual simulation site photos. Every application for a proposed large-scale ground-mounted solar PV system on the site shall include photo simulations of the proposed large-scale ground-mounted solar PV system with the site plan drawings.
- (7) Visual simulation landscaping photos. Every application for a proposed large-scale ground-mounted solar PV system shall include a visual simulation of the proposed landscaping plantings, both at the time of installation and as expected to appear in year five of the system's operation. The landscaping area is to be shown surrounding the outside of the security fence for the proposed solar PV system are to be included with the preliminary site plan drawings and shall be presented to the public early in the site plan application process. A detailed landscaping design and planting schedule are to be provided as part of any site plan application.



- (8) Structures for overhead collection lines. Structures for overhead collection lines for a large-scale ground-mounted solar PV system are to be located upon the non-active agricultural portions of the site and along field edges wherever possible.
- (9) Access roads. There is hereby established three (3) classes of access roads to be used for any large-scale ground-mounted solar project. They include the following:
- (a) “Solar System Site Access Road which is the main point of access to the site extending from the pavement edge of the adjacent public highway. The solar system site access road is to be designed to the Town’s Industrial Road Specification and to have a minimum width of twenty-four (24) feet and shall be paved for one hundred (100) feet from the edge of the travel lane of the adjacent public street.
  - (b) “Solar System’s PV Panel(s) Access Road(s) which is the access roads within the site that provide access to the solar panels for maintenance purposes. These are “hard surface” access roads are to be located along the edge of agricultural fields and designed to meet the Town of Farmington’s Private Drive specifications.
  - (c) “Solar System Subsurface Stabilized Maintenance Access Roads” which involve the space between the solar panels and the perimeter of the solar site’s security fence. This area is to be designed to meet the Town’s Subsurface Stabilized Maintenance Access Road specifications. These areas are mainly for emergency access purposes. To the extent practical, the “Solar System’s PV Panel(s) Access Roads and the “Solar System Subsurface Stabilized Maintenance Access Roads” are to be in areas next to hedgerows and on the nonagricultural portions of the solar PV system site.
- (10) Access gates. There shall be a minimum of one (1) access gate sized to accommodate maintenance equipment and/or emergency response equipment of local public safety agencies. Depending upon the length of each side of each of the sides of the security fence the Town Fire Marshall shall have the authority to require more than one (1) access gate to be provided for vehicles to and from the solar system’s PV panel(s) where it is deemed to be in the interests of promoting public safety of first responders.
- (11) Emergency personnel exit gates. One (1) emergency personnel exit gate is to be provided along the security fence perimeter on all sides of the site to facilitate emergency egress from the enclosed area by system operators and first responders involved with extinguishing a solar panel fire or brush fire within the interior portion of a large-scale ground-mounted solar PV system site. Depending upon the length of each side of the security fence the Town Fire Marshall shall have the authority to require more than one (1) emergency access gate to be provided around the perimeter of the site where it is deemed to be in the interests of promoting public safety of first responders.

- (12) Access road widths. The width of the large-scale ground-mounted solar system's PV panels access road is to be no wider than twenty (20) feet, to minimize the loss of agricultural lands and comply with the design standards of the State of New York Fire Access Code. The width of the solar system access road shall have a minimum width of twenty-four (24) feet and shall be paved.
- (13) Prohibition on cut and fill. There shall be no cut and fill of a large-scale ground-mounted solar PV system site for creating on-site access roads which would create on-site drainage problems. Any on-site access road, which is proposed to cross agricultural fields is instead to be located along ridge tops and follow existing field contours to the greatest extent possible. The location of all on-site access roads are to be shown on the site plan drawings.
- (14) Site drainage. All existing site drainage is to be maintained to the greatest extent practical. Any drainage structure(s) and/or erosion control measure(s) to be installed, such as diversions, ditches, and field drainage tile lines, shall take appropriate measures to maintain natural drainage flows and the effectiveness of such structures. Any existing drainage structure that is disturbed or damaged during site construction is to be repaired and the drainage structure is to be returned, as close as possible, to the original condition, unless such structures are to be eliminated based upon the site plan for the large-scale ground-mounted solar PV system.
- (15) Access road surface. The surface of a large-scale ground-mounted solar PV system access road that is to be constructed through agricultural fields is to be level with the adjacent field surface wherever possible. The design for this site improvement is to be shown on the site plan drawings. No access road shall be permitted that alters existing drainage patterns on the site.
- (16) Maintaining natural drainage patterns. Culverts and water bars are to be installed so as to maintain natural drainage patterns within the large-scale ground-mounted solar PV system area. The design for these site components is to be shown on the site plan drawings.
- (17) Topsoil stripping and storage. All topsoil areas stripped for vehicle and equipment traffic, on-site parking and equipment laydown and storage areas is to remain on the site during the useful life of the large-scale ground-mounted solar PV system. The designated area(s) on the site to be used for topsoil stockpiling are to be shown on the site plan drawings. All topsoil stockpiles are to be stabilized and seeded in accordance with the Town's MS 4 Program requirements.



- (18) Site excavation storage. All excavated materials (e.g. rock and/or subsoil) from on-site work areas (e.g. on-site parking area(s), electric cable trenches and site lay down areas, etc.) are to be stockpiled on-site and separate from other excavated materials (e.g., top soil). The design for these site components is to be shown on the site plan drawings.
- (19) Maximum temporary workspace area width. A maximum width of fifty (50) feet for any temporary workspace is to be provided along any open-cut electric cable trench for property topsoil segregation. All topsoil will be stockpiled immediately adjacent to the workspace area where stripped and shall be used for restoration on that portion of the solar PV system site as soon as practical after the installation of the electric cable.
- (20) Electric interconnect cables and transmission lines. Electric interconnect cables and transmission lines are to be buried in agricultural fields wherever practical. All such buried lines are to be shown on the site plan drawings and the record drawings for said large-scale ground-mounted solar PV system.
- (21) Electric interconnect cables and transmission lines. Electric interconnect cables and transmission lines that must be installed above ground shall be located outside agricultural field boundaries. When above ground cables and transmission lines must cross agricultural fields, then taller support structures are to be used providing longer spanning distances and all such structures are to be located on the edges of the agricultural fields, to the greatest extent practical. Details for all such structures are to be shown on the site plan drawings.
- (22) Buried electric cables and transmission lines. All buried electric cables and transmission lines buried in cropland, hay land and improved pasture shall have a minimum depth of 48 inches of cover. At no time shall the depth of cover be less than twenty-four (24) inches below the existing soil surface. The location(s) of all buried electric cables and transmission lines is to be shown on the site plan drawings.
- (23) Intercept drain lines. The Ontario County Soil and Water Conservation District is to be consulted concerning the type of intercept drain lines whenever buried electric cable alters the natural stratification of soil horizons and natural soil drainage patterns. Their report shall be taken into consideration and design details shown on the site plan drawings.

- (24) Pasturelands. Where a proposed large-scale ground-mounted solar PV system design affects existing and continued pasture areas, it is necessary to construct temporary or permanent fences around work areas to prevent livestock access and are to be based upon landowner written agreements. Said agreements are to be referenced on the site plan drawings and copies thereof filed with the Town's project file.
  - (25) Excess concrete. Excess concrete used in the construction of the large-scale ground-mounted solar PV system site shall not be buried or left on the surface in active agricultural areas of the project. Concrete trucks are to be washed, in documented washout areas, outside of active agricultural areas. A washout site is to be shown on the site plan drawings, along with notes that identify the reclamation of these areas.
  - (26) Materials disposal. All permits necessary for disposal of materials brought onto a large-scale ground-mounted solar PV system site, under local, state and/or federal laws and regulations, must be obtained by the contractor, with the cooperation of the landowner. Copies of all such permits are to be noted on the site plan drawings and filed with the Town Development Office.
- G. The following restoration requirements for all agricultural areas that are part of a large-scale ground-mounted solar PV system which are temporarily disturbed by construction or decommissioning shall:
- (1) Be de-compacted to a depth of eighteen (18) inches with a deep ripper or heavy-duty chisel plow. Soil compaction results should be no more than 250 pounds per square inch (PSI) as measured with a soil penetrometer. In areas where the topsoil was stripped, soil decompaction should be conducted prior to topsoil replacement. Following decompaction, remove all rocks that are four (4) inches or greater in size from the surface of the subsoil prior to replacement of topsoil. Replace the topsoil to original depth and re-establish original contours where possible. Remove all rocks sized four (4) inches and larger from the surface of the topsoil. Subsoil decompaction and topsoil replacement shall be avoided after October first of each year and May first of the following year.
  - (2) Regrade all access roads to allow for farm equipment crossing and farm animals and to restore original surface drainage patterns, or other drainage pattern incorporated into the approved site design by the Planning Board.
  - (3) Seed all restored agricultural areas with the seed mix specified by the landowner, to maintain consistency with the surrounding areas.

- (4) All damaged subsurface or surface drainage structures are to be repaired to pre-construction conditions, unless said structures are to be removed as part of the site plan approval by the Planning Board. All surface or subsurface drainage problems resulting from construction of the solar energy project are to be corrected with the appropriate mitigation as determined by the EM, Soil and Water Conservation District and the landowner.
  - (5) Postpone any restoration practices until favorable (workable, relatively dry) topsoil/subsoil conditions exist. Restoration is not to be conducted while soils are in a wet or plastic state of consistency. Stockpiled topsoil shall not be regraded, and subsoil shall not be de-compacted until plasticity, as determined by the Atterberg field test, is adequately reduced. No project restoration activities are to occur in agricultural fields between the months of October and the following May unless favorable soil moisture conditions exist.
  - (6) Following site restoration, remove all construction debris from the site.
  - (7) Following site restoration, at which point in time shall be agreed-to by the landowner, the project sponsor is to provide a monitoring and remediation period of no less than two years, from said agreed-to date, to enable the revegetation of cover for the disturbed ground to make sure erosion is controlled. General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, revegetation, drainage and repair of severed subsurface drain lines, fences, etc.
  - (8) Mitigate any topsoil deficiency and trench settling with imported topsoil that is consistent with the quality of topsoil on the affected site. All excess rocks and stones larger than four (4) inches in diameter shall be removed from the site.
  - (9) All aboveground solar array structures are to be removed and all areas previously used for agricultural production are to be restored and accepted by the landowner, the Soil and Water Conservation District, and the State Department of Agriculture and Markets.
  - (10) All concrete piers, footers, or other supports are to be removed to a depth of 48 inches below the soil surface. Underground electric lines are to be abandoned in place. Access roads in agricultural areas are to be removed, unless otherwise specified by the landowner.
- H. Utility connections. Utility lines and connections from a large-scale ground-mounted solar PV system shall be installed underground, unless otherwise determined by the Planning Board for reasons that may include poor soil conditions, topography of the site, and requirements of the utility provider. Electric inverters and transformers for utility interconnections may be above-ground if required by the utility provider.

- I. Fences. Notwithstanding the provisions found in § 165-61 Fences of this chapter, fences not exceeding eight (8) feet in height, including open-weave chain-link fences and solid fences, shall be permitted for the purpose of screening or enclosing a large-scale ground-mounted solar PV system, regardless of the district in which the system is located, provided said system is classified as a principal use.
- J. Barbed wire. Notwithstanding provisions for barbed wire found in §165-61. A. of this chapter, fences intended to enclose a large-scale ground-mounted solar PV system may contain barbed wire canted out.
- K. Height. Large-scale ground-mounted solar PV systems may not exceed twelve (12) feet in height, excepting weather monitoring equipment, which may extend to a height of fifteen (15) feet or such height as the Planning Board finds appropriate and not objectionable under the circumstances, and excepting utility poles and lines needed to transport solar energy to the utility grid and connection facilities of the local utility.
- L. Minimum lot size. Large-scale ground-mounted solar PV systems shall adhere to the minimum lot size requirements for the zoning district in which the system is located, except that for residential districts where the minimum lot size shall be one (1) acre.
- M. Lot coverage requirements. Large-scale ground-mounted solar PV systems shall adhere to the maximum lot coverage requirement for principal uses within the zoning district they are located. The lot coverage of a large-scale ground-mounted solar PV system shall be calculated based on the definition of “lot coverage” found in Article II, § 165-10, of this chapter.
- N. Signs. Large-scale ground-mounted solar PV systems classified as a principal use shall adhere to the sign requirements for the zoning district in which they are located. However, a project information sign and public warning signs shall be affixed to the project fence and the warning signs are to be spaced apart at intervals recommended by the Federal Energy Regulatory Commission (FERC) and shall be of the size recommended in said FERC regulations.
- O. Location in front yard. Notwithstanding the requirements regulating location of accessory structures found elsewhere in this chapter, large-scale ground-mounted solar PV systems classified as an accessory use shall be prohibited in a front yard, including location in any front yard on a corner lot.

§ 165-85.5. Periodic soil sampling reports. The periodic soil sampling reports required by the Planning Board as a condition of granting a special use permit for a large-scale ground-mounted solar PV system shall be:

- A. In place prior to the start of construction of a large-scale ground-mounted solar PV system which establishes relevant benchmark soil conditions over representative sections of the lot(s)/parcel(s) on which the solar system will be sited.
- B. Said benchmark soil conditions shall serve as the basis for periodic soil sampling conditions to monitor conditions of the soils beneath and around the solar arrays used.
- C. Significant deviations in the periodic sampling reports from benchmarks shall warrant the Planning Board to investigate the changes and re-examine the special use permit approved and its conditions to determine if changed circumstances reflected in the soil sampling results warrant rescinding the special use permit or continuing it on such new terms and timing as the Planning Board determines to be appropriate under the circumstances. The burden shall be on the system operator and landowner to establish that conditions remain safe for the operation of the solar system on the site so that continuation of the special use permit, as conditioned and with such appropriate additional conditions as may be imposed by the Planning Board, remains warranted.

§ 165.85.6. Alterations to approved large-scale ground-mounted solar systems.

- A. Any alteration(s) or repair(s) made to solar energy equipment located within an approved large-scale ground-mounted solar PV system site shall comply with the site's special use permit, final site plan, Decommissioning Plan, and Operation and Maintenance Plan will require a Building Permit issued by the Town Code Enforcement Officer. All such permit(s) must comply with all New York State Building Codes.
- B. Any alteration(s) or repair(s) made to solar energy equipment located within an approved large-scale ground-mounted solar PV system site that is/are determined not to comply with the site's special use permit, final site plan, Decommissioning Plan, and the site's Operation and Maintenance Plan will require the approval by the Town Planning Board prior to the issuance of a Building Permit by the Town Code Enforcement Officer.

§ 165.85.7. Annual report.

- A. The large-scale ground-mounted solar PV system owner shall, on a yearly basis from the date of the certificate of compliance issued by the Code Enforcement Officer (CEO), provide the CEO a written report identifying the rated capacity of the system and the amount of electricity that was generated by the system and transmitted to the grid over the most recent twelve-month period.

B. In addition to the above, the annual written report shall show:

- (1) all restrictions, if any, that were placed upon the production of the solar energy imposed by identified factors beyond the control of the System Operator; and
- (2) all changes to solar panels used and the reasons, therefore; and
- (3) the number, location, and kind (by manufacturer and model) of said changes to solar panels used; and
- (4) site plantings needing replacement and identify the plan for their replacement; and
- (5) any change of ownership or operator of the system and/or ownership of the lot/parcel upon which the large-scale ground-mounted solar PV system is located; and
- (6) any change in the party(ies) responsible for decommissioning and removal of the large-scale ground-mounted solar PV system.

C. Third-year report. Every third year, since the start of solar generation, the annual report to the CEO, as is to be provided for in the Planning Board's Condition of Approval for the Special Use Permit for a large-scale ground-mounted solar PV system occurring on lands identified in §165-85.4.E. above, shall provide the filing of evidence of financial surety and requisite soil sampling. Failure to submit an adequate report as required herein shall be considered a violation subject to the penalties in Article X of Chapter 165 of the Town Code and may be considered evidence of abandonment. The Town Engineer shall review each third-year report and compare it to the surety amount on file with the Town Clerk's Office to determine what, if any, change needs to be made to the surety. Such change shall reflect any structural change to the large-scale ground-mounted solar PV system, and significant increase in the costs of materials associated with the system operations, hourly rate increases associated with Town personnel monitoring of the site, decommissioning and site restoration. The Town Engineer's surety review shall be coordinated with the Town Code Enforcement Officer, the Town Planning Board, the Town Director of Planning and Development, and acted upon by the Town Board. The system operator shall have thirty (30) days, from the date of Town Board action, to file the revised surety instrument with the Town Clerk's Office. Failure to do so shall constitute a violation of the special use permit conditions of approval and result in the Town Code Enforcement Officer initiating the abandonment process described elsewhere in these regulations.

§165-85.8. Site development and form of surety for any large-scale ground-mounted solar PV system.

- A. Prior to the Town Code Enforcement Officer (CEO) authorizing the start of construction for any large-scale ground-mounted solar PV system a letter of credit is to be submitted to the Town Construction Inspector and the Town Engineer for their review and acceptance. The letter of credit shall be based upon the applicant's engineer's estimate of values for the approved site improvements. This estimate is then reviewed by the Town Planning Board and, if accepted, recommended to the Town Board for approval by said Board and then a letter of credit, in the amount approved, is to be filed with the Town Clerk's Office. Any letter of credit not filed with the Town Clerk's Office within ninety (90) days of the date of the Town Board Resolution approving said amount may be subject to reapproval by those identified above herein.
- B. Once the letter of credit is filed with the Town Clerk's Office then the CEO shall schedule a pre-construction meeting with Town Staff, the Town Engineer and other involved agencies wishing to attend. The pre-construction meeting shall identify all involved with the site development along with all procedures expected to be followed with the development of the large-scale ground-mounted solar PV system site.
- C. The letter of credit shall be automatically renewed, if determined necessary by the Town Director of Planning & Development and shall not be allowed to expire until a maintenance bond has been approved by the Town Board and filed with the Town Clerk's Office and the CEO has issued a Certificate of Compliance for the site development. At that point, the letter of credit may be released upon Town Board authorization.
- D. In the event and during the on-going operation of the large-scale ground-mounted PV system it is determined necessary, by the Town Board, that additional site improvements are necessary, the applicant shall provide the Town Construction Inspector and the Town Engineer with a separate engineer's estimate of value for said site improvements. The acceptance process identified in A. above is to be followed along with the pre-construction process identified in B. above prior to any authorization to make such additional site improvement.



§165-85.9. Decommissioning Plan and form of surety for any large-scale ground-mounted solar PV system.

- A. Decommissioning Plan and Surety for special use permit and site plan Applications. All large-scale ground-mounted solar PV systems shall provide as part of any special use permit and/or site plan application, a decommissioning plan that is to be accompanied by a proposed form of surety which is ultimately to be based in part upon the conditions of Special Use Permit and Final Site Plan approvals by the Planning Board. The approved surety guarantees among other things the periodic inspection(s) of and reports upon the project site during its' useful life and the reclamation of the project site in the manner as provided for elsewhere in this chapter.
- B. Acceptance of Decommissioning Plan. The applicant's Decommissioning Plan shall be submitted by the Planning Board, after its' initial review, to the Town Engineer for his/her review and recommendation. In addition, the applicant's surety shall also be reviewed by the Town Engineer for his/her recommendation and report to the Planning Board. The Planning Board, as part of Final Site Plan Approval shall recommend to the Town Board, whether to accept the surety instrument. The Town Board, based upon its review shall either accept, modify, or deny the form of surety being offered. No further action shall be taken upon the proposed solar PV system until an acceptable form of surety has been favorably acted upon by the Town Board.
- C. Filing of surety. The surety, once approved by the Town Board, is to remain on file in the Town Clerk's Office and shall be available to the Town for the entire existence of the large-scale ground-mounted solar system, including the decommissioning and restoration of the site, after the solar system has ceased operating. In the event the anticipated operational life of the large-scale ground-mounted solar system is amended, then a revised acceptable form of surety is to be reviewed and recommended by the Planning Board, and finally accepted by the Town Board and filed with the Town Clerk.
- D. Planning Board review and recommendation to Town Board. The Planning Board shall review the applicant's proposed decommissioning plan and proposed form of surety finding that it guarantees for period inspections of (both annually and every third year) and reports upon the project during its' useful life. In addition, the Planning Board shall determine that the accepted form of surety is to be used for the reclamation of a site upon its abandonment and decommissioning as provided for elsewhere in this chapter. The Planning Board, based upon its' review of the proposed decommissioning plan and proposed form of surety shall provide the Town Board with a report and recommendation of its' findings and make recommendations on whether to accept said documents as submitted. The Planning Board, in making such determinations shall have the right to employ technical and legal assistance, at the applicant's expense.



- E. Surety. The large-scale ground-mounted solar PV system owner and/or landowner shall keep on file with the Town Clerk's Office, an approved surety that is to remain in effect throughout the life of the system and shall be in the form of an irrevocable acceptable form of surety or other form of surety acceptable to the Planning Board and approved by the Town Board. The irrevocable acceptable form of surety or other form of surety shall include an auto-extension provision to be issued by at least an A-rated institution solely for the benefit of the Town. The Town shall be entitled to draw upon the acceptable form of surety if the large-scale ground-mounted owner and/or landowner fails to commence or complete decommissioning activities within the time periods specified therein. No other parties, including the system owner or operator or landowner(s), shall have the ability to demand payment under the surety. Upon completion of decommissioning or restoration of the site, the system owner or operator or landowner may petition the Town Board to reduce or terminate the acceptable form of surety. In the event ownership of the system is transferred to another party, the new owner (transferee) shall file evidence of an acceptable financial surety with the Town Board at the time of transfer, and every three (3) years thereafter, as provided for herein.
- F. Surety purpose. The purpose of the surety is to provide for full cost of decommissioning and removal of the large-scale ground-mounted solar PV system in the event the system is not removed by the system owner and/or landowner.
- G. Surety failure. In the event the surety fails for any reason, it shall be promptly replaced, within thirty (30) days of the lapse of the surety or else such failure may be found to constitute evidence of abandonment and noncompliance with special use permit conditions, warranting the commencement of enforcement procedures for abandonment of the large-scale ground-mounted solar PV system.
- H. Town Board review and acceptance of decommissioning plan and form of surety. The Town Board, upon its' receipt of the above referenced Planning Board report and recommendation, shall consider said action(s) prior to taking formal action to adopt a decommissioning plan and accept a form of surety for the proposed large-scale ground-mounted solar PV system. Once accepted, the decommissioning plan and surety shall be filed with the Town Clerk's Office within thirty (30) days of the date of the Town Board Resolution.
- I. Surety reduction. Once a site has been restored and accepted by the Planning Board, then the surety amount could be reduced to an amount sufficient to deal with any issues that might arise during the follow-up two (2) year period of site monitoring to include, but not limited to, reseeding, mulching, tackifier, etc.

- J. Decommissioning and removal by Town. If the large-scale ground-mounted solar PV system owner and/or landowner fails to decommission and remove an abandoned system in accordance with the requirements of this chapter, the Town may enter upon the property to start the decommissioning process identified in the filed Decommissioning Plan; and to oversee the removal of the system within six (6) months of the date of decommissioning by the Town. Prior to entering upon the site, the Town shall request the identified utility provider to inspect the system and, if necessary, de-energize the system. The costs associated with this action shall be borne by the landowner. Failure to reimburse the Town for expenses incurred shall result in the cost being added to the property owner's Real Property Tax Bill for the coming year.

§ 165-85. 10. Pre-construction meeting.

- A. Prior to the Town Code Enforcement Officer (CEO) scheduling a pre-construction meeting, the final subdivision plat is to be recorded in the Office of the Ontario County Clerk and all signatures shall be affixed to Final Site Plan drawings. Copies of said signed Final Site Plan drawings shall be distributed to all Town Departments and the Town Engineer's Office, and an approved letter of credit filed with the Town Clerk's Office, and the approved Decommissioning Plan is to be filed with the Town Clerk's Office and with the Ontario County Clerk's Office.
- B. Prior to the start of site construction of an approved large-scale ground-mounted solar PV system, a pre-construction meeting shall be scheduled by the Town Code Enforcement Officer and conducted by Town Staff and the Town Engineer. In addition to Town Staff, the landowner, the applicant, the applicant's EM (when warranted), the applicant's engineer and a representative of the utility provider, shall attend this pre-construction meeting. Finally, the approved minutes of said pre-construction meeting shall be filed with the Town Clerk's Office prior to the CEO issuing the order to proceed.
- C. The Final Pre-construction Meeting Minutes shall serve to further regulate the site's development and on-going operation of the large-scale ground-mounted solar PV system.

§ 165-85. ~~911~~. Abandonment.

- A. Applicability and purpose. This section governing abandonment shall apply to all large-scale ground-mounted solar PV systems with a rated capacity of 25 kW or more, hereinafter referred to as "large-scale ground-mounted solar PV systems," that are approved after the effective date of these regulations. It is the purpose of this section to provide for the safety, health, protection and general welfare of persons and property in the Town of Farmington by requiring abandoned large-scale ground-mounted solar PV systems to be removed pursuant to a decommissioning plan that has been approved

by the Town Board. The anticipated useful life of such systems, as well as the volatility of the recently emerging solar industry where multiple solar companies have filed for bankruptcy, closed, or been acquired which creates an environment for systems to be abandoned, thereby creating a negative visual impact upon the Town and, in certain instances, the loss of productive farmland soils necessary to sustain continued agricultural operations.

- B. Abandonment. A large-scale ground-mounted solar PV system shall be deemed abandoned if the system fails to generate and transmit electricity at a rate of more than ten percent (10%) of its rated capacity over a continuous period of one (1) year, excluding forced reductions beyond the system operator's control. A large-scale ground-mounted solar PV system shall also be deemed abandoned if any of the conditions of approval for the special use permit, or final site plan approval are determined to be not complied with by the Planning Board. Other determination(s) of abandonment by the Planning Board, shall include, but are not limited to, termination or abandonment of utility interconnection agreement(s); failing to make periodic reports as required; or failing to maintain required surety. Finally, a large-scale ground-mounted solar PV system also shall be deemed abandoned if, following the pre-construction meeting date, initial construction of the system has commenced and is not completed within twelve (12) calendar months of issuance of the notice to proceed, or the first building permit for the project is issued.
- C. Determination of abandonment. The Code Enforcement Officer (CEO) shall determine a large-scale ground-mounted solar PV system to be abandoned and shall notify the Town Board, the system owner(s), landowner(s) and permittee by certified mail upon his finding that:
- (1) the facility under construction has failed to complete construction and installation of the system within 180 days from the date of the notice to proceed; or
  - (2) in the case of a fully constructed facility that is operating at a rate of less than ten percent (10%) of its rated capacity and not caused by a forced reduction in production by the identified utility or other factors beyond the system operator's control; or,
  - (3) in the case of failure to restore operation of the facility to no less than eighty percent (80%) of rated capacity within one hundred eighty (180) days within an established date of abandonment of the system; or,
  - (4) the system operator has failed to provide written annual reports as required elsewhere in this section of the Town Code.

The system owner, landowner(s) and permittee shall have thirty (30) calendar days from the date of the signed receipt of the certified mail sent to any one of the identified parties to provide a written response to the CEO. Failure to respond within said thirty (30) calendar days shall be deemed to be the established date of abandonment of the system.

- D. Extension of time. The time at which a large-scale ground-mounted solar PV system shall be deemed abandoned may be extended by the Planning Board for one additional period of one (1) year, provided the system owner presents to the Board a viable plan outlining the steps and schedule for placing the system in service or back in service within the time of the extension. An application for an extension of time shall be made to the Planning Board by the large-scale ground-mounted solar PV system operator prior to abandonment as defined herein. Extenuating circumstances as to why the large-scale ground-mounted solar PV system has not been operating or why construction has not been completed may be considered by the Planning Board in determining whether to grant an extension. The Planning Board may schedule a public hearing upon such request to receive public testimony concerning matters relating to the project's delay in construction, or operation.
- E. Expiration of special use permit and site plan approvals. Upon the determination by the Planning Board that a large-scale ground-mounted solar PV system has been abandoned, both the special use permit and site plan approval granted by the Board shall be formally recalled and made null and void, with the exception of the provisions of the approved decommissioning plan and surety guarantee on file.
- F. Notification to Town Board along with request to commence decommissioning of the site. The Planning Board, upon revoking the special use permit and final site plan approvals shall notify the Town Board of such action. The Town Board upon receipt of this notification may adopt a resolution to cause the removal and restoration of the site at the system owner's and/or landowner(s) expense as provided for in the Decommissioning Plan.

#### § 165-85.12. Decommissioning.

- A. Decommissioning process. The decommissioning process for a large-scale ground-mounted solar PV system contains the following general steps provided for in the adopted Decommissioning Plan: determination of abandonment notice issued; deconstruction permit applied for and issued; physical decommissioning (i.e., dismantling and removal of the physical components of the solar facility); restoration of the land; and follow-up monitoring of the site for two (2) years. Each of these phases shall be in accordance with the approved decommissioning plan on file.

- B. System component(s) removal required. A large-scale ground-mounted solar PV system which has been abandoned shall be decommissioned and the physical site improvements removed, and the site restored to its original state. The large-scale ground-mounted solar PV system owner and/or owner of the land upon which the system is located shall be held responsible to physically remove all components of the system within one (1) year of abandonment. Removal of the large-scale ground-mounted solar PV system shall be in accordance with a decommissioning plan that follows the decommissioning process (the written Plan) that has been approved by the Town Board.
- C. Town implementation of the decommissioning plan. If after six (6) calendar months of the date of the Town Board's determination of abandonment of the system, the system owner or landowner fails to initiate any action to commence decommissioning of the site and/or remove any portion of the system's components, the Town Board shall give notice to the system owner and landowner that they have failed to address the Town Board's decision and that the Town is commencing the abandonment process and will be using funds from the surety to implement the adopted Decommissioning Plan.
- D. Removal by Town and reimbursement of Town expenses. Any costs and expenses incurred by the Town in connection with any proceeding or work performed by the Town or its representatives to address abandonment issues and/or decommission and removal of a large-scale ground-mounted solar PV system, and restore the associated land, including legal costs and expenses, shall be reimbursed from the surety posted by the system owner or landowner as provided elsewhere in this section. Any costs incurred by the Town for decommissioning, removal and restoration that are not paid for or covered by the required surety, including legal costs, shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become part of the taxes to be levied and assessed thereon and shall be enforced and collected, with interest, by the same officer and in the same manner, by the same proceedings, at the same time and the penalties as are provided by law for the collection and enforcement of real property taxes in the Town. This provision does not restrict the Town from proceeding against the responsible parties to collect monies owed by other means, such as by enforcement of a decommissioning plan or other agreement.
- E. Decommissioning of a large-scale ground-mounted solar PV system shall consist of:
- (1) Physical removal of all aboveground and below-ground equipment, structures and foundations, including but not limited to all solar arrays and support structures, buildings, security fence and other site related fence, electric transmission lines and components, roadways, and other physical improvements to the site.
  - (2) Disposal of all solid waste in accordance with local, state, and federal waste disposal regulations. A record of where said solid waste was taken to shall be filed with the Town Clerk's Office within thirty (30) days of removal from the site.

- (3) Restoration of the ground surface and soils in accordance with the criteria established herein and acceptance documented by the Ontario County Soil and Water Conservation District and the State Department of Agriculture and Markets.
  - (4) Stabilization and revegetation of the site with native seed mixes and/or plant species (excluding invasive species) as documented by the EM and approved by the Town Engineers and the Town's MS 4 Officer as accepted practices to minimize site erosion.
- F. Landowner's requested exemption(s). Upon petition to the Town Board, the Board may permit the system owner to leave certain underground or aboveground site improvements in place, provided the landowner can show that such improvements are: part of a plan to use or redevelop the site; not detrimental to such redevelopment for other permitted or special permitted uses; and do not adversely affect community character or the environment.

**Section 6.** Chapter 165, Article VIII, Administration and Enforcement, Section 99. Appointment of Planning Board; powers and duties. Subsection C. is hereby repealed and replaced in its entirety to read as follows:

- C. Special use permits. The Town of Farmington Planning Board, in accordance with provisions of §274-a and 274-b of New York State Town Law, and this Town Code, shall have the authority to issue special use permits for those uses listed in Article VI, Special Permit Uses, of this Chapter of the Town Code, for such property or portion thereof, and for such duration, and with such reasonable conditions and restrictions as are directly related to an incidental to the proposed special use of the land at issue, as the Planning Board determines to be appropriate under the circumstances. Requests for special use permits shall be subject to the following provisions:
- (1) An application for special use permit review and approval shall be made in writing on the appropriate forms and shall be filed with the Administrator in the Town Development Office, who shall forward such application to the Town Planning Board, after consulting with the Town Code Enforcement Officer, the Town Zoning Inspector and the Town Director of Planning and Development. An application for special use permit review and approval shall require and be made in tandem with an application for site plan review and approval for the proposed project. These two applications shall be subject to the same information submission requirements and shall follow one review and approval process as outlined in § 165-100. The application for site plan review and approval shall be considered during the public hearing on the special use permit. In the event an application for site plan approval necessitates granting of an area variance by the Town Zoning Board of Appeals

(ZBA), no decision may be made upon either the site plan or the special use permit by the Planning Board until the ZBA has acted. Additional fees shall be required of the applicant to process the special use permit application, the site plan review and approval, and any requested area variance from the ZBA. Such fees shall be established by the Town Board and made part of the Town's Fee Schedule.

- (2) In addition to the information submission requirements of § 165-100, the Town Planning Board may require an application for special use permit review and approval to be accompanied, in the following cases, by a transportation impact analysis (TIS), and reviewed by the Town Engineer and Town Planning Board:
  - (a) Any retail, commercial or industrial development which proposed direct access to a collector or arterial classified road located outside the boundaries of the mapped MTOD Major Thoroughfare Overlay District and/or the mapped MSOD Main Street Overlay District.
  - (b) Any large development to be located on property within the boundaries of the mapped MTOD Major Thoroughfare Overlay District and/or the mapped MSOD Main Street Overlay District.
  - (c) Any residential development which proposed to have five (5) or more dwelling units with individual driveways, or more than twenty-five (25) dwelling units having access to a state or county highway, by means of a proposed, or existing town highway located within the mapped MTOD Major Thoroughfare Overlay District and/or the mapped MSOD Main Street Overlay District.
  - (d) Any other use which may, in the opinion of the Town Highway Superintendent, the Town Engineer, or a qualified Traffic Engineer, detrimentally impact the safe and efficient movement of traffic along public roads.
- (3) The Transportation Impact Statement shall include the following:
  - (a) A description of the proposed site and the existing highway network within one mile of the site, including relationship of the site to existing and proposed access roads.
  - (b) A detailed description of road conditions and characteristics, including but not limited to grades, pavement widths, sight distances (or restrictions) and surface conditions in the vicinity of the site.
  - (c) The locations of intersections, traffic signals, and public transportation facilities in the vicinity of the site.
  - (d) The locations of sidewalks, bike lanes and trails in the vicinity of the site.



- (e) A description of existing traffic conditions, including average daily traffic volumes, design hour volumes, roadway and intersection capacities and levels of service for each road or highway impacted by the project.
  - (f) A determination of the development's anticipated transportation impact, using standard trip-generation rates and accepted traffic modeling methodologies that consider effects on adjacent development and the need for access controls or additional traffic control devices.
  - (g) Compliance with the Driveway Spacing Standards contained in Chapter 165, Section 34, of the Farmington Town Code.
  - (h) For development located on property within the boundaries of the mapped MTOD Major Thoroughfare Overlay District and/or the mapped MSOD Main Street Overlay District, an analysis of the project's potential transportation impacts on proposed future transportation and impacts on proposed future access roads to the development site.
- (4) Approval by the Town Planning Board of any special use permit shall be contingent on a finding by the Board, based on information submitted and testimony given by the applicant at the public hearing, testimony received by the public at the public hearing, referral comments and recommendations received from the Ontario County Planning Board, and Town staff comments, that the project or development will, as applicable:
- (a) Provide adequate and safe site access for vehicles as well as pedestrians.
  - (b) Provide adequate site utility service, including water supply, sewage, refuse disposal, storm water control and signage.
  - (c) Be compatible with and enhance, to the greatest extent possible, the existing natural features of the site and surrounding areas.
  - (d) Comply with the specific requirement(s) for granting a special use permit as set forth in Article VI of this Chapter, unless the Planning Board, as permitted by New York State Town Law § 274-b [5] determines by written resolution to waive a special use permit requirement.
  - (e) Protect prime and unique classified agricultural soils and not conflict with nearby established agricultural operations.



- (f) Avoid harm or destruction to unique natural features found on the site such as drumlins, freshwater wetlands, floodplains, established mature trees and wood lots, etc.
  - (g) Protect historic structures located on the site.
  - (h) Provide adequate landscaping, screening or buffering between adjacent uses which may be incompatible with the proposed project.
  - (i) Provide adequate mitigation measures for identified adverse environmental impacts determined by the Town Planning Board as part of the environmental review of said special use permit application.
- (5) The Town Planning Board shall review the application for special use permit approval based upon the criteria and considerations listed above as well as those listed in Article VI of this Chapter. Should the applicant, based on the findings of the Board, fail to meet any one of the criteria or requirements listed above or those listed in Article VI, either because of the basis nature and design of the project or the lack of appropriate mitigating measures, then the request for approval of a special use permit shall be denied. Should the applicant, based on the findings of the Board, meet all of the criteria or requirements listed, either because of the basic nature and design of the project or the inclusion of appropriate mitigating measures, then the request for special use permit approval shall be granted. The Town Planning Board may approve an application for a special use permit, subject to appropriate conditions and/or the inclusion of mitigating measures that will ensure compliance with the criteria and requirements listed above and in Article VI of this Chapter.
- (6) A special use permit granted for a special use activity on property shall lapse upon abandonment of such activity on such lot or after one year of nonuse of the lot for such permitted activity, and warrant revocation of the special use permit upon action by the Planning Board after notice and hearing.

**Section 7.** If any clause, sentence, paragraph, section, or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been ordered.

**Section 8.** This local law shall take effect immediately upon filing with the Secretary of State.

**(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 2022 of the **Town of Farmington** was duly passed by the Farmington Town Board on \_\_\_\_\_, 2022, 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<sup>1</sup>.)**

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.

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<sup>1</sup>*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 \_\_\_\_\_ 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 1, above.

\_\_\_\_\_  
Clerk of the Town

(Seal)

Date: \_\_\_\_\_