

**TOWN OF FARMINGTON PLANNING BOARD RESOLUTION
DELAWARE RIVER SOLAR SPECIAL USE PERMIT
CONDITIONS OF APPROVAL**

PB#1006-18

APPLICANT: Delaware River Solar, LLC, on behalf of the property owners Roger and Carol Smith, 466 Yellow Mills Road, Palmyra, N.Y. 14522

ACTION: Special Use Permit Approval with Conditions for the development of a 7 Megawatt Solar Farm in three parts to be constructed upon approximately 45.105 acres of land (on Lots #2, #3 and #4 of the Roger and Carol Smith Subdivision) and having a property address cited above herein.

WHEREAS, the Planning Board (hereinafter referred to as Board) has opened the Public Hearing at tonight’s meeting upon the proposed Special Use Permit application referenced above (hereinafter referred to as Action); and

WHEREAS, the Board has received testimony at tonight’s Public Hearing upon said Action; and

WHEREAS, the Board as the established Lead Agency has completed its environmental risk review under SEQRA and has made a determination of non-significance upon the Action, dated December 18, 2019.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Board finds that there are six (6) Applicants associated with the requested Special Use Permit in this Action for the construction, on-going operations and maintenance, and decommissioning of the above-referenced 7 Megawatt Solar Farm:

- (a) Delaware River Solar, LLC
- (b) NY Farmington LLC I; and
- (c) NY Farmington LLC II; and
- (d) NY Farmington LLC III; and
- (e) Roger and Carol Smith, Property Owners

The term “Applicant” as used hereafter refers to these six (6) Applicants individually and jointly, and possessive punctuation variations do not control application of the terms of the conditions imposed hereafter on each of the listed Applicants. The term “solar farm Project” as used hereafter refers to the Action referenced above seeking a special use permit that is pending before the Board and consisting of a large-scale three-lot solar farm system shepherded overall by Delaware River Solar LLC and to be distributed one lot each to three affiliated LLCs (NY Farmington LLC I, II and III) on part of property commonly known as 466 Yellow Mills Road, Palmyra, New York, owned by Roger and Carol Smith.

BE IT FURTHER RESOLVED that the Board does hereby make the following findings of fact upon the requested Action, using the regulations from the Town Code, §165-65.3 Solar Photovoltaic (PV) Systems, [Added 9-26-2017 by L.L. No. 6-2017], to organize and coordinate the Board's findings with the associated statutory guidance.

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) systems that reduce on-site consumption of utility-supplied energy while protecting the health, safety and welfare of adjacent and surrounding land uses and properties.

The Planning Board finds that, based upon its review of the documents and drawings on file with the Town for the Action, the proposed Large Scale Photovoltaic (PV) Solar System being proposed on three (3) parcels of the Smith Property meets the above stated Purpose of the Town's Zoning Law to permit such solar systems as proposed by the Applicants that reduce on-site consumption of utility-supplied energy while protecting the health, safety and welfare of adjacent and surrounding land uses and properties.

The Board further finds that the solar farm Project contributes to the goals and objectives contained in the adopted New York State Renewable Energy Plan by providing cleaner and greener energy for all residents. The Board further finds that the extensive environmental record that has been created for this solar farm Project has identified measures to be taken for the construction, on-going maintenance and decommissioning of the Action that protect the health, safety and welfare of adjacent and surrounding land uses and properties which are incorporated in this process as warranted.

B. Intent.

It is the intent of these regulations to:

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

The Board finds that the proposed Action involves the temporary use of viable agricultural soils located on the property of the landowners, Roger and Carol Smith (hereinafter the Smiths). The Board further finds that the Applicants have demonstrated that because of the site's extensive areas of viable agricultural soils located on the Smiths' Property, and due to other factors such as wetlands to be avoided, there is no feasible alternative area(s) for siting the proposed solar farm. The Board further finds that the Smiths intend to continue grazing of their livestock on the remaining open portions of all four (4) lots. The Board further finds that the Smiths have concluded

that supplemental income has become important to sustain their ongoing agricultural operations and that leasing part of their land for solar farming provides such income. The Board further finds the purpose for the adopted “Town of Farmington Farmland Protection Plan” is . . . “to protect agricultural soils and promote viable farming operations in the Town of Farmington,” and that such purpose can be realized through the continued mix use of the Smiths’ farmland for both agricultural pursuits, farming operations and the generation of clean solar energy. The Board further finds that unlike other permitted land use in the A-80 Agricultural District, such as the development of residential sites, this Action does not permanently take viable agricultural soils out of production forever. The Board further finds that this Action does not disrupt site drainage patterns necessary to sustain the site’s pasturelands.

The Board further finds that the temporary use of this site’s viable agricultural soils has been mitigated by the Applicant to the extent practical and that as a condition for granting this Special Use Permit the Applicant will provide and execute a decommissioning plan acceptable to the Town, which will describe when and how the site’s soils will be reclaimed for continued productive agricultural operations. The Board further finds that adherence to the Guidelines for Agricultural Mitigation for Solar Energy Projects (Guidelines) promulgated by the New York State Department of Agriculture and Markets, and promoted by the Ontario County Soil and Water Conservation District, as minimum supplemental standards for the construction, operation and decommissioning of the site, will enhance the continued agricultural viability of this farm operation and help preserve the long term productive agricultural land resources resulting from the soil and land reclamation at the end of the useful life of the Action. Accordingly, compliance with the State’s Guidelines, as stated and as may be revised, shall be condition of the Special Use Permit as provided hereafter in the listed Condition No. 6.

- (2) Support green economy innovations; and

The Board finds that the Action complements the New York State’s Renewable Energy Plan Goals and Objectives by generating solar energy and contributing to a cleaner, greener energy future for all state residents. The Board further finds that the Action complements the Town’s adopted Public Utilities, Facilities and Services Goal, as contained in the 2011 Edition of the Town of Farmington Comprehensive Plan, by providing new and additional electricity services that efficiently meet present needs and anticipated future needs of Town residents.

- (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.

The Board finds that the Action has been supported by a funding commitment from the New York State Energy Research and Development Agency (NYSERDA) and an established agreement with Rochester Gas & Electric Corporation to accept the energy to be generated by the proposed Action throughout the thirty- (30-) year life-span of the proposed solar farm Project. The Board in making this finding signifies its support for New York State in meeting its renewable energy goals established in the above referenced Energy Plan.

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.

The Board finds that the proposed Action is subject to the provisions contained in Chapter 165 of the Town Code in that the proposed solar farm Project is to be installed and operated after the effective date of those Town regulations. Therefore, the Board concludes that it has the authority to issue a Special Use Permit with conditions contained herein for the above described Action.

- (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.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (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.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (4) Properties with approved site plan. Notwithstanding the requirements of § 165-100 of this chapter, entitled “Site development plans,” for any lot or parcel of land that has an approved site plan, the installation of a by-right solar PV system on the lot shall not be considered a change to the approved site plan. This provision shall not be interpreted to exempt lots with an approved site plan from other requirements of this section.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (5) Prohibition. Solar PV systems attached to the side of a building are prohibited unless they are designed as a building-integrated system.

The Board finds that this section of the Town Code does not apply to the proposed Action.

D. Solar PV Systems Permitted by Right.

- (1) By-right solar PV systems. In order to encourage use of solar PV systems in the Town of Farmington, the following systems shall be permitted by right in any zoning district in the Town, provided the system is generating electricity only for the land use(s) located on the same lot as the system, and further provided that the system meets the standards for by-right systems identified in § 165-65.3D(2) below. By-right systems require a building permit.

- (a) Building-integrated solar PV systems. Building-integrated solar PV systems are permitted to face any rear, side and/or front yard area.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (b) Building-mounted solar PV systems. Building-mounted solar PV systems are permitted to face any rear, side and/or front yard area.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (2) Standards for by-right systems.

- (a) Accessory use. All building-mounted by-right solar PV systems shall be considered an accessory use.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (b) By-right small-scale ground-mounted solar PV systems. Only small-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 25 kW 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.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (c) By-right facilities shall comply with all applicable New York State building codes.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (d) In no event shall lot coverage for a solar photovoltaic (PV) system exceed 50% of the lot area.

The Board finds that this section of the Town Code does not apply to the proposed Action.

(3) Building-mounted solar PV systems.

- (a) For a building-mounted PV system installed on a sloped roof:

The Board finds that these sections of the Town Code does not apply to the proposed Action.

[1] The highest point of the system shall not exceed the highest point of the roof to which it is attached.

[2] Solar panels shall be parallel to the roof surface or tilted with no more than an eighteen-inch gap between the module frame and the roof surface. This measurement shall not be taken from any parapet which might be considered part of a roof.

- (b) For a building-mounted system installed on a flat roof, the highest point of the system shall not extend more than five feet above the height of the roof.

The Board finds that these sections of the Town Code do not apply to the proposed Action.

E. Solar PV Systems requiring a Special Use Permit.

- (1) Solar PV systems requiring a special use permit. Except as provided in § 165-65.3D, Solar PV systems permitted by right, no other type of 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 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:

The Board finds that this section of the Town Code does apply to the proposed Action.

- (a) Large-scale ground-mounted solar PV systems.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board finds that the proposed Action is subject to the Board issuing a Special Use Permit with conditions and final site plan approval with conditions.

- (b) Building-mounted and building-integrated 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.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (c) Solar PV systems, regardless of size, that generate and provide electricity, through a remote net metering agreement or other arrangement, to an off-site user or users located on a lot(s) or parcel(s) of land other than the lot or parcel of land on which the system is located.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board further finds that the Applicants have entered into an Agreement with Rochester Gas & Electric (an off-site user). The Board finds that said Agreement shall remain in effect during the thirty- (30-) year life of the project. Any termination or abandonment of the above-cited Agreement shall be evidence of abandonment of the solar farm Project, and also authorize the Town to revoke the Special Use Permit after notice and hearing if requested, and so require Applicants to seek approval for a new special use permit if continuing operations of the solar farm Project is desired. This is to be a condition of approval for the requested Special Use Permit.

- (d) Solar PV systems, regardless of size, mounted on carports or canopy structures covering parking facilities.

The Board finds that this section of the Town Code does not apply to the proposed Action.

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

The Board finds that this section of the Town Code does apply to the proposed Action. The Board further finds that the Large Scale Photovoltaic (PV) Systems to be constructed on the proposed three (3) parcels of land in the Action are hereby classified as a principal use. The establishment and regulation of the proposed Action as a principal use is to be a condition of this Special Use Permit.

- (a) Principal use. A solar PV system constructed on a lot or parcel of land and providing electricity to an off-site user or users 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 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.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board finds that the Action is classified as a large-scale solar PV system and a principal use of the property site on which it is constructed. Establishment of the proposed Action as a principal use of the property on which it is constructed is to be a condition of this Special Use Permit.

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

The Board finds that this section of the Town Code does not apply to the proposed Action.

F. Standards for facilities requiring a special use permit. Solar PV systems requiring a Special Use Permit shall be subject to the following standards:

- (1) Large-scale ground-mounted solar PV systems and ground-mounted systems classified as a special use.

The Board finds that the proposed Action is classified as a Large-scale ground-mounted solar PV system and subject to granting a Special Use Permit.

- (a) Setbacks. Large-scale ground-mounted solar PV systems are subject to the minimum yard and setback requirements for the zoning district in which the system is located. No part of a ground-mounted system shall extend into the required yards and/or setbacks due to a tracking system or short-

term or seasonal adjustment in the location, position or orientation of solar-PV-related equipment or parts.

The Board finds that this section of the Town Code does apply to the proposed Action and that no variances are associated with the Action.

- (b) Setback to residential district. The location of large-scale ground-mounted solar collectors shall meet all applicable setbacks for accessory structures in the zoning district where the project is to be located, but not less than 25 feet from any public highway right-of-way, utility easement, and natural vegetation shall be preserved within this buffer zone and, where possible, augmented. The setbacks are intended to provide a visual buffer between the PV system and adjacent dwellings. Plantings within this area are to be at a height so as to provide, as much as practicable, a visual screen of the large-scale ground-mounted system from residential uses. The species type, location and planned height of such landscaping shall be subject to the approval of the Planning Board.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board further finds that the final site plan shall comply with this standard. The Board also finds that this final site plan requirement will be a condition of this Special Use Permit.

- [1] Large-scale ground-mounted solar PV systems located in a residential district 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 A-80 Agricultural District or other residential district, unless said property contains soils classified as "prime" or "unique" (Soils Groups 1 through 4) and the land is being actively farmed. In this instance, the minimum setback shall be 40 feet from the property line. This additional setback dimension shall also apply to the front yard setback when the lot or parcel of land on the opposite side of the street is located in a residential district.

The Board finds that this section of the Town Code does apply to the proposed Action and that a condition of this Special Use Permit is that the associated setback from all property lines will be at least forty (40) feet. The Board further finds that this condition of approval shall also apply to the pending action upon the final site plan associated with this solar farm Project.

- [2] Large-scale ground-mounted solar PV systems located in commercial or industrial districts 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 Agricultural District and the other resi-

dential districts or an Incentive Zone 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.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- [3] Large-scale ground-mounted solar PV systems located upon farmland located within the delineated Town of Farmington Active Farmland Map, Number 8, page 92 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 Assessor in calculation of the agricultural use exemption values, a part of the New York State Department of Agriculture and Markets Agricultural Districts Law, once it can be determined, by the Planning Board, that there is no feasible alternative. The following standards are to be implemented by the Planning Board as part of site plan approval:

The Board finds that this section of the Town Code does apply to the proposed Action. The Board further finds this criteria has been complied with by the Applicant as there is no feasible alternative for the Smiths or other Applicants based upon documentation submitted as part of the environmental record for the Action.

- [a] 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, restoration and follow-up monitoring of solar energy projects impacting such lands. Depending upon the size of the project, the project sponsor is to hire an environmental monitor (EM) to oversee the construction, restoration and follow-up monitoring in agricultural fields. The EM is to be on site whenever construction or restoration work is occurring on the Class 1 through 4 soils and is to be coordinated with the Ontario County Soil and Water Conservation District and/or the New York State Department of Agriculture and Markets to develop an appropriate schedule for inspections to assure these lands are being protected to the greatest extent possible.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board further finds

that this standard is met as the Applicant is required to and has retained a qualified Environmental Monitor to oversee the construction, decommissioning, restoration and follow-up monitoring in the agricultural fields. The Board further finds that the Applicant's present decommissioning plan provides for coordination with the statutorily-cited agencies and provides for periodic inspections and reports to the Town. This is a condition of Special Use Permit approval and it will also be a condition of site plan approval by this Board.

- [b] Fencing and watering systems associated with rotational grazing systems and reduction in farmland viability due to the reduction in remaining productive farmland are to be assessed and mitigated to the greatest extent possible.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board further finds that the Action meets this standard by providing for lane ways between the solar arrays that allow for rotational grazing systems to be provided. The Board further finds that the landowners have accepted these lane ways for their use during the life of the Action. This is a condition of Special Use Permit approval; and it will also be a condition of site plan approval by this Board.

- [c] Structures for overhead collection lines are to be located upon the nonagricultural areas and along field edges where possible.

The Board finds that this section of the Town Code does apply to the proposed Action. This standard is met as the Applicant has demonstrated in documents on file that overhead collection lines will be located upon a minimal area of identified viable agricultural soils and along field edges to the extent practicable. This is a condition of Special Use Permit approval; and it will also be a condition of final site plan approval by this Board.

- [d] Access roads are to be located along the edge of agricultural fields, in areas next to hedgerows and field boundaries and in the nonagricultural portions of the site.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board further finds this standard is met by the Applicant identifying on

pending site plan drawings that there is to be one (1) access road to the three (3) solar arrays that is to be located along the edge of agricultural fields and to the extent practical in the nonagricultural portions of the site. This criteria is a condition of Special Use Permit approval; and that it will also be a condition of site plan approval by this Board.

- [e] There shall be no cut and fill so as to reduce the risk of creating drainage problems by locating access roads, which cross agricultural fields, along ridge tops and by following field contours to the greatest extent possible.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board finds that this standard will be met as this criteria is hereby made a condition of Special Use Permit approval; and it will also will be a condition of the final site plan approval.

- [f] The width of access roads across or along agricultural fields is to be no wider than 20 feet so as to minimize the loss of agricultural lands and comply with the State of New York fire access code.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also will be a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [g] All existing drainage and erosion control structures such as diversions, ditches, and tile lines or take appropriate measures to maintain the design and effectiveness of these structures. Repair any structure disturbed during construction to as close to original condition as possible, unless such structures are to be eliminated based upon a new site plan for the large scale project.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also will be a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [h] The surface of solar farm access roads to be constructed through agricultural fields should be level with the adjacent field surface where possible.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also will be a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [i] Culverts and waterbars are to be installed to maintain natural drainage patterns.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also will be a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [j] All topsoil areas to be used for vehicle and equipment traffic, parking, and equipment laydown and storage areas are to be stripped.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also will be a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [k] All vehicle and equipment traffic and parking to the access road and/or designated work areas, such as laydown areas, are to be limited in size to the greatest extent practical.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also will be a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [l] No vehicles or equipment are to be allowed outside the work area without prior approval from the landowner and the EM.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [m] Where an open trench is required for cable installation, topsoil stripping from the entire work area may be necessary. As a result, additional work space may be required as part of site plan approval.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [n] All topsoil stripped from work areas (parking areas, electric cable trenches, along access roads) is to be stockpiled separate from other excavated materials (rock and/or subsoil).

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [o] A maximum of 50 feet of temporary workspace is to be provided along open-cut electric cable trenches for proper topsoil segregation. All topsoil will be stockpiled immediately adjacent to the area where stripped/removed and shall be used for restoration on that particular site. No topsoil shall be removed from the site. The site plan shall clearly designate topsoil stockpile areas in the field and on the construction drawings.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a

condition of site plan approval to be addressed as part of said application, at a future date and time.

- [p] Electric interconnect cables and transmission lines are to be buried in agricultural fields wherever practical.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [q] Interconnect cables and transmission lines installed aboveground shall be located outside agricultural field boundaries. When above-ground cables and transmission lines must cross agricultural fields, taller structures that provide longer spanning distances and locate poles on field edges to the greatest extent practicable.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [r] All buried electric cables in cropland, hayland and improved pasture shall have a minimum depth of 48 inches of cover. At no time is the depth of cover to be less than 24 inches below the soil surface.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [s] The Ontario County Soil and Water Conservation District is to be consulted concerning the type of intercept drain lines whenever buried electric cables alter the natural stratification of soil horizons and natural soil drainage patterns.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [t] In pasture areas, it is necessary to construct temporary or permanent fences around work areas to prevent livestock access, consistent with landowner agreements.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [u] Excess concrete used in the construction of the site is not to be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [v] All permits necessary for disposal under local, state and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [4] Restoration requirements. All agricultural areas temporarily disturbed by construction shall:

- [a] Be decompacted to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. Soil compaction results should be no more than 250 pounds per square inch (PSI) as measured with a soil penetrometer. In areas where the topsoil was stripped, soil decompaction should be conducted prior to topsoil replacement. Following decompaction, remove all rocks four inches in size or greater from the surface of the subsoil prior to replacement of topsoil. Replace the topsoil to original depth and reestablish original contours where possible. Remove all rocks four inches and larger from the surface of the topsoil. Subsoil decompaction and topsoil replacement shall be avoided after October 1 of each year.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and that it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [b] Regrade all access roads to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the approved site design by the Planning Board.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [c] Seed all restored agricultural areas with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [d] All damaged subsurface or surface drainage structures are to be repaired to preconstruction conditions, unless said

structures are to be removed as part of the site plan approval. All surface or subsurface drainage problems resulting from construction of the solar energy project with the appropriate mitigation as determined by the EM, Soil and Water Conservation District and the landowner.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [e] Postpone any restoration practices until favorable (workable, relatively dry) topsoil/subsoil conditions exist. Restoration is not to be conducted while soils are in a wet or plastic state of consistency. Stockpiled topsoil should not be regraded and subsoil should not be decompacted until plasticity, as determined by the Atterberg field test, is adequately reduced. No project restoration activities are to occur in agricultural fields between the months of October and May unless favorable soil moisture conditions exist.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [f] Following site restoration, remove all construction debris from the site.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [g] Following site restoration, the project sponsor is to provide a monitoring and remediation period of no less than two years. General conditions to be monitored include topsoil thickness, relative content of rack and large stones, trench settling, crop production, drainage and repair of severed subsurface drain lines, fences, etc.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this Special Use Permit Application, and any lesser monitoring period provided in the State's *Guidelines for Agricultural Mitigation for Solar Energy Projects* is not controlling nor sufficient. The Board further finds that this Town Code provision will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [h] Mitigate any topsoil deficiency and trench settling with imported topsoil that is consistent with the quality of topsoil on the affected site. All excess rocks and large stones are to be removed from the site.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [i] 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.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this Special Use Permit Application; and will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [j] 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.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this

Special Use Permit Application; and will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [5] 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. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this Special Use Permit Application; and will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [6] Fences. Notwithstanding the provisions found in § 165-61A of this chapter, fences not exceeding eight 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. In instances where the provisions of § 165-61A would allow a fence greater than eight feet in height, the less restrictive provision shall apply.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this Special Use Permit Application; and will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [7] Barbed wire. Notwithstanding provisions for barbed wire found in § 165-61A of this chapter, fences intended to enclose a large-scale ground-mounted solar PV system may contain barbed wire canted out.

Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this Special Use Permit Application; and will also be met as a condition of site plan approval

to be addressed as part of said application, at a future date and time.

- [8] Height. Large-scale ground-mounted solar PV systems may not exceed 12 feet in height.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this Special Use Permit Application; and will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [9] 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, the minimum lot size shall be one acre.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this Special Use Permit Application; and will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [10] 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 in which 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.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this Special Use Permit Application; and will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [11] 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.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this Special Use Permit Ap-

plication; and will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [12] 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 of a corner lot.

The Board finds this section of the Town Code does not apply to the proposed Action.

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

The Board finds this section of the Town Code does not apply to the proposed Action.

- (1) 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.
- (2) On a building that does not meet the minimum setback or yard requirements, provided there is no increase in the extent or degree of nonconformity with said requirement.
- (3) On a building that exceeds the maximum lot coverage requirements, provided there is no increase in the extent or degree of nonconformity with said requirement.

H. Abandonment and decommissioning.

The Board finds that this section of the Town Code does apply to the Proposed Action.

- (1) Applicability and purpose. This section governing abandonment and decommissioning shall apply to large-scale ground-mounted solar PV systems with a rated capacity of 25 kW or more, hereinafter referred to as “large-scale solar PV systems.” 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 solar PV systems to be removed pursuant to a decommissioning plan. 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 creates an environment for systems to be abandoned, thereby creating a negative visual impact upon the

Town. Abandoned large-scale systems may become unsafe by reason of their energy-producing capabilities and serve as an attractive nuisance.

The Board finds that the proposed Action, a 7 Mw Solar Farm in three parts, is a large-scale solar PV system subject to the Special Use Permit criteria contained in § 165-65.3 [H] of the Farmington Town Code. The Board further finds that the present draft Decommissioning Plan document, prepared by the Applicant and dated February 13, 2020, acknowledges that the proposed Action is subject to the Special Use Permit criteria contained in § 165-65.3 [H] and agrees to comply, meeting the purpose of this section when the decommissioning plan is approved and executed containing such provision.

- (2) Abandonment. A large-scale solar PV system shall be deemed abandoned if the system fails to generate and transmit electricity at a rate of more than 10% of its rated capacity over a continuous period of one year. A commercial solar PV system also shall be deemed abandoned if, following site plan approval, initial construction of the system has commenced and is not completed within 18 months of issuance of the first building permit for the project.

The Board finds the Applicant's present draft decommissioning plan document acknowledges and the Applicant accepts the standard in the Town Code (§ 165-65.3 [H][2]) for determining some events when a commercial solar PV system is to be deemed abandoned. The Board further finds that there may be other additional events when such a solar system may be found or deemed abandoned as provided elsewhere in these findings, such as upon termination of Applicant's agreement with RG&E, and noncompliance with Town requirements for the special use permit, such as failure to provide periodic reports when required, and failure to maintain a sufficient surety. All provisions for abandonment described in this Resolution shall be a condition of Special Use Permit approval, and included in the required approved decommissioning plan.

- (3) Extension of time. The time at which a commercial solar PV system shall be deemed abandoned may be extended by the Planning Board for one additional period of one year, provided the system owner presents to the Board a viable plan outlining the steps and schedules for placing the system in service or back in service within the time period of the extension. An application for an extension of time shall be made to the Planning Board by the commercial solar PV system owner prior to abandonment as defined herein. Extenuating circumstances as to why the commercial solar PV system has not been operating or why construction has not been completed may be considered by the Board in determining whether to gain an extension.

The Board finds the Applicant's present draft decommissioning plan document acknowledges and the Applicant accepts the provision in the Town

Code (§ 165-65.3 [H][3]) for the extension of time by the Planning Board for determining when a commercial solar PV system is to be deemed abandoned. This is a condition of approval for the Special Use Permit.

- (4) Removal required. A commercial solar PV system which has been abandoned shall be decommissioned and removed. The commercial 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 year of abandonment. Removal of the commercial solar PV system shall be in accordance with a decommissioning plan approved by the Planning Board.

The Board finds the Applicant's present draft decommissioning plan document acknowledges and the Applicant accepts the requirement in the Town Code (§ 165-65.3 [H][4]) for decommissioning, removal of solar system components, and determining responsibilities for when an abandoned commercial solar PV system is deemed abandoned. This is a condition of approval for this Special Use Permit.

- (5) Decommissioning and removal.

The Board finds the Applicant's present draft decommissioning plan document acknowledges and the Applicant accepts the provision in the Town Code (§ 165-65.3 [H][2]) for when an abandoned commercial solar PV system is to be deemed abandoned. The Board further finds that the responsibilities for decommissioning and reclamation of the three (3) sites in the Action by the Applicants for continued agricultural operations will be met by an approved decommissioning plan agreement and as a Condition of this Special Use Permit. The Board further finds that the Special Use Permit shall not be in effect until all agreements implementing decommissioning, removal of system components and restoration of the land aspects of the Town Code to the Action, and the conditions of the Special Use Permit, have been signed by all the Applicants and the Town and a copy is on file with the Town Clerk.

- (a) Decommissioning and removal of a commercial solar PV system shall consist of:

The Board finds that this section of the Town Code does apply to the proposed Action.

- [1] Physical removal of all aboveground and below-ground equipment, structures and foundations, including but not limited to all solar arrays, buildings, security barriers, fences, electric transmission lines and components, roadways and other physical improvements to the site.

The Board finds the Applicant’s present draft decommissioning plan document acknowledges and the Applicant accepts the requirement in the Town Code (§ 165-65.3 [H][5]) for removing all above-ground equipment, structures and foundations that are listed. This is a condition of approval for the Special Use Permit.

- [2] Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations.

The Board finds the Applicant’s present draft decommissioning plan document acknowledges and the Applicant accepts the requirement in the Town Code (§ 165-65.3 [H][5]) for disposal of all solid and hazardous waste associated with the Action under local, state and federal waste disposal regulations. This is a condition of approval for this Special Use Permit.

- [3] Restoration of the ground surface and soil.

The Board finds the Applicant’s present draft decommissioning plan document acknowledges and the Applicant accepts the requirement in the Town Code (§ 165-65.3 [H][5]) for restoration of the ground surface and soil to the extent feasible consistent with the other restoration provisions of the Town Code once the Large Scale Solar PV Site is decommissioned and removed. This is a condition of approval for this Special Use Permit.

- [4] Stabilization and revegetation of the site with native seed mixes and/or plant species (excluding invasive species) to minimize erosion.

The Board finds the Applicant’s present draft decommissioning plan document acknowledges and the Applicant accepts the requirement in the Town Code (§ 165-65.3 [H][5]) for stabilization and revegetation of the Large Scale Solar PV Site in a manner determined by the Town and Property Owner to minimize soil erosion. This is a condition of approval for this Special Use Permit.

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

The Board finds the Applicant’s present draft decommissioning plan acknowledges and the Applicant accepts the provision in the Town Code (§ 165-65.3 [H][5]) that the Planning Board may permit the system owner of the Large Scale Solar PV Site to leave certain (undisclosed) improvements in place upon a further finding that the owner can show that such improvements are part of a plan to redevelop the site. This is a condition of approval for this Special Use Permit.

- (c) Decommissioning plan. All applications for a commercial solar PV system shall be accompanied by a decommissioning plan to be implemented upon abandonment and/or in conjunction with removal of the system. The decommissioning plan shall address those items listed in § 165-65.3H(5)(a) above and include:

The Board finds the Applicant has provided a proposed draft decommissioning plan that acknowledges and accepts the requirement in the Town Code (§165-65.3 [H][5]) for an approved decommissioning plan to be implemented upon abandonment and/or in conjunction with removal of the system. Thus Applicant’s decommissioning plan for its Action must be approved by the Town as acceptable to manage foreseeable decommissioning issues before the Special Use Permit shall take effect. An approved and executed decommissioning plan is a condition of approval for a special use permit for the Action.

- (6) Special use permit conditions. The following conditions shall apply to all special use permits issued for a large-scale ground-mounted solar PV system. No special use permit shall be issued unless the Planning Board finds that the conditions have been or will be met.

The Board finds that this section of the Town Code does apply to the proposed Action.

- (a) A licensed engineer’s estimate of the anticipated operational life of the system.

The Board finds the Applicant’s present draft decommissioning plan acknowledges and the Applicant accepts the requirement in the Town Code (§ 165-65.3 [H][6]) for a licensed engineer to prepare an estimate of the anticipated operational life of the system. The Board finds that this condition is met in that the Applicant has provided two documents from licensed engineers (August 2018 and January 2020) which provide estimates of the anticipated operational life of the system. This is a condition of approval for this Special Use Permit.

- (b) Identification of the party responsible for decommissioning.

The Board finds this condition will be met as the Applicant's present draft decommissioning plan acknowledges and the Applicant accepts the requirement in the Town Code (§165-65.3 [H][6]) for identifying the responsible parties for decommissioning of the proposed Large Scale Solar PV Site. The Board further finds that in addition to identifying Delaware River Solar LLC and the property owners, Roger and Carol Smith as being the Applicants responsible for decommissioning the solar farm Project, the Applicant also includes the identities of three (3) Project Companies responsible for the three (3) sites involved in the Action: NY Farmington I, LLC, NY Farmington II, LLC, and NY Farmington III, LLC, all affiliates of Delaware River Solar LLC. The Board finds that all the applicants are jointly and severally responsible for compliance with the decommissioning duties imposed by the Town Code, the approved decommissioning plan, and the conditions of the Special Use Permit for the solar farm Project and its three separate sites. This is a condition of approval for this Special Use Permit.

- (c) Description of any agreement regarding decommissioning between the responsible party and the landowner.

The Board finds this condition will be met as the Applicants' present draft decommissioning plan on file with the Town is the agreement between the landowners and the LLCs involved in the solar farm Project, and the lengthy document is available for inspection by interested persons, both at the Office of Town Clerk and on the Town's website. As determined previously, a fully approved and executed decommissioning agreement is a condition of any Special Use Permit for Applicant's Action.

- (d) A schedule showing the time frame over which decommissioning will occur and for completion of site restoration work.

The Board finds that this condition will be met as the Applicant's present draft decommissioning plan contains a schedule for decommissioning work to be carried out over some four months. As determined previously, a fully approved and executed decommissioning agreement is a condition of any Special Use Permit for Applicant's Action, and will contain the requisite schedule.

- (e) A cost estimate prepared by a licensed professional engineer estimating the full cost of decommissioning and removal of the solar PV system.

The Board finds that this condition will be met as the Applicant's draft decommissioning plan contains a requirement for a cost esti-

mate prepared by a licensed engineer, though in draft form, and this form will need to be reviewed and accepted by the Town's Engineer, Town Attorney and/or Town's Legal Counsel before the requisite surety amount is determined and provided, and before any pre-construction meeting may be scheduled by the Town Code Enforcement Officer. This is a Condition of Special Use Permit Approval by the Board.

- (f) A financial plan to ensure that financial resources will be available to fully decommission the site.

The Board finds this condition will be met as the Applicant's present draft decommissioning plan on file with the Town does contain a financial plan to ensure funding for decommissioning the three (3) sites of the Action. As determined previously, a fully approved and executed decommissioning agreement is a condition of any Special Use Permit for Applicant's Action.

- (g) An acceptable form of surety is to be approved by the Planning Board and accepted by the Town Board and filed with the Town Clerk in an amount specified in the above-referenced financial plan. Said acceptable form of surety is to remain in effect for the above-referenced anticipated operational life of the system. In the event the anticipated operational life of the system is amended, then a revised acceptable form of surety is to be approved by the Planning Board, accepted by the Town Board and filed with the Town Clerk.

The Board finds this section of the Town Code does apply to the proposed Action. The Board further finds this standard will be met as provided in the Applicant's present draft decommissioning plan once the Town determines the desired form of surety and such is approved and executed by all parties. The Board further finds that an acceptable form of surety is to remain in effect to an agreed-to date that coincides with full reclamation of the site, restoration of the land and monitoring as provided herein. The Board establishes this requirement as a Condition of Approval of the Special Use Permit Application.

- (h) Financial surety. Prior to the issuance of a building permit and every three years thereafter, the commercial solar PV system owner and/or landowner shall file with the Town Clerk evidence of financial surety to provide for the full cost of decommissioning and removal of the solar PV system in the event the system is not removed by the system owner and/or landowner. Evidence of financial surety shall be 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

shall include an auto-extension provision to be issued by an A-rated institution solely for the benefit of the Town. The Town shall be entitled to draw upon the acceptable form of surety in the event that the commercial solar PV system owner and/or landowner is unable or unwilling to commence decommissioning activities within the time periods specified herein. No other parties, including the owner and/or landowner, shall have the ability to demand payment under the letter of credit. Upon completion of decommissioning, the owner and/or landowner may petition the Town Board to 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 financial surety with the Town Board at the time of transfer, and every three years thereafter, as provided herein.

The Board finds this section of the Town Code does apply to the proposed Action. The Board further finds this condition will be met as provided in the Applicant's present draft decommissioning plan once the Town determines the desired form of surety and such is approved and executed by all parties. The Board further finds that an acceptable form of surety is to remain in effect to an agreed-to date that coincides with full reclamation of the site, restoration of the land and monitoring as provided herein. The Board establishes this requirement as a Condition of Approval of the Special Use Permit Application.

- (i) Amount. The amount of the surety shall be determined by the Town Engineer based upon a current estimate of decommissioning and removal costs as provided in the decommissioning plan and subsequent annual reports. The amount of the surety may be adjusted by the Town Board upon receipt of a favorable recommendation from the Planning Board of an annual report containing an updated cost estimate for decommissioning and removal. Any revised surety is to be filed with the Town Clerk's office.

The Board finds this section of the Town Code does apply to the proposed Action. The Board further finds this condition will be met by the Town Engineer providing, during the periodic reviews of the thirty- (30-) year life of the Special Use Permit, a current estimate of decommissioning and removal costs as provided in the agreed-to and executed decommissioning plan. The Board further finds that a condition of approval of the Special Use Permit Application shall be the Applicant's agreement that the amount of surety may be adjusted by the Town Board during the periodic reviews of the ongoing operation and maintenance of the Project.

- (j) Annual report. The commercial solar PV system owner shall, on a yearly basis from the certificate of compliance issued by the Code Enforcement

Officer, provide the Town Code Enforcement Officer a written report showing 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. The report shall also identify any change of ownership of the solar PV system and/or the land upon which the system is located and shall identify any change in the party responsible for decommissioning and removal of the system upon its abandonment. The actual report shall be submitted no later than 45 days after the end of the calendar year. Every third year, to coincide with the filing of evidence of financial surety, the annual report shall also include a recalculation of the estimated full cost of decommissioning and removal of the large-scale solar PV system. The Town Board may require an adjustment in the amount of the surety to reflect any changes in the estimated cost of decommissioning and removal. Failure to submit a report as required herein shall be considered a violation subject to the penalties in Article X of this chapter.

The Board finds this section of the Town Code does apply to the proposed Action. The Planning Board finds that this condition will be met by establishing this annual report requirement as a Condition of Approval of the Special Use Permit Application. The Board establishes this requirement as a Condition of Approval of the Special Use Permit Application.

- (k) Decommissioning and removal by Town. If the commercial solar PV system owner and/or landowner fails to decommission and remove an abandoned facility in accordance with the requirements of this section, the Town may enter upon the property to decommission and remove the system.

The Board finds this section of the Town Code does apply to the proposed Action. The Planning Board finds this condition will be met by establishing this requirement for permitted entry as a Condition of Approval of the Special Use Permit Application. The Board does, therefore, establish this requirement as a Condition of Approval of the Special Use Permit Application. The Board further acknowledges receipt of this commitment by the Property Owners, Roger Smith and Carol Smith, in their signed letter to the Town dated February 13, 2020. The Board further finds additional acknowledgement by the Smiths' legal counsel, Scott P. Falvey, Attorney at Law, which is contained in a letter from Mr. Falvey dated March 8, 2020, that his clients (the Smiths) accept the responsibility for ensuring the decommissioning of the three (3) solar sites (NY Farmington LLC I, II and III) as set forth in the provisions of the Farmington Town Code Section 165-65.3.

- (7) Determination of abandonment. Upon a determination by the Code Enforcement Officer that a commercial solar PV system has been abandoned, the Code Enforcement Officer shall notify the system owner, landowner and permittee by certified mail:

The Board finds this section of the Town Code does apply to the proposed Action. The Board further finds that a determination by the Code Enforcement Officer that a commercial solar PV system has been abandoned does require notification be provided by certified mail to the Applicant identified above herein.

- (a) In the case of a facility under construction, to complete construction and installation of the facility within 180 days; or
- (b) In the case of a fully constructed facility that is operating at a rate of less than 10% of its rated capacity, to restore operation of the facility to no less than 80% of rated capacity within 180 days, or the Town will deem the system abandoned and commence action to revoke the special use permit and require removal of the system.
- (8) Failure to perform notification. Being so classified, if either the system owner, landowner and/or permittee fails to perform as directed by the Code Enforcement Officer within the one-hundred-eighty-day period, the Code Enforcement Officer shall notify the system owner, landowner and permittee, by certified mail, that the solar PV system has been deemed abandoned and the Town intends to revoke the special use permit within 60 days of mailing said notice. The notice shall also state that the permittee may appeal the Code Enforcement Officer's determination to the Town Board and request a public hearing upon the matter.

The Board finds this section of the Town Code does apply to the proposed Action. The Board further finds that such a determination by the Code Enforcement Officer that a commercial solar PV system has been deemed abandoned entitles the Applicant to the notification contained in the Town Code in such case.

- (a) Said appeal and request for hearing must be made and received by the Town Board within 30 days of mailing notice. Failure by the permittee to submit an appeal and request for hearing within the thirty-day period will result in the special use permit being deemed revoked as stated herein.

The Board finds these sections of the Town Code do apply to the proposed Action. The Board further finds that the Applicant understands and accepts this provision of the Town Code, which establishes the respective rights in such matter for the Applicant and Town.

- (b) In the event the permittee appeals the determination of the Code Enforcement Officer and requests a hearing, the Town Board shall schedule and conduct said hearing within 60 days of receiving the appeal and request. In the event a hearing is held, the Town Board shall determine whether the solar PV system has been abandoned, whether to continue the special use permit with conditions as may be appropriate to the facts and circumstances presented to the Board or whether to revoke the special use permit and order removal of the solar PV system.

The Board finds these sections of the Town Code do apply to the proposed Action. The Board further finds that the Applicant understands and accepts this provision of the Town Code, which establishes the respective rights in such matter for the Applicant and Town.

- (c) Upon a determination by the Code Enforcement Officer or Town Board that a special use permit has been revoked, the decommissioning plan must be implemented and the system removed within one year of having been deemed abandoned or the Town Board may cause the removal at the owner's and/or landowner's expense. If the owner and/or landowner fails to fully implement the decommissioning plan within one year of abandonment, the Town Board may collect the required surety and use said funds to implement the decommissioning plan.

The Board finds these sections of the Town Code do apply to the proposed Action. The Board further finds that the Applicant understands and accepts this provision of the Town Code, which establishes the respective rights in such matter for the Applicant and Town. As a condition of the Special Use Permit, both the surety and approved decommissioning plan shall provide the Town with these statutory rights.

- (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 decommission and remove a commercial solar PV system, including legal costs and expenses, shall be reimbursed from the surety posted by the system owner or landowner as provided in § 165-65.3 herein. Any costs incurred by the Town for decommissioning and removal 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 same penalties as are provided by law for the collection and enforcement of real property taxes in the Town.

The Board finds these sections of the Town Code do apply to the proposed Action. The Board further finds that the Applicant understands and accepts this provision of the Town Code, and so both the surety and approved decommissioning plan shall provide the Town with these statutory rights. The Board does establish these requirements as part of an approved decommissioning plan and as a Condition of Approval of the Special Use Permit Application.

In addition, the Board finds that disputes between Applicants and Town regarding any aspects of the solar farm Project should be negotiated and resolved in a reasonable time in good faith, provided that the Town remains required to comply with and enforce the Town Code and Town agreements made in connection with the solar farm Project to protect and preserve Town interests in the land and community, which concerns are broader than just Applicants' interests. The Town Code provides for reimbursement of the Town's legal costs and expenses related to decommissioning and removal of the solar farm Project. Town Code § 165-65.3[H][8]. Accordingly, in the event of disputes regarding the continuing operation of the solar farm Project that could result in decommissioning, as well as disputes involving decommissioning, removal or related issues such as restoration of the site—if such a dispute results in court action by an Applicant against the Town, or the Town determines after discussion with Applicant to resort to court action against an Applicant to resolve such a dispute, such Applicant shall indemnify the Town against attorney fees and litigation expenses as provided in Condition No. 52 set forth below.

Also, the Board finds that many of the statutory requirements of the Town Code found to apply as conditions of the Special Use Permit for the solar farm Project herein are similarly found in the *Guidelines for Agricultural Mitigation for Solar Energy Projects* (Guidelines) promulgated by the New York State Department of Agriculture and Markets (revision dated 4/19/2018). Rather than list each of the conditions found to apply by the Board to the Applicants' solar farm Project, the Board instead references and incorporates such Guidelines hereunder, listed as Condition No. 6. The Board notes that the Guidelines provided and considered in the SEQRA process for this solar farm Project was the revision dated April 19, 2018, but that the Department of Agriculture and Markets has since issued a new revision, dated October 18, 2019. The Board has reviewed that current 2019 version of the Ag & Markets' *Guidelines for Agricultural Mitigation for Solar Energy Projects*, and finds its provisions provide a better minimum basis for protecting and preserving the continued agricultural viability of the site after conclusion of the solar farm Project, except, however, that the post-construction monitoring period of one

growing season provided in the 2019 Guidelines is insufficient and in conflict with the Town Code’s requirements for a two-year monitoring period, and such longer monitoring period is imposed in the associated Condition No. 6, below.

Finally, the Board finds that the conditions itemized and numbered below are warranted as a result of the Board’s individual findings regarding certain aspects of the solar farm Project, as well as a result of the Board’s collective judgment considering the whole solar farm Project overall and foreseeable associated issues and their preferred resolution over the extensive term involved, and the Board finds such conditions are necessary, are consistent with the Town Code, and are imposed hereunder, to protect the Town’s expected interests over the many years duration of the Applicants’ solar farm Project as well as can be done at present.

BE IT FURTHER RESOLVED, then, that the following conditions of approval apply to the requested Special Use Permit:

1. The Special Use Permit to be granted under this Action is valid only upon all the conditions set forth herein if, and as long as, all such conditions are met by Applicants and their associated lots as determined by the Town, and so long as the solar farm Project continues to comply with the Town-approved final site plan for each lot, as may be amended with Town approval. As used in the Special Use Permit context, the term “solar farm Project” includes the whole solar farm system approved by the Town in this Action, together with its respective partitions of lots and system parts and operations, whether or not such lots, parts or operations are separately mentioned.
2. The Special Use Permit applies to the solar farm Project, and to each of the three subdivided lots on which solar equipment, operation and service is proposed by Applicants in this solar farm Project jointly and severally. Although for some purposes in law the three lots involved in the solar farm Project are and will be treated separately, for the purpose of their solar farm Project before the Planning Board the three lots involved are an interconnected and joint operation of Applicants, and so for the purpose of this Special Use Permit the three lots making up the solar farm Project are also determined to be a joint operation of Applicants. Consequently, a failure to comply with all the conditions of this Special Use Permit by one Applicant or lot at some time simultaneously imperils the validity of the Special Use Permit by the other Applicants and lots involved in this solar farm Project, even if the other Applicants and lots are themselves in full compliance with all the conditions of the Special Use Permit at such time. Noncompliance with any condition of the Special Use Permit by any one of the Applicants or their lots involved in the solar farm Project that is not remedied as required by the Town shall result in termination of the Special Use Permit for all Applicants on all lots upon written notice of such action to Applicants by the Town and a hearing if requested as provided in the Town Code. Such termination of the Special Use Permit for the solar farm Project shall amount to abandonment of the solar farm Project on all lots by Applicants and invoke

decommissioning provisions under the Special Use Permit, the Applicants' Decommissioning Plan, and the Town Code.

3. The Special Use Permit is valid only for the listed Applicants to this solar farm Project for the lots identified in this Action for the solar farm Project and is not transferable.
4. This Special Use Permit shall not take effect until an approved Decommissioning Plan is executed by each Applicant and the Town and filed with the Town Clerk, the required approved surety under this Special Use Permit and the Decommissioning Plan is in effect with evidence of such surety's existence and validity on file with the Town Clerk, and a final site plan has been approved by the Board for the solar farm Project, including each of the three subdivided lots which will contain solar system equipment.
5. The Special Use Permit is valid for a maximum of thirty (30) years from the date of issuance of the Town Code Enforcement Officer's Certificate of Compliance as applicable. Said Special Use Permit shall not be extended without formal amendment to the duration limitation of the Special Use Permit by the Planning Board.
6. As a condition of this Special Use Permit, Applicants shall construct, operate, and decommission the solar farm Project, and restore the property to its agricultural condition, in accordance with the all the Guidelines for Agricultural Mitigation for Solar Energy Projects (Guidelines) promulgated by the New York State Department of Agriculture and Markets (revision dated October 18, 2019) to supplement the conditions of the Special Use Permit specified herein by the Planning Board, which specified provisions have priority over the referenced and incorporated Guidelines in the event of a conflict. The Board notes that the 2019 Guidelines contain post-construction monitoring for only one growing season, and such insufficient period is rejected and adjusted in this Action to the Town Code requirement of two years from the restoration instead. The referenced Guidelines (as adjusted by the Town) shall constitute supplemental directives of the Planning Board and provide a minimum standard of conduct for the subject matter addressed for the duration of the solar farm Project, in conjunction with the other conditions established by the Planning Board and the Town Code. Should the State revise the referenced Guidelines over the term of the solar farm Project, as may be extended, such new guidelines shall control under this paragraph, to the extent matters remain executory; provided, however, that any State revisions to the Guidelines that reduce or diminish the standards established in the State's October 18, 2019 version of the Guidelines (as adjusted by the Town) need not be accepted as applicable to the solar farm Project and its three lots in the Town's discretion. In the event the State revises its Guidelines, the Town may, either on its own initiative or at the request of Applicants, evaluate such revisions and provide Applicants with written notice of any revised conditions in the Guidelines now applicable to the solar farm Project and its three lots, and such Town-approved conditions contained in the revised Guidelines shall thereafter control the solar farm Project as revised incorporated Guidelines under this paragraph.
7. As a condition of this Special Use Permit, a final site plan for the solar farm Project and each of its three lots must be approved by the Planning Board. The Special Use Permit

comes into effect only upon the Applicants obtaining final site plan approval from the Board for each of the three lots involved in this solar farm Project and the Town Code Enforcement Officer's issuance of a Certificate of Compliance with final site plan approval for each such lot involved. Moreover, as a condition of this Special Use Permit, for the entire duration of its construction and operational existence the solar farm Project and each of its three lots shall remain in full compliance with the applicable final site plan approved by the Board and shall be maintained in a safe and fully operable state.

8. As a condition of this Special Use Permit, a final site plan for the solar farm Project and each of its three lots must contain the applicable conditions established in this Special Use Permit. Nothing in this Special Use Permit process shall limit or constrain the Planning Board's rights and discretion to require additional conditions in the final site plan for any of the three lots involved in the solar farm Project.
9. As a condition of this Special Use Permit, the solar farm Project is to be in compliance with all applicable setbacks.
10. As a condition of this Special Use Permit, a detailed site lighting plan and illumination fixtures shall be included as part of an approved final site plan for the solar farm Project.
11. As a condition of this Special Use Permit, a detailed landscaping plan with plantings acceptable to the property owners and Planning Board with a planting schedule shall be included as part of an approved final site plan. Also, Applicants shall install the approved landscaping for the entire solar farm Project site prior to the Code Enforcement Officer's issuance of a Certificate of Compliance with final site plan, to provide a visual screen of the solar farm Project, and Applicants shall maintain such approved landscaping for the duration of the solar farm Project.
12. Applicants have designated certain lane ways between the solar arrays in their solar farm Project that allow for rotational grazing systems, and as a condition of this Special Use Permit, such lane ways shall be included in the final site plan and maintained for the duration of the solar farm Project.
13. Applicants have designated one (1) access road to the three (3) solar array lots that is to be located along the edge of agricultural fields and to the extent practical in nonagricultural portions of the site, and is not wider than twenty (20) feet across along its length, and as a condition of this Special Use Permit, such access road shall be included in the final site plan and maintained in such width and location for the duration of the solar farm Project.
14. As a condition of this Special Use Permit, fencing permitted or required in the final site plan for the solar farm Project shall not exceed eight feet in height, though such fencing may contain barbed wire canted out.

15. As a condition of this Special Use Permit, the solar farm Project system equipment may not exceed twelve feet in height, measured from the surface of the ground upon which the system equipment is located.
16. As a condition of this Special Use Permit, the solar farm Project shall adhere to the minimum lot size requirements for the zoning district in which the system is located.
17. As a condition of this Special Use Permit, the solar farm Project shall adhere to the maximum lot coverage requirement for principal uses within the zoning district in which it is located.
18. As a condition of this Special Use Permit, the solar farm Project shall adhere to the sign requirements for the zoning district in which it is located.
19. As a condition of this Special Use Permit, and prior to the commencement of any construction or operation of the solar farm Project, Applicants shall provide to the Town a financial plan in an approved Decommissioning Plan containing an irrevocable surety in sufficient amount and acceptable form by a reliable source entity on which the Town alone may draw to cover Town expenses incurred in decommissioning the solar farm Project and restore the property in the event that the Applicants are unable or unwilling to do so within the time required.
20. As a condition of this Special Use Permit, and prior to the commencement of any construction or operation of the solar farm Project, and before the Special Use Permit can validly issue, the surety approved in the financial plan and Decommissioning Plan shall be provided in fact and a record evidencing such fact shall be kept on file with the Town Clerk. Such surety shall be maintained by Applicants and shall continue to be kept valid for the entire existence of the solar farm Project, expected to last for thirty years, plus any Board-approved extensions, together with the time involved in decommissioning the solar farm Project, restoration work to reclaim the underlying land for agricultural use again, and post-decommission monitoring, unless the property owners obtain appropriate approval from the Planning Board to use their property for a different permitted use (and then to restore the property to condition for that next approved use).
21. As a condition of this Special Use Permit, Applicants shall direct the surety source to provide the Town with all the same notices regarding the surety for its benefit that the surety source provides to Applicants, and at the same time.
22. As a condition of this Special Use Permit, Applicants must employ a qualified environmental monitor (EM) to oversee the construction of the solar farm Project, as well as restoration and follow-up monitoring in agricultural fields. The EM is to be on site whenever construction or restoration work is occurring on the solar farm Project, and must coordinate an appropriate schedule for inspections with the Ontario County Soil and Water Conservation District and/or the New York State Department of Agriculture and Markets to protect the affected lands to the greatest extent possible.

23. As a condition of this Special Use Permit, after the construction of the solar farm Project, and prior to the issuance of a Certificate of Compliance from the Code Enforcement Officer, the Applicants shall provide the Town a post-construction certification from a professional engineer registered in New York State which attests to the solar farm Project's compliance with all applicable codes, safe industry practices, and the list of solar system materials and equipment that Applicants identified to the Town when obtaining final site plan approval to be used in construction of the solar farm Project; and further, attests that the solar farm Project on each of its three lots has been constructed according to the design standards approved by the Town in the final site plan.
24. As a condition of this Special Use Permit, the solar farm Project shall be deemed abandoned if, following site plan approval, initial construction of the system has commenced and is not completed within eighteen months of issuance of the first building permit for the project. In such case, the provisions for abandonment under the Special Use Permit, Decommissioning Plan and Town Code shall take effect.
25. As a condition of this Special Use Permit, every three (3) years from the date of issuance of the Certificate of Compliance by the Town Code Enforcement Officer with the final site plan for the solar farm Project, and up to the final reclamation of the land, there shall be provided to the Town Code Enforcement Officer by the Environmental Monitor employed by Applicants a written report on the status and condition of the solar farm Project for each of the three lots involved. Such report shall provide adequate information on the current status of the surety; the electricity generated compared to that expected as part of the Town's approval process; the status of Applicants' contract with RG&E; current condition and operation of the solar equipment; any indications of, or experiences with, fire in the past period at the solar farm Project, and risk of fire in the next three-year period; description of notices received by reason of the solar farm Project from other local, county or state agencies; number and dates of solar panels and/or supports replaced and reason therefore; required plantings replaced or needing replacement; indications of significant erosion, leaching of chemicals, or deterioration of equipment at the site; and changes to the solar farm Project and associated land; plus such additional information as may be requested by the Town Code Enforcement Officer in order to discharge his or her duties under the Town Code, Special Use Permit conditions and applicable contracts such as the Decommissioning Plan. Failure to provide this periodic report when required, or the provision of an inadequate report in the Town's determination, shall provide a sufficient basis itself for a Town finding of abandonment of the solar farm Project and authorize the Town to revoke this Special Use Permit after notice and hearing if requested and initiate appropriate abandonment provisions of the Decommissioning Plan and Town Code. The Town Code Enforcement Officer shall review such written report for compliance with the Town Code, Special Use Permit conditions and applicable contracts, and is entitled to request and obtain from the Environmental Monitor clarifying information or additional information needed to discharge his or her duties regarding the solar farm Project. The failure of the EM to provide such requested information in a timely manner may result in the EM periodic report being deemed inadequate by the Town and so constitute a failure to provide an adequate report for the three-year period as required as a condition of this Special Use Permit.

26. As a condition of this Special Use Permit, the surety requirement herein shall be re-evaluated every three years in compliance with the Town Code and approved Decommissioning Plan for continued sufficiency in light of changing cost factors and circumstances for decommissioning of the solar farm Project and restoration of the property, and may be modified as appropriate to protect the interests of the Town. Potential rising cost factors warranting modification of the surety could include, for some examples, inflation, and increased expected costs for engineering expertise, compliance with new regulatory requirements, labor, equipment and seeding supplies. The presumptive amount of the surety applicable to the solar farm Project shall be determined by the Town Engineer based upon a current estimate of decommissioning, removal and restoration costs as provided in the Decommissioning Plan and with evaluation of Applicants' latest reports. The amount of the surety may be adjusted by the Town Board upon receipt of such a recommendation from the Planning Board based upon an updated cost estimate from the Town Engineer for decommissioning of the solar farm Project, restoration of the property and follow-up monitoring. Upon modification action by the Town Board, the surety requirement for the solar farm Project shall be so revised for the next three-year period as directed by the Town Board, and Applicants must provide a suitable and sufficient surety in the revised amount within the time required by the Town Board in order to continue to operate under this Special Use Permit. Record evidence of any revised surety is to be filed with the Town Clerk.
27. As a condition of this Special Use Permit, should the required surety lapse or become inadequate for any reason, and sufficient surety not re-established to the Town's satisfaction within the time period designated by the Town after written notice of such re-establishment requirement of sufficient surety provided to Applicants, then the Special Use Permit may be revoked after notice and hearing if requested. Furthermore, failure to provide a form of surety acceptable to the Town within the Town's designated time period shall constitute abandonment of the solar farm Project and allow the Town to take action under appropriate abandonment provisions of the Decommissioning Plan, the Special Use Permit and Town Code.
28. As a condition of this Special Use Permit, any damaged solar panel(s) or arrays shall be removed from the property within thirty (30) days of discovery by, or written notice of such condition provided to, the Environmental Monitor for the solar farm Project. The Environmental Monitor (EM) must be on-site at all times during removal and replacement of any of the solar panels or equipment. Damaged solar panels or equipment may be replaced without requiring an amended site plan application or Special Use Permit, provided that such panels or equipment have been first verified by the Town Code Enforcement Officer as needing replacement and as suitable replacement panel(s).
29. As a condition of this Special Use Permit, all taxes owed for the site property of the solar farm Project shall be current and no taxes left unpaid, nor shall the site property become subject to a tax lien foreclosure proceeding during the entire term of this Special Use Permit.

30. As a condition of this Special Use Permit, the solar farm Project shall continue to generate the level of solar energy identified in the application for this solar farm Project, and a failure to substantially conform to those standards for an extended period of time may be found to be evidence of abandonment.
31. As a condition of this Special Use Permit, any diseased, damaged or failing plantings required for the solar farm Project discovered by the Environmental Monitor or Town Code Enforcement Officer shall be replaced, in kind, within two weeks of discovery if found during during the planting season between May 1 and November 1 of such year, but not later than May 31st of the following year.
32. As a condition of this Special Use Permit, and for its duration, Applicants remain responsible to promptly reimburse the Town for the periodic costs associated with the services provided by the Town's Engineering Firm for site inspections and periodic reports on the ongoing operations of the solar farm Project and its compliance with Special Use Permit conditions and final site plans.
33. As a condition of this Special Use Permit, any termination or abandonment of the Agreement regarding electricity provision and payment from the solar farm Project between Applicants and RG&E shall authorize the Town to revoke the Special Use Permit after notice and hearing if requested.
34. As a condition of this Special Use Permit, Applicants shall provide the Town with an annual report regarding their solar farm Project operations beginning a year following the Certificate of Compliance with the final site plan issued by the Code Enforcement Officer. The annual report shall be in writing and show the rated capacity of the solar system and the amount of electricity that was generated by the system and transmitted to RG&E and the grid over the most recent twelve-month period. The report shall also identify any change of ownership of the solar system and/or the land upon which the system is located, and shall identify any change in the party responsible for decommissioning and removal of the system upon its abandonment. Furthermore, every third year, to coincide with the filing of evidence of financial surety, Applicants' annual report shall also include a recalculation of the estimated full cost of decommissioning and removal of the large-scale solar system and restoration of the property to its agricultural condition. Failure to submit a report as required herein shall be considered a violation subject to the penalties in §§ 165-113 and 165-114 of the Farmington Town Code.
35. As a condition of this Special Use Permit, any significant physical changes taken or equipment modifications made to the solar farm Project without prior Town approval shall authorize the Town to revoke the Special Use Permit after notice and hearing if requested. Any physical changes proposed to the solar farm Project site(s) after final site plan approval, or changes to equipment, other than ordinary maintenance or replacement of damaged or nonfunctioning solar panels or structures, shall require submission of an application for an amended Special Use Permit and shall also be subject to an amended final site plan.

36. As a condition of this Special Use Permit, the solar farm Project and each of its individual lots 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 year. However, the time at which the solar farm Project shall be deemed abandoned may be extended by the Planning Board for one additional period of up to one year, provided the Applicants present to the Board a viable plan outlining the steps and schedules for placing the system in service or back in service within the time period of the extension. An application for an extension of time shall be made to the Planning Board by the Applicants prior to any abandonment. Extenuating circumstances as to why the solar farm Project has not been operating or why construction has not been completed may be considered by the Board in determining whether to grant an extension.
37. As a condition of this Special Use Permit, the solar farm Project which has been abandoned or deemed abandoned by the Town shall be decommissioned and removed from the land on which it is located. Applicants and/or owners of the land upon which the solar system is located shall be held responsible to physically remove all components of the system within one year of abandonment. Removal of the solar farm Project shall be in accordance with a Decommissioning Plan approved by the Planning Board and as required by the Town Code and the Special Use Permit.
38. As a condition of this Special Use Permit, Applicants shall prepare a decommissioning plan (“Decommissioning Plan”) for the solar farm Project which is acceptable to the Town and binds each Applicant individually and jointly to remove the solar farm Project from its three lot locations at their expense and restore the land to its prior agricultural or other approved condition in a timely fashion also at their expense in accordance with the Town Code, these Special Use Permit conditions, and other lawful requirements. Such Decommissioning Plan shall comply with the conditions of this Special Use Permit and the Town Code in addition to addressing other foreseeable issues involved when the solar farm Project operation comes to a conclusion or the solar farm Project is abandoned. The Special Use Permit shall not become effective until each Applicant enters into a binding agreement with a Town-approved Decommissioning Plan.
39. As a condition of this Special Use Permit, the Decommissioning Plan shall be implemented by Applicants and/or the Town when the solar farm Project on any of the three lots ceases operation at the end of useful life, or is abandoned in whole or part earlier, and associated physical structures are to be removed as decommissioning and restoration of the property.
40. As a condition of this Special Use Permit, and as a required part of an approved Decommissioning Plan, Applicants shall provide the Town Engineer with an engineering estimate of the anticipated operational life of the system, a schedule showing the expected time frame over which decommissioning will occur and for completion of site restoration work, and a detailed estimate of the full cost of decommissioning the solar farm Project (of its three lots) and restoring the entire property to its agricultural condition; and Town approval of said Decommissioning Plan shall not be had unless the Town Engineer re-

views and accepts those Applicants' estimates as reasonable and acceptable under the foreseeable circumstances.

41. As a condition of this Special Use Permit, and as a required part of an approved Decommissioning Plan, Applicants shall provide the Town with a copy of any agreement between property owners and other Applicants regarding decommissioning of the solar farm Project other than the Decommissioning Plan to which the Town is a party.
42. As a condition of this Special Use Permit, the Environmental Monitor employed by Applicants regarding the solar farm Project shall be available upon demand from the Town Code Enforcement Officer for any issue involved with the Decommissioning Plan or the decommissioning or restoration processes.
43. As a condition of this Special Use Permit, upon conclusion of the solar farm Project, or upon the revocation or termination of the Special Use Permit for Applicants' solar farm Project, all aboveground solar array equipment and structures are to be removed reasonably promptly by Applicants as provided herein, and all areas previously used for agricultural production are to be restored by Applicants to a degree of such use again as is acceptable by the landowners, the Ontario County Soil and Water Conservation District and the State Department of Agriculture and Markets.
44. As a condition of this Special Use Permit, decommissioning of the solar farm Project consists of physical removal of all aboveground and below-ground equipment, solar panels, support structures and foundations, including but not limited to all solar arrays, buildings, security barriers, fences, electric transmission lines and components, roadways and other physical improvements to the site, except such removal may be limited to some extent if specified in these conditions. For example, upon petition to the Planning Board, the Board may permit Applicants to leave certain underground or aboveground improvements in place, provided the owner can show that such improvements are part of a reasonable plan to redevelop or restore the site, are not detrimental to such redevelopment or restoration and do not adversely affect community character or the environment.
45. As a condition of this Special Use Permit, decommissioning of the solar farm Project also consists of restoration of the ground surface and soil to the general condition of the land prior to the construction and operation of the solar farm Project as provided by the applicable Guidelines and consistent with the Town Code.
46. As a condition of this Special Use Permit, decommissioning of the solar farm Project also consists of stabilization and revegetation of the site with native seed mixes and/or plant species (excluding invasive species) to minimize erosion.
47. As a condition of this Special Use Permit, decommissioning of the solar farm Project also consists of disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations.

48. As a condition of this Special Use Permit, Applicants must provide monitoring and remediation of the solar farm Project site(s) for a period of no less than two years after site restoration. General conditions to be monitored include topsoil thickness, relative content of rack and large stones, trench settling, crop production, drainage and repair of severed subsurface drain lines, fences, etc. Applicants remain responsible to remediate problems with the property attributable to the construction, operation, or decommissioning of the solar farm Project arising during the monitoring and remediation period. Applicants may petition the Planning Board to terminate their surety at the conclusion of this two-year monitoring period, which surety termination may be approved by the Town Board upon such recommendation by the Planning Board after consideration of the conditions of the property at such time and the Town's expected expenses relating to further remediation.
49. As a condition of this Special Use Permit, if Applicants fail to decommission and remove an abandoned facility in accordance with the requirements of this Special Use Permit, Decommissioning Plan or the Town Code, the Town is thereupon authorized to enter upon the property with all necessary or advantageous equipment and labor to carry out the decommissioning itself and remove the solar system and restore the property to its agricultural condition. In such case, the Town may not be held responsible for damage to any equipment or land, nor has any obligation to protect, preserve or salvage any equipment belonging to Applicants. Applicants' failure to decommission the solar farm Project themselves as required shall be deemed a forfeiture of their ownership interests and rights in the solar farm Project equipment and materials on site, entitling the Town to scrap or dispose of all such equipment and materials as the Town deems fit or convenient; and Applicants are responsible to indemnify the Town for all its expenses incurred in having to carry out the decommissioning and restoration work that was the Applicants' responsibility.
50. As a condition of this Special Use Permit, a determination by the Code Enforcement Officer that the solar farm Project or any one of its lots have been abandoned, Applicants will be subject to the procedures for abandonment provided by the Town Code in Section 165-65.3 [H], the Decommissioning Plan, and these Special Use Permit conditions.
51. All Applicants have the responsibility to keep the Town provided with current addresses for receipt of Town notices. Accordingly, as a condition of this Special Use Permit, Town provision of written or electronic notice to Applicants according to the current addresses on record with the Town at the time for Applicants shall constitute sufficient notice of Town action to the Applicant involved at such time regardless of whether the Applicant actually receives such notice at such address, receives such notice late, or receives such notice at all.
52. As a condition of this Special Use Permit, in the event an Applicant resorts to court action against the Town, its agencies, or Code Enforcement Officer or other Town personnel engaged in official duties to resolve a dispute involving continuance of operations of the solar farm Project (which could result in decommissioning) or decommissioning-related issues, which action prompts the Town to incur legal expenses for attorney fees

and associated filing fees and other litigation expenses in order to respond in court so as to protect its rights and interests, such Applicant commencing court action shall be responsible to indemnify the Town for its legal fees and expenses incurred in responding to the Applicant's litigation, including appeals and claims about Applicant's indemnification of the Town's legal fees and expenses. In the event the Town commences court action against an Applicant to protect or enforce the Town's rights or responsibilities under the Town Code, these Special Use Permit conditions or a Town contract, regarding the solar farm Project's continuance of operations or decommissioning-related issues, and substantially prevails in an order, judgment or settlement, such Applicant shall be responsible to indemnify the Town for its legal fees and expenses incurred in such litigation, including appeals and claims about Applicant's indemnification of the Town's legal fees and expenses. An Applicant required to indemnify the Town for legal fees and litigation expenses shall pay such obligation in full within thirty days of written notice of the indemnification amount sought by the Town. The failure of an Applicant to pay such indemnification amount on time shall entitle the Town to recover such amount from the surety provided to the Town by Applicant in connection with the solar farm Project. Alternatively, in addition to any other remedies available to the Town under law or equity, any indemnification amount not paid or covered by Applicant's surety 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 same penalties as are provided by law for the collection and enforcement of real property taxes in the Town.

53. As a condition of this Special Use Permit, the Code Enforcement Officer and COE agents may enter and inspect the solar farm Project sites to conduct official duties and monitor the sites for continuing compliance with the final site plan, Special Use Permit conditions and Town Code.
54. In the event any condition specified herein is violated or not met as required, in addition to any other actions the Board or Town may be authorized to take in such circumstances, the Board is authorized to revoke the Special Use Permit granted hereunder after notice of the proposed action to Applicants and a hearing if requested consistent with the Town Code. If the Special Use Permit is revoked, the Town may require cessation of the solar farm Project operation for noncompliance with law, and further find the unpermitted solar farm Project abandoned, and invoke associated requirements and rights, along with other actions that may be warranted, consistent with the Town Code.

BE IT FURTHER RESOLVED that the Clerk of the Board is hereby directed to provide by U.S. Mailing, a certified copy of this resolution to the Involved and Interested Agencies and to the Town Clerk.

BE IT FINALLY RESOLVED that the Clerk of the Board is to provide copies of this resolution to: Roger and Carol Smith, 4790 Fox Road, Palmyra, New York 14522; Peter Dolgos, Delaware River Solar, LLC, 33 Irving Place, New York, N.Y. 10003; David Matt, Schultz Associ-

ates, P.C., P.O. Box 89 Spencerport, N.Y. 14559; the Town Highway and Parks Superintendent; the Town Water and Sewer Superintendent; the Town Director of Planning and Development; the Town Code Enforcement Officer; and the Town Engineering Firm, MRB Group, D.P.C., Attn: Lance S. Brabant, CPESC, Director of Planning Services.

The above resolution was offered by NAME and seconded by NAME at a meeting of the Planning Board held on Wednesday, INSERT DATE, 2020. Following discussion thereon, the following roll call vote was taken and recorded:

Adrian Bellis	Aye or Nay
Timothy DeLucia	Aye or Nay
Edward Hemminger	Aye or Nay
Shauncy Maloy	Aye or Nay
Douglas Viets	Aye or Nay

Motion result.

I, John M. Robortella, Clerk of the Board, do hereby attest to the accuracy of the above Resolution being acted upon and recorded in the minutes of the Farmington Planning Board for the Wednesday, INSERT DATE, 2020, meeting.

John M. Robortella, Clerk of the Board L.S.

