

**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 three separate Solar Energy Systems of 2.338 Megawatts alternating current, totaling together approximately a 7 Megawatt ac Solar Farm to be constructed in three parts upon approximately 45.105 acres of land (on Lots #1, #2 and #3 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 held many public hearings upon the proposed Special Use Permit application referenced above (hereinafter referred to as Action); and

WHEREAS, the Board has closed the public hearing associated with the proposed Special Use Permit application at its August 5, 2020, Board meeting; and

WHEREAS, the Board has carefully considered the information and comments received upon the proposed Special Use Permit application, as well as the Town Code and applicable law; 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 RESOLVED that the Board finds that property owners Roger and Carol Smith (the Smiths, or Applicants) have applied for a special use permit in this Action for part of their property located at 466 Yellow Mills Road, Palmyra, New York, through their agent Delaware River Solar, LLC, which entity has contracted with them to utilize part of their aforesaid property for the construction, on-going operations and maintenance, and decommissioning of three large-scale ground-mounted solar PV system “solar farms” to be located on Lots #1, #2 and #3 as shown on the Filed Final Subdivision Plat for Roger and Carol Smith Lands Located at 466 Yellow Mills Road, Palmyra, New York, to be operated and owned initially by three independent entities currently owned by Delaware River Solar, LLC: (a) NY Farmington I, LLC; (b) NY Farmington II, LLC; and (c) NY Farmington III, LLC. Such entities operating and/or owning solar farms on their respective aforesaid lots are referred to in this Resolution as System Operators, and included in such term are their current owner Delaware River Solar, LLC or successor owners until such owners cede all control over their affiliates’ actions operating their solar farm, apart from passive ownership. “Solar farm” in this Resolution refers to the proposed large-scale ground-mounted solar PV systems in this Action sited on any of Lots #1, #2 and/or #3 as shown on the Filed Final Subdivision Plat for Roger and Carol Smith

Lands Located at 466 Yellow Mills Road, Palmyra, New York, and as further identified on the Final Site Plan for the Delaware River Solar LLC Solar Farm Project located on Lots #1, #2 and #3 of the Roger and Carol Smith Lands Located at 466 Yellow Mills Road, Palmyra, New York (sometimes “Lots #1, #2 and #3 of the Roger and Carol Smith Subdivision”), together with their respective system parts and operations, whether or not such lots, parts or operations are separately mentioned.

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 Ground-Mounted Photovoltaic (PV) Solar Systems being proposed on three (3) subdivided parcels of the Smiths’ Property in this Action meet the above-stated Purpose of the Town’s Zoning Law to permit such solar systems as proposed by the Applicants to provide new and additional electricity services that efficiently meet present needs and anticipated future needs of Town residents while protecting the health, safety and welfare of adjacent and surrounding land uses and properties.

The Board further finds that the proposed solar farms contribute 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 Action has demonstrated the lack of significant environmental harm and 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. The Board further finds that the Applicants have demonstrated that because of the site's extensive areas of viable agricultural soils, and due to other factors such as wetlands and steep slopes to be avoided, there is no feasible alternative area(s) for siting the proposed solar farms on the Smiths' property. The Board further finds that the Smiths intend to continue grazing of their livestock on the remaining open portions of all four (4) lots at 466 Yellow Mills Road. 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 mixed 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 and necessarily 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 Applicants to the extent practical and that as a condition for granting this Special Use Permit the Applicants and System Operators 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, among other issues, and provide periodic soil sampling to identify any potential-possible problems early. 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 and adopted as provided herein, shall be a condition of the Special Use Permit as provided hereafter in the listed Condition No. 5.

- (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’s proposed solar farms have been supported by a funding commitment from the New York State Energy Research and Development Agency (NYSERDA) and by established agreements with Rochester Gas & Electric Corporation to accept the energy to be generated by the proposed solar farms throughout their proposed thirty (30) year life-spans. 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 farms are 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. Final Subdivision Plat Approval and documentation shall be filed in the Office of the Ontario County Clerk.

- (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 System Operators or their owner Delaware River Solar, LLC have entered into Interconnection Agreements with Rochester Gas & Electric for the purpose of distributing solar energy to off-site users. The Board finds that such Agreements shall remain in effect during the entire term of

the proposed solar farms. Any termination or abandonment of such Agreement shall be evidence of abandonment of that solar farm, and shall also authorize the Town to revoke the Special Use Permit for such lot after notice and hearing if requested, and so require Applicants to seek approval for a new special use permit if continuing operations of a solar farm on such lot 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 Ground-Mounted Photovoltaic (PV) Systems to be constructed on the proposed three (3) parcels of land in the Action are hereby classified as principal uses. 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 ground-mounted 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 for each of the three subject solar farm lots 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 residential 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 on their property based upon documentation submitted as part of the environmental record for the Action.

Among the facts presented to the Planning Board were that Delaware River Solar, LLC (DRS) had various criteria to be met in order to select a viable location where its desired solar farms could be constructed. The property had to consist of a contiguous site with relatively flat topography of adequate

size to host the solar farms; required proximity to the existing RG&E electrical grid suitable for connecting community solar farms; had to be available for use as a solar farm under a lease agreement with the current landowner; had to avoid environmentally sensitive areas such as water and deep forest; had to have a large setback area from public roads and neighbor residences to reduce visual impacts and permit effective screening; and had to have good highway access for construction, operation and maintenance activities.

Prior to reaching a lease agreement with the Smiths, DRS did seek prospective landowners within an approximate two-mile radius of the Smiths' property, and found either no interest from landowners or such land that was not suitable for solar system development.

The Smiths' property at 466 Yellow Mills Road met DRS's various criteria and was suitable to host the three 2.338 MV solar farms DRS intended to develop under the Town's new large-scale ground-mounted solar system authorization. The Smiths had suitable property and were willing to host the proposed solar farms on a portion of their main property in order to obtain significant income that would enable them to continue their agricultural and farming operations there, and so signed a lease with DRS.

Where on the Smiths' main property could the solar farms be best located involved juggling all the various requirements and preferences of the Town Code, solar farms developer, the landowners, and even consideration of neighbors. The Smiths' smaller adjacent property to the west (Tax Map No. 10.00-01-37.131), if relevant to this feasibility issue, was not suitable for the proposed solar farming as being relatively small at 21 acres (especially with setbacks factored in), was prone to seasonal flooding and lots of trees would have to be removed. That property contains soils classed from 1 to 9, as well as wetlands to be avoided and wooded areas which would interfere with racking and sunlight capture and would require removal; would be isolated from the rest of the solar arrays, and the Smiths still desire to use part of that property to graze cattle.

The Schultz Associates soils report identified various factors impacting the location of the proposed solar farms on the Smiths' property at 466 Yellow Mills Road. At the Smiths' main property, location of the solar farms was limited by required setbacks, avoiding wetlands, forest and steep slopes, and avoiding areas where trees on the property cast shadows that would obstruct sunlight capture by solar panels.

The soils report did locate three acres on the Smiths' main property that would not involve soils Classified 1 – 4, but **Schultz Associates noted that** other problems would then emerge for that elevated location, such as the inability to screen such panels from neighbors or drivers due to their substantial height above the roads, and the isolated location would require unnecessary disturbance of additional steep slope and erodible farmland during construction and decommissioning. The proposed solar farm designs did incorporate 1.6 acres of the lower class soils, but the remaining 1.4 acres are too isolated to feasibly include.

As all the foregoing facts indicate, the feasibility of locating the proposed solar farms elsewhere on the Smiths' property to avoid soils Classified 1 – 4 was considered, but the Planning Board finds there was no feasible alternative as required under this Town Code standard, **and so the Planning Board is authorized** to issue a special use permit for the construction and operation of the proposed solar farms on the Smiths' property even if solar arrays **are** to be mounted above, and equipment installed on, soils Classified 1 – 4.

- [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 for the lots hosting solar farms under this Action. The Board further finds that the Applicants' present decom-

missioning plan dated June, 2020 (Version 5) 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 and will utilize them for livestock as long as livestock are being kept on the Applicants' farm. 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 farms 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. The Board finds that no topsoil shall be permitted to be removed from any solar farm site, whether during solar farm construction, operation or decommissioning.

- [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. The Board finds that weather monitoring equipment, even if used in conjunction with solar farms, is not subject to this height limitation for these solar systems and may extend to a height of fifteen feet in such case. Moreover, the Board further finds that this height restriction does not apply to overhead or above-ground electric transmission lines, equipment and poles needed to transport solar energy to the utility grid and connection facilities of the local electric utility, here RG&E.

- [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 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.

- [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 sys-

tems.” 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, consisting of three solar farms on three lots of the Roger and Carol Smith Subdivision, involves large-scale ground-mounted solar PV systems 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 Applicants and System Operators and dated June, 2020 (Version 5) 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 Applicants’ and System Operators present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, 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 Applicants’ or System Operators’ agreement with RG&E, and noncompliance with Town requirements for the special use permit, such as failure to provide adequate 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 Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, 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 Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, 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, which shall be part of an approved decommissioning plan. This is a condition of approval for this Special Use Permit.

- (5) Decommissioning and removal.

The Board finds the Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, 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 and System Operators 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, System Operator 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 Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, the requirement in the Town Code (§ 165-65.3 [H][5]) for removing all above-ground equipment, structures and foundations that are listed, which shall be part of an approved decommissioning plan. 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 Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, 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, which shall be part of an approved decommissioning plan. This is a condition of approval for this Special Use Permit.

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

The Board finds the Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, 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 a solar farm is decommissioned and removed, which shall be part of an approved decommissioning plan. 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 Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, 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, which shall be part of an approved decommissioning plan. 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 Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, the provision in the Town Code (§ 165-65.3 [H][5]) that the Planning Board may permit the System Operator of a solar farm to leave certain improvements in place upon a further finding that the property 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 Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, 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 a solar farm. Thus Applicants' and System Operators' decommissioning plan for this 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 Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, 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 each solar farm. 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 systems. 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 Applicants' and System Operators' present draft decommissioning plan dated June, 2020 (Version 5), acknowledges and the Applicants and System Operators accept the requirement in the Town Code (§165-65.3 [H][6]) for identifying the responsible parties for decommissioning of the proposed solar farms, which shall be part of an approved decommissioning plan. The Board further finds that in addition to identifying the property owners, Roger and Carol Smith, as being the Applicants responsible for decommissioning the solar farms, System Operators NY Farmington I, LLC, NY Farmington II, LLC, and NY Farmington III, LLC will also be involved as operators and/or owners of the three proposed solar farms on Lots #1, #2, and #3 of the Roger and Carol Smith Subdivision, and have decommissioning responsibilities, as well as owners of affiliates which have not ceded control over a system operator of a solar farm, apart from passive

investment. The Board finds that all those identified parties will have legal obligations for compliance with the decommissioning duties imposed by the Town Code, the approved decommissioning plan and agreement, and the conditions of their Special Use Permit for the three solar farms involved in this Action. 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' and System Operators' present draft decommissioning plan on file with the Town dated June, 2020 (Version 5), is an agreement between the landowners and the System Operators involved for decommissioning the three solar farms at issue, 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 plan and agreement is a condition of any Special Use Permit for Applicant's Action. **Furthermore, as stated in the proposed Decommissioning Plan dated June, 2020 (Version 5), the Planning Board has been advised that the Applicants and DRS have entered into a lease agreement which contains conditions regarding the removal of solar facilities and restoration of the site, and such agreement has been requested but has not yet been received for review by the Planning Board.**

- (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 Applicants' and System Operators' present draft decommissioning plan dated June, 2020 (Version 5), contains a schedule for decommissioning work to be carried out over some four months, and will provide a detailed schedule at the time decommissioning is proposed, **which shall be part of an approved decommissioning plan.** 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 Applicants' and System Operators' present draft decommissioning plan dated June, 2020 (Version 5), contains a requirement for, **and a proposed** cost estimate 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 Applicants’ and System Operators’ present draft decommissioning plan dated June, 2020 (Version 5), does contain a financial plan to ensure funding for decommissioning the three solar farms of the Action, which shall be part of an approved decommissioning plan. 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 Applicants’ and System Operators’ ~~present draft decommissioning plan dated June, 2020 (Version 5)~~, once the Town determines the desired form of surety and such plan 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 Applicants' and System Operators' ~~present draft decommissioning plan dated June, 2020 (Version 5)~~, once the Town determines the desired form of surety and such plan 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 solar farms and conditions under the Special Use Permit and Town Code, a current estimate of decommissioning, removal and restoration costs as provided in the Applicants' and System Operators' ~~present draft decommissioning plan, dated June, 2020 (Version 5)~~, once the Town determines the desired form of surety and such plan is approved and executed by all parties dated June, 2020 (Version 5). The Board further finds that a con-

dition of approval of the Special Use Permit Application shall be the Applicants' and System Operators' agreement that the amount of surety may be adjusted by the Town Board as appropriate during the periodic reviews of the ongoing operation and maintenance of the solar farms at issue.

- (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 solar farms as set forth in the provisions of the Farmington Town Code Section 165-65.3. Similarly, the System Operators will be obligated to decommission their solar farms as provided in their ~~present draft~~ decommissioning plan agreement approved by the Planning Board dated June, 2020 (Version 5), which agreement shall contain provisions authorizing the Town to enter upon property containing a solar farm to decommission the solar farm, remove and dispose of its component parts, and restore the property to its prior agricultural condition.

- (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 relevant Applicants and System Operators 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 En-

forcement Officer that a commercial solar PV system has been deemed abandoned entitles the Applicants and relevant System Operators 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 Applicants and System Operators understand and accept this provision of the Town Code, which establishes the respective rights in such matter for the Applicants, System Operators 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 Applicants and System Operators understand and accept this provision of the Town Code, which establishes the respective rights in such matter for the Applicants, System Operators 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 Applicants and System Operators understand and accept this provision of the Town Code, which establishes the respective rights in such matter for the Applicants, System Operators 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 Applicants and System Operators understand and accept 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, System Operators and Town regarding any aspects of the solar farms at issue 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 farms to protect and preserve Town interests in the land and community, which concerns are broader than just Applicants' and System Operators' 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 farms 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 or System Operator against the Town, or the Town determines after discussion with Applicant or System Operator to resort to court action against an Applicant and/or System Operator to resolve such a dispute, such Applicant and/or System Operator 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 farms 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' and System Operators solar farms, the Board instead references and incorporates such *Guidelines* hereunder, listed as Condition No. 5. The Board notes that the *Guidelines* provided and considered in the SEQRA process for these solar farms 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 Smiths' site after conclusion of the solar farms' operations, through soil sampling, for example, 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. 5, below.

Finally, the Board finds that the conditions itemized and numbered below are warranted under the facts of the proposed solar farms and are expressly imposed as conditions on the Special Use Permit approved hereunder as a result of the Board's individual findings regarding certain aspects of the proposed solar farms, as well as a result of the Board's collective judgment considering Applicants' and System Operators' whole solar farm proposal overall and foreseeable associated issues and their preferred resolution over the potentially extensive term involved. The Board finds such extensive conditions are necessary and reasonable to balance the different property owner, developer and community interests involved, are required by or directly related to aspects of the Town Code, and are imposed hereunder to protect the Town's expected interests over the many years duration of the proposed solar farms and minimize the impact of the solar farms on the area and neighbors as well as can be done under the present law and circumstances.

BE IT FURTHER RESOLVED, then, that the Planning Board does hereby approve a special use permit for each of Lots #1, #2 and/or #3 as shown on the Filed Final Subdivision Plat for Roger and Carol Smith Lands Located at 466 Yellow Mills Road, Palmyra, New York, to host a

large-scale ground-mounted solar farm thereon as proposed in this Action, subject to the following conditions that shall apply to and govern each such lot individually and the solar farm associated therewith:

1. Each Special Use Permit approved 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 System Operators on their associated lots as determined by the Town, and so long as their solar farms continue to exist on their lot and comply with the Town-approved final site plan for each respective lot, as may be amended with Town approval, and with these Special Use Permit conditions.
2. Each Special Use Permit applies to and is valid only for an individual lot of the Roger and Carol Smith Subdivision located at 466 Yellow Mills Road, Palmyra, New York, proposed to contain a solar farm (Lot #1, #2, or #3), and to the respective proposed solar farms as permitted on their approved final site plans and subject to the conditions of their Special Use Permit. This Resolution does not authorize any special use permit to be applicable to Lot #4 of the Roger and Carol Smith Subdivision located at 466 Yellow Mills Road, Palmyra, New York, or any part of that property other than Lots #1, #2, and #3 as provided herein. The Final Subdivision Plat, for Roger and Carol Smith, shall be promptly filed in the Office of the Ontario County Clerk. This Special Use Permit approval shall expire for any aforesaid lot for which a solar farm has been determined to be abandoned after notice and a hearing if requested, or a lot on which a solar farm has undergone decommissioning under the Town Code, Special Use Permit, or Decommissioning Plan.
3. No Special Use Permit for any of Lots #1, #2, or #3 of the Roger and Carol Smith Subdivision located at 466 Yellow Mills Road, Palmyra, New York, shall take effect unless and until (1) an approved Decommissioning Plan is agreed to and executed by each Applicant, System Operator and the Town for such lot and filed with the Town Clerk; (2) the required approved surety for such lot under this Special Use Permit authorization and the Decommissioning Plan and Agreement is in effect with evidence of such surety's existence and validity on file with the Town Clerk; and (3) a final site plan has been approved by the Board for the proposed solar farm for such lot.
4. The Special Use Permit for Lots #1, #2, or #3 of the Roger and Carol Smith Subdivision shall remain valid for so long as the lot is used to produce solar energy in conformance with the terms and conditions of the Town Code, this Special Use Permit authorization and the final site plan approved for such lots.
5. As a condition of this Special Use Permit approval, Applicants and System Operators shall construct, operate, and decommission the proposed solar farms, and restore the respective lots to their present agricultural condition, in accordance with 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 farms' existence, in conjunction with the other conditions established by the Planning Board and the Town Code. Should the State revise the referenced *Guidelines* over the terms of the solar farms, such new and updated 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 these solar farms 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 or System Operators, evaluate such revisions and provide Applicants and System Operators with written notice of any revised conditions in the *Guidelines* now applicable to their solar farms, and such Town-approved conditions contained in the revised *Guidelines* shall thereafter control these solar farms as revised incorporated *Guidelines* under this paragraph.

6. As a condition of this Special Use Permit approval, a final site plan for each proposed solar farm must be first approved by the Planning Board before a Special Use Permit can be effective for such lot. The Special Use Permit comes into effect only upon the Applicants and System Operators obtaining final site plan approval from the Board for construction of a solar farm on lots #1, #2, and/or #3 of the Roger and Carol Smith Subdivision and the 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 approval, for the entire duration of its construction and operational existence each solar farm shall remain in full compliance with the applicable final site plan approved by the Board and these Special Use Permit conditions, and shall be maintained in a safe and fully operable state.
7. To ensure that each solar farm is properly monitored and maintains a safe operation for the area people, land, soils and environment involved over its term that will enable full restoration of the lot to its agricultural production potential at the same prime soils classifications and condition presently existing (a fundamental principle and condition on which this Special Use Permit approval is being granted), the following soil sampling condition is imposed for the entire duration of each proposed solar farm on lots #1, #2, and #3 of the Roger and Carol Smith Subdivision conditionally permitted by this Resolution and Special Use Permit approval. At the time of construction, and before a Certificate of Compliance is issued by the Code Enforcement Officer, Applicants or System Operator for its lot shall engage an independent and competent entity to take soil samples consistent with Cornell University's soil testing guidelines for measuring contaminant levels in a particular area regarding collection, labeling and packaging of representative soils beneath and around solar panels and solar system equipment according to soil sampling locations specified on the final site plan approved for its lot.

Such soil sampling shall consist of three individual samples per acre of installed solar panel arrays of the same kind and model, to be taken from the ground at a 1-2” depth along the lower drip edge of representative solar arrays across the lot, with an additional three separate individual samples to be taken on the lot at a 1-2” ground depth along the main course of water flow leaving that lot, as specified by the Town Engineer on the final site plan. Such soil samples shall be collected, labeled, packaged and transferred with a chain of custody to an independent laboratory certified by the NY State Department of Health Environmental Laboratory Approval Program for soil analysis, which lab may or may not be the same entity collecting the soil samples. Such soil samples shall be analyzed to establish a starting benchmark for future evaluation of the soil conditions on such lot. Such analysis shall consist of objective evaluations of the soil samples as to the following characteristics and levels: (i) soil pH; (ii) percent organic material; (iii) cation exchange capacity; (iv) Phosphorus/Phosphate; (v) Potassium/Potash; (vi) Nitrogen; (vii) Arsenic; (viii) Barium; (ix) Cadmium; (x) Chromium (hexavalent and trivalent); (xi) Lead; (xii) Mercury; (xiii) Selenium; (xiv) Silver; (xv) Zinc; and (xvi) additional potentially harmful chemicals or metals identified as materials used in the manufacture of solar panels or equipment used or stored by the solar farm on its lot during the previous three-year period not already designated for analysis in the foregoing list of monitored items (“monitored items”). Such benchmark analysis with detailed reporting of each such monitored item and the chain of custody shall be provided by Applicants or System Operators to the Code Enforcement Officer when received, and included with every three-year report required by Condition No. 25. Every three years after issuance of the initial Certificate of Compliance by the Code Enforcement Officer, in conjunction with the three-year report required under Condition No. 25, and not more than four months before such three-year report, Applicants or System Operators shall engage an independent and competent entity to take soil samples on each solar farm lot as to location and depth as set forth by the Town Engineer on the approved final site plan for such lot (and to include additional samples as adjusted for changed solar panels as may occur during the term under this section and consistently sampled in the same location thereafter) for comparison in such report with the starting benchmark findings of the monitored items for analysis of the soils underlying the solar farm lots. In the event the System Operator changes the kind or model of solar panel or equipment installed or stored from that originally installed during the term of its solar farm, such changes shall be reported to the Town during that reporting period and additional soil samples (at least three and up to three per acre of such changed solar panel arrays) shall be taken across the lot from the ground along the lower drip edge of representative solar arrays containing the changed solar panels at a 1-2” depth, and such initial soil sampling at the new locations necessitated by the change in solar panels shall be identified as new benchmark locations for comparison with future soil sampling results at those locations.

All soil samples shall be collected, labeled, packaged, transferred and analyzed with the same process as the initial benchmark sampling, though the entities involved in the work may differ if competent and the laboratory conducting the soils analysis is similarly certified. All reporting of soil sampling results to the Town shall be organized so that the Town may readily identify the benchmarks for each soil sampling location reported, and follow the subsequent soil sampling results at each such location at all interim three-year intervals up to the present.

Because Applicants, Delaware River Solar, LLC and System Operators have represented in their submissions to the Planning Board that the proposed solar farms will employ safe practices for the land, soils and environment and that no significant leaching or contaminants will occur from construction or operation of their solar farms in this Action, there should be no significant change to the land or soils on Lots #1, #2, and #3 of the Roger and Carol Smith Subdivision as a result of, and during the term of, the solar farms, and a Special Use Permit is being granted in reliance on that information and expectation. In the event a reported monitored item deviates significantly from its corresponding starting benchmark during a solar farm term under this Special Use Permit authorization, such significant change shall constitute an early indication that the solar farm equipment or operation appears to be adversely affecting the land and soils on the lot affected by such report contrary to representations made by Applicants, Delaware River Solar, LLC and System Operators to the Planning Board to obtain the Special Use Permit authorizing use of such lot for safe solar farming. For purposes of this soil sampling program, a “significant” deviation shall consist of a change of fifteen percent or more for evaluations of (i) soil pH; (ii) percent organic material; (iii) cation exchange capacity; (iv) Phosphorus/Phosphate; (v) Potassium/Potash; and (vi) Nitrogen; and for the remaining monitored items of chemicals and metals, a significant deviation shall consist of a consistent increase in such tested level indicating a noticeable trending increase over multiple testing periods not clearly attributable to a non-contaminant factor, or else a level approaching, reaching or exceeding maximum permitted limits for such monitored item under then-current regulations establishing standards for soil contaminants and/or pollutants promulgated by the New York State Department of Conservation, or successor agency (such as 6 NYCRR § 375, Subpart 375-6 (Table 375-6.8(a))); in any case, the meaning of “significant” in this context shall be construed to provide early notice of, and available action by the Planning Board as to, potential contamination, adverse changes to the agricultural soils being sampled, and/or harm to area persons, land and/or environment. Upon the Town’s receipt of a report of a monitored item deviating significantly from its benchmark, the Planning Board is authorized to conduct an investigation into the circumstances of the deviation to determine whether the continued grant of the conditional Special Use Permit applicable to the lot and solar farm reporting the significant deviation for a monitored item is warranted in light of the new information about potential harm not previously known. The Planning Board may require the Applicants or System Operator to explain the basis for the significant deviation of the monitored item(s) and establish at a public hearing that continued operation of the solar farm with its current equipment is still safe for area persons, land, soils and environment and that existing facts and circumstances continue to warrant the grant of the Special Use Permit. If after notice and a hearing the Planning Board finds on substantial evidence that the solar farm equipment or operation on a lot has a significant deviation of a monitored item(s) and is causing harm to area persons, land, soils or environment, or finds that the Applicants or System Operator have failed to establish that continuing their solar farm operation is safe for area persons, land, soils or environment despite the significant deviation of the monitored item(s), then the Planning Board is authorized to rescind the conditional Special Use Permit associated with such lot since such continued use of the lot for System Operator’s solar farm operation is now or may be creating a hazard that is harmful to area persons and/or adversely affecting the lot, soils condition and

environment of the area contrary to representations and information of safety on which the Special Use Permit was conditionally granted.

Furthermore, in the event a solar farm is to be decommissioned by its System Operator, and such decommissioning is to commence more than a year after the most recent three-year report under Condition No. 25, Applicants and/or System Operator shall conduct a final soil sampling of the site before removal of any solar arrays as if a three-year soil sampling report under Condition No. 25 was then required, and shall report the results of such testing to the Town before the decommissioning process is concluded and before any reduction in amount of the surety, discharge of the surety, or return of unused surety funds to the Applicants and/or System Operators, can occur in order to finally assess restoration and cleanup requirements for the solar operation and lot.

As a final additional condition for this soil sampling monitoring process, in the event this soil sampling monitoring process is invalidated or significantly modified by a court for some lot, the Special Use Permit which was approved upon this key soil sampling condition for such lot shall become void, and continued operation of the solar farm on such lot shall be unauthorized unless and until a new special use permit is subsequently obtained for the lot under the law and Town Code as they then stand. As set forth more fully elsewhere, the solar farm equipment for an unauthorized solar farm is subject to removal by the Town under the Town Code, this Special Use Permit authorization and Decommissioning Plan, if not undertaken by Applicants or System Operator upon the Town's demand.

8. As a condition of this Special Use Permit approval, a final site plan for each of lots #1, #2, and #3 of the Roger and Carol Smith Subdivision containing the proposed solar farms 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 for the proposed solar farms up until the time of final approval.
9. As a condition of this Special Use Permit approval, the proposed solar farms are to be in compliance with all applicable setbacks in effect at the time of approval. Also, no topsoil located on Lots #1, #2, or #3 of the Roger and Carol Smith Subdivision at 466 Yellow Mills Road shall be removed from the property during construction, operation or decommissioning of a solar farm located on such a lot.
10. As a condition of this Special Use Permit approval, a detailed site lighting plan and illumination fixtures shall be included as part of an approved final site plan for the proposed solar farms.
11. As a condition of this Special Use Permit approval, 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 or System Operators shall install the approved landscaping for the proposed solar farm to the extent feasible with the season 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, and Applicants or System Operators shall maintain such approved landscaping for the

duration of the solar farm operation. In the event landscape plantings cannot be completed due to seasonal limitations when the solar farm is ready to commence operations, the Code Enforcement Officer is authorized to issue a Conditional Certificate of Compliance for a period up to May 31st of the following calendar year to allow solar farm operation during such period until the landscape plantings required in the final site plan may be completed at the next earliest planting season.

12. Applicants have designated certain lane ways between the solar arrays in the proposed solar farms that allow for rotational grazing systems, and as a condition of this Special Use Permit approval, such lane ways shall be included in the final site plan for each lot and maintained for the duration of the solar farm operation, so long as the landowners are operating their cattle farm.
13. Applicants have designated one (1) access road to the three (3) solar farms on lots #1, #2, and #3 of the Roger and Carol Smith Subdivision 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. As a condition of this Special Use Permit approval, such access road shall be included in the final site plan for each lot and maintained in such width and location for the duration of the solar farm operation.
14. As a condition of this Special Use Permit approval, fencing permitted or required in the final site plan for each proposed solar farm 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 approval, solar farm system equipment may not exceed twelve feet in height, measured from the surface of the ground upon which the system equipment is located. Excluded from this condition are weather station equipment up to fifteen feet in height, even if used in conjunction with or for the benefit of the solar farm, as well as above-ground electrical wires, poles or equipment attached to poles needed for interconnection to above-ground utility distribution equipment maintained by the local electric utility providing interconnection of its network to the solar farm.
16. As a condition of this Special Use Permit approval, each solar farm 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 approval, each solar farm 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 approval, each solar farm shall adhere to the sign requirements for the zoning district in which it is located.
19. As a condition of this Special Use Permit approval, and prior to the commencement of any construction or operation of a proposed solar farm on lots #1, #2, or #3 of the Roger and Carol Smith Subdivision, Applicants and/or System Operators 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 and restore the property in the event that the Applicants and/or System Operators are unable or unwilling to do so within the time required. Applicants and/or System Operators shall remain responsible to reimburse the Town for expenses incurred in connection with their lots and solar farms in this Action in the event actual decommissioning and restoration costs and related expenses including Town engineering and legal fees exceed the surety available.
20. As a condition of this Special Use Permit approval, and prior to the commencement of any construction or operation of a solar farm, and before the Special Use Permit is valid, the surety approved in the financial plan and Decommissioning Plan shall be provided in fact for each proposed solar farm and a record evidencing such fact shall be filed with the Town Clerk. Such surety shall be maintained by Applicants and/or System Operators and shall continue to be kept valid for the entire existence and duration of the solar farm operation, expected to last for thirty years, together with the time involved in any extensions, decommissioning the solar farm, 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 approval, Applicants and/or System Operators 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/or System Operators, and at the same time.
 22. As a condition of this Special Use Permit approval, Applicants and/or System Operators must employ a qualified environmental monitor (EM) to oversee the construction of each solar farm, 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 a solar farm 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 approval, after the construction of a proposed solar farm, and prior to the issuance of a Certificate of Compliance from the Code Enforcement Officer, the Applicants or System Operators shall provide the Town a post-construction certification from a professional engineer registered in New York State which attests to the solar farm's compliance with all applicable codes, safe industry practices, and the list of solar system materials and equipment that Applicants and/or System Operators identified to the Town when obtaining final site plan approval to be used in construction of the solar farm; and further, attests that the solar farm 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 approval, a solar farm shall be deemed abandoned if, following site plan approval, initial construction of the solar 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 approval, every three (3) years from the date of issuance of the Certificate of Compliance by the Code Enforcement Officer with the final site plan for each solar farm, and up to the final reclamation of the land, there shall be provided to the Code Enforcement Officer by the System Operator for each solar farm a written report on the status and condition of their solar farm over the past three year term. Such report shall provide adequate information on the current status of the solar farm's operations, condition and safety. Such report shall include at least the following information: status of the surety; the solar farm's rated capacity for generating electricity and the solar electricity generated during the past term, broken down annually, and with references to all restrictions on the production of solar energy imposed by identified factors beyond the control of the System Operator; the identification and status of all System Operator contracts with RG&E or other utilities relating to the production and distribution of solar energy; current condition and operation of the solar system equipment; any indications of, or experiences with, fire in the past period at the solar farm; copies of notices received by Applicants or System Operators by reason of the solar farm from other local, county, state or federal agencies; identification of the manufacturer and model of all solar panels installed and stored at the solar farm during the period sufficient for the Town to be able to determine all materials involved in the production of each solar panel, and the number of each such models on site at the solar farm and their location; results of soil sampling required under Condition No. 7 of this Special Use Permit Resolution conducted within the previous four months; number and dates of replacements of solar panels and/or supports or significant equipment and reason therefore; required plantings replaced or needing replacement and the plan for such replacement if incomplete; indications of significant erosion or deterioration of equipment or components at the site; changes to the land use associated with the solar farm lot, such as agricultural production (kind, level and location) and grazing livestock (kind and number); and changes in ownership, operations, management or significant contractual relationships involving the solar farm occurring during the period; plus such additional information as may be reasonably requested by the Town Code Enforcement Officer in order to discharge his or her duties under the Town Code, Special Use Permit conditions and the Decommissioning Plan. The Town Code Enforcement Officer shall review such written report for compliance with applicable requirements, and is entitled to request and obtain from the System Operator or Applicants clarifying information or additional information needed to discharge his or her duties regarding the solar farms conditionally permitted under this authorization. Failure to provide this periodic report when required, or the provision of an inadequate report in the Town's reasonable determination, shall provide a sufficient basis itself for a Town finding of abandonment of the noncompliant solar farm and authorize the Town to revoke the Special Use Permit after notice and hearing if requested and initiate appropriate abandonment provisions of the Decommissioning Plan, the Special Use Permit and Town Code. In addition, failure

to submit an adequate report as required herein shall be considered a violation subject to the penalties in Article X of Chapter 165 of the Town Code and may constitute evidence of abandonment.

26. As a condition of this Special Use Permit approval, 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 and restoration of the property. Potential rising cost factors warranting increase of the surety could include, for some examples, inflation, and increased expected costs for associated engineering expertise, compliance with new regulatory requirements, labor, equipment and seeding supplies. The presumptive amount of the surety applicable to each solar farm shall be determined by the Town Engineer based upon a current estimate of decommissioning, removal and restoration costs as provided in the Decommissioning Plan with the benefit of information contained in the latest reports by Applicants and/or System Operators as detailed in Conditions No. 25 and 34. 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 anticipated expenses to be incurred for decommissioning the solar farm, restoration of the property and follow-up monitoring as provided in the decommissioning plan. Upon modification action by the Town Board, the surety requirement for the solar farm shall be so revised for the next three-year period as directed by the Town Board, and Applicants and/or System Operators 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. Such surety, however revised, shall not constitute the total financial responsibility of Applicants and/or System Operators to the Town, and Applicants and/or System Operators remain responsible to compensate the Town for its reimbursable expenses incurred in response to issues involving their lots and solar farms in this Action in the event actual reimbursable expenses, including Town engineering and legal fees, exceed the surety available.
27. As a condition of this Special Use Permit approval, 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 and the System Operator for such solar farm, then the Special Use Permit may be revoked for such solar farm lot 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 and enable 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 approval, any damaged or malfunctioning solar panel(s) or arrays or other equipment shall be removed from the property within thirty

- (30) days of discovery by, or written notice of such condition provided to, the System Operator of the solar farm. Such solar panels, arrays or equipment may be replaced without requiring an amended site plan application or Special Use Permit, but records identifying such changes shall be kept by the System Operator and made available to the Code Enforcement Officer upon request, and reported to the Town as part of the reports required in Conditions No. 25 and 34.
29. As a condition of this Special Use Permit approval, all taxes owed for the site property of the solar farm 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 approval, each solar farm shall continue to generate and transmit electricity at a rate of more than 10% of its rated capacity over a continuous period of one year. A failure to conform to those standards for a period of over one (1) year may be found to constitute evidence of abandonment, unless such reduced energy generation was limited by RG&E, New York State, or any other energy regulatory body that is beyond the control of the solar farm, or necessary for the operations of the solar farm, and the burden of establishing such reduction by factors beyond the solar farm's control to avoid a finding of abandonment shall be on the Applicants and/or System Operator. In addition, such energy generation curtailment must be noted in each report provided to the Town pursuant to Conditions No. 25 and 34.
 31. As a condition of this Special Use Permit approval, any diseased, damaged or failing plantings required for the solar farm discovered by the Applicants, System Operator or Code Enforcement Officer shall be replaced, in kind, within two months of discovery if found during the planting season between May 1 and November 1 of such year, otherwise not later than May 31st of the following year.
 32. As a condition of this Special Use Permit approval, and for its duration, Applicants and/or System Operators remain responsible to promptly reimburse the Town for the periodic costs associated with the services provided by the Town's Engineering Firm for tasks involved with assisting the Town to supervise their large-scale ground-mounted solar farm, including: (i) the review associated with determining expected decommissioning costs every three years as part of the three-year evaluation of the sufficiency of the surety; (ii) evaluating soil sampling results of monitored items provided with third-year reports or final reports by System Operators; (iii) review of plans and permits associated with decommissioning or abandonment of a solar farm; (iv) assisting the Town with review and approval of the project Notice of Termination once construction of a solar farm is completed; and (v) other tasks requested by the Town to address issues raised by construction, operation, monitoring and/or decommissioning of the solar farm, such as site inspections or attendance at Town meetings.
 33. As a condition of this Special Use Permit approval, any termination or abandonment of the Distributed Generation Interconnection Agreement regarding electricity provision and payment from the solar farms between Applicants and/or System Operators and RG&E

- ~~shall~~ may be found to constitute abandonment of the solar farm and authorize the Planning Board to revoke the Special Use Permit after notice and hearing if requested.
34. As a condition of this Special Use Permit approval, Applicants and/or System Operators shall provide the Town with an annual report regarding their solar farm operations beginning a year after the Certificate of Compliance with the final site plan issued by the Code Enforcement Officer. Such 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 electric grid over the most recent twelve-month period, along with references to all restrictions on the production of solar energy imposed by identified factors beyond the control of the System Operator. The annual report shall identify changes to solar panels used and the reasons therefore, and provide the number, location and kind (by manufacturer and model) of replacement solar panels. The annual report shall identify plantings needing replacement and the plan for their replacement. The annual report shall also identify any change of ownership or operator of the solar farm and/or the ownership of the lot upon which the solar farm is located, and shall identify any change in the party responsible for decommissioning and removal of the solar farm. Furthermore, every third year, to coincide with the filing of evidence of financial surety and requisite soil sampling, the annual report shall be subsumed within the three-year report provided for in Condition No. 25. Failure to submit an adequate report as required herein shall be considered a violation subject to the penalties in Article X of Chapter 165 of the Town Code and may be considered evidence of abandonment.
35. As a condition of this Special Use Permit approval, significant physical changes made to the lot or significant equipment modifications made to the solar farm that differ from the final site plan without prior Town approval is unauthorized and shall authorize the Town to revoke the Special Use Permit after notice and hearing if requested; provided, however, that significant equipment modifications shall not include replacement of damaged, nonfunctioning or underperforming solar panels, arrays or other equipment if notice thereof is included in the annual report for that period required by Condition No. 34. Any physical changes made to, or proposed to, the solar farm after final site plan approval that disturb .1 acre or more, or changes to equipment (other than ordinary maintenance or replacement of damaged, nonfunctioning, or underperforming solar panels, equipment, components or structures that does not disturb any soils on the site), shall require submission of an application to the Planning Board 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 approval, a solar farm 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, unless such energy generation was limited by RG&E, New York State, or any other energy regulatory body beyond the control of the System Operator or solar farm. Such energy generation curtailment can occur beyond the control of the solar farm and shall be noted in each report provided to the Town, as outlined in Conditions No. 25 and 34. However, the time at which the solar farm shall be deemed abandoned may be extended by the Planning Board for up to one year, provided the Applicants and/or System Operators present to the Board a viable plan outlining the steps and schedules for placing the solar farm 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 Applicants and/or System Operators prior to any abandonment. Extenuating circumstances as to why the solar farm 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 approval, a solar farm which has been abandoned or found abandoned by the Town shall be decommissioned and removed from the lot on which it is located. Applicants and System Operators shall be held responsible to physically remove all components of the solar farm within one year of abandonment or in accordance with the requirements of the approved decommissioning plan, if an earlier period is so agreed and approved. Removal of the solar farm system and equipment 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 approval, Applicants and System Operators shall prepare a decommissioning plan (“Decommissioning Plan”) for the solar farm which is acceptable to the Town and binds each Applicant and System Operator individually to remove their solar farm from its lot location 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 include a decommissioning funds agreement satisfactory to the Town and executed by System Operator, and 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 operation comes to a managed conclusion or the solar farm is abandoned. The Special Use Permit for a lot shall not become effective until each Applicant and System Operator agree to a Town-approved Decommissioning Plan for such lot.
39. As a condition of this Special Use Permit approval, the Decommissioning Plan shall be implemented by Applicant, System Operators and/or the Town when the solar farm on a lot in this Action ceases operation at the end of its 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 approval, and as a required part of an approved Decommissioning Plan, Applicants and/or System Operators shall provide the Town Engineer with an engineering estimate of the anticipated operational life of the solar farm, 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 and restoring the associated lot to its prior agricultural condition; and Town approval of said Decommissioning Plan shall not be made unless the Town Engineer reviews and accepts those estimates as reasonable and acceptable under the foreseeable circumstances.

41. As a condition of this Special Use Permit approval, and as a required part of an approved Decommissioning Plan, Applicants and/or System Operators shall provide the Town with a copy of any agreement between property owners and System Operators regarding decommissioning of a solar farm other than the Decommissioning Plan to which the Town is a party.
42. As a condition of this Special Use Permit approval, the Environmental Monitor employed by Applicants and/or System Operators regarding the solar farm shall be available upon demand from the Code Enforcement Officer for any issue involved with the Decommissioning Plan or the decommissioning or restoration processes. Furthermore, any change in Environmental Monitor and/or its contact information during the life of the solar farms shall be promptly provided to the Code Enforcement Officer.
43. As a condition of this Special Use Permit approval, upon conclusion of a solar farm operation, or upon the revocation or termination of the Special Use Permit for such solar farm, all aboveground solar array equipment and structures are to be removed from such lot reasonably and promptly by Applicants and/or System Operators as provided herein, and all lot areas usable for agricultural production prior to the solar farm construction and operation are to be restored by Applicants and/or System Operators to benchmark soil conditions, subject to minor deviations as are acceptable by the landowners, the Planning Board, 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 approval, decommissioning of a solar farm consists of physical removal of all above-ground and below-ground equipment, solar panels, support structures and foundations, including but not limited to all solar arrays, inverters, transformers, machines, buildings, security barriers, fences, electric transmission lines and components, roadways and other physical improvements to the site, except that buried electrical lines and conduit, or footings or foundations more than four feet deep, may be left in the ground as provided by the Town Code and *Guidelines to minimize disturbance of the soils*, and such removal may be further limited to some extent if specified in these conditions. For example, upon petition to the Planning Board, the Board may permit Applicants and System Operators to leave certain underground or above-ground improvements in place such as some or all of the planted landscape buffer, provided the owner can show that such improvements are part of a reasonable plan to use the improvements or redevelop 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 approval, decommissioning of a solar farm also consists of final soil sampling as provided in Condition No. 7, and restoration of the ground surface and soil of the associated lot to the benchmark soil conditions, subject to minor deviations as are acceptable by the landowners, the Planning Board, the Ontario County Soil and Water Conservation District and the State Department of Agriculture and Markets.

46. As a condition of this Special Use Permit approval, decommissioning of a solar farm also consists of stabilization and revegetation of the associated lot with native seed mixes and/or plant species (excluding invasive species) preferred by the property owners to minimize erosion.
47. As a condition of this Special Use Permit approval, decommissioning of a solar farm also consists of disposal of all solid and hazardous waste and contaminants from the lot in accordance with local, state and federal waste disposal regulations.
48. As a condition of this Special Use Permit approval, Applicants and/or System Operator must provide monitoring and remediation of the solar farm 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, vegetative cover, drainage and repair of severed subsurface drain lines, fences, etc. Applicants and/or System Operators remain responsible to remediate problems with the property attributable to the construction, operation, or decommissioning of a solar farm arising during the monitoring and remediation period. Applicants and/or System Operator may petition the Planning Board to reduce their surety upon decommissioning, as well as terminate their surety at the conclusion of this two-year monitoring period, which surety reduction or 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 anticipation of any further remediation.
49. As a condition of this Special Use Permit approval, if Applicants and/or System Operator fail to decommission and remove an abandoned solar farm in accordance with the requirements of this Special Use Permit, Decommissioning Plan or the Town Code, the Town is authorized to enter upon the lot associated with such abandoned solar farm with all necessary or advantageous equipment and labor (either by itself and staff or through arrangements with others authorized or appropriate such as the local utility provider or competent contractors) to carry out the decommissioning itself and remove the solar farm components and waste and restore the property to roughly its agricultural condition prior to the construction and operation of the abandoned solar farm. 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 or assets on the lot belonging to Applicants and/or System Operator. The failure of Applicants and/or System Operator to timely decommission a solar farm themselves as required shall be deemed a forfeiture of their ownership interests and rights in the solar farm 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; provided, however, that taking such limited and temporary control of the lot and its contents to decommission the solar farm shall not impose any duties or responsibilities upon the Town due to its presence on the property or its control of solar farm components and waste to complete decommissioning as implied agent for Applicants and/or System Operator; and Applicants and/or System Operator remain responsible to indemnify the Town for all its expenses incurred in having to carry out the

decommissioning and restoration work that was the responsibility of Applicants and System Operator.

50. As a condition of this Special Use Permit approval, a reasonable determination by the Code Enforcement Officer that a solar farm has been abandoned subjects Applicants and/or System Operator 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 and System Operator 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 approval, Town provision of written or electronic notice to Applicants and/or System Operator according to the current addresses on record with the Town at the time for Applicants and/or System Operator shall constitute sufficient notice of Town action to the Applicant and/or System Operator involved at such time regardless of whether the Applicant or System Operator 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 approval, in the event an Applicant and/or System Operator 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 a solar farm (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 and/or System Operator commencing court action shall be responsible to indemnify the Town for its legal fees and expenses incurred in responding to the litigation commenced by Applicant and/or System Operator, including appeals and claims about Applicant's and/or System Operator's indemnification of the Town's legal fees and expenses. In the event the Town commences court action against an Applicant and/or System Operator to protect or enforce the Town's rights or responsibilities under the Town Code, these Special Use Permit conditions or a Town contract, regarding a solar farm's continuance of operations or decommissioning-related issues, and substantially prevails in an order, judgment or settlement, such Applicant and/or System Operator shall be responsible to indemnify the Town for its legal fees and expenses incurred in such litigation, including appeals and claims about Applicant's and/or System Operator's indemnification of the Town's legal fees and expenses. An Applicant and/or System Operator 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 and/or System Operator to pay such indemnification amount on time shall entitle the Town to recover such amount from the surety provided to the Town by Applicant and/or System Operator in connection with the solar farm. 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 and/or System Operator's surety shall be assessed against the associated lot and Applicant's property at 466 Yellow Mills Road, 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 with 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 approval, upon request by the Code Enforcement Officer and within 48 hours thereof the System Operator shall provide a person authorized to accompany the Code Enforcement Officer and/or Town staff, Town Engineer or Town consultant or contractor to enter the solar farm consistent with law in order to conduct official duties, monitor the solar farm site for continuing compliance with the final site plan, Special Use Permit and Town Code, and/or conduct operations under such authorities or Decommissioning Plan or Agreement, or take emergency or urgent actions to remediate problems existing or beginning at the solar farm or on its lot.
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 System Operator and a hearing if requested consistent with the Town Code. If the Special Use Permit is revoked for noncompliance with a condition, the Town may require cessation of the solar farm operation for noncompliance with law, and in the absence of a new special use permit grant under the law and Town Code then existing, further find the unpermitted solar farm abandoned, and invoke associated requirements and rights, along with other actions that may be warranted, consistent with the Town Code, Special Use Permit and Decommissioning Plan and Agreement.
55. As a condition of this Special Use Permit approval, Tax Map Numbers that are to be assigned to Lots #1, #2 and #3 as shown on the Filed Final Subdivision Plat for Roger and Carol Smith Lands Located at 466 Yellow Mills Road, Palmyra, New York, are to be shown on the Final Site Plan drawing for such lots prior to signature by the Planning Board Chairperson. In addition, a copy of the liber and page for the Final Subdivision Plat for Roger and Carol Smith Lands Located at 466 Yellow Mills Road, Palmyra, New York, is to be filed in the Town Development Office.

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 Associates, 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.

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