New York State Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001
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Local Law Filing

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

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

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

of East Greenbush

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STATE RECORDS
JUL 28 2022
DEPARTMENT OF STATE

Local Law No. 3 **of the year 20**22

A local law to Issue a SEQRA Determination and to Adopt Local Law No. 3 of 2022 Amending the Solar Energy Law to Provide Requirements for Large Scale Solar Energy Systems and Certain Other Modifications.
(Insert Title)

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

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

of East Greenbush **as follows:**

See Attached.

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

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

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

I hereby certify that the local law annexed hereto, designated as local law No. 3 of 2022 of the (County)(City)(Town)(Village) of East Greenbush was duly passed by the Town Board on July 20, 2022, in accordance with the applicable provisions of law.

(Name of Legislative Body)

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

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

(Name of Legislative Body)

(repassed after disapproval) by the _____ and was deemed duly adopted

(Elective Chief Executive Officer)*

on _____ 20[ ], in accordance w ith the applicable provisions of law.

3. (Final adoption by referendum.)

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

(Name of Legislative Body)

(repassed after disapproval) by the _____ on _____ 20____.

(Elective Chief Executive Officer)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20[0]__, in accordance with the applicable provisions of law.

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

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

(Name of Legislative Body)

(repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

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

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

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

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)
I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

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

(Seal)

Date: 7-26-2022

Local Law No. 3 of 2022

(A local law amending the Solar Energy Law for the Town of East Greenbush, as enacted by Local Law 1 of 2017, and specifically portions of that law relating to Large-Scale Solar Energy Systems and other Solar Facilities)

Be it enacted by the Town Board of the Town of East Greenbush that the Solar Energy Law (Local Law No. 1 of 2017, as amended by Local Law No. 3 of 2017) is amended as follows:

Section 1. (Purpose and Legislative Intent)

Section 3 (3) is repealed and a new Section 3(3) is added as follows:

> (3) Foster "smart solar development" by encouraging use of previously disturbed, degraded, and developed lands for large-scale solar energy system development, while minimizing adverse impacts to undeveloped and agricultural lands, thereby reducing impacts to finite natural resources, such as land and water;

Section 3 is amended by adding the following subdivisions:

> 4) Improve air quality by reducing fossil fuel emissions of air pollutants, including greenhouse gases;
>
> 5) Increase reliability of the state's and region's energy supply, because it will be more diverse and less dependent on a single source;
>
> 6) Increasing employment and economic activity in the Town's and the region's green and renewable energy sectors by furthering the installation of solar energy systems.

Section 2. (Definitions)

Section 4 is amended by adding the following subdivisions. In the event of codification, these additional definitions shall be inserted alphabetically with existing definitions:

> ANSI — American National Standards Institute.
>
> COMMISSIONING — A systematic process that provides documented confirmation that a battery energy storage system functions according to the intended design criteria and complies with applicable code requirements.
>
> CONSERVATION ADVISORY COUNCIL – That certain body known as the East Greenbush Conservation Advisory Council established by the Town Board pursuant to Article 12-F of the New York State General Municipal Law.
>
> CZL or Comprehensive Zoning Law shall mean local law 1 of 2008 entitled "Comprehensive Zoning Law of the Town of East Greenbush," or as amended.
>
> DESIGNATED FARMLAND — Land designated as Farmland of Statewide Importance, or land

designated as Prime Farmland or Prime Farmland If Drained in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses. See also, Town Natural Resources Inventory.

ENERGY CODE — The New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law, as currently in effect and as hereafter amended from time to time.

FARMLAND OF STATEWIDE IMPORTANCE — Land, designated as Farmland of Statewide Importance in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, which is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of Statewide Importance may include tracts of land that are a part of a county adopted, State certified Agricultural District.

GLARE — The effect by reflections of light with intensity sufficient, as determined in a reasonable manner, to cause annoyance, discomfort, nuisance, or loss in visual performance and visibility in any material respects.

IMPERVIOUS SURFACE – For the purposes of this local law, see the definition of imperious surface at Section 4.3 of the CZL.

INVASIVE SPECIES – A species, as defined in 6 NYCRR 575, that is nonnative to the ecosystem under consideration, and whose introduction causes or is likely to cause economic or environmental harm or harm to human health, which harm must significantly outweigh any benefits. Also, species listed in 6 NYCRR 575, as may be updated.

KILOWATT (KW)—A unit of electrical power equal to 1,000 watts, which constitutes the basic unit of electrical demand. A watt is a metric measurement of power (not energy) and is the rate at which electricity is used. 1,000 KW is equal to 1 megawatt (MW).

LARGE-SCALE SOLAR ENERGY SYSTEM, TIER 1— Any solar energy system that produces energy for the purpose of offsite sale or consumption and involves solar energy equipment with an area greater than one half an acre but not more than ten acres of land.

LARGE-SCALE SOLAR ENERGY SYSTEM, TIER 2 – Any solar energy system that produces energy primarily for the purpose of offsite sale or consumption and involves solar energy equipment with an area greater than ten acres of land.

LARGE-SCALE SOLAR ENERGY SYSTEM, CO-USE – Any large-scale solar energy system, or roof-mounted solar energy system which produces energy primarily for the purpose of offsite sale or consumption that is situated on a site with other principal uses and involves the installation of solar energy equipment upon existing impervious surfaces.

MEGAWATT (MW) — A unit of electrical power equal to 1,000,000 watts or 1,000 kilowatts (kW).

NAMEPLATE CAPACITY - For solar energy systems, starting from the initial installation of the solar energy system, the maximum electrical generating output that the solar energy system is capable of producing on a steady state basis and during continuous operation (when not restricted

by seasonal or other de-ratings) as specified by the manufacturer of the solar energy system.

NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL) — A U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

NATIVE PERENNIAL VEGETATION — Native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for pollinators and shall not include any prohibited or regulated invasive species.

NEC – National Electric Code

NEW YORK STATE ACCELERATED RENEWABLE ENERGY GROWTH AND COMMUNITY BENEFIT ACT (94-C PROCESS) — Permitting process administered by the New York State Office of Renewable Energy Siting (ORES) for proposed major solar energy systems with a nameplate capacity equal to or greater than 25,000 kW (25 MW) pursuant Section 94-C of the Executive Law and its implementing regulations. The 94-C process supersedes the permitting authority of this chapter, but ORES will apply the substantive requirements of this chapter unless it finds them unreasonably burdensome in view of the New York State renewable energy targets of the Climate Leadership and Community Protection Act and environmental benefits of the solar energy system. Projects with a nameplate capacity of 20,000 kW (20 MW) but less than 25,000 kW (25 MW) may opt-in to the 94-C process.

NFPA — National Fire Protection Association.

NONPARTICIPATING COMMERCIAL BUILDING — Any principal building used for conducting a retail business, motel, hotel, or other sensitive receptor commercial use as determined by the Planning Board that is located on a nonparticipating property.

NONPARTICIPATING PROPERTY — Any property that is not a participating property.

NONPARTICIPATING RESIDENCE — Any dwelling unit located on a nonparticipating property.

NYS AG AND MARKETS SOLAR ENERGY PROJECT GUIDANCE — The latest revision of the Guidelines for Solar Energy Projects-Construction Mitigation for Agricultural Lands published by the New York State Department of Agriculture and Markets.

OPERATOR — The applicant for the approval of a solar energy system, the owner, lessee, licensee, or other person authorized to install and operate a solar energy system or battery energy storage system on the real property of an owner, and each operator's successors, transferees, assignees, and all parties to which the solar energy system may transfer any or all of its ownership interests or contracts or subcontracts concerning the construction, management, operations and/or maintenance in, and responsibilities of the solar energy system or battery energy storage system.

ON-FARM SOLAR ENERGY SYSTEM — A solar energy system located on a farm that is a farm operation, as defined by Article 25-AA of the Agriculture and Markets Law, in an agricultural district, where the solar energy system is designed, installed, and operated so that the anticipated annual total amounts of electrical energy generated do not exceed the anticipated annual total electricity consumed on the farm by more than 110%.

OWNER — The owner of the real property on which a solar energy system or battery energy

storage system is located or installed or proposed to be located or installed.

PARTICIPATING PROPERTY — A solar energy system host property or any real property that is the subject of an agreement that provides for compensation to the landowner from the operator (or affiliate) regardless of whether any part of the solar energy system is constructed on the property.

POLLINATOR—Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.

SOLAR COLLECTOR — A device, structure, panel or part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal or electrical energy.

SOLAR ENERGY SYSTEM ARRAY — Any number of electrically connected solar panels providing a single electricity producing unit.

SOLAR PANEL — A photovoltaic device capable of collecting and converting solar energy into electrical energy.

SOLAR THERMAL ELECTRIC EQUIPMENT — Solar energy conversion technologies that convert solar energy to electricity by heating a working fluid to power a turbine that drives a generator.

SOLAR THERMAL SYSTEM — Solar energy devices that convert solar radiation to usable thermal energy for the transfer of stored heat for heating water or air, consisting of solar collectors, storage tanks, and associated tubing and controls. Solar thermal systems are not regulated as solar energy systems pursuant to this chapter.

UL — Underwriters Laboratory, an accredited standards developer in the US.

UNDERUTILIZED PREVIOUSLY DEVELOPED AND/OR DISTURBED LAND – Lands which have been developed, or other degraded lands, such as parking lots, contaminated lands, landfills, and mines.

UTILITY PROVIDER – An entity owning and/or operating utility facilities consisting, e.g., the lines, facilities and systems for producing, transmitting, or distributing electricity which directly or indirectly serve the public or any part thereof

UNIFORM CODE —The New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

Section 4 is further amended by repealing the definitions of solar energy equipment and solar energy systems, and adding the following subdivisions:

SOLAR ENERGY EQUIPMENT — Electrical material, hardware, conduit, or other equipment associated with the production of electricity including solar panels, solar thermal electric equipment, associated wiring, mounting brackets, framing and foundations, accessory structures and buildings, battery energy storage systems, light reflectors, concentrators, and heat exchangers, inverters and other power conditioning equipment, substations, electrical infrastructure, distribution lines and other appurtenant structures and facilities used for or intended to be used for solar energy system.

SOLAR ENERGY SYSTEM — The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, solar panels and solar energy equipment. The area of a solar energy system includes all the land inside the perimeter of the solar energy system, which extends to the boundaries of any required fencing and any interconnection equipment. Access roads outside the fence shall not be included when calculating solar energy system area. A solar energy system does not include a solar thermal system.

Section 3 (Amendments to Solar Energy Law Section 6)

A new subsection, Section 6(D) is added as follows:

D. Requirements for On-Farm Solar Energy Systems

On-farm solar energy systems are permitted in R-B, R-OS, CI, A-R Districts with a building permit as an accessory structure, subject to the following requirements:

1. The location of the solar energy system meets all applicable setback requirements of the zone in which they are located.
2. The height of the ground-mounted solar energy equipment shall not exceed 17 feet at its highest operating position.
3. The total surface area of all solar panels on the lot shall not exceed 4,000 square feet and shall not exceed 5% lot coverage.
4. The solar energy equipment is located in a side or rear yard.
5. Solar energy equipment shall be designed and located in a way so as to prevent reflective glare toward any inhabited buildings on adjacent properties, roads or from impacting aircraft flight path as provided in Federal Aviation Administration guidance.
6. Where site plan approval is required elsewhere in the regulations of the Town for a development or activity, the site plan review shall include review of the adequacy, location, arrangement, size, design, and general site compatibility of proposed solar energy systems.
7. If a solar energy system is in disrepair or ceases to generate solar energy for more than nine consecutive months, the property owner shall remove the solar energy equipment within 90 days after the end of the nine-month period. In the discretion of the Town, the involved party or parties may be required to post a bond to secure performance under this subsection.
8. Portable solar array (e.g., flower) units with a total panel surface area of 100 square feet or greater must adhere to the same guidelines as ground mounted minor solar energy systems.

Section 4 (Approval Standards for Large-Scale Solar Energy Systems)

Section 7. is repealed, and a new section 7 is added as follows:

7. Approval standards for large-scale solar energy systems

(1) The standards found in this subpart are applicable to large-scale solar energy systems permitted, installed, or modified in the Town after the effective date of this chapter, excluding general maintenance and repair. This local law shall also apply to large-scale solar energy systems permitted by the New York State Office of Renewable Energy Siting (ORES) with a nameplate capacity equal to or greater than 25,000 kW (25 MW) pursuant Section 94-C of the Executive Law and its implementing regulations.

(2) Except as provided in Subsection B. of this Section, large-scale solar energy systems shall be permitted only in the following zones:

	Large-Scale Solar Energy System, Tier 1	**Large-Scale Solar Energy System, Tier 2**	**Large-Scale Solar Energy System, Co-Use**
A-R, Agriculture-Residential District	SUP*	SUP	SUP
R-OS, Residential-Open Space District	SUP	SUP	SUP
R-B, Residential-Buffer District	SUP	N/P**	SUP
O, Corporate Office Only District	SUP	SUP	SUP
OC, Corporate Office/ Regional Commercial District	SUP	SUP	SUP
OI, Corporate Office/Light Industrial District	SUP	SUP	SUP
CI, Coastal Industrial District	SUP	SUP	SUP
B-1, General Business Mixed Use District	N/P	N/P	SUP
B-2,General Business District	N/P	N/P	SUP
PPB, Personal/Professional District	N/P	N/P	SUP

**SUP = Allowed by special use permit* ***N/P = Not permitted*

A. Tier 1 and Tier 2 large-scale solar energy systems are permitted with a special use permit in all districts, as a principal use or as an accessory use, provided that the large-scale solar energy system occupies underutilized previously developed and/or disturbed land.

B. For the purposes of defining large-scale solar energy system use sub-types, the total area of the large-scale solar energy system site, which can encompass one or more parcels, shall be determinative where a large-scale solar energy system crosses zoning districts and/or municipal boundaries.

(3) General Requirements for Large-Scale Solar Energy Systems

A. A building permit shall be required for installation of all large-scale solar energy systems.

B. All solar energy system installations must be performed in accordance with applicable electrical and building codes, the manufacturer's installation instructions, and industry standards. Prior to operation, the electrical connections must be inspected by the Town Building Inspector and/or by an appropriate electrical inspection person or agency, as determined by the Town. In addition, any connection to the public utility grid must be approved and inspected by the appropriate utility provider.

C. The operator shall notify the Town Building Inspector and the responding fire department at least three business days prior to the initial energization of the solar energy system. Following such notification, the Town Building Inspector, or their designee, shall be permitted by the operator to be present for the initial energization of the solar energy system. Failure to comply with the requirements this provision shall constitute a violation of the building permit.

D. Solar energy systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the responding fire department(s).

E. The solar energy system installer shall comply with all licensing and other requirements of the jurisdiction and the state, as determined by the Building Inspector.

F. When a battery energy storage system is included as part of the solar energy system it must be installed to meet the requirements of the NYS Building Code and the Town's battery energy storage system local law.

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

(4) Requirements for large-scale solar energy systems.

Large-Scale Solar Energy Systems are only permitted in zoning districts according to Section 7.02, and only following:

A. First, the issuance of a special use permit from the Planning Board complying with the specific standards for special use permits set forth in Article 5 Section D, below; followed by

B. Approval of a site plan in accordance with Section 4.3 of the CZL that meets the Site Plan Standards set forth in (5) D), below, and in Section 4.3 of the CZL, and obtaining all other necessary approvals. Large-scale solar energy system applications shall be considered a major site plan.

(5) Large-scale solar energy systems site plan review standards.

A. Permit application. In addition to the requirements for site development plan review of Section 4.3 of the CZL, the application for a solar energy system shall consist of one paper copy, unless otherwise required by the Planning Board, and an electronic (digital) filing that contains at least the following:

1) Summary. A narrative overview of the large-scale solar energy system, including its

nameplate capacity.

2) Inventory. A tabulation describing the:
   a) Number and type of each proposed solar array, including their nameplate capacity.
   b) Dimensions and respective manufacturers.
   c) Additional structures and/or facilities.
   d) Documentation that the project will meet all the requirements of the National Electric Code.
3) Vicinity map. Identification of the property, or properties, on which the proposed solar energy system will be located.
4) Site plan. A plan showing the:
   a) Planned location of each solar array.
   b) All property lines within 1,000 feet of the property lines of the proposed site.
   c) Each array's setback distance from the closest solar energy system boundary.
   d) Access road, parking, and turnout locations.
   e) Substation(s) and ancillary equipment, buildings, fencing, and structures.
   f) Electrical cabling from the solar energy system to the substation(s), and from the substation(s) to where the electricity will leave the site, and associated distribution, transmission, and data lines.
   g) One or three line electrical wiring diagram of the proposed system.
   h) Cut sheets for all equipment to be used on site, including toxicity testing records for the solar panels proposed to be used and provided by the manufacturer of the solar panels.
   i) Conservation areas on or adjacent to the site of the solar energy system and sensitive natural, historic, cultural, scenic, recreation, and other resources as identified during the SEQRA review, including: regulated wetlands; water bodies; riparian buffers and waterbodies, including those subject to the Watercourse Management Overlay provisions at Section 2.8 of the CZL; populations of threatened and/or endangered species (federal or state), or habitat for such species; archaeological sites; designated farmland; existing healthy, native forests consisting of at least one acre of contiguous area; individual existing healthy trees that are at least 100 years old; conservation easements; other significant natural features and scenic view sheds; and existing trails or corridors that connect the site to neighboring areas.
   j) A screening and landscaping plan, prepared by a licensed professional landscape architect, that shows proposed screening and buffering of all arrays, buildings and other non-array structures on the site or sites. The plan shall include the proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures, and the plan for ongoing vegetation management. The screening and landscaping plan shall include locations, elevations, sight lines, height, plant species, and/or materials that will comprise the

structures, landscaping and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system.

5) Visual impact assessment. An assessment of potential visual impacts upon residential properties, public roads, known important views or vistas, and historic and cultural places, as well as sensitive receptors identified by the Planning Board as part of its review.

   a) The assessment shall include consideration of recommendations and guiding principles in the following:

      (i) Comprehensive Plan, as may be amended

      (ii) Natural Resources Inventory, as may be amended

      (iii) Western East Greenbush Generic Environmental Impact Statement, as may be amended

      (iv) NYS Department of Environmental Conservation's Program Policy (DEP-00-2), entitled "Assessing and Mitigating Visual and Aesthetic Impacts," issued July 31, 2000; last revised Dec. 13, 2019, as may be amended;

      (v) Clean Energy, Green Communities: A Guide to Siting Renewable Energy in the Hudson Valley (Scenic Hudson); and

      (vi) Other recognized resources for assessing visual impacts

   b) The visual assessment may include, subject to Planning Board requirements:

      (i) A line-of-sight profile analysis;

      (ii) A computer-generated model of visual impacts on viewpoints noted in residential properties, public roads, known important views or vistas, and historic and cultural places, including photo simulations of summer and winter conditions, and before and after simulations of proposed landscaping and buffer.

      (iii) Additional visual impact analyses from other locations and a digital view shed report or other more enhanced visual assessments, as may be required by the Town Board and/or Planning Board.

6) A completed SEQRA Environmental Assessment Form (EAF).

7) Demonstration that the proposed solar energy system complies with the current construction and decommissioning and restoration guidelines established by the NYS Ag and Markets Solar Energy Project Guidance on designated farmland.

8) Agricultural integration plan. For solar energy systems constructed on designated farmland, an agricultural integration plan describing how ongoing agricultural activities will be integrated within the solar energy system, or a demonstration that such plan is not practicable, in which case a vegetation plan for the creation of native pollinator habitat as set forth in NYS Ag and Markets NYS Utility Corridor Pollinator Habitat Guidelines, as may be updated and/or replaced by NYS Ag and Markets.

9) Habitat assessment. A habitat assessment shall be submitted and should be conducted prior to developing any detailed design. The assessment should be prepared according to "Guidelines for Habitat Assessment" prepared by Hudsonia, Inc. 2013, as updated, and carried out by biologists familiar with habitats and biota of the region, and the life history needs of species of

conservation concern. The assessment shall identify potential impacts and mitigation measures. For large scale solar energy systems proposed on lands used for agricultural production, the Planning Board may, in its discretion, waive the requirement for a habitat assessment.

10) Construction schedule. A proposed schedule for the completion of the project, including the proposed start date, proposed commencement of land disturbing activities, proposed date of substantial completion, the expected date of final stabilization, the expected date of connection to the power grid, and the expected date on which operation of the solar energy system shall commence.

11) Drainage and stormwater management. An erosion, sediment control, and stormwater management plan prepared to Town MS4 and NYSDEC standards, including the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity, latest edition, if applicable, in accordance with Section 3.13 of the CZL.

12) Emergency services. A fire protection and emergency response plan, created in consultation with the responding fire department(s) having jurisdiction over the site of the solar energy system.

13) Leases/agreements/easements. A demonstration that the operator has obtained title to or a leasehold interest in the facility site, including ingress and egress access to a public street, or is under binding contract or option to obtain such title or leasehold interest, or can obtain such title or leasehold interest, subject to Town Attorney review.

14) Lighting and parking, as appropriate.

15) Noise. A study of the noise impacts of the construction and operation of the solar energy system demonstrating compliance with the approval standards for noise provided herein, in accordance with Section 3.6 (Performance Standards) of the CZL, and the latest NYSDEC policy for Assessing and Mitigating Noise Impacts. Existing background noise levels shall be taken before there is any modeling of projected noise levels.

16) Traffic study. An analysis and modelling of the construction and decommissioning processes with regard to the transportation network may be required by the Planning Board.

17) Signage plan.

18) Security plan. Design plans and narrative verifying that the solar energy system is:

    a) Located, fenced, or otherwise secured so as to prevent unauthorized access inside the planted buffer.

    b) Installed in such a manner that it is accessible only to persons authorized to operate it or perform service on it, and is inaccessible to non-authorized individuals.

19) Construction management plan. A construction/deconstruction plan that includes a traffic control plan (subject to state and local approval, as appropriate); delivery and parking areas; delivery routes; permits required; hours of operation; noise mitigation (e.g., construction hours); dust mitigation; and road monitoring and maintenance. Anticipated construction methods for foundation installation should be described for all solar equipment.

20) A signed and executed New York State standardized interconnection contract from the

utility provider acknowledging that it will be connected to the utility grid in order to sell electricity to the public utility.

21) Operation and maintenance plan. An operation and maintenance plan describing continuing solar energy system maintenance and property upkeep, such as mowing and trimming. Such plan will provide for the inspection, and replacement (i.e., by the following growing season, if necessary), of landscaping and trees that are part of the approved landscaping plan to ensure compliance with the landscaping plan requirements. The plan shall also include:

a) Storm and other severe weather event follow-up, and other actions that shall be taken to keep the solar energy system operating quietly, efficiently, and not polluting land, water, and air.

b) Plans to ensure proper operation of inverters, inverter filters and associated electrical equipment, including checks for electrical pollution.

c) Preventive maintenance inspections at least every six months or as otherwise specified by the Town during site plan review. Operators shall make every effort to conduct inspections after hail, wind, or other severe weather event likely to result in damage to the solar energy system. A wind event is defined as severe wind, which would be wind over 40 miles per hour for one hour or wind gust 58 miles per hour or greater. Each inspection shall consider solar panel condition, metal fatigue, fastener condition, leakage, and other potential failures that might impact public health and safety or the environment.

d) Landscaping management plan. A plan shall specify how the owners and operators will implement, maintain and replace, if necessary, the approved landscaping plan and screening methods. The plan shall address plantings and landscaping for both the screening elements and the landscaping within the large scale solar energy system boundary. Regular herbicide applications are discouraged. If any mowing is necessary for future maintenance, timing should be coordinated so as not to disrupt critical timing of pollinator migrations and breeding birds that rely on vegetation for a food source and safety cover. The plan shall identify timing of mowing in relation to these objectives. Plans which use grazing animals for management are encouraged. Narrative shall be included in the application to justify a plan not incorporating grazing animals as part of the management strategy.

e) A responsible entity associated with each operation and maintenance plan action.

f) Quarterly inspections of the integrity of security systems.

g) Provision for an annual safety inspection of the solar energy system by the Town Building Inspector or designee.

h) A yearly report provided to the Building Inspector 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 in ownership of the solar energy 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 annual report shall be submitted no later than 45 days after the end of the

calendar year. Every third year, to coincide with the refiling of the security required under Section 7.06(A), the annual report shall also include a recalculation of the estimated full cost of decommissioning and removal of the large-scale solar energy system. The Building Inspector 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 of Section 4.1 of the CZL.

i) All required reports shall be provided to the Town of Building Inspector within 30 days of the inspection.

22) A decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of the large-scale solar energy system. The decommissioning plan must ensure the site will be restored to a useful, nonhazardous condition without delay, including, but not limited to, the following:

a) Removal of all above-ground solar energy equipment, structures and restoration of areas previously used for agricultural production, according to recommendations by the owner, the Soil and Water Conservation District, the Town Engineer, the Department of Agriculture and Markets, and/or other qualified entity; removal of concrete piers, footers, or other supports to a depth of 48 inches below the soil surface; and removal of access roads, unless otherwise specified by the owner and subject to approval during site plan review. For solar energy systems constructed on designated farmland, the restoration of the designated farmland pursuant to the decommissioning guidelines of the New York State Agriculture and Markets Solar Energy Project Guidance.

b) Restoration of the surface grade and soil after removal of equipment.

c) Revegetation of restored soil areas with native or agricultural seed mixes, excluding any invasive species.

d) A time frame for the execution of the decommissioning plan work.

e)

f) Anticipated life of the solar energy system.

g) The disconnection of the solar energy system from the utility power grid.

h) Stabilization or revegetation of the site as necessary to minimize erosion.

i) Estimated decommissioning costs, including contingency costs of at least 50% (in current dollars), consistent with the then-current NYSERDA guidance, or based on a detailed engineering assessment, and certified by a New York State-licensed professional engineer.

j) The verifiable means by which it can be determined that the solar energy system has not delivered electricity to the grid for any consecutive thirty day period.

k) The plan to dispose or recycle all waste generated from the decommissioning of the solar energy system pursuant to local, state, and federal solid waste regulations.

l) Method for ensuring that funds will be available for decommissioning and restoration as set forth in the decommissioning surety requirements of (6) of this

chapter.

23) Ancillary materials. Other relevant studies, reports, certifications, and approvals as may be reasonably requested by the Town of East Greenbush to ensure compliance with this local law, the CZL, and SEQRA.

24) Conservation Advisory Council referral. The application shall be referred to the Town CAC upon submission to the Town Board and Planning Board. The CAC shall conduct its application review and related activities in accordance with local law 2 of 2020 and its established procedures.

25) Changes. Throughout the permit application review process, the operator shall promptly notify the Town Board, Planning Board, and CAC of any changes to the information contained in the permit application. Changes that do not materially alter the initial site plan may be administratively accepted by the Planning and Zoning Department, the Town's designated engineer, or other Office, as may be designated by the Town Board.

26) The Town may require additional information deemed necessary to assess compliance with this local law based on the specific characteristics of the property or other project elements as determined on a case-by-case basis as part of the Planning Board review.

B. Solar energy system application review escrow account, application fee, and reimbursement for Town oversight expenses.

1) The operator shall pay to the Town of East Greenbush a nonrefundable application fee in accordance with Section 4.3 of the CZL and the Town Land Development Application. The nonrefundable permit application fee shall be set by the Town Board and may be reviewed annually by the Town Board.

2) The Town may require that an account be established and funded by the operator to cover reimbursable expenses in accordance with the CZL, including Section 3.13.18 and Section 4.3.

3) The operator shall reimburse the Town of East Greenbush for all oversight expenses (the "oversight expenses") incurred by the Town relating to the solar energy system, from application through decommissioning. These oversight expenses include (but are not limited to) amounts required for building permits, licensing, relicensing, decommissioning, inspections, administration, engineering, required expert health and wildlife evaluations, handling complaints, and legal costs. "Legal costs" include reasonable attorney fees for the Town of East Greenbush in the event that an action is commenced by the Town to enforce provisions of this chapter for the solar energy system.

4) A reimbursement account will be funded by the operator for the reimbursement of these oversight expenses for the life of the solar energy system. The operator will replenish any funds used by the Town of East Greenbush within 30 calendar days of being sent written notification (and explanation) of withdrawals of said funds. Failure to maintain the reimbursement account at a minimum balance, equal to one year of anticipated oversight expenses as estimated by the Town of East Greenbush Town Board, Planning Board, Town Engineer, and Town Attorney, within 30 days of being given notice shall be cause for revocation of the solar energy system permit(s) issued by the Town.

5) Once the operator believes that they have satisfactorily complied with the

decommissioning conditions specified in this chapter, they shall send the Town of East Greenbush written notification. The Town then will verify, to their satisfaction, that all decommissioning conditions have been complied with. If there is material noncompliance, the Town will so notify the operator. Upon confirmation by the Town that the requirements of the decommissioning plan have been met, the Town will return all reimbursement account funds to the operator, less related expenses incurred by the Town of East Greenbush.

C. Site plan approval design standards. In addition to site plan requirements under Section 4.3 of the CZL, prior to issuance of final site plan approval by the Town for a solar energy system, the following requirements shall be met:

1) Setbacks.

a) Except as otherwise approved by the Planning Board pursuant to this Subsection C(1), all large-scale solar energy systems shall comply with the setback requirements set forth in Appendix A. Such minimum setbacks for a solar energy system shall be measured from the fencing surrounding the solar energy system that is nearest to the relevant property line, building or highway rights-of-way. Landscape buffers for screening, access roads, and collection lines may be placed in the setback area.

b) The setback requirements for large-scale solar energy systems, co-use shall be as specified in the CZL for the district in which the system, or portion thereof, will be located.

c) The Planning Board may require a greater setback from the requirements of Subsection C(1)(a)(i), (ii), (iii), and (iv) if the Planning Board finds that, in consideration of such factors as the subject property's natural characteristics and proposed mitigation including, but not limited to, topography, existing and proposed vegetative buffers, the proximity to the nonparticipating residence, the presence of participating properties on adjoining parcels separated by a Town road, and whether the site is underutilized previously developed and disturbed land, that:

(i) There will be a visual impact from the road, or the adjacent nonparticipating residence from the solar energy system.

(ii) There will be an adverse impact on the road or on the adjacent nonparticipating residence from the construction, maintenance, and operation of the solar energy system.

2) Height. The height of the solar-related equipment shall not exceed 15 feet. Height is measured from the lowest adjacent grade to the highest point of the structure at maximum tilt, including any attachments, such as a lightning protection device. The Town Board may approve a greater height based upon the demonstration of a significant need where the impacts of increased height are mitigated. Towers constructed for electrical lines may exceed the maximum permitted height as provided in the zoning district regulations, provided that no structure shall exceed the height of 25 feet above ground level, unless required by applicable code to interconnect into existing electric infrastructure, by the utility provider, or necessitated by applicable code to cross certain structures (e.g. pipelines).

3) The screening and landscaping plan must include the required buffering and plantings within the solar energy system.

   a) Buffers. The plan should demonstrate that the landscaped buffer will provide year-round screening so that, to the maximum extent practicable, the solar energy equipment is not visible from roadways and adjacent nonparticipating properties. The vegetation plantings shall be planted within 25 feet of the fencing surrounding the perimeter of the solar energy system. In lieu of plantings, berms or existing vegetation may be used to satisfy all or a portion of the required landscaped screening. If the buffer utilizes vegetative planting, the plantings shall consist of native and noninvasive plant species to promote habitat for wildlife, and foraging habitat beneficial to game birds, song birds, and pollinators. Plantings should be deer-resistant. Buffers shall consist of a diverse selection of native tree and shrub species to create a hedgerow or other appropriate habitat structure. Evergreen tree plantings may be required to properly screen portions of the site. Plantings shall be no more than eight feet apart and at least four feet tall at time of planting. The buffer shall obtain a height of at least 10 feet within five growing seasons. Opaque architectural fencing may be used to supplement other screening methods but shall not be the primary method. The vegetation management plan shall ensure that any landscaping and trees that die off will be replaced by the following growing season with the approved plantings from the screening and landscape plan.

   b) Solar energy system plantings. Within the solar energy system (i.e., within the fence) the plan must provide for ground cover and other plantings consisting of native, pollinator friendly plants. Within a reasonable time period after 12-months of seeding, an evaluation shall be conducted to ensure target species are establishing and any invasive species of plants are removed.

   c) Invasive species. Invasive species shall not be planted as part of the landscape buffer or solar energy system plantings.

4) Power collection. All on-site utility, distribution, and transmission lines are, to the maximum extent practicable, to be placed underground.

5) Agricultural resources. Any large-scale solar energy systems located on parcels containing designated farmland shall be located on no more than 50% of the designated farmland present on the parcel. If contiguous participating properties containing large-scale solar energy systems are present, the collective parcels shall be treated as one parcel for the purposes of the designated farmland location requirement of this subsection.

6) All large-scale solar energy systems shall be required to comply with an approved agricultural integration plan, or the creation of native pollinator habitat as set forth in NYS Ag and Markets NYS Utility Corridor Pollinator Habitat Guidelines, as may be updated and/or replaced by NYS Ag and Markets.

7) To the maximum extent practicable, large-scale solar energy systems located on designated farmland shall be constructed and decommissioned in accordance with the construction requirements of the New York State Agriculture and Markets Solar Energy Project Guidance.

8) Preservation. Existing on-site vegetation shall be preserved to the maximum extent

practicable. The removal of existing non-invasive trees greater than 6 inches in diameter at breast height (DBH) shall be minimized to the maximum extent possible. To verify compliance with this requirement, the Town Board and/or Planning Board may require that all trees 6" DBH and greater be individually mapped and depicted on the site plan. Clear-cutting of all native and non-invasive trees in a single contiguous area exceeding 20,000 square feet shall be prohibited except where necessary in order to construct an access road outside the fence.

9) Site disturbance, including, but not limited to, grading, soil removal, excavation, soil compaction, and tree removal shall be minimized to the maximum extent practicable. The siting of a large-scale solar energy system shall take advantage of natural topography and vegetative screening. The facility should be located at a lower elevation on the property if practicable. Forested sites shall not be deforested to construct a large-scale solar energy facility.

10) Architectural compatibility. All appurtenant structures, including, but not limited to, equipment shelters, battery energy storage and general facilities, transformers and substations, shall be architecturally compatible with each other and to the maximum extent possible, shielded from the view of persons not on the parcel by existing vegetation or plantings and/or joined or clustered to reduce visual impacts. These structures shall consist of, to the extent reasonably possible, materials, colors and textures that blend the facility into the surround property and scenery. Structures should be designed to be architecturally compatible with each other, and if possible, shielded from view by existing vegetation or plantings and/or joined or clustered to reduce visual impacts.

11) Fencing. All large-scale solar energy systems shall be enclosed by fencing a minimum of six feet high and a maximum of eight feet high, to prevent unauthorized access., or of a height as otherwise required by the National Electric Code. Perimeter fencing shall allow for the movement of small wildlife by using fixed-knot woven wire or other wildlife friendly fencing. Barbed wired fencing is prohibited. Fencing for mechanical equipment, including a structure for storage batteries, may be 7-feet high and otherwise be constructed in compliance with the National Electrical Code. This section shall supersede other height requirements contained in the CZL.

12) Utility connections. Utility lines and connections for a large-scale solar energy system shall be installed underground, unless otherwise determined by the Town Board for reasons that may include poor soil conditions, topography of the site, and consideration of the utility provider's engineering requirements. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

13) Glare. All large-scale solar energy systems shall be designed and located in order to prevent reflective glare toward any inhabited buildings on adjacent properties, roads or from impacting aircraft flight path as provided in Federal Aviation Administration guidance. Exterior surfaces of roof- and ground-mounted collectors and related equipment shall have a non-reflective finish and shall be color-coordinated to harmonize with roof materials and other dominant colors of the structure. The applicant shall demonstrate that any glare produced does not have significant adverse impact on neighboring properties or roadways.

14) Lighting of solar energy systems shall be consistent with state and federal law. Lighting

of appurtenant structures shall be limited to that required for safety and operational purposes and shall be reasonably shielded from abutting properties. Lighting of the solar photovoltaic installation shall be directed downward, shall incorporate full cutoff fixtures to reduce light pollution, and shall be Dark Sky-compliant unless otherwise determined by the Town Board and/or Planning Board.

15) Access and parking. A road and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, trails, or other accessways, public or private, shall be made. The amount of land clearing and disturbance needed to construct the road and parking shall be minimized to the maximum extent practical. There shall be two parking spaces or the number of parking spaces needed to accommodate the maximum number of anticipated maintenance personnel to be present at the large-scale solar energy system at one time, whichever is greater, to be used in connection with the maintenance of the large-scale solar energy system. Such parking spaces shall not be used for the permanent storage of vehicles.

16) Noise levels from the large-scale solar energy system will comply with the noise limits for solar energy facilities contained in the New York Office of Renewable Energy Siting regulations at 19 NYCRR 900-6.5(b) by implementing the design required by 19 NYCRR 900-2.8 except that the standards applicable to existing nonparticipating residences shall also be met for existing participating residences.

17) Signage. The installation of a clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations. Non-prohibited signage shall be designed and placed in accordance with governing regulations and/or according to Town requirements. Warning signs with the operator's and owner's contact information shall be placed on the entrance and perimeter of the property and of the large-scale solar energy system at locations acceptable to the Planning Board. Solar Energy Equipment shall not be used for displaying any advertising. All signs, flags, streamers or similar items, both temporary and permanent, are prohibited on solar energy equipment except:

    a) Manufacturer's or installer's identification;

    b) Appropriate warning signs and placards. The installation of a clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations;

    c) Signs that may be required by an authority having jurisdiction agency; and

    d) Signs that provide a twenty-four-hour emergency contact phone number and warning of any danger.

18) Surface area. The total surface area of the solar energy equipment system shall not exceed 60% of the total parcel area. If contiguous participating properties containing solar energy systems are present, the collective parcels may be treated as one parcel for the purposes of the surface area requirements of this subsection.

19) Stormwater management. The installation of new impervious surface is discouraged. The design shall incorporate to the maximum extent practicable permeable pavements, green infrastructure, and other low-impact design elements. A stormwater management maintenance agreement shall be required for any required permanent post-construction

stormwater management facilities. Stormwater management must conform to Town MS4 and NYSDEC standards, including but not limited to the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity, latest edition, if applicable.

20) Wildlife habitat and movements conservation. Existing trees, wetlands, or other vegetation that link open areas should be preserved as wildlife cover. The operator shall identify a wildlife movement corridor for wildlife to navigate through the large-scale solar energy system, which proposed wildlife corridor shall be shown on the site plan. Areas between fencing shall be kept open to allow for the movement of migratory animals and other wildlife.

D. Standards for Planning Board's large-scale solar energy system special use permit application decision. In addition to the site plan approval standards of Section 3.11 Special Use Permits of the CZL, approval of the special use permit application requires that the Planning Board find:

1) That the proposed large-scale solar energy system protects adjacent land uses, will not adversely affect the existing character of the neighborhood in which the large-scale solar energy system would be located, and will not adversely affect surface waters, wildlife and wildlife movement, forests, wetlands, and other important natural resources on the site.

2) The proposed large-scale solar energy system is in harmony with local laws of the Town and complies with the design standards and other requirements of this chapter and applicable safety and safety-related codes and requirements.

3) The operation of the large-scale solar energy system would not create significant adverse impacts to human health and the environment.

4) The visual assessment demonstrates that the large-scale solar energy system will not have a detrimental effect on the public's use, enjoyment or view of a significant place, view, scenic roadway, or historic structure, nor the Town's rural character, as appropriate.

5) No large-scale solar energy system shall be located within a reasonable radius of an existing or permitted large-scale solar energy system.

E. The large-scale solar energy system approval shall include appropriate conditions to mitigate adverse impacts of the solar energy system, including, but not limited to:

1) Compliance with the approved landscaping plan, vegetation management plan, and operations and maintenance plan.

2) Prior to the issuance of a building permit, the operator shall provide a copy of all necessary titles to or leasehold interests in the facility, including ingress and egress access to public streets, and such deeds, easements, leases, licenses, or other real property rights or privileges as are necessary for all interconnections for the facility.

3) Initial site-specific training must be provided for the Building Inspector, fire department, emergency response, East Greenbush Police Department, and Rensselaer County emergency management system Subsequent annual training to be similarly provided in the discretion of the above parties. Expenses for such training shall be

covered by the operator.

4) The decommissioning plan shall run to the benefit of the Town of East Greenbush and be executed by the operator as well as the owners and such signatures shall be notarized in a format that allows the plan to be recorded at the Rensselaer County Clerk. This document shall be recorded as an irrevocable deed restriction indexed against the property upon which the solar energy system is to be constructed.

5) Large-scale solar energy system construction-related damage. The operator of any permitted large-scale solar energy system shall, repair or replace all real or personal property, public or private, damaged as a result of the large-scale solar energy system construction.

6) Site access shall be maintained to a level acceptable to the local fire department and emergency medical services. All means of emergency shut down and/or disconnection of the large-scale solar energy system shall be clearly marked.

7) The operator shall be responsible for the cost of maintaining the large-scale solar energy system and any access road(s), unless accepted as a public way.

8) The operator shall identify a responsible person with contact information for public inquiries from the commencement of construction of the large-scale solar energy system until the completion of the decommissioning plan. Changes to the identity of the responsible person shall be submitted no later than the time all required reporting is due.

9) The operator is responsible to provide the Town of East Greenbush with a current written list of all chemicals used for maintenance and operation of the solar energy system (e.g., pesticides, herbicides, cleaners). This list shall include quantity and frequency of application of each of these chemicals. This list shall be provided as part of the application; any modifications to the list once the system is in operation shall be set forth in the annual report required under Section 7.05(A)(21). The operator shall be liable for a civil penalty of not more than $500 for each day or part thereof during which violation of the requirements of this subsection continues. The civil penalties provided by this subsection shall be recoverable in an action instituted in the name of the Town of East Greenbush.

10) The operator shall secure and maintain public liability insurance from the commencement of construction of the solar energy system until the completion of the decommissioning plan, as follows:

    a) Commercial general liability covering personal injuries, death and property damage: $1,000,000 per occurrence ($2,000,000 aggregate), which shall specifically include the Town of East Greenbush and its officers, employees, board members, attorneys, agents and consultants as additional named insured.

    b) Umbrella coverage: $5,000,000.

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

    d) The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town of East Greenbush with at least 30 days' prior written

notice in advance of cancellation.

e) Renewal or replacement policies shall be delivered to the Town of East Greenbush at least 15 days before the expiration of the insurance that such policies are to renew or replace.

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

g) A certificate of insurance that states that it is for informational purposes only and does not confer sufficient rights upon the Town of East Greenbush shall not be deemed to comply with this chapter.

(6) Modification of Requirements

A. Modification of requirements for large-scale solar energy systems. Except as provided for in Subsection B of this Section, where the Planning Board finds that a proposed large-scale solar energy system would comply with the spirit of Section 7.05, or that compliance with Section 7.05 would cause unusual hardship or extraordinary difficulties because of exceptional and unique conditions of topography, access, location, shape, size, drainage or other physical features of the site, the minimum requirements of Section 7.05 may be modified by specific Resolution of the Planning Board to mitigate the hardship, provided that the public interest is protected and the development is in keeping with the general spirit and intent of Section 7.05 and other Town requirements. Any such modification of specific requirements stated within Section 7.05, except for modifications solely related to procedure, shall be preceded by recommendation to, and concurrence by, the Town Board.

B. Modification and/or waiver of requirements for large-scale solar energy system as co-use. The Planning Board may upon making findings of fact as to their specific applicability to a proposed co-use large-scale solar energy system, modify and/or waive the requirements of this section. Said findings of fact shall include, but not be limited to, discussion of the proposal in relation to the requirements of this section with regard to the nature of the site, the neighborhood in which the site is located, the degree to which the co-use large-scale solar energy system promotes the purpose and intent of this chapter, and other relevant information used in making its determination. The intent of this provision is to provide a more streamlined process for co-use large scale solar energy systems.

(7) Decommissioning and removal.

A. Security for decommissioning.

1) The operator shall place with the Town of East Greenbush an acceptable letter of credit, performance bond, or other form of security reasonably acceptable to the Town Attorney and Town Engineer that is sufficient to cover the cost of implementing the decommissioning plan. The amount of the letter of credit or other security shall be in the amount of 150% of the estimated cost of implementing the approved decommissioning plan. The estimated cost of implementing the decommissioning plan will be certified by a licensed professional engineer and reviewed by the Town Engineer. The financial security shall include an auto extension provision, be non-terminable, and be issued by an A-rated institution solely for the benefit of the Town.

The salvage value of the solar energy equipment shall not be accounted for in the estimated cost of implementing the decommissioning plan. The financial security shall be updated every third year thereafter specifying changes to the estimated cost of implementing the decommissioning plan. No other parties, including the owner and/or landowner shall have the ability to demand payment under the letter of credit or surety bond.

2) The Town of East Greenbush shall use this security to assure the faithful performance of the decommissioning plan. The full amount of the security shall remain in full force and effect until the decommissioning plan has been fully implemented.

3) The security for implementing the decommissioning plan shall not be released until the Town Engineer has confirmed that the approved decommissioning plan has been fully implemented and is satisfied that any road damage identified during and after decommissioning that is caused by the operator and/or one or more of its contractors or subcontractors has been repaired or reconstructed to the satisfaction of the NYSDOT, Rensselaer County, and/or Town of East Greenbush Department of Public Works at the operator's expense. In addition, the operator shall pay for all costs related to work of the NYSDOT, Rensselaer County, and/or Town of East Greenbush Department of Public Works (as appropriate) inspection prior to receipt of the release of the surety. Upon written certification that decommissioning has been completed, the owner and/or landowner may petition the Town Board to terminate the letter of credit, surety bond, or other required financial security. Upon request by the operator and/or the owner/landowner, the Town Engineer and Building Inspector shall recommend to the Town Board that the financial security be released. The Town Board shall have the sole discretion to release the security.

B. Decommissioning and removal.

1) A large-scale solar energy system that fails to generate and transmit electricity at a rate of more than 10% of its rated capacity over a period of 12 consecutive months shall be deemed to be abandoned. The Town Board may, after holding a public hearing on notice to the owner and operator of the system and site owner, determine that the system shall be decommissioned on an approved time schedule. The decommissioning and removal of a large-scale solar energy system shall consist of:

a) Physical removal of the large-scale solar energy system from the lot to include, but not be limited to, all aboveground and below-ground equipment, structures and foundations, fences, electric transmission lines and components, roadways and other physical improvements to the site;

b) Restoration of the ground surface and soils to its preinstalled condition, including grading and vegetative stabilization to eliminate any negative impacts to surrounding properties and in accordance with New York State Agriculture and Markets Solar Energy Project Guidance;

c) Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations, and certification of proper removal and disposal as required by the NYS Department of Environmental Conservation or other government agency;

d) Stabilization and revegetation of the site with native seed mixes and/or plant species

(excluding invasive species) to minimize erosion and in accordance with New York State Agriculture and Markets Solar Energy Project Guidance.

e) For areas previously used for agricultural production, removal of concrete piers , footers, or other supports to a depth of 48 inches below the soil surface; and removal of access roads, unless otherwise specified by the owner and subject to approval during site plan review. Restoration preformed shall be according to the NYS Ag and Markets Solar Energy Project Guidance, by recommendations of the owner, the Soil and Water Conservation District, the Town Engineer, the Department of Agriculture and Markets, and/or other qualified entity

2) Decommissioning and removal by the Town. If the large-scale solar energy system owner and/or landowner fail 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.

a) Procedure.

(i) Upon a determination by the Town Board that a large-scale solar energy system has been abandoned, the Building Inspector shall notify the system owner and operator, and property owner by certified mail: 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 270 days, or the Town will deem the system abandoned and commence action to revoke the special use permit and require removal of the system.

(ii) Being so notified, if the system owner, landowner and/or permittee fails to perform as directed by the Building Inspector within the 270 day period, the Building Inspector shall notify the system owner, landowner and permittee, by certified mail, that the large-scale solar energy system has been deemed abandoned and the Town intends to revoke the special use permit within 60 days of mailing the notice. The notice shall also state that the permittee may appeal the Building Inspector's determination of abandonment to the Planning Board and request a public hearing.

(iii)The appeal and request for hearing shall be made and received by the Building Inspector within 60 days of mailing notice. Failure by the permittee to submit an appeal and request for hearing within the sixty-day period shall result in the special use permit being deemed revoked as stated herein.

(iv)In the event the permittee appeals the determination of the Building Inspector and requests a hearing, the Planning Board shall schedule and conduct the hearing within 60 days of receiving the appeal and request. In the event a hearing is held, the Planning Board shall determine whether the large-scale solar energy 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 Planning Board, or whether to revoke the permit and order removal of the large-scale solar energy system

(v) Upon a determination by the Building Inspector or Planning 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 may cause the removal at the owner and/or landowner's expense. If the owner and/or landowner fail to fully implement the decommissioning plan within one year of abandonment, the Town may collect the required security and use said funds to implement the decommissioning plan.

b) Removal by the 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 large-scale solar energy system , including legal costs and expenses, shall be reimbursed from the financial surety posted by the system owner or landowner as provided in Section 7.07(A) of this local law. 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 under the same penalties as are provided by law for the collection and enforcement of real property taxes in the Town.

(8) Permit timeframe; abandonment.

A. Permit time frame. The special use permit and site plan approval for a solar energy system shall be valid for a period of 24 months, provided that a building permit is issued for construction and construction is commenced. In the event construction has not commenced in accordance with the final site plan, as may have been amended and approved, as required by the Town Board and/or the Planning Board, the Town Board may extend the time to complete construction for up to two consecutive extensions each of 12 months. If the owner and/or operator fails to commence construction and/or obtain a building permit after 48 months, the approvals shall expire. If the owner or operator fails to perform substantial construction within 36 months of commencement of construction, the Town may notify the owner or operator to implement the decommissioning plan. In such instance, the decommissioning plan must be completed within 150 days of notification by the Town.

B. Upon notification by the operator, made to the Building Inspector by certified mail, of the proposed date of discontinued operation of the solar energy system, or by cessation of activity of a constructed facility for a period of one year, the Town may notify the operator that the operator must implement the decommissioning plan within 150 days.

C. If the owner or operator of the facility fails to fully implement the decommissioning plan within the required time frame, the Town may, at its discretion, implement the decommissioning plan and may recover all of the expenses incurred for such activities from the defaulted owner or operator, or, at the Town's sole discretion, from any financial security made with the Town as set forth herein. The operator and the owner of the real property on which the solar energy system is located shall be jointly and separately liable for all costs and expenses of the Town incurred during and relating to the removal of the solar energy system pursuant to the decommissioning plan. Notwithstanding the foregoing, the Town shall first attempt to secure payment for such costs and expenses from the security made with the Town as set forth herein. In the event the costs incurred by the

Town to implement the decommissioning plan are not obtained from the security, the Town shall next attempt to secure payment for such costs and expenses from the operator; however, in the event the Town is not made whole following reasonable attempts to collect such costs and expenses from the operator of the installation, the Town reserves all rights to pursue payment for such costs and expenses from the owner of the real property on which the installation in question is located. Such costs shall be assessed against the property, shall become a lien and tax upon the property, and shall be enforced and collected with interest by the same officer and in the same manner as other taxes. Legal counsel of the Town shall institute appropriate action for the recovery of such cost, plus attorney's fees, including, but not limited to filing of municipal claims pursuant to the cost of such work, 9% interest per annum, plus a penalty of 9% of the amount due plus attorney's fees and costs incurred by the Town for the removal work and filing the claim.

D. With the consent of the owner, the Building Inspector, with the concurrence from the Town Engineer and the Planning Board, may allow the operator to implement the decommissioning plan while allowing the landscaping to remain.

(9) Nonconformance.

A. If a building-mounted large-scale solar energy system is to be installed on any building or structure that is nonconforming because its height violates the height restrictions of the zoning district in which it is located, the building-mounted system may be permitted, so long as the building-mounted system does not extend above the peak or highest point of the roof to which it is mounted and so long as it complies with the other provisions of this law.

B. If a building-mounted large-scale solar energy system is to be installed on a building or structure on a nonconforming property that does not meet the minimum setbacks required and/or exceeds the lot coverage limits for the zoning district in which it is located, a building-mounted system shall be permitted, so long as there is no expansion of any setback or lot coverage nonconformity and so long as it complies with the other provisions of this local law.

(10) Project ownership; transfer.

A. If the operator changes, the special use permit and/or site plan approval shall remain in effect, provided that the successor operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. The new operator shall notify the Building Inspector and the Town Board of such change within 30 days of the change. The new operator must provide such notification to the Building Inspector and the Town Board in writing. The special use permit and all other local approvals for the solar energy system shall become void if a new operator fails to provide written notification to the Building Inspector in the required time frame. Reinstatement of a void special use permit will be subject to the same review and approval processes for new applications under this chapter.

(11) PILOT Agreement.

A. Where the large-scale solar energy system is designed, installed, and operated so that the anticipated annual total amounts of electrical energy generated exceed the anticipated annual total electricity consumed on the property by more than 110%, the operator shall be required to enter into an agreement for a payment in lieu of taxes (PILOT) with the Town pursuant to Real Property Tax Law §487. This PILOT agreement shall be drafted by the

Town Attorney in consultation with the Town Assessor and Town Supervisor.

B. No building permit shall be issued or construction commenced for a solar energy system requiring a PILOT until such time as the PILOT agreement has been executed by all parties and recorded at the Office of the Rensselaer County Clerk.

C. The PILOT shall run to the benefit of the Town of East Greenbush and be executed by the operator and the owners of the real property upon which the solar energy system is to be located and such signatures by notarized in such a way that allows the PILOT agreement to be recorded at the Office of the Rensselaer County Clerk. Prior to commencement of construction, the PILOT agreement shall be recorded at the Office of the Rensselaer County Clerk as a lien on the property and indexed against the property/properties upon which the solar energy system is to be constructed. The intent of the above provisions is so that should the operator of the solar energy system default with regard to such PILOT agreement, that such obligation will become the responsibility of the then owner of the property upon which the solar energy system is sited and that failure to satisfy the terms of such agreement will permit the Town of East Greenbush to enforce such agreement as against the owner.

D. Community host agreement. Prior to issuance of a building permit for the solar energy system, the operator for which a large-scale solar energy system with a nameplate capacity of over 1MW is to be developed shall enter into a community host agreement with the Town for payment by the operator to the Town of an agreed upon monetary amount or provision of a specific public improvement or improvements that shall act to offset the potential adverse impacts that may be associated with a solar energy system.

Section 5. (Addition of Appendix A – Large-Scale Solar Energy System Setback Requirements pursuant to Section 7(5)(c)(1))

A new Appendix A is added as follows:

Large-Scale Solar Energy System, Tier 1				
	Front	**Side**	**Rear**	**Non-Participating Residential or Commercial Building**
A-R, Agriculture-Residential District	100'	100'	100'	250'
R-OS, Residential-Open Space District	100'	100'	100'	250'
R-B, Residential-Buffer District	100'	100'	100'	250'
O, Corporate Office Only District	50'	50'	50'	250'
OC, Corporate Office/ Regional Commercial District	50'	50'	50'	250'
OI, Corporate Office/Light Industrial District	50'	50'	50'	250'

Large-Scale Solar Energy System, Tier 1				
	Front	**Side**	**Rear**	**Non-Participating Residential or Commercial Building**
CI, Coastal Industrial District	50'	50'	50'	250'

Large-Scale Solar Energy System, Tier 2				
	Front	**Side**	**Rear**	**Non-Participating Residential or Commercial Building**
A-R, Agriculture-Residential District	100'	100'	100'	250'
R-OS, Residential-Open Space District	100'	100'	100'	250'
O, Corporate Office Only District	50'	50'	50'	250'
OC, Corporate Office/ Regional Commercial District	50'	50'	50'	250'
OI, Corporate Office/Light Industrial District	50'	50'	50'	250'
CI, Coastal Industrial District	50'	50'	50'	250'

Section 6.

This local law shall take effect immediately.

Section 7.

Local law 1 of 2022 ("A local law establishing a temporary moratorium on the issuance of special use permits for large-scale solar energy systems") is hereby repealed in its entirety.

The Town of East Greenbush

STATE OF NEW YORK
COUNTY OF RENSSELAER
TOWN OF EAST GREENBUSH

I, Ellen Pangburn, Town Clerk of the Town of East Greenbush, Rensselaer County, and State of New York do hereby certify that the foregoing is a true and correct copy of the resolution 170-2022. Whereas, the East Greenbush Town Board has adopted said resolution on July 20, 2022, Adopting Local Law No. 3 of 2022 to Issue a SEQRA Determination and to Adopt Local Law No. 3 of 2022 Amending the Solar Energy Law to Provide Requirements for Large Scale Solar Energy Systems and Certain Other Modifications.

I FURTHER CERTIFY, that such Resolution was adopted in full compliance with the laws of the State of New York.

IN TESTIMONY WHEREOF, I have here unto set my hand and affixed the seal of the Town of East Greenbush, this **26th day of July, 2022.**

Ellen Pangburn
Town Clerk
Town of East Greenbush
Rensselaer County, New York

Town of East Greenbush

170-2022 A Resolution to Issue a SEQRA Determination and to Adopt Local Law No. 3 of 2022 Amending the Solar Energy Law to Provide Requirements for Large Scale Solar Energy Systems and Certain Other Modifications

WHEREAS, on January 19, 2022 the Town Board adopted Local Law No. 1 of 2022 imposing a temporary moratorium on the applications for permits, site plans, or other land use approvals for large-scale solar energy systems (LSSES) in order to give the Town Board sufficient time to adequately study and consider the Comprehensive Zoning Law and the Solar Energy Law as they relate to LSSES within the various zoning districts in the town; and

WHEREAS, the text of a proposed local law amending various sections of the Solar Energy Law (Local Law 1 of 2017, as amended by Local Law 3 of 2017) to provide requirements for LSSES and certain other provisions was introduced to the Town Board on May 20, 2022 (the "proposed Solar Energy Law amendments"); and

WHEREAS, a Full EAF has been prepared for this type 1 SEQRA application and the Director of Planning and Zoning, on behalf of the Town Board, initiated a coordinated review, indicating that the Town Board is declaring its intent to be lead agency, which the Town Board acknowledged on May 18, 2022 (resolution 131-2022), and has coordinated the lead agency status, receiving no responses to the contrary, and has sought comments from other involved and interested agencies; and

WHEREAS, the Town Board conducted a Public Workshop on Large Scale Solar Energy Systems on March 30, 2022 to receive public and industry stakeholder comment on the proposal to modify the Solar Energy Law with regard to LSSES and the potential for development in the Town of LSSES, more generally; and

WHEREAS, the Town Board held a duly noticed public hearing on June 8, 2022 to accept public comment on the proposed Solar Energy Law amendments; and

WHEREAS, the Town Board held a second duly noticed public hearing on July 13, 2022 to accept public comment on the proposed Solar Energy Law as amended since the June 8, 2022 public hearing; and

WHEREAS, the Town Board considered all comments of the public both for and against the proposed Solar Energy Law amendments expressed during the public hearing on June 8, 2022 and on July 13, 2022; and

WHEREAS, the proposed Solar Energy Law amendments were provided to the Town Planning Board to provide the Planning Board with an opportunity to provide an advisory report in accordance with Section 4.4.1.B of the Comprehensive Zoning Law (CZL) concerning the proposed amendment to the CZL; and

WHEREAS, the Planning Board at its meeting of May 27, 2022 recommended that the Town Board adopt the proposed Solar Energy Law amendments; and

WHEREAS, the proposed Solar Energy Law amendments and accompanying documentation was provided to Rensselaer County Economic Development and Planning (RCEDP) for its review pursuant to the requirements of the NYS General Municipal Law and the RCEDP responded by recommending that local consideration shall prevail; and

WHEREAS, the Town Board took into consideration the recommendation of the Town Planning Board and RCEDP; and

WHEREAS, the Town Comptroller confirms that this resolution will not have a material impact on the Town's finances;

now, therefore, be it

RESOLVED, that the Town Board as SEQRA lead agency for the review of this type 1 action has carefully reviewed the SEQRA documents including the EAF Part 1, 2 and 3, and has considered the SEQRA criteria of significance set forth at 6 NYCRR 617.7 (c) and hereby determines to issue the attached negative declaration of environmental significance, finding that no EIS will be prepared for this project because the action will not have a significant adverse impact on the environment;

and be it further

RESOLVED, that the Town Board hereby approves Local Law No. 3 of 2022 amending the Solar Energy Law to provide requirements for large-scale solar energy systems and certain other modifications;

and be it further

RESOLVED, that the Moratorium on Large Scale Solar Energy Systems is lifted, effective immediately;

and be it further

RESOLVED, that Local Law No. 3 of 2022 be filed in accordance with applicable provisions of law.

The foregoing resolution was duly moved by Councilor Tierney and seconded by Councilor Fritz and brought to a vote resulting as follows:

Councilor T. Tierney	VOTED: YES
Councilor B. Fritz	VOTED: YES
Supervisor J. Conway	VOTED: YES
Councilor H. Kennedy	VOTED: YES
Councilor E. Nestler	VOTED: YES

Approved: July 20, 2022