TOWN OF CONKLIN, NEW YORK

LOCAL LAW NO. ___ OF 2026

A LOCAL LAW AMENDING CHAPTER 138 ("SOLAR ENERGY SYSTEMS") AND CHAPTER 140 ("ZONING") OF THE CODE OF THE TOWN OF CONKLIN

Be it enacted by the Town Board of the Town of Conklin as follows:

Section 1. Legislative intent. The Town Board finds that, since the adoption of Chapter 138 by Local Law No. 2 of 2024, the Town has received and approved multiple applications for commercial ground-mounted solar energy systems, that all such systems have been proposed on agricultural and rural lands in the Town interior, that the Town adopted Local Law No. 2 of 2025 imposing a moratorium on new commercial solar energy system applications in order to study the cumulative effects of such development, that in the course of that study the Town reviewed the electric utility's preliminary interconnection screening analysis and hosting-capacity data for the Town submitted to the Town in 2026 in support of an application for a hardship use variance under Local Law No. 2 of 2025, and that the amendments set forth in this local law are the product of that study and are adopted to implement the Town's 2014 Comprehensive Plan Update, which calls for energy development that "will have only positive or neutral effects on the natural resources, residents, aesthetic aspects, public utilities/transportation infrastructure or the economic status of the Town of Conklin" and recommends that the Town "investigate the potential of developing new districting for the development of energy sources."

Section 2. Chapter 138 of the Code of the Town of Conklin is hereby amended to read as follows:

Chapter 138

SOLAR ENERGY SYSTEMS

ARTICLE I

General Provisions

§ 138-1. Title.

This chapter shall be known as the "Solar Energy Systems Law."

§ 138-2. Statutory authority.

This chapter is adopted pursuant to the authority and provisions of Section 10 of the Municipal Home Rule Law of the State of New York, and Sections 261-265 of the Town Law which authorizes the Town of Conklin ("Town") to adopt land use provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the Town Law of New York State, "to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor." This chapter is further adopted pursuant to Town Law §§ 274-a and 274-b, and the Town Board hereby reserves to itself the authority to review and decide all site plan and special use permit applications for commercial solar energy systems.

§ 138-3. Statement of purpose.

This chapter, adopted consistent with the Comprehensive Plan of the Town of Conklin, is to advance and protect the public health, safety, and welfare of the Town by specifying where solar energy systems are permitted, and establishing regulations for the installation and use of solar energy systems and equipment with the following objectives:

A. ~~Taking advantage of a safe, abundant, renewable, and nonpolluting energy resource;~~Accommodating noncommercial solar energy systems that serve the on-site energy needs of the Town's residents, farms and businesses in all zoning districts;

B. ~~Reducing the cost of energy by the owners of commercial and residential properties, including single-family homes;~~Directing commercial solar energy systems, which are industrial-scale electric generating uses, to the Town's industrial zoning districts, where the Town's Comprehensive Plan directs industrial land uses, where the electric distribution infrastructure with the greatest capacity is located, and where such systems are compatible with surrounding land uses;

C. ~~Increasing employment and business development in the region by furthering the installation of solar energy systems;~~Protecting the Town's limited remaining agricultural lands, open space, flood-absorbing lands and rural character from conversion to industrial-scale electric generation, consistent with the Comprehensive Plan's finding that agriculture "preserves open space, demands very little in municipal services, and lessens flood impacts";

D. ~~Balancing the need to improve energy sustainability through increased use of solar energy systems with concerns for preservation of~~Ensuring that any solar energy system permitted in the Town has only positive or neutral effects on public health, welfare, and safety, ~~as well as~~ environmental quality, visual and aesthetic values, and existing neighborhood social and ecological stability; and

E. Minimizing adverse impacts on the character of neighborhoods, property values and the scenic, historic and environmental resources of the Town, and preventing the oversaturation of any area of the Town with commercial solar energy systems.

§ 138-4. Findings.

The Town Board of the Town of Conklin ("Board") makes the following findings:

A. That, when properly regulated and properly sited, solar energy is a clean, readily available and renewable energy source ~~beneficial to the Town, its residents and the general public~~, and the Town intends to accommodate the use of properly regulated and properly sited solar energy systems, so far as conditions in the Town permit.

B. That there exists a growing need to properly site all types of solar energy systems within the boundaries of the Town to protect residential areas, business areas and other land uses, to preserve the overall beauty, nature and character of the Town, including the integrity of our rural communities, to promote the effective and efficient use of solar energy resources, and to protect the health, safety and general welfare of the citizens of the Town.

C. That commercial solar energy systems are industrial-scale electric generating facilities that deplete land available for other uses, introduce industrial usage into other nonindustrial areas, can pose environmental challenges and compete with other activities, and are therefore most appropriately

located in the Town's industrial zoning districts, where the Comprehensive Plan directs industrial land uses, where the Town's principal transportation and electric distribution infrastructure is concentrated along the New York State Route 7 and Conklin Road corridor, and where such facilities will not displace residential, agricultural or open-space uses.

D. That solar energy systems need to be regulated from permitting through construction, throughout their useful life, and ultimately for their decommissioning and removal when no longer utilized.

E. That the Town's 2014 Comprehensive Plan Update identifies only 16 remaining agricultural properties in the Town, comprising approximately 1,460 acres or 10% of the Town's land area, nearly all located in the Town interior; that the Comprehensive Plan finds that agriculture preserves open space, demands very little in municipal services and lessens flood impacts in a Town that has suffered catastrophic flooding in 2006 and 2011; and that every commercial ground-mounted solar energy system approved or proposed in the Town between 2024 and 2026 has been sited on agricultural or rural land in the Agricultural-Rural (A-R) District, such that further conversion of such land threatens the irreversible loss of the Town's remaining agricultural base.

F. That the Town has approved multiple commercial ground-mounted solar energy systems since 2024, that the electric distribution utility serving the Town has reported, in a preliminary interconnection screening analysis and hosting-capacity data submitted to the Town in 2026 in connection with an application for a hardship use variance under Local Law No. 2 of 2025, that the substation serving the Town is encumbered and has limited remaining hosting capacity and that the three-phase distribution circuits with the greatest available capacity are located along the New York State Route 7 and Conklin Road corridor, and that the cumulative visual, agricultural, neighborhood-character and fiscal effects of additional commercial solar energy systems warrant the siting, spacing, screening and dimensional standards set forth in this chapter.

G. That the Comprehensive Plan directs the Town to investigate new districting for energy development and to adopt zoning that permits energy development only where it will have positive or neutral effects on the Town's natural resources, residents and aesthetic character, and that this chapter implements that direction.

H. That a commercial solar energy system owned and operated by a private developer for the sale of electricity or net-metering credits to the grid or to off-site subscribers is not a franchised public utility with an obligation to serve the Town's residents, is not the exclusive source of electric service to any customer, and does not require a particular location within the Town in order to render safe and adequate service, and that such systems are therefore regulated under this chapter as a distinct land use and not as a public utility use under Chapter 140 of this Code.

§ 138-5. Applicability.

A. The requirements of this chapter shall apply to all solar energy systems installed, constructed, expanded, relocated or modified after its effective date, excluding general maintenance and repair and like-kind replacement of components that does not increase nameplate capacity, height or footprint.

B. Pending applications. The amendments to this chapter made by Local Law No. ___ of 2026 shall apply to every application for a commercial solar energy system first submitted on or after the effective date of that local law. An application for a commercial solar energy system that was

submitted to the Town before that effective date, and an application for a commercial solar energy system that is submitted within 90 days after the grant of an application for relief under Local Law No. 2 of 2025 that was filed before that effective date, shall be reviewed and decided under the provisions of this chapter in effect immediately before that effective date, provided the application is diligently prosecuted. A material change to any such application, including the addition or substitution of a parcel or an increase in nameplate capacity or fenced area, shall be treated as a new application. The Zoning Board of Appeals shall retain authority to hear and decide any application for relief under Local Law No. 2 of 2025 filed before that effective date, notwithstanding the expiration of that local law.

C. Previously permitted systems. A commercial solar energy system for which a special use permit was issued before the effective date of Local Law No. ___ of 2026, or upon an application described in Subsection B, may be constructed, operated and maintained in accordance with the terms of that permit and the provisions of this chapter under which it was issued; provided that §§ 138-22 through 138-27 and Article V of this chapter, as amended, shall apply to every such system to the extent not inconsistent with the terms of the permit. Any expansion, relocation or increase in nameplate capacity or fenced area of a previously permitted system shall comply with this chapter as amended.

§ 138-6. Severability.

A. If any word, phrase, sentence, part, section, subsection, or other portion of this chapter or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion or the proscribed application thereof shall be severable and the remaining provisions of this chapter and all applications thereof not having been declared void, unconstitutional or invalid shall remain in full force and effect.

B. Any special use permit issued under this chapter shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect by a competent authority or is overturned by a competent authority, the permit shall be void in total, upon determination by the Town Board made after notice to the permit holder and an opportunity to be heard.

§ 138-7. Repealer.

All ordinances, local laws, and parts thereof inconsistent with this chapter are hereby repealed.

§ 138-8. Conflict with other laws.

Where this chapter differs or conflicts with other laws, rules and regulations the more restrictive applicable law, rule or regulation shall apply. This section shall be inapplicable when county, state or federal law preempts the application of a more restrictive law, rule or regulation, including the provisions contained in this chapter. Without limiting the foregoing, where this chapter differs or conflicts with Chapter 140, Zoning, as to the siting, dimensional or performance standards applicable to a solar energy system, this chapter shall control.

§ 138-9. Effective date.

This chapter shall take effect immediately upon filing with the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

§ 138-10. Word usage and definitions.

For the purposes of this chapter, and where not inconsistent with the context of a particular section, the terms, phrases, words, abbreviations and their derivations defined below shall have the meaning given in this article. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number. The word "shall" is always mandatory, and not merely directory.

ACCESSORY STRUCTURE — Any structure designed to accommodate an accessory use but detached from the principal structure, such as a freestanding garage for vehicles accessory to the principal use, a storage shed, garden house or similar facility.

AGRICULTURAL DATA STATEMENT — The statement required by Town Law § 283-a and Agriculture and Markets Law § 305-a for any application for a special use permit, site plan approval, use variance or subdivision approval that would occur on property within a county-adopted agricultural district containing a farm operation, or on property with boundaries within 500 feet of a farm operation located in an agricultural district.

APPLICANT — Any person, firm, limited liability company, partnership or corporation submitting an application to the Town of Conklin for a solar energy ~~production facility~~system, together with each owner, developer and operator identified pursuant to § 138-19D(1).

BATTERY ENERGY STORAGE SYSTEM — One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, including but not limited to electrochemical batteries and their associated inverters, controls, enclosures and fire-suppression systems, but excluding uninterruptible power supplies serving only the monitoring, communication and protective equipment of a solar energy system and having an aggregate capacity of less than 20 kilowatt-hours.

BOARD — The Town Board of the Town of Conklin, New York.

BUILDING — Any structure other than a boundary wall or fence.

BUILDING INTEGRATED SOLAR ENERGY SYSTEM — A combination of photovoltaic building components integrated into any building envelope system, such as vertical facades, including glass and other facade material, semitransparent skylight systems, roofing materials, and shading over windows.

CERTIFICATE OF COMPLIANCE — A certificate stating that materials and products meet specified standards or that work was done in compliance with approved construction documents.

COMMERCIAL SOLAR ENERGY SYSTEM — A solar energy system that primarily produces energy that is fed directly into the grid primarily for off-site sale or consumption, including through community distributed generation, remote net metering or any other arrangement by which electricity or credits are sold or allocated to off-site customers or subscribers, or any solar energy system with a nameplate generating capacity of 50 kilowatts (AC) or more, or any ground-mounted solar energy system designed to generate more than 110% of the electricity consumed on the parcel on which it is located over the preceding 12 months. Commercial solar energy systems include building-integrated, roof-mounted and

ground-mounted solar energy systems that meet or exceed the above-stated nameplate generating capacity. A commercial solar energy system is a principal industrial use of land and is not an agricultural use, farm operation or accessory farm building, notwithstanding the co-location of grazing, cropping or other agricultural activity within or around the system.

COORDINATED ELECTRIC SYSTEM INTERCONNECTION REVIEW (CESIR) — The study and resulting report issued by the applicable electric utility under the New York State Standardized Interconnection Requirements that confirms the utility's technical assessment of system readiness for interconnection and specifies any conditions, costs or system upgrades required before interconnection may occur.

FARMLAND OF STATEWIDE IMPORTANCE — Land, designated as "Farmland of Statewide Importance" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey that is of 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 have been designated for agriculture by state law.

FENCED AREA — The total area, measured in acres, enclosed by the security fence or fences required by § 138-15C(6), including all solar collectors, racking, inverters, transformers, solar accessory facilities or structures and internal access ways. Where more than one fenced enclosure is proposed on a parcel or on contiguous parcels under common ownership or control, the fenced area is the sum of all such enclosures.

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

GROUND-MOUNTED SOLAR ENERGY SYSTEM — A solar energy system that is anchored to the ground and attached to a pole or other mounting system, detached from any other structure for the primary purpose of producing electricity. A solar carport is a ground-mounted solar energy system.

HABITABLE RESIDENTIAL STRUCTURE — A dwelling unit, including a mobile or manufactured home, that is lawfully occupied or capable of lawful occupancy as a residence, including any attached garage, porch or deck.

HOST COMMUNITY AGREEMENT — A contract between a commercial solar energy system owner/developer and the Town, whereby such owner/developer agrees to provide the community with certain benefits to mitigate impacts of the solar project.

INDUSTRIAL DISTRICTS — The I-L Limited Industrial, I-D Industrial Development, and IDT Industrial Development/Transportation Districts established by Chapter 140 of this Code.

NAMEPLATE CAPACITY — A solar energy system's maximum electric power output under optimal operating conditions. ~~Nameplate capacity may be expressed in terms of alternating current (AC) or (DC).~~For purposes of this chapter, nameplate capacity shall be expressed in alternating current (AC) as the aggregate rated output of the system's inverters.

NET METERING — A billing arrangement whereby the solar energy producer receives credit for excess electricity generated and delivered to the power grid, paying only for the power used.

NONCOMMERCIAL SOLAR ENERGY SYSTEM — A solar energy system with a nameplate generating capacity of less than 50 kilowatts (AC) that is incidental and subordinate to another use on the same parcel and which primarily produces energy for on-site consumption and, if ground-mounted, is designed to generate not more than 110% of the electricity consumed on the parcel over the preceding 12 months. Noncommercial solar energy systems include building-integrated, roof-mounted and ground-mounted solar energy systems that do not meet or exceed the above-stated nameplate generating capacity.

NONPARTICIPATING PROPERTY — A parcel of land not subject to any type of agreement with the applicant. A parcel owned by the applicant, the landowner or any affiliate of either shall not be considered a nonparticipating property.

PARTICIPATING PROPERTY — A parcel of land subject to a lease, good neighbor agreement or other contract with the applicant, in which the property owner receives consideration in exchange for authorizing or consenting to solar energy system development by the applicant on or in the vicinity of the parcel.

PHOTOVOLTAIC SYSTEMS — A solar energy production system that produces electricity by the use of semiconductor devices, i.e., photovoltaic cells that generate electricity when light strikes them.

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

ROOF-MOUNTED SOLAR ENERGY SYSTEM — A solar panel system located on the ~~Roof~~roof of any legally permitted building or structure for the purpose of producing electricity for on-site or off-site consumption.

SOLAR ACCESSORY FACILITY OR STRUCTURE — An accessory facility or structure serving or being used in conjunction with a solar energy system and located on the same property or lot as a solar energy system, including, but not limited to, utility or transmission equipment, inverters, transformers, switchgear, storage sheds or cabinets. Battery energy storage systems are specifically excluded from this definition.

SOLAR CARPORT — A ground-mounted structure that consists of a roof supported on posts with solar panels affixed to or functioning as the roof, installed over parking spaces to provide shelter for parked vehicles while generating electricity.

SOLAR COLLECTOR/SOLAR PANEL — A photovoltaic cell, panel or array, capable of collecting and converting solar energy into electricity.

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

SOLAR ENERGY SYSTEM — All components and subsystems required to convert solar energy into electric energy suitable for use. This term includes, but is not limited to, solar panels and solar energy equipment. The area of a solar energy system includes all the land and/or structures inside the perimeter of the solar energy system, which extends to any interconnection equipment. A solar energy system is classified as a noncommercial solar energy system or commercial solar energy system as defined herein.

Battery energy storage systems are specifically excluded from this definition and are not authorized by this chapter.

SOLAR THERMAL SYSTEM — All components and subsystems required to convert solar energy into thermal energy, typically for heating water, space heating or industrial processes. This term includes, but is not limited to, solar panels and solar energy equipment including a heat transfer system that delivers the heat to the desired application.

STRUCTURE — Any object constructed, installed or placed on land to facilitate land use and development or subdivision of land, such as a building, shed or tank and any fixtures, additions and alterations thereto.

TOWN DESIGNATED ENGINEER (TDE) — The engineer or engineering firm designated by the Town Board to review applications under this chapter, or the Town Engineer.

TOWN SOLAR OPERATING PERMIT — The annual permit required by § 138-22C for the operation of a commercial solar energy system.

UNIFORM CODE — The New York State Uniform Fire Prevention and Building Code, including the most current edition of the Fire Code of New York State (19 NYCRR Part 1225) and its provisions governing solar photovoltaic power systems, as the same may be amended, superseded or updated from time to time.

VISUAL SCREEN — A continuous landscaped buffer, alone or in combination with berms, fences or existing vegetation, that blocks the view of all solar collectors, racking, fencing, inverters, transformers and solar accessory facilities or structures from the vantage points specified in § 138-15C(7), as determined from an observer height of five feet above grade.

ARTICLE II

Noncommercial Solar Energy Systems

§ 138-11. Permitting requirements for noncommercial solar energy systems.

A. All solar energy systems including solar thermal systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the New York State Uniform Fire Prevention and Building Code ("Uniform Code"), including the most current edition of the Fire Code of New York State, the New York State Energy Conservation Construction Code ("Energy Code"), and the Town of Conklin Code.

B. Building permits pursuant to the requirements of the Town of Conklin Zoning Code § 140-120 shall be required for installation of all rooftop, building-mounted and ground-mounted noncommercial solar energy systems.

C. All noncommercial solar energy systems shall be permitted as accessory uses in all zoning districts and shall be exempt from site plan review under the Town of Conklin Zoning Code (Chapter 140) or other land use regulation, subject to the following conditions for each type of solar energy system:

(1) Roof-mounted solar energy systems.

(a) Roof-mounted solar energy systems shall incorporate, when feasible, the following design requirements (exceptions may be approved by the Code Enforcement Officer):

[1] Solar panels on pitched roofs shall be mounted with a maximum distance of eight inches between the roof surface and the highest edge of the system.

[2] Solar panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.

[3] Solar panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.

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

(b) Glare. All solar panels shall have anti-reflective coating(s).

(c) Height. All roof-mounted solar energy systems shall be subject to the maximum height regulations specified for principal and accessory buildings within the underlying zoning district.

(2) Building-integrated solar energy systems.

(a) Building-integrated solar energy systems shall be shown on the plans submitted for the building permit application for the building containing the system.

(3) Ground-mounted solar energy systems.

(a) Ground-mounted noncommercial solar energy systems shall be subject to the lot size and lot coverage restrictions applicable to permitted accessory buildings in the underlying zoning district as set forth in the Town of Conklin Zoning Code. The surface area of all solar collectors shall be counted toward lot coverage.

(b) Setbacks. Ground-mounted noncommercial solar energy systems shall be subject to the setback regulations specified for principal and accessory buildings within the underlying zoning district as applicable, but in no event shall any portion of a ground-mounted noncommercial solar energy system be located closer than 20 feet to any side or rear lot line. All ground-mounted noncommercial solar energy systems shall only be installed in the side or rear yards in residential and Agricultural-Rural districts.

(c) Height. Ground-mounted noncommercial solar energy systems shall not exceed 10 feet from finished grade when oriented at maximum tilt in residential and Agricultural-Rural districts, and 15 feet from finished grade when oriented at maximum tilt in all other districts.

(d) Compliance. Ground-mounted noncommercial solar energy systems are subject to, and shall adhere to all Town Code, local laws, and ordinance permitting requirements applicable to the parcel where they are installed.

(e) Screening. A ground-mounted noncommercial solar energy system with a collector surface area exceeding 1,000 square feet shall be screened from view from adjoining

residences and public roads by existing vegetation, fencing or plantings of evergreen trees and shrubs not less than six feet in height at planting, which the owner shall maintain and replace as necessary. Solar collectors shall be oriented and located so as to prevent reflective glare toward any inhabited building on an adjacent property or any road.

(f) Solar carports shall be permitted as accessory structures over existing or approved parking areas serving a lawful principal use and shall comply with the height and setback requirements for accessory buildings in the underlying zoning district.

D. Permit review and inspection timeline for building permit. Building permit determinations will be issued within 30 calendar days upon receipt of complete and accurate applications. The Town will provide feedback within 15 days of receiving incomplete or inaccurate applications. If an inspection is required, it will be provided within 10 days of the inspection request. The Town will make all reasonable efforts for prompt review and inspections; however, failure to meet the times set forth herein shall not be deemed an approval.

§ 138-12. Installation requirements, inspection, and decommission.

A. Noncommercial solar energy system requirements.

(1) All noncommercial solar energy system installations must be performed by a qualified solar installer.

(2) Prior to operation, electrical connections must be inspected by the Town Code Enforcement Officer and by an appropriate electrical inspection person or agency, as determined by the Town.

(3) Any connection to the public utility grid must be inspected by the appropriate public utility.

(4) Solar energy systems shall be maintained in good working order.

(5) Rooftop and building-mounted solar energy systems shall meet the current version of the New York Uniform Fire Prevention and Building Code standards in effect at the time permit is issued.

(6) If energy storage devices are included as part of the noncommercial solar energy system, they must be placed in a secure container or enclosure meeting the requirements of the New York State ~~Building~~Uniform Code, including the Fire Code of New York State, when in use, and, when no longer used, shall be disposed of in accordance with the laws and regulations of New York State.

(7) Right to inspect. If the Town Code Enforcement Officer receives a complaint, or requests access to inspect a noncommercial solar energy system or facility, the property owner shall allow access to the property and facility. If it is determined after inspection that a hazard has been identified, the Code Enforcement Officer or their authorized designee may, at their sole discretion, order the hazard remedied within 24 hours.

(8) Abandonment and decommissioning. Removal required. Any noncommercial solar energy system which has been determined to be nonfunctioning or abandoned for a continuous period of 12 months shall be decommissioned and removed. The owner of the

noncommercial solar energy system and/or facility and owner of the land upon which the system is located shall be jointly and severally responsible to physically remove all components of the system within six months of the determination of the system to be nonfunctioning or abandoned.

§ 138-13. Appeals; jurisdiction of the Zoning Board of Appeals.

A. ~~If a person or corporation is found to be in violation of the provisions of this article, appeals must be made in accordance with the established procedures of the Town Code.~~An appeal from any order, requirement, decision, interpretation or determination of the Code Enforcement Officer under this chapter may be taken to the Zoning Board of Appeals in the manner provided by Town Law § 267-a and Chapter 140 of this Code.

B. ~~If a permit for a solar energy system is denied, the applicant may appeal or seek relief as applicable pursuant to the Town Zoning Code (Chapter 140).~~The Zoning Board of Appeals shall have jurisdiction to grant area variances from the dimensional standards of this chapter in accordance with Town Law §§ 267-b and 274-b(3), and use variances in accordance with Town Law § 267-b, subject in every case to § 138-16.1 of this chapter. The Zoning Board of Appeals shall have no jurisdiction to review, modify or reverse any determination of the Town Board upon a special use permit or site plan application under this chapter, which determinations shall be reviewable only in a proceeding under Article 78 of the Civil Practice Law and Rules commenced within 30 days after the filing of the decision in the office of the Town Clerk.

ARTICLE III

Commercial Solar Energy Systems

§ 138-14. Siting considerations.

A. ~~The Town aims to promote commercial solar energy system development in line with the objectives outlined in the Comprehensive Plan. Concurrently, the Town is dedicated to preventing~~The Town's Comprehensive Plan directs industrial land uses to the Town's industrial districts along the New York State Route 7 and Conklin Road corridor and directs the Town to permit energy development only where it will have positive or neutral effects on the Town's natural resources, residents and aesthetic character. Consistent with that direction, this article confines commercial ground-mounted solar energy systems to the industrial districts and is intended to prevent an excessive proliferation of commercial solar energy systems within the Town, thereby safeguarding against potential negative impacts on landscapes, agricultural lands and neighborhoods. This approach seeks to maintain the visual, agricultural and residential integrity of the Town while ~~facilitating responsible renewable energy expansion~~accommodating solar energy systems so far as conditions in the Town permit.

(1) Scenic/view impact. Commercial solar energy systems visible within one mile from points of public access, or public rights-of-way, must be positioned and screened to ~~minimize alteration of~~avoid any material alteration of existing views. Commercial solar energy systems shall be presumed to result in significant adverse visual impacts, ~~but~~which presumption the applicant ~~can~~may rebut ~~this presumption~~only through ~~detailed visual simulations~~the visual impact assessment and visual impacts minimization and mitigation

plan required by § 138-19D(8), prepared in accordance with the methodology of the New York State Department of Environmental Conservation Program Policy DEP-00-2, "Assessing and Mitigating Visual and Aesthetic Impacts," as amended. The Board shall grant a special use permit for a commercial solar energy system only if satisfied, on the basis of substantial evidence in the record, that there will be minimal negative visual impacts due to existing screening, topography, or additional vegetative screening meeting the requirements of § 138-15C(7). A commercial solar energy system shall only be installed in locations deemed by the Board not detrimental to the general neighborhood character. The final determination of permissible location shall be made by the Board as part of the special use permit and site plan application review.

(2) Spacing. To prevent oversaturation of commercial solar energy systems in one area of the Town, no commercial ground-mounted solar energy system shall be approved on any parcel any portion of which lies within one mile, measured in a straight line from the nearest property line of the parcel on which an existing, approved or previously accepted commercial ground-mounted solar energy system is located, whether or not such system has been constructed, of an ~~already approved commercial solar energy system unless the Board determines that it will not have a significant impact on the area or neighborhood's character~~existing, approved or previously accepted commercial ground-mounted solar energy system. A commercial ground-mounted solar energy system proposed within such distance shall be presumed to have a significant adverse cumulative impact on neighborhood character, and the Board may approve such a system only upon an express written finding, supported by a cumulative visual impact analysis prepared pursuant to § 138-19D(8), that the proposed system will not be visible from any point from which the existing or approved system is visible and will not otherwise contribute to a cumulative adverse impact on the character of the area.

(3) Environmental sensitivity. Siting in environmentally sensitive areas, including but not limited to floodways, floodplains, federal-designated areas of special flood hazard, aquifers, wellhead protection zones, regulated wetlands and their adjacent areas, or wetlands, is ~~discouraged~~prohibited except as expressly provided in § 138-15C(12). Proposed sites in ~~these~~such areas shall be presumed to have a significant, adverse environmental impact. During the SEQR review, applicants must provide sufficient evidence to rebut this presumption, and demonstrate that the proposed action will not negatively affect the health, safety, and property of the Town's residents.

(4) Interconnection and grid capacity. The Board shall consider, as part of its review, whether the applicant has demonstrated through a CESIR or equivalent utility study that the electric distribution system serving the proposed site has adequate hosting capacity to accept the full nameplate capacity of the proposed system without utility system upgrades that would require new or expanded above-ground lines, poles, reclosers, regulators or substations within the Town, and the visual, traffic and land use impacts of any such upgrades shall be evaluated as part of the project.

§ 138-15. Site restrictions and requirements.

A. Permitted commercial solar energy systems shall not incorporate a battery ~~storage or a battery~~ energy storage system. This chapter is intended to optimize the integration of solar energy into the existing grid infrastructure, promoting a more efficient and sustainable energy distribution system in a manner ensuring the safety and well-being of the Town's residents.

B. Public utility use. A commercial solar energy system shall not be considered a public utility use as that term is defined in Chapter 140, Zoning, § 140-4, Definitions, of the Town of Conklin Zoning Code, shall not be considered a "public utility structure" within the meaning of § 140-91 of this Code, and shall not be permitted in any district under § 140-11G, § 140-91 or any similar provision of Chapter 140. The Town Board finds, for the reasons set forth in § 138-4H, that a commercial solar energy system is a private, merchant electric generating use and not a franchised public utility. Any claim that a commercial solar energy system is entitled to be reviewed under a public utility or public necessity standard shall be governed by § 138-16.1 of this chapter.

C. Commercial solar energy systems are permitted by special use permit issued by the Town Board ~~in all zoning districts~~only in the zoning districts specified in § 138-15.1 and subject to the requirements of this chapter. Commercial solar energy systems shall also require site plan approval by the Town Board prior to the granting of a special use permit, and shall be subject to the following restrictions and requirements:

(1) Commercial ground-mounted solar energy systems are not permitted as an accessory use. Roof-mounted and building-integrated commercial solar energy systems may be permitted as an accessory use in the C-N, C-G and industrial districts.

(2) Commercial ground-mounted solar energy systems must be located on ~~sites with at least five acres open for development~~a single parcel, or on contiguous parcels under common ownership or control that are merged or combined prior to the issuance of a building permit, having a minimum lot area of 10 acres and a minimum of 10 contiguous acres of developable land. For purposes of this subsection, "developable land" excludes regulated wetlands and their adjacent areas, floodways, areas of special flood hazard, slopes exceeding 15%, existing easements and rights-of-way, and the setback and buffer areas required by this chapter. Other types of commercial solar energy systems shall comply with applicable lot size requirements as set forth in the Town Code and applicable local laws, if any.

(3) The height of the solar collectors and any mounts within a commercial ground-mounted solar energy system shall not exceed 15 feet from finished grade when oriented at maximum tilt. Other types of commercial solar energy systems shall comply with applicable maximum height requirements as set forth in the Town's Zoning Code (Chapter 140) and other applicable local laws, if any. No solar accessory facility or structure shall exceed 15 feet in height, and no commercial solar energy system shall include any tower, mast or pole exceeding the height limit for accessory buildings in the underlying district except utility poles required for interconnection that the Board has approved pursuant to § 138-15C(14).

(4) Solar energy equipment shall be located in a manner to: i) minimize visual impacts and view blockage for surrounding properties, and ii) minimize shading of property to the north, while still providing adequate solar access for collectors. Inverters, transformers, switchgear and

other noise-generating equipment shall be located as far as practicable from nonparticipating habitable residential structures and in no event closer than 500 feet to any such structure.

(5) Solar collectors shall be installed so as to ~~minimize~~prevent glare onto neighboring properties and roadways. All solar collectors shall be treated with anti-reflective coating(s). The applicant shall submit a glare analysis prepared using the Solar Glare Hazard Analysis Tool (SGHAT) or an equivalent methodology acceptable to the TDE, evaluating all public roads, nonparticipating habitable residential structures and airport approach paths within one mile of the system. No commercial solar energy system shall be approved that is predicted to produce glare at any such receptor, and the Board may require modifications to array orientation, tilt, panel type or screening to eliminate any predicted glare.

(6) All commercial ground-mounted solar energy systems and associated solar accessory structures/facilities shall be completely enclosed by a minimum eight-foot-high anchored ~~mini-mesh chain-link~~ fence ~~with a two-foot tip-out~~ and a self-locking gate. The fence shall be black or dark green vinyl-coated mini-mesh chain-link with a two-foot tip out, or, where the Board finds that it will better serve the purposes of this chapter, a woven-wire agricultural-style fence of the same height on wooden posts. No fence shall contain barbed or razor wire. Said fence shall contain five-inch-high-by-sixteen-inch-wide grade-level cutouts every 75 feet to permit small animals to move freely into and out of the site. Fencing shall be located inside of the buffer required by § 138-15C(7) below and shall bear, at each gate and at intervals of not more than 300 feet, a sign not exceeding four square feet identifying the owner and operator, the emergency contact telephone number and the presence of high voltage. No other signage, including advertising or sponsor signage, shall be permitted.

(7) Visual screen. All commercial ground-mounted solar energy systems must additionally include a visual ~~buffer~~screen between the system and all public roads and nonparticipating properties. ~~The buffer shall consist of appropriate plantings with a mixture of evergreen and deciduous trees and shrubs a height so as to provide a visual screen of the ground-mounted system. The species, type, location and planted height of such landscaping and fencing shall be subject to the approval of the Town Board.~~The visual screen shall comply with the following minimum requirements:

(a) Extent. It shall be presumed that the visual screen must surround the entire perimeter of the fenced area, excluding only the width of the approved access drive. The applicant may overcome this presumption as to a portion of the perimeter only by demonstrating, through the visual impact assessment required by § 138-19D(8), that the system will not be visible from any public road, nonparticipating habitable residential structure, public park or publicly accessible vantage point through that portion of the perimeter at any time of year, taking into account the loss of foliage on deciduous vegetation, and only with the express approval of the Board.

(b) Location and width. The visual screen shall be located outside the fence, within the required setback, and shall have a planted width of not less than 30 feet. Where the Board determines that topography, the elevation of a public road or residence, or the height of the system requires a greater width or an earthen berm to achieve the

performance standard of Subsection (7)(d), the Board may require a planted width of up to 50 feet and a berm of up to six feet in height with side slopes not steeper than 3:1, planted in accordance with this subsection.

(c) Composition. The visual screen shall consist of not fewer than two staggered rows of plantings, offset so that the trees in one row are centered on the gaps in the adjacent row. Not less than 70% of the trees shall be evergreen species. Evergreen trees shall be not less than eight feet in height at the time of planting and shall be spaced not more than 10 feet on center within each row; deciduous trees shall have a caliper of not less than two and one-half inches at planting; and a continuous row of native shrubs not less than three feet in height at planting shall be installed on the exterior side of the screen. Not fewer than three species of evergreen tree shall be used, no single species shall exceed 40% of the evergreen plantings, and all plantings shall be species native to or naturalized in the Southern Tier of New York, non-invasive, and suited to the soils and hydrology of the site. All plantings shall be protected from deer browse until established.

(d) Performance standard. The visual screen, in combination with any approved berm, fence or preserved existing vegetation, shall provide a complete visual screen, as defined in § 138-10, of the system from every public road, nonparticipating habitable residential structure, public park and publicly accessible vantage point within one mile of the system within three growing seasons after the commencement of operation, and shall provide not less than 75% opacity, as measured at an observer height of five feet, from such vantage points at the time of planting. Where existing conditions do not permit the foregoing to be achieved with plantings of the minimum size specified in Subsection (7)(c), the Board shall require larger planting stock, a berm, a greater planted width, a relocation or reduction of the fenced area, or a combination of the foregoing.

(e) Existing vegetation. Existing hedgerows, tree lines and wooded areas located within 100 feet of the perimeter of the fenced area shall be preserved and shall be protected during construction by fencing at the drip line. Existing vegetation may be credited toward the visual screen only to the extent the visual impact assessment demonstrates that it meets the performance standard of Subsection (7)(d) in all seasons, and the Board may require supplemental plantings. Clearing of forested land exceeding two acres for the placement of solar collectors or solar accessory facilities or structures is prohibited, and the Board may require that the system be reduced or reconfigured to avoid the removal of mature trees.

(f) Plan preparation and approval. The visual screen shall be depicted on a landscaping and screening plan prepared and stamped by a landscape architect registered in the State of New York, which shall identify the species, size at planting, spacing, quantity and location of all plantings, all berms and existing vegetation to be preserved, a planting schedule, and a maintenance and monitoring program. The species, type, location, planted height and maintenance of such landscaping and fencing shall be subject to the approval of the Town Board, which may consult with the Broome County Soil and

Water Conservation District or a landscape architect retained by the Town at the applicant's expense pursuant to § 138-20.

(g) Installation and maintenance. The visual screen shall be fully installed prior to the commencement of operation of the system and prior to the issuance of any certificate of compliance or Town solar operating permit. The owner and operator shall maintain the visual screen for the life of the system, shall water and groom all plantings, and shall replace any dead, dying, diseased or missing plant within one growing season, and in no event later than the next June 1. Failure to install or maintain the visual screen as approved shall constitute a violation of this chapter and of the special use permit and shall be grounds for denial of renewal of the Town solar operating permit under § 138-22C and for revocation under § 138-31.

(h) Landscaping security. Prior to the issuance of a building permit, the applicant shall post with the Town a cash deposit or irrevocable letter of credit, in a form approved by the Town Attorney, in an amount equal to 125% of the installed cost of the visual screen as estimated by the applicant's landscape architect and approved by the TDE, or such greater amount as the Town Board determines is adequate to install and maintain the visual screen, which security shall be maintained for a period of not less than five full growing seasons after the Code Enforcement Officer certifies that the visual screen has been installed as approved and may be drawn upon by the Town to install, replace or maintain any portion of the visual screen that the owner or operator has failed to install, replace or maintain after 30 days' written notice.

(8) Setback requirements. No commercial solar energy system, including solar energy equipment and solar collectors as measured from the fence enclosing the commercial solar energy system, as provided by § 138-15C(6) above, shall be erected ahead of the front line of any existing building or be closer than:

(a) ~~One hundred~~One hundred fifty feet from any nonparticipating residential property line.

(b) ~~Three hundred~~Five hundred feet from the front, side or rear of nonparticipating, habitable residential structures.

(c) ~~Fifty~~One hundred feet from nonparticipating, nonresidential property lines.

(d) ~~Fifty~~One hundred feet from the ~~boundary~~right-of-way line of any public street or roadway, and 150 feet from the right-of-way line of New York State Route 7 and Interstate Route 81.

(e) One thousand feet from all property boundary lines of a school, church, public park/parkland, playground, public library or place of public assembly designed for, or regularly engaged in the simultaneous use of, 100 persons or more.

(f) Two hundred fifty feet from the boundary of any R-12, R-15, R-M or A-R zoning district.

(g) One hundred feet from the ordinary high-water mark of the Susquehanna River or any perennial stream, and from the delineated boundary of any state or federally regulated

wetland, and no portion of a commercial solar energy system shall be located within the regulated adjacent area of a state-regulated wetland.

(h) Where a greater setback is required by Chapter 140 for a principal building in the underlying district, the greater setback shall apply. Required setbacks shall be measured in a straight line to the nearest point of the fence; where no fence is required, to the nearest point of any solar collector, solar energy equipment or solar accessory facility or structure. Setbacks required by Subsections (8)(a) through (g) shall be kept free of solar collectors, solar energy equipment, solar accessory facilities and structures, parking and stormwater management facilities, and may contain only the visual screen, the approved access drive and underground collection lines.

(9) All proposed commercial solar energy systems shall demonstrate that the facility will be sited so as to have the least adverse visual effect on the environment and its character, on existing vegetation, and on any nearby residential dwellings. Any glare produced by the solar array shall not impair or render unsafe the use of contiguous structures, vehicles in the vicinity, airplanes, etc.

(10) Lot coverage and project size requirements. Commercial solar energy systems shall adhere to applicable maximum lot coverage requirements for principal uses, if any. For purposes of this chapter and Chapter 140, the fenced area of a commercial ground-mounted solar energy system shall be counted as lot coverage. The fenced area of a commercial ground-mounted solar energy system shall not exceed 30 acres, and shall not exceed 50% of the gross area of the parcel or parcels on which it is located. No more than one commercial ground-mounted solar energy system shall be permitted on any parcel or on contiguous parcels under common ownership or control, and a commercial ground-mounted solar energy system shall not be divided into separately permitted systems in order to avoid any limitation of this chapter.

(11) Siting considerations. The Town Board may impose such other and related requirements for applications, and conditions on its approval, under this chapter as to enforce the standards referred to herein or in order to discharge its obligations under SEQRA.

(12) No commercial solar energy system or any portion thereof shall be located within a floodway. Commercial solar energy systems proposed within an environmentally sensitive area including but not limited to: ~~floodway,~~ floodplain and/or federal-designated area of special flood hazard, aquifer, designated wellhead protection zone or wetland adjacent area are subject to, and shall comply with all local, federal and state application and permitting requirements, including Chapter 79, Flood Damage Prevention, of this Code, and are subject to Town Board:

(a) Approval of an engineering plan;

(b) Approval and acceptance of documentation showing proper installation including a maximum tilt with the entire panel(s) and all inverters, transformers and electrical equipment at least two feet above the base flood elevation;

(c) Approval and acceptance of plans for utility connections;

(d) Approval and acceptance of safety measures; and

(e) Approval and issuance of a floodplain development permit where applicable, and a certification by the applicant's engineer that the system will not increase base flood elevations or displace flood storage.

(13) If property is subdivided to accommodate commercial ground-mounted solar energy systems as a primary use, the property containing the commercial ground-mounted solar energy system must have road frontage in compliance with the Town Zoning Code (Chapter 140) and other applicable local laws, if any. No subdivision shall be approved that would create a lot that does not comply with § 138-15C(2).

(14) All utilities serving the site of a commercial solar energy system shall be installed underground and in compliance with all laws, rules and regulations of the Town, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code, where appropriate. If the applicant seeks to install aboveground utilities or transmission lines, the applicant must provide sufficient proof of infeasibility of underground installation. The Board may waive or vary the requirements of underground installation of utilities whenever, in the opinion of the Board, the applicant's proof establishes that such variance or waiver shall not be detrimental to the health, safety, general welfare and environment, including the visual and scenic characteristics of the area. Any above-ground poles, lines, reclosers, regulators or other interconnection facilities proposed within the Town, whether on or off the project parcel and whether to be owned by the applicant or the utility, shall be shown on the site plan and depicted in the visual impact assessment.

(15) At a commercial ground-mounted solar energy systems site, at least one access road and adequate parking shall be provided to ensure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and vegetation cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. This subsection shall apply to other types of commercial solar energy systems if, at the discretion of the Board, the circumstances of the project so dictate.

(16) Fire access roads and access for fire apparatus equipment shall be provided, as approved by the chief of the ~~Town of Conklin Volunteer Fire Department~~fire department or fire company providing service to the property, and the Board. Any gates to the site shall be equipped with Knox Company locks to allow fire department access. The applicant shall provide a fire safety and emergency response plan developed in coordination with, and approved in writing by, the chief of the fire department or fire company providing service to the property, which plan shall address access, water supply, de-energization procedures, hazardous materials, and the training and equipment to be provided to the fire department at the applicant's expense prior to the commencement of operation and annually thereafter. The system shall be designed, constructed, marked and maintained in compliance with the most current edition of the Fire Code of New York State, including its provisions governing solar

photovoltaic power systems, and the applicant shall certify such compliance through a New York State licensed professional engineer prior to the issuance of a certificate of compliance.

(17) Commercial ground-mounted solar energy system owners shall develop, implement, and maintain native perennial vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds and pollinators. Seed mixes shall be approved by the Board, shall exclude invasive species, and shall be established within one growing season after construction; areas disturbed by construction shall be stabilized in accordance with the SWPPP.

(18) Noise. The sound generated by a commercial solar energy system, including inverters, transformers and tracking motors, shall not exceed the lesser of the limits established by Chapter 94 of this Code or 45 dBA (one-hour Leq) at the exterior of any nonparticipating habitable residential structure or 50 dBA (one-hour Leq) at any nonparticipating property line.

(19) Lighting. Site lighting shall be limited to motion-activated, fully shielded, downward-directed fixtures mounted on structures housing equipment, with zero footcandles at the property line. No lighting of the array shall be permitted.

(20) Color and materials. All solar accessory facilities and structures, fences, racking and equipment enclosures visible from outside the fenced area shall be finished in non-reflective earth-tone or dark green colors approved by the Board.

(21) Agricultural co-location. The co-location of grazing, cropping, apiculture or other agricultural activity within or around a commercial solar energy system shall not alter the classification of the system as a commercial solar energy system and principal industrial use, shall not exempt the system from any requirement of this chapter, and shall not be considered by the Board as mitigation of any impact unless the applicant submits, and the Board approves as a condition of the special use permit, a binding agricultural operations plan and recorded covenant identifying the agricultural operator, the acreage, the practices and the duration of the agricultural use, with the failure to maintain such use constituting a violation of the special use permit.

§ 138-15.1. Zoning districts in which commercial solar energy systems are permitted.

A. Commercial ground-mounted solar energy systems are permitted, as a principal use and only upon the issuance of a special use permit and site plan approval by the Town Board in accordance with this chapter, solely in the following zoning districts: I-L Limited Industrial, I-D Industrial Development, and IDT Industrial Development/Transportation.

B. Roof-mounted and building-integrated commercial solar energy systems are permitted, only upon the issuance of a special use permit and site plan approval by the Town Board in accordance with this chapter, in the C-N Neighborhood Commercial and C-G General Commercial Districts and in the industrial districts, as an accessory use to a lawful principal nonresidential use.

C. Commercial solar energy systems of every type are prohibited in the R-12, R-15 and R-M Residence Districts and in the A-R Agricultural-Rural District, and commercial ground-mounted solar energy

systems are additionally prohibited in the C-N and C-G Commercial Districts and in the EDDZ Economic Development District Zone. Where a parcel lies in more than one zoning district, no portion of a commercial ground-mounted solar energy system, including its fence, visual screen and access drive, shall be located within any district in which such systems are prohibited, and § 140-8 of this Code shall not be applied to extend a permitted district into a prohibited district for purposes of this chapter.

D. The Town Board finds that the industrial districts identified in Subsection A are the areas of the Town designated by the Comprehensive Plan for industrial land uses; are served by the three-phase electric distribution lines and substation facilities with the greatest available hosting capacity in the Town, as reflected in the hosting capacity data published by the electric utility serving the Town; are located along the Town's principal transportation corridor; and contain the parcels on which an industrial-scale electric generating use will have the least adverse effect on residential neighborhoods, agricultural lands, open space and the rural character of the Town interior.

§ 138-16. Additional site restrictions and requirements for commercial ground-mounted solar energy systems located on certain agricultural lands.

A. Any commercial ground-mounted solar energy system located on areas that consist of Prime Farmland and/or Farmland of Statewide Importance shall not ~~exceed 50%~~occupy more than 10% of the area of Prime Farmland and/or Farmland of Statewide Importance on the parcel, and the fenced area of the system shall not include more than 10 acres of Prime Farmland and/or Farmland of Statewide Importance. ~~However, if the Board determines that the applicant has meaningfully committed to making the Prime Farmland/Farmland of Statewide Importance on the parcel occupied by the commercial solar energy system available for a meaningful agricultural use in addition to the commercial solar energy system as a condition of the special use permit, this 50% limit shall not apply.~~The Board may waive the foregoing limits only upon a finding, supported by substantial evidence, that the applicant has demonstrated that the system (1) allows for the continued agricultural use of the affected land through a binding agricultural operations plan approved pursuant to § 138-15C(21); (2) avoids the irreversible conversion of agricultural soils, as demonstrated in the decommissioning plan; (3) minimizes disturbance to agricultural soils by limiting grading, soil compaction and the removal of topsoil; and (4) incorporates construction techniques and equipment that preserve the long-term viability of the soil for future agricultural use. The Board may consider the agricultural production of the property over the preceding 10 years in making such determination.

B. Commercial solar energy systems located on Prime Farmland and/or Farmland of Statewide Importance, or on land within a county-adopted agricultural district, shall be constructed, operated and decommissioned in accordance with the ~~construction requirements~~most current "Guidelines for Agricultural Mitigation for Solar Energy Projects" of the New York State Department of Agriculture and Markets, and the applicant shall retain, at its expense, an environmental monitor acceptable to the Town to document compliance with such guidelines during construction and decommissioning.

C. The applicant shall submit a soil sampling and analysis plan, prepared by a qualified soil scientist or professional engineer, to characterize and document the surface soil quality of the site before construction, upon decommissioning, and before and after restoration. Baseline sampling shall be

completed before any site disturbance; a sampling event shall be conducted at the location of any broken or damaged solar collector within 30 days and a report provided to the Town; agricultural parameters shall be compared to the baseline sampling event; and environmental parameters shall be compared to the unrestricted use soil cleanup objectives of 6 NYCRR 375-6.8(a), Table 375-6.8(a).

D. An Agricultural Data Statement shall be submitted with every application for a special use permit, site plan approval or variance under this chapter for property within a county-adopted agricultural district containing a farm operation, or within 500 feet of a farm operation located in such a district, and the Board shall evaluate and consider such statement in accordance with Town Law § 283-a.

§ 138-16.1. Variances; relief under a public utility or public necessity standard.

A. Area variances. An application for an area variance from any dimensional standard of this chapter, including the setbacks, height, lot area, fenced area and visual screen width requirements of § 138-15, shall be made to the Zoning Board of Appeals pursuant to Town Law §§ 267-b and 274-b(3). In addition to the factors set forth in Town Law § 267-b(3), the Zoning Board of Appeals shall make written findings addressing the visual, agricultural, neighborhood-character and cumulative impacts identified in §§ 138-4 and 138-14 of this chapter, and no area variance shall be granted that would reduce the setback from a nonparticipating habitable residential structure below 300 feet or the setback from a nonparticipating residential property line below 100 feet.

B. Use variances. An application to locate a commercial solar energy system in any zoning district in which it is prohibited by § 138-15.1 shall be made to the Zoning Board of Appeals as an application for a use variance pursuant to Town Law § 267-b(2). The Zoning Board of Appeals shall not grant a use variance for a commercial solar energy system in the A-R District, or in any residence district, unless the applicant demonstrates, in addition to the showing otherwise required by law, that the system cannot be located on any parcel within the industrial districts of the Town, taking into account the hosting capacity of the electric distribution system serving such districts as reported by the electric utility, and that the system will comply with every requirement of this chapter, including the additional requirements of Subsection D.

C. Relief under a public utility or public necessity standard. In the event that a commercial solar energy system is permitted by use variance or area variance, including by any variance granted under a public utility or public necessity standard, by interpretation, by a court of competent jurisdiction, or by a permit issued by the New York State Office of Renewable Energy Siting and Electric Transmission or any successor agency, all of the permitting and other requirements, conditions, regulations and restrictions contained in this chapter shall apply to such commercial solar energy system to the fullest extent permitted by law, including but not limited to the requirement of a special use permit and site plan approval by the Town Board, all site restrictions and requirements contained in § 138-15, the agricultural land protections of § 138-16, the application requirements of § 138-19, the escrow, insurance, inspection, triennial review, decommissioning and contractual requirements of this article and Article IV, and the enforcement provisions of Article V. The grant of a variance or other relief from one provision of this chapter shall not be construed as relief from any other provision. In considering any application under a public utility or public necessity standard, the Zoning Board of Appeals shall make written findings, on the basis of substantial evidence, as to (1) whether the applicant is a franchised public utility with an obligation to serve

customers within the Town or a merchant generator; (2) whether the proposed system is required to render safe and adequate electric service to the public, taking into account the hosting capacity data and interconnection studies of the electric utility serving the Town; (3) whether there are compelling reasons, economic or otherwise, that make it more feasible to locate the system on the proposed parcel than on parcels within the industrial districts of the Town; and (4) the intrusion and burden of the proposed system on the community, including its visual, agricultural, neighborhood-character and cumulative impacts, which findings shall determine the extent of the showing required of the applicant.

D. Additional requirements in prohibited districts. Where a commercial ground-mounted solar energy system is permitted by variance or other relief described in Subsection C in the A-R District or in any residence district, it shall additionally comply with the following requirements, which shall be applied in place of the corresponding requirements of § 138-15 and shall not themselves be subject to variance except upon a showing of unnecessary hardship under Town Law § 267-b(2):

(1) No portion of the fence enclosing the system shall be closer than 300 feet to any nonparticipating property line, 750 feet to any nonparticipating habitable residential structure, or 150 feet to the right-of-way line of any public street or roadway.

(2) The system shall be located on a parcel or merged parcels having a minimum lot area of 20 acres and a minimum of 15 contiguous acres of developable land as defined in § 138-15C(2).

(3) The fenced area of the system shall not exceed 15 acres and shall not include any Prime Farmland or Farmland of Statewide Importance in excess of 10% of such land on the parcel or 5 acres, whichever is less, and the waiver authorized by § 138-16A shall not be available.

(4) The planted width of the visual screen required by § 138-15C(7) shall be not less than 50 feet, and evergreen trees shall be not less than 10 feet in height at the time of planting.

(5) The spacing requirement of § 138-14A(2) shall be two miles and shall not be subject to the exception set forth therein.

§ 138-17. Application, ~~recertification~~triennial review and annual fees.

A. The Board shall approve the form of the application(s) for solar energy systems by resolution and update same as deemed appropriate.

B. Commercial solar energy system fees. In addition to any applicable, parcel-specific, permitting fees required by Town law or ordinance, an applicant shall pay an initial, nonrefundable application fee, as set by the Town, upon filing its special use permit and site plan applications to cover the cost of processing and reviewing the commercial solar energy system application. Unless otherwise set by resolution of the Town Board, the application fee shall be $2,500 for a commercial solar energy system with a nameplate capacity of less than one megawatt and $2,500 per megawatt or fraction thereof for a system with a nameplate capacity of one megawatt or more.

C. If the project is approved, the owner shall pay an annual fee to the Town, with the application for the Town solar operating permit required by § 138-22C, to cover the cost of processing and reviewing the annual inspection report(s) and for administration, inspections and enforcement.

D. The owner shall pay ~~a recertification fee to the Town as set forth in § 138-24A herein for recertification of the special use permit~~the Town's costs of the triennial review under § 138-24 in accordance with § 138-20C.

E. All application, permit, review, inspection, ~~recertification,~~ enforcement and such other fees associated with the initial application(s), or the continued operation of a commercial solar energy system shall be set by the Town Board by resolution, and the fees stated in this chapter shall apply until superseded by such resolution.

§ 138-18. Special use permit application procedure.

A. The Town Board is hereby designated and authorized to review, analyze, evaluate and make decisions with respect to all special use permit and site plan applications for commercial solar energy systems. The Board may, at its discretion, delegate or designate the Town Planning Board, or other officials of the Town to accept, review, analyze, evaluate and make recommendations to the Board with respect to granting or not granting, ~~recertifying or not recertifying,~~ or revoking site plan and/or special use permit approval of commercial solar energy systems.

(1) Except for parcel-specific Town Code permitting requirements as set forth in § 138-18A(2) below, the special use permit, necessary building permit(s), the Town solar operating permit, and subsequent certificates of compliance ~~and/or special use permit recertification~~, no additional permits or approvals from the Town shall be required for a commercial solar energy system covered by this article.

(2) A preapplication meeting is required with the applicant, Town Engineer or TDE, Code Enforcement Officer, the chair of the Planning Board or designee, the chief of the fire department or fire company serving the property or designee, and Town Supervisor prior to submitting a formal special use permit application during which the applicant should be prepared to address adherence to all Town Code permitting requirements applicable to the project. At the preapplication meeting the applicant shall present a concept plan, the hosting capacity data and any utility screening or CESIR results for the proposed point of interconnection, and a description of all parcels within one mile on which commercial solar energy systems exist, are approved or are proposed. The preapplication meeting shall be held not less than 60 days before the submission of an application.

(3) Completed applications for siting commercial solar energy systems shall be submitted to the Town Code Enforcement Officer at least ~~10~~30 days prior to the next regular meeting of the Town Board. Applications may be made by the owner of the property or their duly authorized representative, who shall attend the meeting of the Board to discuss the application. Applications not meeting the requirements stated herein, or which are otherwise incomplete may be rejected by the Town Code Enforcement Officer or the Board. No application shall be deemed complete, and no time period under this chapter or under Town Law §§ 274-a or 274-b shall commence to run, until the Town Engineer (or the TDE) has certified in writing that the application contains every item required by § 138-19, the application fee has been paid, the escrow deposit required by § 138-20 has been made, and Part 1 of the Full Environmental Assessment Form has been submitted. Until the Town Engineer has issued such certification, no review of the application shall be undertaken by

the Town Board, the Planning Board or any Town consultant, no referral shall be made, no public hearing shall be scheduled, and no action shall be taken under the State Environmental Quality Review Act; the Town Engineer's review for completeness shall not constitute a review on the merits. Upon receipt of the Town Engineer's certification, the Town Board shall, by resolution, accept the application as complete and commence its review.

(3.1) Referrals. Upon acceptance of a complete application, the Town Board (a) may, in its sole discretion, refer the application to the Town Planning Board for an advisory report and recommendation on the site plan and special use permit, in which event the Planning Board shall report to the Town Board within 45 days of referral or such longer period as the Town Board may allow, and the failure of the Planning Board to report within such period shall be deemed a recommendation of no objection; and shall refer the application (b) to the Broome County Department of Planning and Economic Development pursuant to General Municipal Law §§ 239-l, 239-m and 239-n where required; (c) to the chief of the fire department or fire company serving the property; (d) to the Town Highway Superintendent; (e) to the Broome County Soil and Water Conservation District; and (f) where an Agricultural Data Statement is required, to the Broome County Agricultural and Farmland Protection Board and to the owners of land identified in the statement, in accordance with Town Law § 283-a. Where the Town Board has referred the application to the Planning Board, it shall not close the public hearing until it has received the Planning Board's report or the period for such report has expired.

(3.2) Community informational meeting. Prior to the public hearing, the applicant shall, at its expense, hold at least one public informational meeting within the Town, at a location and time approved by the Town Supervisor, to which all owners of property within 1,500 feet of the project parcel shall be invited by first-class mail not less than 14 days in advance. The applicant shall submit with its application a community engagement plan describing how it will inform and respond to neighboring property owners during review, construction and operation, and shall submit to the Town a summary of the comments received at the informational meeting and its responses prior to the public hearing.

(4) Within 62 days after the Town Board meeting where the complete application is ~~submitted~~accepted as complete, a public hearing shall be held, provided that the Town Board may defer the opening of the public hearing until a determination of significance has been made under SEQRA and, where a positive declaration is issued, may conduct the public hearing on the special use permit jointly with the public hearing on the draft environmental impact statement. Notice of such public hearing shall be published in the official newspaper of the Town at least 10 days prior to the date thereof. In order that the Town may notify nearby landowners, at the applicant's cost, the applicant, at least three weeks prior to the date of said public hearing, shall be required to provide the names and addresses of all landowners whose property is located within 1,500 feet of any property line of the lot on which the proposed commercial solar energy system is proposed to be located. The applicant shall also post, and maintain until the close of the public hearing, a sign not less than four square feet in area, in a form prescribed by the Town, at each road frontage of the project parcel, stating the nature of the application and the date, time and place of the public hearing.

Notice shall also be given as required by Town Law § 274-b(6), General Municipal Law § 239-nn and Town Law § 283-a.

(5) The Board will undertake a review of an application pursuant to this chapter in a timely fashion, consistent with its responsibilities under SEQRA, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest and need to be involved, and the applicant's desire for a timely resolution.

(6) After the public hearing, after the completion of the SEQRA process, and after formally considering the application, the Board may approve with or without conditions and issue, or deny a special use permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The Board shall approve a special use permit only upon finding that the application complies with every applicable standard of this chapter, that the proposed system will not have a significant adverse visual, agricultural, environmental or cumulative impact, and that the proposed system satisfies the standards set forth in § 140-133A of this Code. The burden of proof for the grant of the permit shall always be upon the applicant.

(7) The Board's decision approving, approving with conditions or denying the special use permit for a commercial solar energy system shall be filed with the Town Clerk within five business days and communicated by mail to the applicant.

(8) No commercial solar energy system installation or construction shall commence until: the site plan is reviewed and approved by the Board; the special use permit has been issued; the applicant has provided proof of insurance pursuant to § 138-25; the decommissioning security required by § 138-26G and the landscaping security required by § 138-15C(7)(h) have been posted; a CESIR or equivalent final interconnection study and an executed interconnection agreement have been delivered to the Town; all consultant fees and escrow deficiencies have been paid; a building permit has been issued; and all agreements required pursuant to Article IV of this chapter have been finalized, executed and, where applicable, recorded to the satisfaction of the Town and the Town Attorney.

§ 138-19. Special use permit application requirements for commercial solar energy systems.

A. The special use permit application shall be signed by the person preparing it on behalf of the applicant, who has knowledge of its contents and representations, and attests to the truth and completeness of the information. If the landowner(s) of the project location is not the applicant, the applicant shall additionally provide one of the following:

(1) A signed writing from each landowner consenting to the filing of the application by the applicant and acknowledging that the landowner is jointly and severally responsible with the applicant for compliance with this chapter, including decommissioning; or

(2) A copy of the agreement(s) between the applicant and each landowner authorizing the applicant to use the landowner's property as proposed in the application, which may be redacted as to financial terms.

B. The special use permit application shall include a statement in writing:

(1) That the applicant's proposed commercial solar energy system shall be maintained in a safe manner and in compliance with all conditions of the site plan approval and special use permit, without exception, unless specifically granted relief by the Board in writing, as well as all applicable and permissible local codes, ordinances and regulations, including any and all applicable county, state and federal laws, rules, and regulations.

(2) That the construction of the proposed commercial solar energy system is legally permissible, including but not limited to the fact that the applicant is authorized to do business in New York State.

(3) Identifying every commercial solar energy system in the State of New York in which the applicant, its parent, or any affiliate holds or has held an ownership or operating interest that has been the subject of a notice of violation, revocation, decommissioning order or enforcement proceeding by any municipality or state agency within the preceding five years.

C. At the discretion of the Board, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration, opportunity for correction or refund of any application fees.

D. All special use permit applications for proposed commercial solar energy systems shall show and include a site plan with maps, drawings and any/all necessary supplemental reports and documentation that show and include the following:

(1) Names, mailing addresses, email addresses and telephone numbers of the applicant and, if the application is made on behalf of a business entity, the entity's authorized agent(s) responsible for the application; and, if different from the applicant:

(a) The owner(s) of the proposed project site.

(b) The developer of the proposed project.

(c) The operator of the proposed project.

(d) The parent entity of the applicant and each entity holding an ownership interest of 10% or more in the applicant, together with evidence that the applicant is authorized to do business in New York.

(2) Name of project, Tax Map parcel numbers and boundary lines of parcel(s) on which the project will be located, a location map showing proposed site's location, north arrow, and scale of the plan, and the zoning district or districts in which each parcel is located.

(3) Current photographs of the project site to establish baseline conditions prior to the commencement of construction, including aerial photographs.

(4) Stamped drawings to scale signed by a New York State licensed professional engineer or registered architect showing:

(a) The layout of the proposed solar energy system.

(b) A survey of the property or properties.

(c) The location of all lot lines, easements and rights-of-way.

(d) The location of all current and proposed utility connections, transmission lines and solar accessory facilities/structures, including the point of interconnection and all on-site and off-site poles, lines and equipment required for interconnection.

(e) Existing and proposed topography and ~~five-foot~~two-foot contour intervals.

(f) Location of all proposed landscaping and screening per the landscaping and screening plan required by § 138-19D(6).

(g) Proposed road and emergency access to the project site, including provisions for paving, if any.

(h) The limits of the fenced area and the required setbacks, with a table stating the fenced area in acres, the percentage of the parcel it occupies, and the distance from the fence to each receptor identified in § 138-15C(8).

(i) A one-line or three-line electrical diagram detailing the solar energy system installation, associated components and electrical interconnection methods, with all disconnects and over-current devices.

(5) A map or maps showing:

(a) Location and distance of the solar energy system and associated solar accessory facilities/structures to the nearest nonparticipating residential property line.

(b) Location and distance of the solar energy system and associated solar accessory facilities/structures to the nearest nonparticipating residential structure.

(c) Location and distance of the solar energy system and associated solar accessory facilities/structures to the nearest nonparticipating, nonresidential property line.

(d) Location and distance of the solar energy system and associated solar accessory facilities/structures to any school, church, public park/parkland, playground, public library or any place of public assembly designed for the simultaneous use of 100 persons or more.

(e) Location of nearest habitable structure.

(f) Location, size and height of all existing structures on the property or properties that are the subject of the application.

(g) Location, size, and height of all proposed solar collection and accessory structures.

(h) The names, addresses and Tax Map parcel numbers of all owners of record of abutting parcels and those within 1,500 feet of the property lines of the parcel(s) where development is proposed. Each such owner shall be designated as "participating" or "nonparticipating" as those terms are defined in this chapter. The location of all structures located on such properties shall be identified and labeled as "residential" or "nonresidential."

(i) Water access in case of fire.

(j) Areas of environmental sensitivity as set forth in § 138-14A(3) and § 138-15C(12) herein, including a wetland delineation performed by a qualified wetland scientist

within the preceding two years and the limits of the floodway and area of special flood hazard as shown on the current Flood Insurance Rate Map.

(k) Areas of Prime Farmland and Farmland of Statewide importance as defined in § 138-10 clearly showing the area of disturbance, the boundaries of any county-adopted agricultural district, and all farm operations within 500 feet.

(l) Detailed information on tree removal areas, including the acreage, species composition and approximate age of any forested area proposed to be cleared.

(m) Detailed information on slope degrees specifying areas with varying slopes.

(n) The location of every existing, approved and proposed commercial solar energy system within one mile of the project parcel, and the location of all zoning district boundaries within 500 feet of the project parcel.

(6) A landscaping and screening plan, prepared and stamped by a landscape architect registered in the State of New York and complying with § 138-15C(7), showing:

(a) All existing natural land features, trees, forest cover and all proposed changes to these features, including size and type of plant material and erosion control measures.

(b) Appropriate fencing around the entirety of a ground-mounted solar energy system in accordance with the requirements of § 138-15C(6) of this article. The fencing shall have self-locking gates, and shall bear warning signs with the owner's name and emergency contact information on any access point to the system and perimeter of the fencing. The fencing and the system shall be further screened by any landscaping needed to avoid adverse aesthetic impacts.

(c) Cross-sections through the visual screen at each public road frontage and at the nearest nonparticipating habitable residential structure, drawn to scale, showing the system, the fence, the berm (if any), the plantings at the time of installation and at three growing seasons, and the line of sight from an observer height of five feet at the road or residence.

(d) A cost estimate for the installation of the visual screen for purposes of § 138-15C(7)(h), and a five-year maintenance and monitoring program.

(7) A property operation and maintenance plan describing continuing photovoltaic maintenance and property upkeep including:

(a) A maintenance plan providing for regular mowing and trimming to ensure no vegetation exceeds 10 inches in height within the interior of the fencing required by § 138-15C(6) of this article.

(b) The use or application of any pesticides, including herbicides, insecticides, fungicides, and other pest-control chemicals, is strictly prohibited anywhere on the site during construction, operation, maintenance, and decommissioning. All vegetation management and pest control shall be conducted exclusively through non-pesticidal methods, including mechanical removal, mowing, and other appropriate integrated pest management practices that do not involve pesticide use. This prohibition applies

to the entire site, including, but not limited to, environmentally sensitive areas identified in § 138-14A(3) and § 138-15C(12).~~use of integrated pest management practices to refrain from/limit pesticide use (including herbicides) for long-term operation and site maintenance. The use of herbicides or pesticides in environmentally sensitive areas identified and as set forth in § 138-14A(3) and § 138-15C(12) is prohibited.~~

(c) Procedures for the proper disposal or recycling of damaged, defective or decommissioned solar collectors and equipment, identifying how and where such materials will be disposed of or recycled, and procedures for the prompt removal and replacement of broken collectors and for the soil sampling required by § 138-16C.

(8) A report or series of reports containing the information hereinafter set forth. Where this section calls for certification, such certification shall be by a qualified New York State licensed professional engineer and/or architect acceptable to the Town, unless otherwise noted.

(a) The proposed design level for solar energy production capacity for the facility and the basis for the calculations of the solar energy system's capacity, stated in both AC and DC.

(b) The make, model and manufacturer of the solar production component parts and schematic drawings of same, together with the manufacturer's safety data sheets and a certification as to whether the solar collectors contain cadmium, lead, selenium or other hazardous materials and, if so, the amount of such materials per collector.

(c) A description of the proposed commercial solar energy system and all related fixtures, structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting.

(d) Applicant's proposed commercial solar energy system maintenance and inspection procedures and related system of records. This report shall further include a list of contacts for the property, notification procedures for the transfer of ownership and plans for continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.

(e) Certification from all relevant county, state and/or federal authorities that the proposed commercial solar energy system will not cause interference with air traffic.

(f) Certification that a topographic and geomorphologic study/analysis has been conducted, taking into account subsurface features and a proposed drainage plan pursuant to a stormwater pollution prevention plan (SWPPP), such that the proposed site is deemed adequate to assure the stability of the proposed commercial ground-mounted solar energy system.

(g) Plans to prevent the erosion of soil both during and after construction, excessive runoff, and flooding of other properties, as applicable. There should be preconstruction and postconstruction drainage calculations for the site completed by a licensed engineer. From this the engineer must show how there will be no increase in runoff from site. A SWPPP will be required if disturbance of the land exceeds one acre.

(h) A decommissioning plan completed in conformance with § 138-26 of this article, including the engineer's estimate of decommissioning cost required by § 138-26G.

(i) ~~A true and complete copy of the interconnection agreement between the owner of the commercial solar energy system and the utility company.~~The utility's preliminary screening analysis and, when issued, the CESIR for the proposed point of interconnection; the current hosting capacity data published by the utility for the distribution circuit and substation serving the site; and, prior to the issuance of a building permit, a true and complete copy of the executed interconnection agreement between the owner of the commercial solar energy system and the utility company. The application shall identify every utility system upgrade required for interconnection and its location.

(j) The applicant shall furnish a visual impact assessment, prepared by a qualified professional in a manner approved by the Board and consistent with NYSDEC Program Policy DEP-00-2, to demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the proposed commercial solar energy system and all related structures which shall, at minimum, include:

[1] A zone of visibility map, based on both bare-earth and vegetated digital surface models and extending not less than one mile from the project parcel, which shall be provided in order to determine locations where the commercial ground-mounted solar energy systems may be seen.

[2] Pictorial representations of before and after views depicting the proposed solar arrays, fencing, approved above-ground utilities including poles, lines and points of interconnection, and the proposed visual screen at the time of planting and at three and ten growing seasons, in leaf-on and leaf-off conditions, from key viewpoints both inside and outside of the Town, including, but not limited to, state highways and other major roads; airports; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; each nonparticipating habitable residential structure within 1,000 feet; and from any other location where the site is visible to a large number of visitors, travelers or residents. The Town Engineer and/or Code Enforcement Officer, acting in consultation with the Town's consultants or experts, will provide guidance concerning the appropriate key sites at the preapplication meeting. The Board may require a balloon test, temporary staking or flagging, or another appropriate field demonstration to assess the visibility and visual impacts of the proposed solar energy system and associated improvements, at the applicant's expense.

[3] An assessment of the visual impact of the commercial solar energy system and accessory buildings from abutting and adjacent properties and streets, and a cumulative visual impact analysis addressing all existing, approved and proposed commercial solar energy systems within two miles of the project parcel.

(k) The applicant shall furnish a visual impacts minimization and mitigation plan that responds to any concerns raised as a result of the visual impact assessment. Said plan shall include proposed minimization and mitigation alternatives based on an assessment of mitigation strategies, including screening (landscaping), architectural design, visual offsets, relocation or rearranging facility components, reduction of facility component profiles, alternative technologies, facility color and design, lighting options for work areas and safety requirements, and lighting options for FAA aviation hazard lighting.

(l) A water quality report and a soil testing report, both prepared by a professional environmental engineer or environmental scientist licensed to practice in the State of New York that shows the presence or absence of any preexisting, subsurface, hazardous materials that may be present at the project site to establish the original condition to which the project site soil and water quality must be protected and/or restored upon ~~special use permit recertification as set forth in § 138-24 herein, and~~ decommissioning as set forth in § 138-26 herein. For purposes of this section, hazardous materials are those listed in 6 NYCRR 597.3, as may be amended from time to time.

(m) A technical or professionally prepared noise analysis detailing potential noise impacts of the system including ambient noise levels to ensure that they do not exceed the maximum permissible continuous sound levels as set forth in § 138-15C(18) and Town Code Chapter 94 and/or any other applicable Town local law or ordinance, with a minimum analysis of the predicted sound level at the nearest nonparticipating property line and nonparticipating habitable residential structure and at 50, 150 and 500 feet from the fenced area.

(n) A certification that the solar panels consist of nontoxic components or, if they do not, the disclosure required by Subsection (8)(b), and that the equipment is certified to applicable performance and safety standards including those established by the International Electrotechnical Commission (IEC) and Underwriters Laboratory (UL).

(o) A Completed Part 1 of the State Environmental Quality Review Act ("SEQRA") Full Environmental Assessment Form ("FEAF"), together with the results of a consultation with the New York State Office of Parks, Recreation and Historic Preservation through the Cultural Resource Information System, a New York Natural Heritage Program response, and a United States Fish and Wildlife Service IPaC report for the project parcel.

(p) The glare analysis required by § 138-15C(5).

(q) The fire safety and emergency response plan required by § 138-15C(16).

(r) Where an Agricultural Data Statement is required, such statement and the soil sampling and analysis plan required by § 138-16C.

(s) A traffic and construction management plan identifying haul routes, the number and type of construction vehicles, hours of construction, and measures to protect Town roads, for purposes of the road use agreement required by § 138-28A(2).

(t) A statement of the proposed term of the project, the projected annual electricity generation, and the proposed offtake arrangement (e.g., community distributed generation, remote net metering or power purchase agreement).

(9) The Board may, in its discretion, modify or waive any of the submission requirements described in this section to the extent that such ~~conditions~~requirements are inapplicable to a given application, upon written findings stating the reasons therefor; provided that the Board shall have no authority under this subsection to waive or modify any dimensional, siting, screening or use requirement of §§ 138-14, 138-15, 138-15.1 or 138-16, relief from which may be sought only as provided in § 138-16.1. The Board may also require that the applicant submit additional information not listed herein that it deems necessary in order to inform and complete its review of the applicant's special use permit application.

§ 138-20. Retention of expert assistance; reimbursement by applicant.

A. The applicant for a special use permit for a commercial solar energy system shall be responsible for the cost of the engineering review by the Town Designated Engineer (TDE), as well as any additional consultants, landscape architects, legal professionals and/or experts the Town may hire to assist in the review and evaluation of the application, the SEQRA review, and any related and/or required contractual agreements pursuant to Article IV of this chapter. The Board may also hire any consultant and/or expert necessary to assist the Board in reviewing and evaluating ~~any requests for recertification of a previously issued special use permit as set forth in § 138-24 of this chapter, which includes~~the triennial review under § 138-24, including a review of the amount of the removal bond or security established by the decommissioning plan pursuant to § 138-26.

B. The applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of TDE review, legal consultation and expert evaluation and consultation to the Board in connection with the review of any application. The initial deposit shall be no less than ~~$15,000~~$25,000, or such greater amount as the Board may determine based upon the nature and complexity of the application. These funds shall accompany the filing of an application, and the Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall bill or invoice the Town no more frequently than monthly for their services in reviewing the application and performing their duties. If at any time during the review process this escrow account has a balance less than 50% of the initially deposited amount, the applicant shall immediately, upon notification by the Town, replenish said escrow account so that the balance of said account equals the amount of the initial deposit. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application, and the failure to replenish the escrow account within 15 business days of notification shall suspend all time periods under this chapter and under Town Law §§ 274-a and 274-b until the required funds are received. In the event that the amount held in escrow by the Town is more than the amount of the actual billing or invoicing at the conclusion of the review process, the difference shall be promptly refunded to the applicant. Billing and invoicing for TDE, legal and expert consultation and evaluation shall be made available to the applicant upon request, redacted where necessary to protect privileged communications. The Town's consultants shall submit itemized vouchers, which the Town shall review for reasonableness before payment from the escrow account, and the

applicant shall be entitled, upon request and on reasonable notice, to be heard by the Board regarding expenditures from the escrow account.

C. Following the closeout of the application escrow, the Board reserves the right to either require the applicant to establish another reasonable escrow account or to bill the applicant on an ongoing basis for any additional reasonable costs incurred by the Town for consultants, legal professionals and/or experts the Town determines necessary for tasks such as construction inspection, the triennial review under § 138-24, ~~recertification of a previously issued special use permit,~~ review of the amount of the removal bond or security established by the decommissioning plan, and any other similar evaluations. The applicant shall reimburse the Town for all such costs within 30 days of receiving notice from the Town. Failure to reimburse the Town in a timely manner may result in the suspension or revocation of the special use permit or the Town solar operating permit. No building permit, certificate of compliance or Town solar operating permit shall be issued while any amount owed to the Town under this section remains unpaid.

§ 138-21. Permit time frame; expiration.

A. The special use permit authorizing construction of a commercial solar energy system shall be valid for a period of 18 months from the date of issuance, conditional upon the subsequent issuance of a building permit authorizing the commencement of construction within 12 months of the date of issuance of the special use permit. If a building permit has not been issued within such 12-month period, the special use permit and site plan approval shall expire automatically and without further action of the Board.

B. In the event construction is not completed in accordance with the approved site plan and the system placed in operation within 18 months after special use permit approval, the applicant may apply to the Board, before the expiration of such period, to extend the time to complete construction for a single period of not more than 180 days, which extension ~~shall not be unreasonably withheld or delayed~~may be granted only upon a showing that the applicant has diligently pursued construction, that the delay resulted from causes beyond the applicant's reasonable control, and that no change in circumstances or in this chapter warrants reconsideration of the permit. If the owner and/or operator fails to ~~perform substantial~~complete construction and place the system in operation ~~after~~within 24 months after special use permit approval, all previously granted approvals shall expire automatically and without further action of the Board, and all application and related fees shall be retained by the Town.

C. No further extension shall be granted. Upon expiration of a special use permit under this section, any further pursuit of the project shall require a new application under this chapter as then in effect, and the decommissioning provisions of § 138-26 shall apply to any construction undertaken. The pendency of a utility interconnection study, interconnection queue position or financing shall not toll any period under this section.

§ 138-22. Related permits and fees.

A. A holder of a special use permit granted under this article shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.

B. A holder of a special use permit granted under this article shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted solar energy production facility in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, county, state and/or United States, including, but not limited to, the most recent editions of the Uniform Code (including the Fire Code of New York State and its provisions governing solar photovoltaic power systems), National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply.

C. Town solar operating permit. No commercial solar energy system shall be operated unless the owner or operator holds a current Town solar operating permit issued by the Code Enforcement Officer. The initial application for a Town solar operating permit shall be submitted not less than 30 days before the commencement of operation and shall be accompanied by the utility's written authorization to interconnect and operate, the certificate of compliance, the Code Enforcement Officer's certification that the visual screen has been installed as approved, and the annual fee established by § 138-17C. The Town solar operating permit shall expire annually on the anniversary of its issuance and may be renewed upon submission of a renewal application, the annual report required by § 138-26H, the annual engineer's inspection report required by § 138-23B, photographs of the visual screen taken from the vantage points used in the visual impact assessment, evidence of current insurance, and the annual fee. Before renewing a Town solar operating permit, the Code Enforcement Officer shall confirm, by inspection, that the system is being operated and maintained in compliance with this chapter, the Uniform Code and all conditions of the special use permit and site plan approval, with particular attention to the visual screen. Operation of a commercial solar energy system without a current Town solar operating permit is a violation of this chapter, and the Code Enforcement Officer may order the system de-energized until a permit is issued.

§ 138-23. Right to inspect.

A. In order to verify that the applicant and any and all lessees, renters and/or licensees of commercial solar energy systems place and construct approved solar energy systems, including solar collectors and solar inverters, in accordance with all applicable technical, safety, fire, building and zoning codes, laws, ordinances and regulations and other applicable requirements, the Town, its authorized officers, agents and/or designees may inspect all facets of said special use permit holders', renters', lessees' or licensees' placement, construction, modification and maintenance of such facilities.

B. Upon reasonable notice, the Town of Conklin Code Enforcement Officer/Building Inspector or their designee may enter a lot on which a commercial solar energy system has been approved for the purpose of inspection for compliance with the application materials as well as any and all other applicable requirements, conditions, codes regulations and/or laws. For commercial-scale solar energy systems, such inspections shall include, but not be limited to, focus on the screening and vegetation plans. Twenty-four hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a commercial-scale solar energy system shall be inspected annually by a New York State licensed professional

engineer that has been approved by the Town or at any other time, upon a determination by the Town's Code Enforcement Officer/Building Inspector that damage may have occurred, and a copy of the inspection report shall be submitted to the Town Building Inspector. Any fee or expense associated with this inspection shall be borne entirely by the permit holder and will be set from time to time by the Town Board pursuant to the Town's fee schedule. For commercial-scale solar energy systems, such inspections will take place on a yearly basis following issuance of the building permit and at such other times as determined by the Code Enforcement Officer/Building Inspector.

C. The costs of all inspections conducted pursuant to this section shall be borne by the applicant.

~~D. On or before February 15 of each year subsequent to the operational date of the commercial solar energy system, or as soon as practicable, the owner of the commercial solar energy system shall provide the Town Code Enforcement Officer/Building Inspector a report showing the rated capacity of the system, and the amount of electricity that was generated in the most recent twelve-month period. This report shall also be made available upon request of the Town, its authorized officers, agents and/or designees and shall be submitted no later than 45 days after a written request for the same. Failure to submit a report as required herein shall be considered a violation subject to the penalties and remedies set forth in Article V herein.~~

§ 138-24. ~~Extent and parameters of special use permit; recertification~~Triennial review; extent and parameters of special use permit.

~~A. At any time between 12 months and six months prior to the three-year anniversary date after the original effective date of the special use permit, and all subsequent third anniversaries of the effective date of the original special use permit thereafter, the holder of the special use permit shall submit a signed written request to the Board for recertification accompanied by a recertification fee which shall be set by the Board by resolution.~~

~~B. In the written request, the holder of such special use permit shall provide the following:~~

~~(1) The name of the current holder of the special use permit for the commercial solar energy system.~~

~~(2) The name and/or number and date of issuance of the original special use permit.~~

~~(3) A current water quality report and a soil testing report as set forth in § 138-19E(8)(l) obtained within 60 days of the written special use permit recertification request.~~

~~(4) Whether the commercial solar energy system has been moved, relocated, rebuilt or otherwise modified since the issuance of the original special use permit or previous recertification if applicable, and, if so, in what manner.~~

~~(5) That the commercial solar energy system is in compliance with the original and/or most recent, recertified special use permit and is in compliance with all applicable codes, rules, laws and regulations.~~

~~C. Board decisions.~~

~~(1) In conjunction with the recertification request, the Town Code Enforcement Officer will conduct an inspection to ensure the installation is being maintained in good working order,~~

~~with particular emphasis on the maintenance of landscaping, fencing and/or other screening required by the Town Board upon the issuance of the site plan approval and special use permit.~~

~~(2) If, after such review, the Board determines that the permitted commercial solar energy system is in compliance with the special use permit and all applicable codes, rules, laws and regulations, then the Board shall issue a recertification special use permit for the commercial solar energy system, which may include any new provisions or conditions that are mutually agreed upon or required by applicable statutes, laws, local laws, ordinances, codes, rules and regulations.~~

~~(3) If, after such review, the Board determines that the permitted commercial solar energy system is not in compliance with the special use permit and all applicable codes, rules, laws and regulations, then the Board may refuse to issue a recertification special use permit for the commercial solar energy system, and in such event , such commercial solar energy system shall not be used after the date that the applicant receives written notification of such decision by the Board.~~

~~(4) Any such decision shall be in writing and supported by substantial evidence contained in a written record.~~

~~D. If the holder of a special use permit for a commercial solar energy system does not submit a request for recertification of such special use permit within the time frame set forth in § 138-24A, of this chapter, then such special use permit and any authorizations granted thereunder shall cease to exist on the date of the third anniversary of the original special use permit or subsequent third anniversary, unless the holder of the special use permit adequately demonstrates to the Board that extenuating circumstances prevented a timely recertification request or that it is in the interest of the Town to consider a late recertification request. If the Board agrees that legitimate extenuating circumstances were present, or that it is in the Town's best interests, the Board may permit the holder to submit a late recertification request or application for a new special use permit.~~

A. Triennial review. Not later than 90 days before the third anniversary of the commencement of operation of a commercial solar energy system, and every three years thereafter, the owner shall submit to the Code Enforcement Officer, for review by the TDE: (1) a recalculated estimate of the full cost of decommissioning and site restoration prepared in accordance with § 138-26A(12); (2) evidence that the insurance required by § 138-25 is in force; (3) a statement identifying the current owner and operator of the system, the current owner of the land and the party responsible for decommissioning, and confirming that the owner's site-control agreement remains in effect; (4) a current water quality report and soil testing report as set forth in § 138-19D(8)(l); and (5) a report by a landscape architect registered in the State of New York, with photographs taken from the vantage points used in the visual impact assessment, documenting the condition of the visual screen and its compliance with § 138-15C(7)(d).

B. Adjustment of security. Within 60 days of receipt of a complete triennial submission and the TDE's recommendation, the Town Board shall, by resolution and without the necessity of a public hearing, fix the amount of the decommissioning security at not less than 125% of the recalculated estimate, and the owner shall post the adjusted security within 60 days thereafter. The cost of the TDE's review shall be reimbursed by the owner pursuant to § 138-20C.

C. Failure to comply. Failure to make a complete triennial submission, to post the adjusted security, or to cure any deficiency in the visual screen identified in the landscape architect's report within one growing season shall constitute a violation of this chapter and of the special use permit, shall be grounds for the Code Enforcement Officer to deny renewal of the Town solar operating permit under § 138-22C, and shall be grounds for revocation under § 138-31.

~~E~~D. Any special use permit granted hereunder shall be:

(1) Nonexclusive.

(2) Not assigned, transferred or conveyed without the express prior written consent of the Board, and such consent shall not be unreasonably withheld or delayed where the proposed transferee has demonstrated the financial and technical capacity to operate and decommission the system, has assumed in writing all obligations of the permit holder under this chapter and the agreements required by Article IV, and has posted the decommissioning and landscaping security required by this chapter.

(3) Subject to revocation, termination, cancellation or modification following a hearing upon due prior written notice to the applicant for a violation of the conditions and provisions of the special use permit for the commercial solar energy system or for a material violation of this chapter.

(4) Personal to the parcel and the system approved, and shall not authorize any expansion, relocation or increase in nameplate capacity or fenced area without a new special use permit and site plan approval under this chapter.

§ 138-25. Liability insurance.

A. Prior to the commencement of construction of a commercial solar energy system, the owner/operator thereof shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage for the duration of the useful life of the commercial solar energy system and until decommissioning is complete.

(1) Insurance policy amounts shall be determined by the Board in consultation with Town's insurer to cover damage or injury that may result from the failure of a commercial solar energy system or any other part(s) of the generation or transmission facility. However, at minimum, the owner/operator shall carry the following insurances in the following amounts:

(a) Commercial general liability covering personal injuries, death and property damage: ~~$1,000,000~~$2,000,000 per occurrence/~~$2,000,000~~$4,000,000 aggregate.

(b) Automobile coverage: $1,000,000 per occurrence/$2,000,000 aggregate.

(c) Workers' compensation and disability: statutory amounts.

(d) Umbrella or excess liability coverage: $5,000,000 per occurrence.

(e) Pollution legal liability coverage: $2,000,000 per occurrence, covering the release of hazardous materials from the system.

(2) The commercial general liability insurance policy shall specifically include the Town of Conklin as additional named insured.

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

(4) The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days' prior written notice in advance of the cancellation of the insurance.

(5) Renewal or replacement policies or certificates shall be delivered to the Town at least 15 days before the expiration of the insurance policies currently in place.

(6) Before construction of a permitted commercial solar energy system is initiated, but no later than 15 days after the grant of Board approval, the special use permit holder shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

§ 138-26. Abandonment of use and decommissioning.

A. The decommissioning plan required by this Section shall include, at minimum, the following:

(1) Physical removal of all above and below ground equipment, structures and foundations including but not limited to all solar panels/collectors, solar energy equipment, accessory facilities/structures, security barriers, electric transmission lines and components and other physical improvement to the site.

(2) Access roads may be left in place if written consent is received by the Town from the landowner. However, all solar energy equipment and accessory facilities or structures installed underground must be fully removed and the land reclaimed.

(3) Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations, including original receipts for all hazardous disposal items, which will be delivered to the Town Supervisor. Solar collectors shall be recycled where a recycling facility is reasonably available.

(4) Restoration of the surface grade and soil after removal of all aboveground solar panels, solar energy equipment and accessory facilities or structures.

(5) Revegetation of restored soil areas with native seed mixes that exclude any invasive species.

(6) Water and soil testing to ensure there is no contamination before, during, and after decommissioning, in accordance with § 138-16C where applicable.

(7) Specific measures to ensure that agricultural lands are restored to their original condition or improved, including removal of stone, decompaction, reestablishment of soil horizons and reinstallation of drainage systems, in accordance with the most current guidelines of the New York State Department of Agriculture and Markets.

(8) Stormwater management and drainage plans to prevent erosion and manage runoff effectively during and after decommissioning.

(9) Tree maintenance and restoration, including the replacement of damaged trees to the extent necessary, to ensure maintenance of the local ecosystem and landscape integrity.

(10) A reasonable timeframe for the completion of all decommissioning and site restoration activities, not to exceed 180 days.

(11) The System Owner remains indefinitely liable for any contamination (ground, ground water, or any other contamination) and is responsible for all remediation within NYS regulations.

(12) An estimate of the full cost of decommissioning and site restoration, prepared and stamped by a New York State licensed professional engineer, without deduction for the salvage or resale value of any component, and including the cost of a third-party contractor performing the work under the direction of the Town, the Town's administrative and engineering costs, and a contingency of not less than 10%.

B. The implementation of the decommissioning plan shall commence and proceed in accordance with subsections C, D and E of this ~~Subsection~~section, as applicable, upon the occurrence of any of the following:

(1) The applicant abandons or otherwise ceases operation of the commercial ground-mounted solar energy system for a cumulative period of 180 days in any 365-day period, or the system generates less than 25% of its projected annual electricity generation, as stated pursuant to § 138-19D(8)(t), in any 12-consecutive-month period, which shall be presumed to constitute abandonment absent a showing by the owner or operator that the shortfall was caused by a documented casualty or utility curtailment that is being diligently remedied;

(2) The applicant or subsequent owner begins but does not complete construction of the project within 18 months, or 24 months upon the granting of an extension by the Board as described in ~~Subsection A above~~§ 138-21B, after receiving special use permit approval; or

(3) The special use permit for the commercial solar energy system is revoked, terminated, or expires ~~and is not recertified~~.

(4) When a permitted commercial solar energy system falls into such a state of disrepair that it creates a health or safety hazard.

(5) When commercial solar energy systems are located, constructed or modified without first obtaining, or in a manner not authorized by, the required site plan review approval, special use permit, or any other necessary authorization; or

(6) When the lease, easement or other agreement giving the owner or operator the right to occupy the parcel terminates or expires without renewal.

C. In the event that construction of an approved solar energy system and/or solar accessory facilities or structures has been started but is not completed and functioning within 18 months of the issuance of the final site plan approval and special use permit, the Town may notify the applicant to complete construction and installation of the facility within 90 days. If the applicant fails to perform, or to apply for and receive a special use permit extension in accordance with this article, the Town may notify the owner and/or operator to implement the decommissioning plan. The decommissioning plan must be completed within 180 days of such notification by the Town.

D. Upon revocation, termination or ~~non-recertification of an expired~~expiration of a special use permit, the applicant, owner and/or operator must fully complete the decommissioning plan within 180 days of the date of revocation, termination or ~~non-recertification~~expiration.

E. Upon the occurrence of any event listed in subsection B above, to which the requirements of subsections C and/or D of this Section do not apply, the Town shall notify the owner and/or operator of the commercial solar energy system to implement the decommissioning plan. Within 90 days of the service of said notice, the owner and/or operator shall either restore operation equal to ~~50%~~80% of approved capacity, or commence implementation of the decommissioning plan, which plan must be fully completed within 180 days after implementation thereof.

F. If the owner and/or operator fails to fully complete the decommissioning plan within the 180-day time period and restore the site as required, the Town may, at its own expense, provide for the restoration of the site in accordance with the decommissioning plan and may, in accordance with the law, recover all expenses incurred for such activities from the removal bond or decommissioning security posted by the owner and/or operator in accordance with subsection G of this Section, and from the defaulted owner and/or operator and the landowner, jointly and severally, directly, if necessary. Any decommissioning costs incurred by the Town which have not been fully paid by the owner and/or operator shall be assessed against the property, shall (in addition to any other available remedies) become a lien and tax upon said property, shall be added to and become a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the same officer and in the same manner as other taxes. The decommissioning plan shall provide for the ability of the Town, or its assignee or designee, to access the property owners' land in order to complete decommissioning if necessary, and the landowner shall grant the Town a recorded license for such purpose as a condition of the special use permit.

G. Prior to the issuance of a ~~special use permit~~building permit, the owner or operator of an approved commercial solar energy system shall post a ~~removal bond or other decommissioning security in a form acceptable to the Town to be held in escrow~~decommissioning security, in the form of a cash deposit held in a segregated Town account or an irrevocable, evergreen standby letter of credit issued by a bank authorized to do business in New York and having an office within 100 miles of the Town, in a form approved by the Town Attorney, to provide for the complete decommissioning and removal of the commercial solar energy system. The amount of the ~~removal bond or~~ decommissioning security shall be ~~agreed upon in consultation with the Town engineer and shall account for~~not less than 125% of the engineer's estimate of the total cost of returning the property to its predeveloped state prepared pursuant to § 138-26A(12), as reviewed and approved by the TDE, or such greater amount as the Town Board determines is adequate to assure complete decommissioning and restoration of the site, and in no event less than $75,000 per megawatt (AC) of nameplate capacity, which minimum shall be adjusted annually in proportion to the change in the Consumer Price Index for All Urban Consumers (Northeast Region) from the effective date of this subsection, ~~taking into account the expected lifetime of the equipment and an assumed 3% rate of inflation~~without deduction for salvage value. The ~~removal bond or~~ security shall state on its face that it is held by and for the sole benefit of the Town and may be drawn upon by the Town upon its certification that the owner or operator has failed to complete decommissioning as required by this chapter. The owner and/or operator shall not encumber or create any security interest(s) in the ~~removal bond or~~ decommissioning security in favor of any third party. The amount of the financial guarantee shall be reviewed by the applicant and the Board every three years ~~upon recertification of the special use permit~~ pursuant to § 138-24, and ~~may be changed following a majority vote of the Board~~shall be increased to not less than 125% of the recalculated estimate required by § 138-26I

within 60 days of the Board's determination. The form of the guarantee must be reviewed and approved by the Town Attorney, and the guarantee must remain in effect until the system is fully removed and final inspection is completed by the Code Enforcement Officer. A surety or performance bond shall not satisfy the requirements of this subsection.

H. The applicant shall provide the Town Code Enforcement Officer on a yearly basis a report showing the rated capacity of the commercial solar energy 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 commercial solar energy system and/or the land upon which the commercial solar energy system is located and shall identify any change in the party responsible for decommissioning and removal of the commercial solar energy system upon its abandonment. The annual report shall be submitted no later than 45 days after the end of the calendar year.

I. Every third year ~~upon the recertification of the special use permit, the annual report shall also include~~, as part of the triennial review under § 138-24, the owner shall submit a recalculation of the estimated full cost of decommissioning and removal of the commercial solar energy system prepared by a New York State licensed professional engineer in accordance with § 138-26A(12), indexed to the cumulative U.S. inflation rate for the three previous years. The Town ~~may~~shall require an adjustment in the amount of the ~~removal bond or~~ decommissioning security to reflect any ~~changes~~increase in the estimated cost of decommissioning and removal. Failure to submit a report as required may be cause to require decommissioning of the system pursuant to this chapter.

J. Ownership changes. If the ownership of a commercial solar energy system that has been granted a special use permit changes, the special use permit shall remain in force and all conditions of the Permit will continue to be obligations of succeeding owners. The Town Clerk shall be notified not less than 30 days in advance and the ownership change registered with the Town. At the time of the notification of the ownership change the new owner(s) must provide a ~~removal bond or~~ decommissioning security to the Town Clerk in accordance with the provisions of § 138-26.G, and the security posted by the prior owner shall not be released until the replacement security has been accepted by the Town. All signs required pursuant to this chapter shall be updated accordingly.

§ 138-27. Adherence to state and federal rules and regulations.

A. To the extent that applicable State or Federal laws, rules, regulations, standards or provisions of same are modified during the operation of a commercial solar energy system, the owner/operator thereof shall conform the permitted commercial solar energy system to the applicable changed and/or modified law, rule, regulation, standard or provision thereof within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard or provision thereof, or sooner, if required by a State or Federal agency responsible for the administration of the changed law, rule, regulation, standard or provision thereof.

ARTICLE IV

Contractual Requirements

§ 138-28. Required contractual agreements.

A. Prior to and as a condition of site plan approval, the applicant for a commercial solar energy system shall execute the following contractual agreements with the Town unless waived at the Town's sole discretion based upon applicability:

(1) Payment in Lieu of Taxes (PILOT) agreement. The applicant shall execute a Payment in Lieu of Taxes (PILOT) Agreement as set forth in § 138-29 of this chapter.

(2) Road use agreement. At the Board's discretion, commercial solar energy systems applicants shall execute a Road Use Agreement with the Town if Town roads are to be used for the construction and/or during the operation of the project. Prior to the issuance of the building permit and commencement of construction, an existing condition survey of the approved hauling route(s) using Town roads shall be undertaken by the applicant at the applicant's expense. Any road damage during construction caused by the operator or its subcontractors on Town roads shall be repaired or reconstructed to the satisfaction of the Town Highway Superintendent at the applicant's sole expense whether or not a Road Use Agreement was entered into between the applicant and the Town. The Board may require the posting of security for the repair of Town roads in an amount recommended by the Highway Superintendent.

(3) Indemnification agreement. The applicant for a commercial solar energy system shall execute an Indemnification Agreement with the Town. The agreement shall require the applicant/owner/operator to at all times defend, indemnify, protect, save, hold harmless and exempt the Town and its officers, councils, employees, attorneys, agents and consultants from any and all penalties, damages, costs or charges arising out of any and all claims, suits, demands, causes of action or award of damages whether compensatory or punitive, or expenses arising therefrom either at law or in equity, which might arise out of or be caused by the placement, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said commercial solar energy system, excepting however any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town or its employees or agents. With respect to the penalties, damages or ~~changes~~charges referenced herein, reasonable attorneys' fees, consultant fees and expert witness fees are included in those costs that are recoverable by the Town.

(4) Host community agreement. The applicant shall enter into a Host Community Agreement providing a public benefit fee to mitigate the additional burdens, financial and otherwise, placed on the Town as a result of the project. The public benefit fee, payable in a lump sum or in installments, shall be utilized as a source of funding for prospective costs and expenses associated with, and related to anticipated municipal services and additional infrastructure improvements to be provided as a result of the project's physical presence within the Town. The public benefit fee and terms of payment shall be agreed to between the applicant and the Town, and shall be approved by resolution of the Town Board.

(5) Decommissioning agreement and recorded covenant. The applicant and the landowner shall execute a decommissioning agreement with the Town incorporating the approved

decommissioning plan and the obligations of § 138-26, which agreement shall be recorded in the Broome County Clerk's office against the project parcel as a covenant running with the land, together with the license required by § 138-26F and the agricultural covenant, if any, required by § 138-15C(21).

§ 138-29. Payment in lieu of taxes.

A. Pursuant to Real Property Tax Law § 487(9)(b), the Town of Conklin hereby expresses its ongoing intent to require a PILOT agreement for all real property tax-exempt solar energy systems. This chapter shall be considered and serve as written notification of the Town's PILOT requirement to owners or developers of commercial solar energy systems pursuant to Real Property Tax Law § 487(9)(a). In addition, upon receipt of any written notification from an owner or developer of a solar energy system pursuant to Real Property Tax Law § 487(9)(a), the Town Clerk shall, within 60 days, notify such owner or developer in writing that the Town intends to require a PILOT agreement. The obligation to enter into a PILOT agreement under this chapter is imposed as a condition of special use permit and site plan approval under § 138-28A(1) and is independent of, and in addition to, the procedure set forth in Real Property Tax Law § 487(9). The failure of the Town to issue or the owner to receive any notice under Real Property Tax Law § 487(9)(a) shall not relieve the owner of a commercial solar energy system of the obligation under this chapter to enter into a PILOT agreement before construction commences, and, to the extent a PILOT agreement under Real Property Tax Law § 487(9) is for any reason unavailable, the host community agreement required by § 138-28A(4) shall provide for annual payments to the Town not less than the payments that would have been required under the Town's then-current standard PILOT terms.

B. The owner of a property on which a solar energy system is located or installed (including any improvement, reconstruction, or replacement thereof), shall enter into a PILOT agreement with the Town of Conklin consistent with the terms of this chapter, except for:

(1) Residential, noncommercial solar energy systems.

(2) Solar energy systems that do not seek or qualify for an exemption from real property taxes pursuant to Real Property Tax Law § 487(4).

C. The lessee or licensee of any owner of a property required to enter into a PILOT agreement by this section, which owns or controls the solar energy system, may enter into the PILOT agreement on behalf of the owner of the property.

D. Nothing in this chapter shall exempt any requirement for compliance with state and local codes for the installation of any solar energy equipment or a solar energy system, or authorize the installation of any solar energy equipment or a solar energy system. All solar energy systems must file a real property tax exemption application pursuant to Real Property Tax Law § 487 to receive a tax exemption.

E. Each PILOT agreement entered into shall include:

(1) Name and contact information of the owner or other party authorized to act upon behalf of the owner of the solar energy system.

(2) The SBL number for each parcel or portion of a parcel on which the solar energy system will be located.

(3) A requirement for 15 ~~to 20~~ successive annual payments, to be paid commencing on the first annual payment date after the effective date of the real property tax exemption granted pursuant to Real Property Tax Law § 487.

(4) The capacity of the solar energy system, and that if the capacity is increased or ~~increased~~decreased as a result of a system upgrade, replacement, partial removal or retirement of solar energy equipment, the annual payments shall be increased or decreased on a pro rata basis for the remaining years of the agreement.

(5) That the parties agree that under the authority of Real Property Tax Law § 487 the solar energy system shall be considered exempt from real property taxes for the fifteen-year life of the PILOT agreement.

(6) That the PILOT agreement may not be assigned without the prior written consent of the Town of Conklin, which consent may not be unreasonably withheld if the assignee has agreed in writing to accept all obligations of the owner, except that the owner may, with advance written notice to the Town of Conklin but without prior consent, assign its payment obligations under the PILOT agreement to an affiliate of the owner or to any party who has provided or is providing financing to the owner for or related to the solar energy system, and has agreed in writing to accept all payment obligations of the owner, that a notice of this agreement may be recorded by the owner at its expense, and that the Town of Conklin shall cooperate in the execution of any notices or assignments with the owner and its successors.

(7) The Town of Conklin Town Board may establish by resolution the payment amount and terms of PILOT agreements and/or community host agreements by developers of solar energy systems with the Town of Conklin or may delegate to the Broome County Industrial Development Agency the authority to negotiate such agreements on behalf of the Town of Conklin.

(8) That if the annual payment is not paid when due, that upon failure to cure within 30 days, the Town of Conklin may cancel the PILOT agreement without notice to the owner, and the solar energy system shall thereafter be subject to taxation at its full assessed value.

ARTICLE V

Violations and Enforcement

§ 138-30. Penalties for offenses.

A. A violation of this chapter is hereby declared to be an offense, punishable as provided in Town Law § 268: by a fine not exceeding ~~$250~~$350 or imprisonment for a period not to exceed ~~15~~six months ~~days~~, or both, for conviction of a first offense; by a fine of not less than $350 nor more than $700 or imprisonment for a period not to exceed six months, or both, for conviction of a second offense committed within a period of five years; and by a fine of not less than $700 nor more than $1,000 or imprisonment for a period not to exceed six months, or both, for conviction of a third or subsequent offense committed within a period of five years. Each ~~week's~~day's continued violation

shall constitute a separate additional violation. In addition, the Town may recover a civil penalty of not more than $1,000 for each day a violation of this chapter continues, in an action brought in a court of competent jurisdiction, together with the Town's reasonable attorneys' fees and consultant costs.

B. Notwithstanding anything in this chapter, the owner/operator of any solar energy system or related accessory structure covered by this chapter may not use the payment of fines, liquidated damages or other penalties to evade or avoid compliance with this section. An attempt to do so may subject the owner/operator of a commercial solar energy system to the termination and revocation of any or all previously granted certificates, permits or approvals for the solar energy system pursuant to the procedures set forth in § 138-31B below. The Town may also seek injunctive relief to prevent the continued violation of this section, without limiting other remedies available to the Town.

C. The owner of the land on which a commercial solar energy system is located and the owner and operator of the system shall be jointly and severally liable for any violation of this chapter.

§ 138-31. Default and/or revocation.

A. If any solar energy system or related accessory structure covered by this chapter is repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this chapter or with any condition of a special use permit or site plan approval, the Code Enforcement Officer shall notify the owner/operator in writing of such violation. Such notice shall specify the nature of the violation or noncompliance and state that the violations must be corrected within 30 days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this chapter, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Code Enforcement Officer or their authorized designee may, at their sole discretion, order the violation remedied within 24 hours and may order the system de-energized pending correction.

B. If, within the period set forth in § 138-31A above, the solar energy system or related accessory structure is not brought into compliance with the provisions of this chapter or substantial steps are not taken in order to bring the same into compliance, the Code Enforcement Officer may revoke any or all issued certificates, permits or approvals issued by the Code Enforcement Officer, including the Town solar operating permit, and shall notify the owner/operator of the same within 48 hours of such action. The Code Enforcement Officer shall, in addition to the foregoing, inform the Board of the owner/operator's failure to comply with Subsection A above. The Board may thereafter, in its discretion, and after providing the owner/operator with notice and an opportunity to be heard, revoke any previously granted special use permit for the solar energy system.

Section 3. Chapter 140 of the Code of the Town of Conklin, Zoning, is hereby amended as follows:

A. The definition of "PUBLIC UTILITY USE" in § 140-4 is amended to read: "PUBLIC UTILITY USE — A building or lot used for or in connection with the transmission, distribution or regulation of water, gas, electric, telephone or other public utility service by a utility franchised or certificated to provide such service to the public within the Town. The term does not include any facility for the generation of electricity for sale, including any solar energy system, wind energy conversion

system or battery energy storage system, which uses are regulated exclusively by Chapter 138 of this Code and by any other chapter specifically applicable thereto."

B. Section 140-11G is amended to read: "G. Electrical distribution substations and other public utility structures of a similar nature are permitted following the issuance of a special permit as provided in Article XVI, § 140-91, of this chapter. This subsection does not authorize any solar energy system, which shall be permitted only as provided in Chapter 138 of this Code."

C. Section 140-34 (A-R District permitted uses) is amended by adding a new Subsection H to read: "H. Noncommercial solar energy systems as accessory uses, subject to Chapter 138 of this Code. Commercial solar energy systems of every type are prohibited in the A-R District."

D. Sections 140-55 (I-L District), 140-62 (I-D District) and 140-68 (IDT District) are each amended by adding a new subsection to read: "Commercial solar energy systems, subject to the issuance of a special use permit and site plan approval by the Town Board in accordance with Chapter 138 of this Code, and subject to all site restrictions and requirements of that chapter, which shall control over any inconsistent provision of this article."

E. Section 140-75 (Economic Development District Zone, suitable development) is amended by adding a new Subsection C to read: "C. Commercial solar energy systems are not a suitable development within the Economic Development District Zone and shall not be permitted therein as a principal or accessory use, except that roof-mounted and building-integrated commercial solar energy systems accessory to a lawful principal use may be permitted as provided in Chapter 138 of this Code."

F. Section 140-91 is amended by adding the following sentence at the end: "This section shall not apply to any solar energy system, wind energy conversion system or battery energy storage system, and no special permit shall be issued under this section for any facility for the generation of electricity for sale."

G. Section 140-130B is amended by adding the following sentence at the end: "The jurisdiction of the Board of Appeals with respect to solar energy systems is further governed by §§ 138-13 and 138-16.1 of this Code."

Section 4. Severability. If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 5. Repeal of inconsistent provisions. All local laws, ordinances or parts thereof inconsistent with this local law are hereby repealed to the extent of such inconsistency. Local Law No. 2 of 2025 (the solar moratorium) shall expire by its terms or upon the effective date of this local law, whichever first occurs, except that § 10 of Local Law No. 2 of 2025 shall continue in effect for the limited purpose stated in § 138-5B of the Code as amended by this local law.

Section 6. Effective date. This local law shall take effect immediately upon filing with the Secretary of State in accordance with Municipal Home Rule Law § 27.