

TOWN OF CONKLIN

LOCAL LAW NO. 2 OF 2024

**A LOCAL LAW AMENDING CHAPTER 140 OF THE TOWN CODE ENTITLED
“ZONING” AND ADDING A NEW CHAPTER 138 ENTITLED SOLAR ENERGY
SYSTEMS**

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

Section 1. Chapter 140 of the Town Code shall be amended as follows:

GENERAL REFERENCES

*Insert new General Reference after Parks – see Ch. 97 and before Subdivision of Land –
See Ch. 115: Solar Energy Systems – See Ch. 138*

§ 140-11. Permitted uses.

H. Delete and Replace with: Customary accessory uses and buildings (i.e., private garages, garden house, tool storage house), provided that such uses are incidental to the principal use and do not include any activity conducted as a business. Non-commercial solar energy systems are permitted as a customary accessory use, subject to the requirements of Chapter 138, and where not addressed by Chapter 138, to the requirements of this Chapter.

§ 140-91. Electrical distribution substations and other public utility structures.

Delete and Replace the introductory part of this section with: Electrical distribution substations and other similar public utility structures may be permitted in any district, provided that:

Section 2. Remainder

Except as hereinafter amended, the remainder of Chapter 140 of the Town Code shall remain in full force and effect.

Section 3. Separability

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words, or parts of this local law or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this local law would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and as if such person or circumstance, to which the local law or part thereof is held inapplicable, had been specifically exempt therefrom.

Section 4. Effective Date

This Local Law 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.

Section 5. Addition of Chapter 138

A new Chapter 138 of the Town Code is hereby added, entitled “Solar Energy Systems,” to read as follows:

Chapter 138

SOLAR ENERGY SYSTEMS

ARTICLE 1: 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.”

§ 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;
- B. Reducing the cost of energy by the owners of commercial and residential properties, including single-family homes;
- C. Increasing employment and business development in the region by furthering the installation of solar energy systems;
- D. Balancing the need to improve energy sustainability through increased use of solar energy systems with concerns for preservation of public health, welfare, and safety, as well as environmental quality, visual and aesthetic values, and existing neighborhood social and ecological stability;
- E. Minimizing adverse impacts on the character of neighborhoods, property values and the scenic, historic and environmental resources of the Town.

§ 138-4. Findings.

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

- A. That, when properly regulated, 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 solar energy systems.
- 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 solar energy systems deplete land available for other uses, introduce industrial usage into other nonindustrial areas, can pose environmental challenges and compete with other activities.
- 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.

§ 138-5. Applicability.

The requirements of this chapter shall apply to all solar energy systems installed or modified after its effective date, excluding general maintenance and repair.

§ 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.

§ 138-7. Repealer.

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

§ 138-8. Conflict with Other Laws.

Where this Local Law differs or conflicts with other laws, rules and regulations the more restrictive applicable law, rule or regulation shall apply. This section shall be inapplicable where County,

State or Federal Law preempts the application of a more restrictive law, rule or regulation, including the provisions contained in this Local Law.

§ 138-9. Effective Date.

This Local Law 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 Local Law, 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.

APPLICANT - Any person, firm or corporation submitting an application to the Town of Conklin for a solar energy production facility.

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, or any solar energy system with a nameplate generating capacity of 50 kilowatts or more. 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.

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.

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.

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.

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).

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.

NON-COMMERCIAL SOLAR ENERGY SYSTEM - A solar energy system with a nameplate generating capacity of less than 50 kilowatts that is incidental and subordinate to another use on the same parcel and which primarily produces energy for on-site consumption. Non-commercial 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.

NON-PARTICIPATING PROPERTY - A parcel of land not subject to any type of agreement with the Applicant.

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 of any legally permitted building or structure for the purpose of producing electricity for onsite or offsite 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, storage sheds or cabinets.

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 non-commercial solar energy system or commercial solar energy system as defined herein.

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.

UNIFORM CODE - The New York State Uniform Fire Prevention and Building Code.

ARTICLE 2: NON-COMMERCIAL SOLAR ENERGY SYSTEMS

§ 138-11. Permitting Requirements for Non-Commercial 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 NYS Uniform Fire Prevention and Building Code (“Uniform Code”), the NYS Energy Conservation 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 non-commercial solar energy systems.
- C. All non-commercial solar energy systems shall be permitted 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):
 - (i) Solar panels on pitched roofs shall be mounted with a maximum distance of eight (8) inches between the roof surface and the highest edge of the system.
 - (ii) Solar panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
 - (iii) Solar panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
 - (iv) Solar panels on flat roofs shall not extend above the top of the surrounding parapet, or more than twenty-four 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 non-commercial 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.
- (b) Setbacks. Ground-mounted non-commercial solar energy systems shall be subject to the setback regulations specified for principal and accessory buildings within the underlying zoning district as applicable. All ground-mounted non-commercial solar energy systems shall only be installed in the side or rear yards in residential districts.
- (c) Height. Ground-mounted non-commercial solar energy systems shall not exceed ten (10) feet from finished grade when oriented at maximum tilt.
- (d) Compliance. Ground-mounted non-commercial 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.

- 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. Non-commercial solar energy system requirements.
- (1) All non-commercial 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 non-commercial solar energy system, they must be placed in a secure container or enclosure meeting the requirements of the New York State Building Code 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 non-commercial 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 non-commercial solar energy system which has been determined to be non-functioning or abandoned shall be decommissioned and removed. The owner of the non-commercial 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 (6) months of the determination of the system to be non-functioning or abandoned.

§ 138-13. 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.
- 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).

ARTICLE 3: 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 an excessive proliferation of commercial solar energy systems within the Town, thereby safeguarding against potential negative impacts on landscapes and neighborhoods. This approach seeks to maintain the visual and residential integrity of the Town while facilitating responsible renewable energy expansion.
 - (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 existing views. Commercial solar energy systems shall be presumed to result in significant visual impacts, but the applicant can rebut this presumption through detailed visual simulations. The Board shall grant a Special Use Permit for a commercial solar energy system only if satisfied that there will be minimal negative visual impacts due to existing screening, topography, or additional vegetative screening. 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 solar energy system shall be approved within one mile 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.
 - (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, or wetlands, is discouraged. Proposed sites in these 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

§ 138-15. Site Restrictions and Requirements

- A. Permitted commercial solar energy systems shall not incorporate battery storage or a battery storage system. This law 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.
- C. Commercial solar energy systems are permitted by Special Use Permit issued by the Town Board in all zoning districts 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.
 - (2) Commercial ground-mounted solar energy systems must be located on sites with at least five (5) acres open for development. 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 fifteen (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.
 - (4) Solar energy equipment shall be located in a manner to (i) minimize visual impacts and view blockage for surrounding properties, and (ii) shading of property to the north, while still providing adequate solar access for collectors.
 - (5) Solar collectors shall be installed so as to minimize glare onto neighboring properties and roadways. All solar collectors shall be treated with anti-reflective coating(s).
 - (6) All commercial ground-mounted solar energy systems and associated solar accessory structures/facilities shall be completely enclosed by a minimum eight (8) foot high anchored mini-mesh chain-link fence with a two (2) foot tip out and a self-locking gate. Said fence shall contain five (5) inch high by sixteen (16) inch wide grade-level cutouts every seventy-five (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.
 - (7) All commercial ground-mounted solar energy systems must additionally include a visual buffer between the system, public roads and non-participating 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.
 - (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 (100) feet from any non-participating residential property line.
 - (b) three hundred (300) feet from the front, side or rear of non-participating, habitable residential structures.
 - (c) fifty (50) feet from non-participating, non-residential property lines.
 - (d) fifty (50) feet from the boundary line of any public street or roadway.
 - (e) one thousand (1,000) 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 one hundred (100) persons or more.
- (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 Requirements. Commercial solar energy systems shall adhere to applicable maximum lot coverage requirements for principal uses, if any.
- (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) 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 are subject to, and shall comply with all local, federal and state application and permitting requirements, 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) 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.
- (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.
- (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.

- (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, and the Board. Any gates to the site shall be equipped with Knox Company locks to allow fire department access.
- (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.

§ 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% of the area of Prime Farmland and/or Farmland of Statewide Importance on the parcel. 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.
- B. Commercial solar energy systems located on Prime Farmland and/or Farmland of Statewide Importance shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets.

§ 138-17. Application, Recertification 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, **non-refundable 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.

- C. If the project is approved, the owner shall pay an annual fee to the Town, 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.
- 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.

§ 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 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 § 138-18.2 below, the Special Use Permit, necessary building permit(s), 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 pre-application meeting is required with the Applicant, Town Engineer, Code Enforcement Officer 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.
 - (3) Completed applications for siting commercial solar energy systems shall be submitted to the Town Code Enforcement Officer at least ten (10) 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.
 - (4) Within 62 days after the Town Board meeting where the complete application is submitted, a public hearing shall be held. Notice of such public hearing shall be published in the official newspaper of the Town at least ten (10) days prior to the date thereof. In order that that 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 one thousand-five hundred (1,500) feet of any property line of the lot on which the proposed commercial solar energy system is proposed to be located.
 - (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 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 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 (5) 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 § 135-25; and all agreements required pursuant to Article 4 of this Chapter have been finalized 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; 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.
- 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, 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.
- 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
 - (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.
 - (3) Current photographs of the project site to establish baseline conditions prior to the commencement of construction.
 - (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
 - (e) Existing and proposed topography and five-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.
 - (5) A map or maps showing:
 - (a) Location and distance of the solar energy system and associated solar accessory facilities/structures to the nearest non-participating residential property line.
 - (b) Location and distance of the solar energy system and associated solar accessory facilities/structures to the nearest non-participating residential structure.
 - (c) Location and distance of the solar energy system and associated solar accessory facilities/structures to the nearest non-participating, non-residential 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 one hundred (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 fifteen hundred (1,500) feet of the property lines of the parcel(s) where development is proposed. Each such owner shall be designated as “participating” or “non-participating” 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 “non-residential”.
 - (i) Water access in case of fire.
 - (j) Areas of environmental sensitivity as set forth in § 138-14.A.3 and § 138-15.C.12 herein.
 - (k) Areas of Prime Farmland and Farmland of Statewide importance as defined in § 138-10 clearly showing the area of disturbance.
 - (l) Detailed information on tree removal areas.
 - (m) Detailed information on slope degrees specifying areas with varying slopes.
- (6) A landscaping and screening plan 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.
- (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 ten (10) inches in height within the interior of the fencing required by § 138-15C.6 of this Article.

(b) The 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.

(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.
- (b) The make, model and manufacturer of the solar production component parts and schematic drawings of same.
- (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 Storm Water 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 pre-construction and post-construction 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.
- (i) A true and complete copy of the interconnection agreement between the owner of the commercial solar energy system and the utility company.

- (j) The Applicant shall furnish a visual impact assessment, in a manner approved by the Board, 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:
 - (i) A zone of visibility map, which shall be provided in order to determine locations where the commercial ground-mounted solar energy systems may be seen.
 - (ii) Pictorial representations of before and after views 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; 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 pre-application meeting.
 - (iii) An assessment of the visual impact of the commercial solar energy system and accessory buildings from abutting and adjacent properties and streets.
- (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 Town Code Chapter 94 and/or any other applicable Town local law or ordinance.

- (n) A certification that the solar panels consist of non-toxic components 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 State Environmental Quality Review Act (“SEQRA”) Full Environmental Assessment Form (“FEAF”).
- (9) The Board may, in its discretion, modify or waive any of the requirements described in this section to the extent that such conditions are inapplicable to a given application. 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, legal professionals and/or experts the Town may hire to assist in the review and evaluation of the Application, and any related and/or required contractual agreements pursuant to Article 4 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 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 \$15,000.00. 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. 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.
- 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 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.

§ 138-21. Permit Time Frame.

- A. The Special Use Permit authorizing construction of a commercial solar energy system shall be valid for a period of eighteen (18) months from the date of issuance, conditional upon the subsequent issuance of building permit authorizing the commencement of construction.
- B. In the event construction is not completed in accordance with the approved site plan within eighteen (18) months after Special Use Permit approval, the Applicant may apply to the Board to extend the time to complete construction for one hundred eighty (180) days, which extension shall not be unreasonably withheld or delayed. If the owner and/or operator fails to perform substantial construction after twenty-four (24) months, all previously granted approvals shall expire and all application and related fees shall be retained by the Town.

§ 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, 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.

§ 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 (24) 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 forty-five (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 5 herein.

§ 138-24. Extent and Parameters of Special Use Permit; Recertification.

- A. At any time between twelve (12) months and six (6) months prior to the three (3) 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 § 138-19.D.8.I obtained within sixty (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.

E. 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.
- (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.

§ 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.
- (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 per occurrence/\$2,000,000 aggregate.
 - (b) Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate.
 - (c) Workers' compensation and disability: statutory amounts.
 - (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 thirty (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 fifteen (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 fifteen (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.

- (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.
 - (7) Specific measures to ensure that agricultural lands are restored to their original condition or improved.
 - (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 all decommissioning and site restoration activities.
 - (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.
- B. The implementation of the decommissioning plan shall commence and proceed in accordance with subsections C, D and E of this Subsection, 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 one hundred-eighty (180) days in any three hundred sixty-five (365) day period;
 - (2) The Applicant or subsequent owner begins but does not complete construction of the project within eighteen (18) months, or twenty-four (24) months upon the granting of an extension by the Board as described in Subsection A above, 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.
- 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 eighteen (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 ninety (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 one hundred eighty (180) days of such notification by the Town.

- D. Upon revocation, termination or non-recertification of an expired Special Use Permit, the Applicant, owner and/or operator must fully complete the decommissioning plan within one hundred eighty (180) days of the date of revocation, termination or non-recertification.
- 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 ninety (90) days of the service of said notice, the owner and/or operator shall either restore operation equal to 50% of approved capacity, or commence implementation of the decommissioning plan, which plan must be fully completed within one hundred eighty (180) days after implementation thereof.
- F. If the owner and/or operator fails to fully complete the decommissioning plan within the one hundred eighty (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 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.
- G. Prior to the issuance of a Special Use 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 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 the total cost of returning the property to its pre-developed state, taking into account the expected lifetime of the equipment and an assumed 3% rate of inflation. The removal bond or security shall state on its face that it is held by and for the sole benefit of the Town. 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 (3) years upon recertification of the Special Use Permit pursuant to § 138-24, and may be changed following a majority vote of the Board. 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.

- 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 (12) 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 forty-five (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 a recalculation of the estimated full cost of decommissioning and removal of the commercial solar energy system indexed to the cumulative U.S. inflation rate for the three (3) previous years. The Town may require an adjustment in the amount of the removal bond or decommissioning security to reflect any changes 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 change, 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 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. 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 twenty-four (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 4: 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:
 - a. 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.

- b. 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.
- c. 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 referenced herein, reasonable attorneys' fees, consultant fees and expert witness fees are included in those costs that are recoverable by the Town.
- d. 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.

§ 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).

- 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, non-commercial 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 fifteen (15) to twenty (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 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 thirty (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 5: VIOLATIONS & ENFORCEMENT

§ 138-30. Penalties for Violations.

- A. A violation of this Local Law is hereby declared to be an offense, punishable by a fine not exceeding \$250 or imprisonment for a period not to exceed fifteen (15) days, or both. Each week's continued violation shall constitute a separate additional violation.
- B. Notwithstanding anything in this Local Law, the owner/operator of any solar energy system or related accessory structure covered by this Local Law 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.

§ 138-31. Default and/or Revocation.

- A. If any solar energy system or related accessory structure covered by this Local Law is repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Local Law, 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 thirty (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 Local Law, 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 twenty-four (24) hours.
- B. If, within the period set forth in § 138-31.A above, the solar energy system or related accessory structure is not brought into compliance with the provisions of this Local Law 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 and shall notify the owner/operator of the same within forty-eight (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.