
**LOCAL LAW #1 FOR THE YEAR 2023
AMENDING THE TOWN OF KIANTONE SOLAR ENERGY LAW**

BE IT ENACTED by the Town Board of the Town of Kiantone as follows:

Section 1 – Title

This local law shall be known as the Town of Kiantone Solar Energy Law.

Section 2 - Authority

This Solar Energy Local Law is adopted pursuant to Sections 261, 262, and 263 of New York Town Law and Section 20 of the Municipal Home Rule Law of the State of New York, which authorizes the Town of Kiantone (“Town”) to adopt zoning provisions that advance and protect the health, safety, and welfare of the community, and to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefore in the Town.

Section 3 - Statement of Purpose

The Town of Kiantone Solar Energy Law is adopted to advance and protect the public health, safety, and welfare of the Town by creating regulations for the installation and use of solar energy systems and equipment, with the following objectives and intent:

1. To take advantage of a safe, abundant, renewable, and non-polluting energy resource;
2. To decrease the cost of electricity to the owners of residential and commercial properties, including single-family houses;
3. To invest in a locally generated source of energy to increase employment and business development in the Town, to the extent reasonably practical, by furthering the installation of solar energy systems;
4. To provide tax revenues and other benefits to the Town and its residents to mitigate impacts from solar energy systems in the Town;
5. To mitigate the impacts of solar energy systems on environmental resources, such as important agricultural lands, forests, wildlife and other protected resources.
6. To enable use of small-scale, on-farm renewable energy generation to benefit local farmers by allowing them to lower utility costs and/or supplement their income.
7. To protect property owners adjoining and surrounding large-scale solar installations from potential impacts through mitigation;
8. To aid in the energy independence of the community as well as the country; and
9. To create zoning regulations in accordance with the Town's comprehensive plan.

Section 4 - Definitions

BATTERY ENERGY STORAGE SYSTEM: One or more devices, assembled together, capable of storing energy in order to supply electricity to the electric grid or a facility at a future time (not to include a stand-alone 12-volt car battery or an electric motor vehicle).

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM: A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system, such as vertical facades, semi-transparent skylight systems, roofing materials, or shading over windows, which produces electricity for onsite consumption.

BUILDING-MOUNTED SOLAR ENERGY SYSTEMS: A solar energy system that is affixed to the side(s) of a building or other structure either directly or by means of support structures or other mounting devices, but not including those mounted to the roof or top surface of a building. Said system is designed and intended to generate electricity solely for use on said lot, potentially for multiple tenants, through a distribution system that is not available to the general public.

COLLECTIVE SOLAR: Solar installations owned collectively through subdivision homeowner associations or similar groups and, which provide energy only for the onsite use of a subdivision or multi-family building. Collective solar installations shall be regulated depending upon generation capacity as either large-scale or small-scale systems, as defined herein, and the onsite consumption for such a system shall include the parcel where the system is located and the parcels owned by the collective's member-owners.

DWELLING: A building, or portion thereof, designed exclusively for residential use, which may be occupied or vacant.

FARM OPERATION: As defined in Section 301 of the New York Agriculture and Markets Law, "land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise[.]" Farm operation shall include commercial horse boarding operations, timber operations, compost, mulch or other biomass crops, and commercial equine operations, as defined in Section 301 of the New York Agriculture and Markets Law. A farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

FARMLAND CONVERSION: An outward or affirmative act changing the use of agricultural land to a nonagricultural use in accordance with the NYS Agriculture and Markets Law.

FARMLAND OF STATEWIDE IMPORTANCE: Soils designated by New York State Agriculture and Markets that do not meet all the criteria for Prime Farmland, that economically produce high yields of crops when treated and managed according to acceptable farming methods and are depicted on the U.S. Department of Agriculture ("USDA") Natural Resources Conservation Service ("NRCS") Web Soil Survey.

GROUND-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System that is anchored to the ground via a pole or other mounting system, detached from any other structure, which generates electricity for onsite or offsite consumption.

HOST COMMUNITY AGREEMENT: A contract between a developer of a Solar Energy System and a local governing body, whereby the developer agrees to provide the community with certain benefits and mitigate specified impacts of the proposed Solar Energy System.

NATIVE PERENNIAL VEGETATION: Native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for pollinators, and shall not include any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation ("NYSDEC").

NON-PARTICIPATING PROPERTY: A property that is not affiliated with a Solar Energy System project in any way.

PARCEL(S): A tract of land owned, leased, or otherwise controlled by an individual or entity upon which a Solar Energy System is proposed to be constructed.

PARTICIPATING PROPERTY: Any real property that is the subject of an agreement that provides for the payment of monetary compensation to the landowner from a Solar Energy System owner, and is controlled by a Solar Energy System owner with or without solar energy-related improvements constructed upon it.

PILOT Agreement: An agreement for a payment in lieu of taxes (“PILOT”) pursuant to Real Property Tax Law § 487.

POLLINATOR: Birds, bees, butterflies, and other insects or wildlife that pollinate flowering plants, including both wild and managed insects.

PRIME FARMLAND: Soil that has the best combination of physical and chemical characteristics for crop production and is designated as “Prime Farmland” in the USDA regulations and depicted on the USDA NRCS Web Soil Survey. *See* 7 C.F.R. § 657.5.

ROOF-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System located on the roof of any legally permitted building or structure, which produces electricity for onsite or offsite consumption.

SOLAR ACCESS: Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive Solar Energy Systems on individual properties.

SOLAR ENERGY EQUIPMENT: Electrical material, hardware, inverters, conduits, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity.

SOLAR ENERGY SYSTEM: The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. A Solar Energy System in the Town of Kiantone is classified as a Tier 1, Tier 2, or Tier 3 Solar Energy System as follows.

- A. Tier 1 Solar Energy Systems include the following:
 - 1. Roof-Mounted Solar Energy Systems
 - 2. Building-Integrated Solar Energy Systems
- B. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems up to 2,000 square feet in size (defined as the actual square footage of panels) and that generate no more than 110% of the electricity consumed onsite in one (1) year.
- C. Tier 3 Solar Energy Systems are systems that do not meet the definition of a Tier 1 or Tier 2 Solar Energy System.

SOLAR FACILITY AREA: The cumulative land area occupied during the commercial operation of the Solar Energy System. This shall include the Solar Energy System, onsite interconnection equipment, onsite electrical energy storage equipment, and any other associated equipment, as well as any solar energy equipment beyond the facility’s perimeter boundary such as improvements necessary for the utility interconnection, access roads, or other permanent improvements, but excluding those established offsite for impact mitigation purposes.

SOLAR PANEL: A photovoltaic device capable of collecting and converting solar energy into electricity.

STEEP SLOPES: Any area having a topographical gradient of 15% (the ratio of vertical distance to horizontal distance) or more with a minimum of 500 square feet, one dimension of which is a minimum of 10 feet. For purposes of this definition, area measurements must be made along a horizontal plane from within the boundaries of a lot.

- A. **STEEP SLOPE:** A slope with a topographical gradient equal to or greater than 15%, but less than 25%.
- B. **VERY STEEP SLOPE:** A slope with a topographical gradient equal to or greater than 25%, but less than 35%.
- C. **EXCESSIVELY STEEP SLOPE:** A slope with a topographical gradient equal to or greater than 35%.

WETLANDS: Any areas designated as such by the NYSDEC or the United States Army Corps of Engineers ("USACE").

ZONING LAW: The Zoning Law of the Town of Kiantone (Local Law No. 1 of 2006).

Section 5 - Applicability

1. The requirements of this Local Law shall apply to all Solar Energy Systems permitted, installed, or modified in the town after the effective date of this Local Law, excluding general maintenance and repair.
2. Solar Energy Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements herein.
3. Modifications to an existing Solar Energy System that increase the Solar Energy System area by more than five percent (5%) of the original area of the Solar Energy System (exclusive of moving any fencing) shall be subject to this Local Law.
4. All Solar Energy 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 ("Building Code"), the NYS Energy Conservation Code ("Energy Code"), and the town code.

Section 6 - General Requirements

1. A building permit shall be required for the installation of all Solar Energy Systems.
2. Issuance of permits and approvals for all Solar Energy Systems shall include review pursuant to the State Environmental Quality Review Act, as set forth in Article 8 of the New York Environmental Conservation Law, and its implementing regulations at 6 N.Y.C.R.R. Part 617 ("SEQRA").
3. This Article shall take precedence over any inconsistent provision of the Zoning Law of the Town of Kiantone.

Section 7 - Permitting Requirements for Tier 1 Solar Energy Systems

All Tier 1 Solar Energy Systems shall be permitted in all zoning districts and shall be exempt from site plan review under the Zoning Law or other land use regulation, subject to the following conditions for each type of Solar Energy System:

1. **Roof-Mounted and Building-Mounted Solar Energy Systems.**
 - a. Roof-mounted and building-mounted solar energy systems are permitted as an accessory use in all zoning districts when attached to a lawfully permitted principal structure and/or accessory structure, subject to the following requirements:
 - i. Height. Solar energy systems shall not exceed maximum height restrictions within any zoning district and are provided the same height exemptions granted to building-mounted mechanical devices and equipment.
 - ii. Setback. Roof-mounted and building-mounted solar energy systems are subject to the setback requirements of the underlying zoning district, and may not be installed on structures which do not conform to setback requirements.
 - iii. Aesthetics and Safety Design. Solar energy equipment shall incorporate the following design requirements:
 - (1) Roof-mounted panels facing the front yard must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof and the highest edge of the system.
 - (2) Access and Pathways. Ground access, roof access, pathways, and spacing requirements for solar photovoltaic systems shall be provided in accordance with the Building Code.
 - (3) Size of solar photovoltaic array. Each photovoltaic array shall not exceed 150 feet in any direction.
 - iv. Where required by the Building Code to allow for smoke ventilation operations, panels and modules shall not be located less than 18 inches from a roof ridge or peak.
 - v. Single ridge roofs and hip roofs. Panels, modules, or arrays installed on single ridge roofs and hip roofs shall be located and shall provide access and pathways in a manner consistent with the Building Code.
 - vi. Ice guards or restraints. Any roof upon which a solar energy system is mounted or integrated must incorporate snow and ice guards, or restraints sufficient to mitigate the risk of injury from falling snow or ice to persons or vehicles moving around or under the roof.
 - b. Glare: All Solar Panels shall have an anti-reflective coating(s), and proof of such must be provided with the building permit application.
 - c. Fire safety: All roof-mounted solar energy systems shall be designed and installed in accordance with the Building Code Standards.
 - d. Notification to the Fire Department. Notification in writing to the fire department having

operational authority at the location where the solar energy system will be installed shall be made no later than 10 days following installation.

- i.* Notification shall include a site map showing the location of the solar energy system's electrical panel and the proper operation of the disconnect switch(s) to cut power from the solar panels in the event of a fire or other emergency situation where the homeowner, tenant, or other personnel is not available or familiar with the safe shutdown operation of the solar energy facility.
 - ii.* In addition, notification shall include a written statement that the method of shutdown is posted inside the main electrical panel of the unit, which will be readily accessible to fire department personnel.
2. Building-Integrated Solar Energy Systems. Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system. They shall be shown to meet the applicable requirements for Tier 1 solar energy systems.

Section 8 - Permitting Requirements for Tier 2 Solar Energy Systems

All Tier 2 Solar Energy Systems shall be permitted through the issuance of a special use permit in all zoning districts as an accessory use, and are subject to the site plan application requirements set forth in Section 10 and the special use permit standards set forth in Section 11, below. All Solar Energy Systems accessory to Agricultural Land Uses shall be exempt from special use permit requirements and shall be permitted through site plan review only. The application shall also include an application fee as set by the Town of Kiantone Town Board, which may be modified from time to time via resolution, and meet the following requirements:

1. Glare. All solar panels shall have an anti-reflective coating(s), and proof of such must be provided with the building permit application.
2. Setbacks. Tier 2 Solar Energy Systems shall be setback a minimum of 30 feet from any side or rear property line. All Ground-Mounted Solar Energy Systems shall only be installed in the side or rear yards. Preference is for siting in rear yards, and if an applicant seeks approval for a Ground-Mounted Solar Energy System in a side yard, it must be shown that installation in the rear yard cannot be accomplished). In all cases, the solar panels shall be located a minimum of 60 feet from any dwelling on an adjoining non-participating property.
3. Height. Tier 2 Solar Energy Systems shall be less than 12 feet in height in Residential Districts. The height of Tier 2 Solar Energy Systems shall be less than 20 feet in all remaining districts.
4. Screening and Visibility.
 - a. All Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable (as determined through the site plan process).
 - b. Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.
5. Vegetative Installations. All vegetation for the purpose of replanting, landscaping, screening, and stormwater management shall be non-invasive, native varieties of appropriate scale and type per intended practice.
6. Steep Slopes. Tier 2 Solar Energy Systems shall not be permitted on very steep or excessively steep

slopes, and steep slopes shall be avoided to the extent practicable.

7. Any Tier 2 solar energy system to be used strictly for agricultural purposes in accordance with NYS Agriculture and Markets Law may have some of the requirements of this article waived by the Planning Board.
8. All solar energy systems shall adhere to all applicable federal, state, county and Town laws, regulations, and building, plumbing, electrical, and fire codes.
9. Any solar energy system shall be accessible for all emergency service vehicles and personnel.
10. All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color.
11. The design, construction, operation, and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.

Section 9 - Permitting Requirements for Tier 3 Solar Energy Systems

All Tier 3 Solar Energy Systems are permitted through the issuance of a special use permit within all zoning districts except the Residential (Established Neighborhoods) ("R1") District, Business (Central) ("B1") District, Business (Light) ("B2") District, and Conservation ("C1") District, and are subject to site plan application requirements set forth in Section 10 and the special use permit standards set forth in Section 11, below. In order to ensure that the benefits of the solar energy system are available to the entire community, the Town may require the applicant to enter into a Host Community Agreement ("HCA") with the Town.

1. Application Process for Installation of Tier 3 Solar Energy Systems:

- a. An application for a Tier 3 Solar Energy System shall include the following:
 - i. Site plan application, which shall meet the requirements of Section 10 ("Site Plan Application"), below, as well as Section 905(B)(3) of the Zoning Law ("Site Plan Review Requirements").
 - ii. Special use permit application, which shall meet the requirements of Section 11 ("Special Use Permit Standards"), below, as well as Section 905(B)(2) of the Zoning Law ("Special Use Permit Provisions").
- b. An application for a Tier 3 Solar Energy System shall be submitted to the Town Clerk, who will determine whether all necessary components of the application have been submitted. If satisfied, the Town Clerk will forward the application to the Planning Board, to be placed on the agenda for the next available Planning Board meeting for a completeness determination. Applicants shall be advised within ten (10) business days of the Planning Board meeting if their application is complete or if there are any deficiencies that must be addressed prior to substantive review of the application.
- c. Application Fees. All applications for Tier 3 solar energy systems shall include the appropriate fees as set by Town Board via resolution, which may be amended from time to time.
- d. Applications shall also be referred to the Town Board to decide on the completion of an HCA or PILOT Agreement. These agreements will need to be finalized prior to the issuance of a building permit.

- e. Applications shall also be referred to the Chautauqua County Department of Planning and Development pursuant to Section 239-m of the General Municipal Law, if required.
- f. Public Hearing. The Planning Board shall complete all public notice and hearing requirements in accordance with Zoning Law § 905 (“Special Use Permits/Site Plan Review”).
- g. Compliance with SEQRA. The Town shall comply with the provisions of SEQRA when reviewing an application for approval of a Tier 3 solar energy system, which shall constitute a Type 1 action under SEQRA.

2. Design Requirements.

- a. Lot Size. No Tier 3 Solar Energy System shall be permitted on property of less than five (5) acres, and the project must be shown to meet all setbacks and other requirements of this law.
- b. Setbacks. For all Tier 3 Solar Energy Systems, the fence surrounding the solar panels and equipment shall be setback a minimum of 50 feet from all property lines and from the edge of any public road right-of-way (“ROW”). Additionally, the fence line shall be setback a minimum of 300 feet from the side or rear of a dwelling on an adjoining non-participating property and 100 feet from the side or rear of any off-site participating dwelling.
- c. Height. The height of a Tier 3 Solar Energy System shall be less than or equal to 20 feet. The height will be measured from the highest natural grade below each solar panel. This height requirement can be waived by the Planning Board if the panels are being raised to accommodate agricultural purposes.
- d. Fencing Requirements. All mechanical equipment, including any structure for storage batteries, shall be enclosed by a fence, have a self-locking gate to prevent unauthorized access, and meet any other regulatory requirements (e.g., National Electric Code (“NEC”)).
- e. Utility Lines. All Solar Facility Area utility lines shall be located underground to the extent feasible, and as permitted by the serving utility, with the exception of the main service connection at the utility company ROW and interconnection equipment.
- f. Noise. The Solar Energy System shall be shown to not have any adverse noise impacts on any surrounding homes or other sensitive receptors, as determined by NYSDEC noise regulations. If necessary, the Planning Board will require analysis of the noise on any sensitive receptors, including single-family homes. Information on any noise-producing equipment (as determined by the Town based on a review of the application materials) shall be submitted.
- g. Hazardous Materials. No components of the Solar Energy System shall contain any US EPA-listed hazardous materials in an amount exceeding allowable limits that could contaminate soils or the air by their release, in accordance with “The List of Extremely Hazardous Substances and Their Threshold Planning Quantities” (Title 40, Chapter I, Subchapter J, Appendix A to Part 355). Solar panels shall not contain cadmium.
- h. Access for Fire Department Vehicles. The main access road into the solar energy facility shall be a minimum of 20 feet wide with an entrance of at least 30 feet wide for tail swing/turning radius. The main access road shall have at least 14 feet of clearance to accommodate emergency and other large vehicles. All vehicular paths within the Solar Facility Area shall be designed to minimize the extent of impervious materials and soil compaction.

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- i. Signage.
- i. No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, equipment specification information, safety information, and 24-hour emergency contact information. This information shall be depicted within an area of no more than eight (8) square feet.
 - ii. As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light-reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
- j. Glare. All Solar Panels shall have an anti-reflective coating(s), and proof of such must be provided with the building permit application.
- k. Lighting. Lighting for a Solar Energy System shall be limited to lighting that is minimally required for safety and operational purposes and shall be reasonably shielded and downcast (*i.e.*, dark sky compliant) from abutting properties.
- l. Steep Slopes. Tier 3 Solar Energy Systems shall not be permitted on very steep or excessively steep slopes and shall avoid steep slopes to the extent practicable.
- m. Vegetative Installations. All vegetation for the purpose of replanting, landscaping, screening, and stormwater management shall be non-invasive, native varieties of appropriate scale and type per intended practice.
- n. Tree-Cutting. A maximum of 25% of mature (6" diameter), non-invasive tree clearance may be permitted for any Tier 3 solar energy system. A Reforestation Plan shall be submitted and included as a part of the decommissioning process for any forest removal.
- o. Weed Control. Non-chemical weed control is required.
- p. Screening and Visibility.
- i. Solar Energy Systems smaller than five (5) acres shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earthen berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
 - ii. Solar Energy Systems larger than five (5) acres shall be required to:
 - (a) Conduct a visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital viewshed report, may be required to be submitted by the applicant.
 - (b) Any demonstrated visibility of the solar panels shall require a professional Glare Analysis to be conducted, providing the duration of glare at each vantage point for the change in sun angle over a one (1) year period.
 - (c) Submit a screening & landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized as reasonably practicable from public roadways and

adjacent properties to the extent feasible. The Planning Board will in good faith determine the adequacy of these measures in its sole and absolute discretion.

- (1) The screening & landscaping plan shall specify the locations, elevations, heights, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system.
 - (2) The landscaped screening shall consist of a minimum of one (1) evergreen tree, at least six (6) feet high at the time of planting, plus two (2) supplemental shrubs at the reasonable discretion of the Planning Board, all planted within each ten (10) linear feet of the Solar Energy System.
 - (3) Existing vegetation may be used to satisfy all or a portion of the required landscaped screening.
 - (4) A list of suitable evergreen trees and shrub species should be provided by the Town.
 - (5) This minimum screening requirement will be reduced if adjoining properties are participating properties.
- (d) For any buildings or structures (not panels) to be placed on the site, the applicant shall be required to submit plans illustrating how these structures will blend into the character of the area. For example, buildings can be made to look like agricultural structures, such as barns.
- (e) A Building Permit is required per structure (not panels).
- q. Timber Harvesting & Haul Roads. All timber harvesting activities associated with the installation of Solar Energy Systems shall adhere to the most current version of the *New York State Forestry Voluntary Best Management Practices for Water Quality, BMP Field Guide* (NYSDEC, 2018) in order to keep forests healthy, maintain public support for timber harvesters and forest management, minimize erosion and surface water runoff, maintain hydrologic processes by limiting disturbance of water flow patterns, maintain water temperature along shorelines and streambanks, and protect nutrient balances in the soil. All haul roads and skid trails shall be smoothed, sloped, ditched, and seeded with perennial grasses, as needed. Landings shall be smoothed, seeded, and protected with waterbars, as needed. At stream crossings, temporary stream culverts and bridges shall be removed, and stream banks shall be restabilized and protected with waterbars. All reclamation efforts shall be subject to inspection by the Town to assure compliance with this provision.
- r. Agricultural Resources. The NYS Department of Agriculture and Markets considers Solar Energy Systems to be “on-farm” equipment when they are designed, installed, and operated so that the anticipated annual total amounts of electrical energy generation do not exceed the anticipated annual total electrical needs of the farm by more than 110 percent.

For projects located on Prime Farmland or Farmland of Statewide Importance exceeding 110% annual total electrical needs of the farm:

- i. Solar Energy Systems located on Prime Farmland or Farmland of Statewide Importance shall be constructed in accordance with the New York State Department of Agriculture and Markets, *Guidelines for Solar Energy Projects – Construction Mitigation for*

Agricultural Lands (2019).

- ii. The Solar Energy System owners shall hire or designate an Environmental Monitor (“EM”) to oversee the construction, restoration, and follow-up monitoring in agricultural areas.
- iii. Solar Energy System owners shall develop, implement, and maintain native 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. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes. Once established, other agriculture uses such as pasturing livestock and apiculture are permissible and encouraged. Input from the Planning Board will be needed to make these determinations.
- iv. Agricultural Restoration Requirements. Once the system is decommissioned, the site shall be restored and remediated in accordance with the New York State Department of Agriculture and Markets, *Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (2019)*, which shall be a condition of the Special Use Permit.
- v. Monitoring and remediation of topsoil thickness and trench settling, excessive rock (>4”), soil compaction, drainage, and fencing and gates shall be required at least three times per growing season for two complete growing seasons for projects subject to NYS Public Service Law Article 10 or one complete growing season for all other projects.
- vi. A conversion penalty equal to five times the taxes saved in the most recent year that the land received any agricultural assessment plus interest shall be imposed by the NYS Department of Agriculture and Markets if farmland that is subject to an agricultural assessment is converted to a nonagricultural use within five years of the last agricultural assessment if located inside an agricultural district or eight years if located outside an agricultural district.

Section 10 – Site Plan Application

1. **Site Plan Requirements.** No building permit for any Tier 3 Solar Energy System shall be issued unless the Planning Board has previously approved a site plan pursuant to this section. Continued compliance with the approved final site plan shall be a requirement of the continued validity of any building permit.
2. **Purpose.** The purpose of site plan review and approval is to secure compliance with the purposes and provisions of this Section, as well as Section 905(B)(3) of the Zoning Law, and with professional design practices for Solar Energy System installations.
3. **Site Plan Contents.** Site plans for a Tier 3 Solar Energy System shall be prepared by a professional engineer, legally qualified architect, landscape architect, or surveyor licensed in the State of New York and shall include the following:
 - a. A site plan illustrating property lines and physical features, including roads, for the project site.
 - b. Proposed changes to the landscape of the site; proposed grading, vegetation clearing, or planting; exterior lighting; and screening vegetation or structures.
 - c. A one- or three-line electrical diagram detailing the Solar Energy System layout, solar collector

installation, associated components, and electrical interconnection methods, with NEC-compliant disconnects and overcurrent devices.

- d. A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters/converters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of a building permit.
- e. Name, address, and contact information of the proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of a building permit.
- f. Name, address, phone number, and signature of the applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.
- g. Zoning district designation for the parcel(s) of land comprising the project site.
- h. Property Operation and Maintenance Plan. Such a plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming (or other methodologies).
- i. Erosion and sediment control and stormwater management plans prepared to NYSDEC standards, if applicable, and to such standards as may be established by the Planning Board.
- j. Engineering documents must be signed and sealed by a New York State Licensed Professional Engineer or Registered Architect.
- k. A completed Full Environmental Assessment Form ("FEAF") pursuant to SEQRA.
- l. A Landscape Plan in accordance with the Special Use Permit requirements of this law.
- m. Any such additional information may be required by the Town's professional engineer or consultant, Planning Board, Zoning Board of Appeals, Town Attorney, Building Inspector, or other Town official.

Section 11 - Special Use Permit Standards (in addition to those required in the General Provisions of Article XLVI)

1. Special Use Permit Standards. No building permit for any Tier 3 Solar Energy System shall be issued unless the Planning Board has previously issued a special use permit pursuant to this section.
2. Specific Standards.
 - a. Maintenance Plan. Applications shall include a maintenance plan for the entire Solar Facility Area (including required setbacks/buffers/weed control) and any related offsite installations.
 - b. Safety Plan. Applications shall include a safety plan (including communication with emergency service providers).
 - c. Environmental and Cultural Resources. Information on the environmental and cultural resources (as identified through the NYSDEC Mapping system and by the Town) on the subject property and surrounding properties shall be included in the application.

- d. Maintenance of Roads. A performance cash bond or surety in a form acceptable to the Planning Board for the purposes of restoration of the site and repair of any Town roads shall be required as a condition of the Special Use Permit and be posted with the Town Clerk. Any forfeited cash bond secured for restoration of the site and repair of Town roads shall be returned to the applicant.
- e. Construction and Maintenance. Prior to the issuance of a building permit for the Tier 3 solar energy system and any associated accessory structures, the applicant shall post a surety in an amount and form acceptable to the Town for the purposes of construction and maintenance. The amount shall be up to 20% of the construction value. Acceptable forms shall include, in order of preference: cash; a letter of credit; a bond that cannot expire; or a combination thereof. This surety will be used to guarantee compliance with the conditions of the approval for the Tier 3 Solar Energy System. If the applicant fails to comply with any conditions of the approval during construction or long-term maintenance of the site, all costs of the Town incurred by bringing the site into compliance with conditions of the approval shall be paid using the surety provided by the applicant. Failure to comply with the conditions of the approval or to maintain an acceptable level of surety will result in the revocation of the certificate of occupancy. The bond shall be carried for a term expiring a maximum of 5 years post-construction or earlier if the Town Board determines that there is full compliance with construction and maintenance requirements under the applicable laws, including but not limited to proper vegetation, fencing, road maintenance, drainage, stormwater management, and soil erosion.
- f. Decommissioning.
- i. Solar Energy Systems that have been abandoned and/or not producing electricity (defined as operated at a minimum of 50% capacity for a period of at least six (6) months) for a period of one (1) year shall be removed at the expense of the owner and/or operator, which at the owner and/or operator's option, may come from any security provided to the Town pursuant to this local law.
- ii. A decommissioning plan (*see* Appendix A) signed by the owner and/or operator of the Solar Energy System shall be submitted with the application, addressing the following:
- (a) The time and cost to decommission and remove the Solar System and any ancillary structures.
- (b) The time and cost required to repair any damage caused to the property by the installation and removal of the Solar Energy System.
- iii. Security.
- (a) The deposit with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town Attorney and/or Engineer, and approved by the Town Board, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be 125% of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of two percent (2%) annually for the life of the Solar Energy System. The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the Solar Energy System. This cost estimate shall be recalculated every four (4) years, the surety shall be updated in kind, and the decommissioning plan shall be updated to reflect these recalculations every four (4)

years.

(b) In the event of default upon the performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until the restoration of the property as set forth in the decommissioning plan is completed.

(c) In the event of default or abandonment of the Solar Energy System, the system shall be decommissioned by the owner and/or operator. If the owner and/or operator fails to decommission the Solar Energy System pursuant to the decommissioning plan, the Town may elect to decommission the Solar Energy System and recover the costs from the cash, bond, or other form of security.

g. Tier 3 Solar Energy System Liability Insurance:

i. The holder of a Special Use Permit for a Tier 3 Solar Energy System shall agree to secure and maintain for the duration of the permit, public liability insurance as follows:

(a) Commercial general liability, covering personal injuries, death, and property damage: \$5,000,000 per occurrence (*\$10,000,000 aggregate*) which shall specifically include the Town and its officers, councils, employees, attorneys, agents, and consultants as additional named insureds;

(b) Umbrella Coverage: \$10,000,000.

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

iii. Insurance Policy Cancellation. 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 cancellation.

iv. Copies of Insurance Policy. No more than fifteen (15) days after the grant of the permit, but before construction is initiated, the permit holder shall deliver to the Town a copy of each of the policies or certificates representing the liability insurance in the required amounts. However, a certificate of insurance states that it is for informational purposes only and does not confer sufficient rights upon the Town and shall not alone be sufficient for compliance with this local law.

v. Insurance Policy Renewal. Renewal or replacement policies shall be delivered to the Town at least fifteen (15) days before the expiration of the prior insurance policies.

vi. Indemnification. Any application for a Tier 3 Solar Energy System within the Town shall contain an indemnification provision. The provision shall require the applicant 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 there from, either at law or in equity, which might arise out of or are caused by the placement, construction, erection, modification, location, performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said 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.

- h. Solar Skyspace. A property owner who has installed or intends to install a Tier 3 solar energy system may choose to negotiate with other property owners in the vicinity for any necessary solar skyspace easements. The issuance of a special use permit does not constitute solar skyspace rights, and the Town shall not be responsible for ensuring impermissible obstruction to the solar skyspace as a result of uses or development performed in accordance with Town Code. In the event that solar easements are negotiated by an applicant or property owner for a Tier 3 solar energy system, a copy or documentation of any solar skyspace easements shall be provided. Such easements negotiated with neighboring property owners shall be properly recorded and shall, at a minimum, include:
- i. The restrictions placed upon buildings, structures, vegetation and other objects or uses that would potentially obstruct the solar skyspace of the solar energy system;
 - ii. A description of the dimensions of the easement expressed in measurable terms, such as the maximum height of buildings and structures, vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector may not be obstructed, or a combination of these descriptions;
 - iii. The amount, if any, of permissible obstruction of the solar skyspace through the easement, expressed in measurable terms, such as a specific percentage of the solar skyspace that may be obstructed or hours during the day;
 - iv. Provision for trimming vegetation that would impermissibly obstruct solar skyspace, including any compensation for trimming expenses;
 - v. Provisions for compensation of the owner and/or operator benefitting from the easement in the event of impermissible obstruction of the solar skyspace that would be in violation of the easement; and
 - vi. The terms or conditions, if any, under which the easement may be revised or terminated.

Section 12 - Ownership Changes

If the owner and/or operator of the Solar Energy System changes or the owner of the property changes, the special use permit shall remain in effect and the successor owner and/or operator shall assume all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner and/or operator of the Solar Energy System shall notify the Building Inspector/Zoning Enforcement Officer thirty (30) days prior to such change.

Section 13 - Safety

1. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.
2. Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal, at a level acceptable to the local

fire department and, if the Tier 3 Solar Energy System is located in an ambulance district, the local ambulance corps.

3. If storage batteries are included as part of the Solar Energy System, they shall meet the requirements of any applicable local law, electrical code, and the Building and Energy Codes when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the Town and any applicable federal, state, or county laws or regulations.

Section 14 - Permit Time Frame and Abandonment

1. The Special Use Permit and site plan approval for a Solar Energy System shall be valid for a period of twenty-four (24) months, provided that construction has commenced. In the event construction is not completed in accordance with the final site plan as may have been amended and approved, as required by the Planning Board, within 24 months after approval, the applicant or the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after thirty (30) months, the approvals shall expire.
2. Prior to the full operation of the Solar Energy System, all equipment and materials associated with facility staging and construction shall be removed from the property. The storage of equipment and materials is not permitted during system operation unless it is within an approved storage structure.
3. Upon cessation of electricity generation of a Solar Energy System on a continuous basis for twelve (12) months, the Town may notify and instruct the owner and/or operator of the Solar Energy System to implement the decommissioning plan. The decommissioning plan must be completed within 360 days of notification.
4. If the owner and/or operator fails to comply with decommissioning upon abandonment, the Town may, at its discretion, utilize the bond and/or security for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan.

Section 15 - Enforcement

Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the Zoning Law.

Section 16 - Severability

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

APPENDIX A: EXAMPLE DECOMMISSIONING PLAN

Date: [Date]

Decommissioning Plan for [Solar Project Name], located at: [Solar Project Address]

Prepared and Submitted by [Solar Developer Name], the owner of [Solar Project Name]

As required by [Town of Kiantone, Chautauqua County, New York], [Solar Developer Name] presents this decommissioning plan for [Solar Project Name] (the "Facility").

Decommissioning will occur as a result of any of the following conditions:

1. The land lease, if any, ends
2. The Facility does not produce power for [12] months
3. The Facility is damaged and will not be repaired or replaced

The owner of the Facility shall restore the property to its condition as it existed before the Facility was installed, pursuant to which may include the following:

1. Removal of all operator-owned equipment, concrete, conduits, structures, fencing, and foundations to a depth of 36 inches below the soil surface.
2. Removal of any solid and hazardous waste caused by the Facility in accordance with local, state and federal waste disposal regulations.
3. Removal of all graveled areas and access roads unless the landowner requests in writing for it to remain.

All said removal and decommissioning shall occur within twelve [12] months of the Facility ceasing to produce power for sale.

The owner of the Facility, currently [Solar Developer Name], is responsible for this decommissioning.

Facility Owner Signature: _____

Date: _____