

Town of Canajoharie

A Local Law Amending the Zoning Law of the Town of Canajoharie With Respect to Utility-Scale Solar Collector Systems

Section 1. Authority, Purpose, and Intent

This Local Law is adopted pursuant to sections 261-263 of the Town Law and section 20 of the Municipal Home Rule Law of the State of New York, which authorize the Town to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with Section 263 the Town law of New York State, “to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor.”

This Local Law is further adopted to advance and promote a clean, wholesome, and attractive environment; protect the community from potential hazards to property and person; protect water resources and viable farmlands; preserve the aesthetic qualities and character of the Town of Canajoharie; prevent depreciation of property; preserve the rights of property owners; and secure the public peace, health, safety and welfare of the Town of Canajoharie by creating regulations for the installation and use of solar energy systems and equipment.

Section 2. Repeal of Certain Portions of Article VI: Supplementary Regulations Section C.14: Solar Energy Systems and Equipment of the Town of Canajoharie Zoning Law

The entirety of the following portion of Article VI Section C.14 is hereby repealed: That portion beginning with “Utility-scale solar collector system” and ending with the final sentence of subsection D(c), which, in part, reads “all costs of the Town incurred to comply with this condition shall be paid using the surety provided by the applicant,” and containing subsections “A. Purpose and intent,” “B. Bulk and area requirements,” “C. General Provisions,” and “D. Removal of obsolete/unused facilities.”

Section 3. Definitions

- A. The following Solar Energy Equipment and Systems definitions added to Article XIII: Definitions of the Town of Canajoharie Zoning Law are hereby repealed:

Accessory Structure

A structure, the use of which is customarily incidental and subordinate to the principal building, and is located on the same lot or premises as the principal building.

Utility-Scale Solar Collector System

A solar energy system that is designed and/or built to provide energy as an ongoing commercial enterprise, or for commercial profit, or designed to distribute energy generated to a transmission system for distribution to customers rather than for use on the site. A utility-scale solar use may include solar energy system equipment and uses,

such as but not limited to supporting posts and frames, buildings and/or other structure(s), access drives, inverter equipment, wires, cables, and other equipment for the purpose of supplying electrical energy produced from solar technologies, whether such use is a principal use, a part of the principal use or an accessory use or structure.

- B. The following Solar Energy Equipment and Systems definitions are hereby added to Article XIII: Definitions of the Town of Canajoharie Zoning Law:

ACTIVE AGRICULTURAL LAND

Land used for a Farm Operation in accordance with Agriculture and Markets Law § 301 – uses of which include production of crops, livestock, and livestock products – within the past five years.

FACILITY AREA

The cumulative land area occupied during the commercial operation of the Solar Energy Equipment/System. This shall include all areas and equipment within the facility's perimeter boundary – including the solar energy system, onsite interconnection equipment, onsite electrical energy storage equipment, and any other associated equipment – as well as Solar Energy Equipment/System and/or Energy Storage Device(s) beyond the facility's perimeter boundary such as improvements necessary for the utility interconnection, access roads or other permanent improvements, but excluding those established off-site for impact mitigation purposes, including but not limited to tree plantings.

GROUND DISTURBANCE

An activity that contributes to measurable soil compaction, alters the soil profile or removes vegetative cover, as defined by NYSDAM.

KILOWATT (kW)

A unit of power equal to 1,000 watts. The nameplate capacity of residential and commercial Solar Energy Equipment/Systems may be described in terms of kW.

LARGER COMMON PLAN OF DEVELOPMENT OR SALE

A contiguous area where multiple separate and distinct solar development activities are occurring, or will occur, under one plan. The term “plan” in “larger common plan of development or sale” is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, marketing plan, advertisement, drawing, permit application, State Environmental Quality Review Act (SEQRA) environmental assessment form or other documents, zoning request, computer design, interconnection agreement, land lease, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating that solar development may occur on a specific plot.

MEGAWATT (MW)

A unit of power equal to 1,000 kW. The nameplate capacity of Solar Energy Equipment/Systems may be described in terms of MW.

NAMEPLATE CAPACITY

A Solar Energy Equipment/System's maximum electric power output under optimal operating conditions. Nameplate Capacity may be expressed in terms of Alternating Current (AC) or Direct Current (DC).

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 NYS Department of Environmental Conservation.

NON-PARTICIPATING PROPERTY

Any property that is not a participating property.

NON-PARTICIPATING RESIDENCE

Any dwelling located on a nonparticipating property.

OPERATOR

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

OWNER

The owner of the real property on which a Solar Energy Equipment/System is located or installed or proposed to be located or installed.

PARTICIPATING PROPERTY

A Solar Energy Equipment/System host property or any real property that is the subject of an agreement that provides for compensation to the landowner from the operator (or affiliate), regardless of whether any part of the solar energy system is constructed on the property.

POLLINATOR

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

PRIME AND OTHER IMPORTANT FARMLANDS

Soils recognized by the USDA Natural Resources Conservation Service (NRCS) and New York State as having the highest value based on soil productivity and capability. These

soils include those soils classified as Prime Farmland, Prime Farmland (if drained), and Farmland of Statewide Significance, according to the NRCS.

PRODUCTIVE FARMLAND

Lands recognized by NYS Dept. of Agriculture and Markets (NYSDAM) and NYSERDA as important agricultural resources impacts to which, in decreasing order of importance, should be avoided when installing Utility-Scale Solar Collector Systems: Active rotational farmland (most important); Permanent hay land; Improved pasture; Unimproved pasture; Other support lands; and Fallow/inactive farmland (least important).

UTILITY-SCALE SOLAR COLLECTOR SYSTEM

A Solar Energy Equipment/System meeting the following criteria:

Ground-Mounted Solar Energy Systems not included under the definition of Small-Scale Solar Collector System, with a Facility Area of up to 30 acres in size, producing greater than 110% consumed on the site over the previous 12 months, and installed primarily for off-site consumption; OR Rooftop or Building Mounted Solar Collector Systems and Building Integrated Photovoltaic (BIPV) Systems producing greater than 110% consumed on the site over the previous 12 months and installed primarily for off-site consumption. Facility Area shall include all Utility-Scale Solar Collector Systems that are part of a larger common plan of development or sale, as defined herein.

SOLAR GUIDELINES

The guidelines for mitigating construction impacts on agricultural land during the stages of a solar energy project, including Construction, Post-Construction Restoration, Monitoring and Remediation, and Decommissioning, as developed by the New York State Department of Agriculture and Markets, which are attached hereto as Exhibit A, and which may be amended or revised.

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%.

Section 4. Supplementary Regulations for Utility-Scale Solar Collector Systems

A new Section C.15: Utility-Scale Solar Collector Systems is hereby added to Article VI: Supplementary Regulations as follows:

A. Purpose and Intent

The purpose of these regulations is to establish regulations for Utility Scale Solar Collector Systems in accordance with the following objectives:

1. To mitigate the impacts of Utility-Scale Solar Collector Systems on environmental resources, such as important agricultural lands, forests, wildlife, and other protected resources;
2. To reduce impacts of Utility-Scale Solar Collector Systems may have on neighbors, mitigate potential depreciation of neighboring properties, and preserve the rights of property owners to install solar energy systems without conflicting with the Comprehensive Plan for the Town of Canajoharie;
3. To set provisions for the placement, design, construction, operation, decommissioning, and, ultimately, removal of Utility-Scale Solar Collector Systems consistent with the Town of Canajoharie's intent to uphold public health, safety, and welfare by promoting a clean, wholesome, and attractive environment, preserving the aesthetic qualities of the Town, and preserving the Town's agricultural resources;
4. To, upon decommissioning and removal of Utility-Scale Solar Collector System, facilitate return of any productive agricultural lands and soils which may be impacted by installation and operation of Utility-Scale Solar Collector Systems to productive agricultural use to the maximum extent possible;
5. To accommodate and take advantage of a safe, abundant, renewable and non-polluting energy resource; and
6. To take advantage of the increased economic activity as may be occasioned by furthering the installation of Utility-Scale Solar Collector Systems .

B. Applicability

1. The requirements of this Section C.15 shall apply to all Utility-Scale Solar Collector Systems permitted, installed, or modified in Town after the effective date of this Local Law, excluding general maintenance and repair.
2. Utility-Scale Solar Collector Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Section.
3. Modifications to an existing Utility-Scale Solar Collector Systems that increase the Facility Area by more than 5% of the original Facility Area (exclusive of moving any fencing) shall be subject to this Local Law.

C. General Provisions

1. A building permit shall be required for installation of all Utility-Scale Solar Collector Systems.
2. Prior to the issuance of the building permit or final approval by the Planning Board, construction and/or site plan documents must be signed and stamped by a NYS Licensed Professional Engineer or NYS Registered Architect.
3. Issuance of permits and approvals by the Planning Board shall include review pursuant to the State Environmental Quality Review Act and regulations.
4. All Utility-Scale Solar Collector 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's code and requirements.
5. Review and written concurrence from the responding fire district shall be provided. In the discretion of the Planning Board, an emergency response plan and/or first responder training may be required. Final approval or issuance of Special Use and/or Building Permits subject to the discretion of the Town Board's discretion and may be subject to any appropriate and reasonable conditions to be determined upon circumstances of the application process.
6. The Planning Board and/or Zoning Board of Appeals, to the extent reasonably practical, may condition their approval of proposed developments on sites adjacent to Utility-Scale Solar Collector Systems so as to protect their Solar Access to remain economically feasible over time.

D. Permitting Requirements

All Utility-Scale Solar Collector Systems are permitted through the issuance of a special use permit and site plan approval within the Agricultural/Rural Residential District, and subject to site plan and special use permit application requirements set forth in this Section and Article VII and Article IX of the Town of Canajoharie Zoning Law.

1. Applications for the installation of Utility-Scale Solar Collector Systems shall be:
 - a. Reviewed by the Planning Board for completeness in accordance with the Town of Canajoharie Zoning Law , including Art. VII Special Use Permits and Art. IX Site Plan Review.
 - b. Subject to a public hearing as required by the Town of Canajoharie Zoning Law . The public hearing shall conform to the requirements set forth in Section D(4) of this Section.

2. Application & Site Plan Review Requirements. Applications for Utility-Scale Solar Collector Systems, including materials for site plan and special use permit review, shall include the following:
 - a. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Utility-Scale Solar Collector System. Such information of the final system installer shall be submitted prior to the issuance of building permit.
 - b. Name, address, contact information, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Utility-Scale Solar Collector System.
 - c. Certification from the utility that the interconnection is viable.
 - d. Nameplate Capacity of the Utility-Scale Solar Collector System (as expressed in MW).
 - e. Site plan conforming to the requirements set forth at Art. IX of the Town of Canajoharie Zoning Law and also the following requirements:
 - i. Zoning district designation for the parcel(s) of land comprising the Facility Area and other portions of the project site.
 - ii. Any Overly Districts, including the Critical Environmental and Scenic Resources Overlay Districts applicable to the project site.
 - iii. Adjacent land uses on contiguous parcels within a 1,000' radius of the site boundary, or as otherwise required by the Planning Board.
 - iv. Proposed changes to the landscape of the site, including site grading, vegetation clearing and planting, the removal of any large trees.
 - v. Erosion and sediment control and storm water management plans prepared to NYS Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.
 - vi. Trails located on the site that are part of the Statewide Snowmobile Trail System.
 - vii. Historic sites listed on the National and/or State Register of Historic Places, or those Eligible for listing, within the site and those within a 1-air mile radius of the site.

- f. Agricultural Inventory and Integration Plan. Documentation detailing ongoing or historical (i.e., during the preceding 5 years) use of the site as Active Agricultural Lands and production of foods, natural resources found on the site which support agriculture, and a plan to for the integration of farming into the site shall be submitted as follows:
- i. The Inventory shall include mapping, narrative, imagery, and other information sufficient to document all Active Agricultural Lands, Productive Farmland, viable agricultural lands, and activities relating to the production of foods on the site.
 - ii. A site specific soil survey shall be conducted. The borders of existing site soils shall be field-identified in accordance with NRCS standards and shall be performed by an accredited Soil Scientist whose name shall be noted on the drawing. Existing published soil maps and data shall only be used as guideline information by the Soil Scientist. In addition to field identifying site soils the Soil Scientist shall document the depth of the plow layer on the site. This document shall also include mapping of Prime and Important Farmland and mineral soil groups 1 through 4 on the parcel(s) comprising the Facility Area.
 - iii. A description of and plan for how the project will integrate into the agriculture and supporting natural resources inventoried on the parcel(s) comprising the site. The plan shall address how promoting farm viability has been incorporated into the project, including, e.g., site layout, construction activities, project operations, post-construction restoration of impacted Active Agricultural Lands and Productive Farmland to be returned to production, decommissioning, etc. Any proposed agricultural dual use activities shall also be included.
- g. A three-line electrical diagram detailing the entire Utility-Scale Solar Collector System layout, including the number of Solar Panels in each ground-mount array, solar collector installation, associated components, inverters, electrical interconnection methods, and utility meter, with all National Electrical Code compliant disconnects and over current devices. The diagram should describe the location and layout of all Energy Storage Device components, if applicable, and should include applicable setback and other bulk and area standards.
- h. A preliminary equipment specification sheet that documents all proposed Solar Panels, system components, mounting systems, racking

system details, battery energy storage systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.

- i. A Property Operation and Maintenance Plan that describes continuing site maintenance, anticipated dual-use, and property upkeep, such as mowing and trimming.
- j. A Decommissioning Plan signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant. The decommissioning plan shall address the following:
 - i. The time required to decommission and remove the Solar Energy System and any ancillary structures.
 - ii. The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.
 - iii. The cost of decommissioning and removing the Solar Energy System, as well as all necessary site remediation or restoration.
 - iv. Removal of all above-ground solar energy equipment, structures and restoration of areas previously used for agricultural production, according to recommendations by the owner, leasing agricultural producer, the Soil and Water Conservation District, the Town Engineer, the NYSDAM, and/or other qualified entity; removal of concrete piers, footers, or other supports to a depth of 48 inches below the soil surface; and removal of access roads, unless otherwise specified by the owner and subject to approval during site plan review.
 - v. Restoration of the surface grade and soil after equipment removal and stabilization or revegetation of the site as necessary to minimize erosion.
 - vi. Disconnection of the solar energy system from the utility power grid.
 - vii. The plan to dispose or recycle all waste generated from the decommissioning of the solar energy system pursuant to local, state, and federal solid waste regulations.
 - viii. The provision of a decommissioning security, whether cash, an irrevocable letter of credit or another form acceptable to the Town, which shall adhere to the following requirements:

- (1) The deposit, executions, or filing with the Town Clerk of cash or other form of financial security acceptable to be held in escrow by the Town, subject to the approval of the Town attorney and/or Engineer. The estimated cost of implementing the decommissioning plan will be certified by a licensed professional engineer and reviewed by the Town Engineer and 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.
 - (2) The amount of the bond or security shall be 150% of the cost of removal and site restoration for the Utility-Scale Solar Collector System and shall be revisited every 3 years and updated as needed to reflect any changes (due to inflation or other cost changes). Salvage value of the Solar Energy System shall not count toward the decommissioning security.
 - (3) In the event of default upon 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 financial security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.
- k. Application fee(s) paid to the Town in accordance with the Town's fee schedule. The Town may, by resolution, establish and update a Utility-Scale Solar Collector Systems application fee in addition to any required site plan, special use permit, or other fees as may be required under the Town's zoning law.
- l. Ancillary materials. Other relevant studies, reports, certifications, and approvals as may be reasonably requested by the Town of Canajoharie to ensure compliance with this local law, the Town of Canajoharie Zoning Law, and SEQRA.

3. Reimbursable Costs. The Planning Board may, under Art. IX Section F and Section L of the Town of Canajoharie Zoning Law, obtain necessary consulting services, the costs of which are to be paid by the Applicant, in accordance with Town of Canajoharie requirements. These costs shall be in addition to any application required fees.
4. Public hearing. In addition to the requirements set forth in the Town of Canajoharie Zoning Law at Art. IX Section G, notice of the public hearing and data regarding the substance of the application shall be provided to the owners of all property within five-hundred (500) feet of the land involved in such application. The Town will provide a copy of the required property owner notice language to the Applicant. The mailing shall not contain any other materials. Notice shall be provided by either certified mail, return receipt requested, at least seven (7) calendar days prior to the hearing, with compliance with this notification procedure certified to by the Applicant and certified mailing receipts must be provided to the Town Clerk and Planning Board prior to any permissions being granted.
5. Special Use Permit Standards.

The Planning Board may issue a special use permit for a Utility-Scale Solar Collector System only after it has found that all the following standards and conditions have been satisfied:

- a. Underground Requirements. All utility lines located outside of the Facility Area shall be placed underground to the maximum extent feasible and as permitted by the serving utility, with the exception of any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.
- b. Vehicular Paths. Vehicular paths within the Facility Area shall be designed in compliance with Uniform Code requirements and NYS DAM guidance to ensure emergency access, while minimizing the extent of impervious materials and soil compaction.
- c. 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. Said information shall be depicted within an area acceptable to the Planning Board.
 - ii. As required by National Electric Code (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.

- d. Glare. Solar Panels shall be placed and arranged such that reflected solar radiation or glare shall not be directed onto adjacent buildings, properties or roadways. All Solar Panels shall have anti-reflective coating(s). The applicant shall demonstrate that any glare produced does not have significant adverse impact on neighboring properties or roadways. The Planning Board may require submission of a Glare Study.
- e. Lighting. Lighting of the Solar Energy Equipment/Systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties (dark sky compliant).
- f. Multiple lots. At the discretion of the Planning Board, where a Utility-Scale Solar Collector System’s Facility Area comprises multiple lots (regardless of ownership by an individual or multiple participating landowners), the combined lots may be treated a single lot for the purposes of applying specific standards and requirements, including but not limited to lot size and setback requirements.
- g. Lot size. The minimum lot size of the property on which the Utility-Scale Solar Collector System is placed shall be 30 acres.
- h. Setbacks. Utility-Scale Solar Collector Systems shall meet the required yard and setback dimensions requirements in Table 1.1, below. Fencing, collection lines, access roads and landscaping may occur within the setback.

Table 1.1

	Setback Distance
Minimum Front Yard Setback	100'
Minimum Side Yard Setback	100'
Minimum Rear Yard Setback	100'
Minimum Setback from Non-participating residence(s), as measured from the nearest wall of the building	350'

	Setback Distance
Participating residence(s), as measured from the nearest wall of the building	100'

- i. Height. The height of the Solar Energy Equipment/System shall not exceed 17 feet. Height is measured from the lowest adjacent grade to the highest point of the structure, including any attachments (such as a lightning-protection device).
 - i. This height requirement can be modified by the Planning Board if the panels are being raised to accommodate continued or new agricultural activities.
- j. Noise levels from the Solar Energy Equipment/System must be shown to not have adverse or unreasonable noise impacts on surrounding homes or other sensitive receptors. The 1-hour average noise generated from the Solar Energy Equipment/System shall not exceed a noise level, as measured at the outside wall of any non-participating residence or occupied community building, based on current (45dBA) or future recommendations from the World Health Organization. Equipment and component manufacturers’ noise ratings may be submitted to demonstrate compliance. The Town may require Operating Sound Pressure Level measurements from a reasonable number of sampled locations at the perimeter of the Solar Energy Equipment/System in order to demonstrate compliance. Existing background noise levels shall be taken before there is any modeling of projected noise levels.
- k. Lot coverage. The surface area of Utility-Scale Solar Collector Systems shall not exceed 80% of the total parcel area.
- l. Fencing Requirements. All mechanical equipment, including any structure for Energy Storage Device components, shall be enclosed by a 7-foot fence, as required by NEC, with a self-locking gate to prevent unauthorized access. This height requirement shall supersede other local requirements which may be in conflict. The use of woven wire fencing or other fencing types that permit wildlife passage shall be required unless otherwise prohibited by local, state, and/or federal standards.

- m. Screening and Visibility. Utility-Scale Solar Collector Systems shall be required to:
- i. Conduct a visual assessment of the visual impacts of the Solar Energy Equipment/System on public roadways, historic resources, scenic resources, important corridors, adjacent properties, and other sensitive receptors as may be identified pursuant to the application requirements and overlays, maps, and/or as identified by the Planning Board. The visual assessment shall generally conform to the most current NYSDEC policy on Assessing and Mitigating Visual and Aesthetic Impacts (“Visual Policy”). 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. The Planning Board may waive or modify the requirements set forth in this section for Solar Energy Equipment/System with a Facility Area smaller than 10 acres.
 - ii. Submit a screening & landscaping plan, prepared by a licensed landscape architect, to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment/Systems shall be minimized as reasonably practical from public roadways and adjacent properties to the maximum extent practical.
 - iii. The screening & landscaping plan should demonstrate that the landscaped buffer will provide year-round screening so that, to the maximum extent practicable, the Solar Energy Equipment/System is not visible from roadways and adjacent nonparticipating properties. The plan shall specify the locations, elevations, height, plant species and/or materials that will comprise the landscaping, berms, grading, structures, architectural features, or other screening methods that will harmonize with character of the property and surrounding area, mitigate adverse aesthetic effects, and screen the system from important views or vistas. The plan shall use native and non-invasive plant species to promote habitat for native wildlife species and foraging habitat beneficial to game birds, song birds, and pollinators. Evergreen tree plantings may be required to screen portions of the site from residential

properties, roadways, and other important natural resources, viewsheds, and/or receptors, as may be identified by the Planning Board. If the buffer utilizes vegetative planting, the plantings shall consist of noninvasive evergreen trees or bushes, deer and weather resistant plant species, or other noninvasive species as otherwise recommended by the landscape architect, planted no more than eight feet apart and at least four feet tall at time of planting, or as otherwise required by the Board or as may be recommended as part of the visual impact assessment. The buffer shall obtain a height of at least 10 feet within five growing seasons. Invasive species shall not be planted as part of the landscape buffer.

- iv. The Planning Board may elect to waive some or all screening and landscaping requirements in select locations based on an applicant's demonstration of non-impact or impact mitigation on adjacent parcels.
 - v. The vegetation management plan shall ensure that any landscaping and trees that die off will be replaced by the following growing season with the approved plantings from the screening and landscape plan.
 - vi. The Planning Board may require a Landscaping Maintenance Financial Security in the form of cash bond or other form acceptable to the Town to ensure the proper maintenance of the landscaping surrounding the solar site.
- n. A Utility-Scale Solar Collector System proposed within 1 mile of an existing or proposed Utility-Scale Solar Collector System shall be reviewed with the additional consideration of the cumulative visual impacts and impacts to the aesthetic resources of the Town.
- o. Environmental Resources
- i. Tree-cutting. Existing on-site vegetation shall be preserved to the maximum extent practicable. The removal of existing non-invasive trees greater than 6 inches in diameter shall be minimized to the greatest extent possible. Clear-cutting of all native and non-invasive trees in a single contiguous area exceeding 20,000 square feet shall be prohibited, except for agricultural and farm management practices. Removal of existing trees larger than 6 inches in diameter should be minimized to the extent possible.

- ii. Utility-Scale Solar Collector System owners and/or operators 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.
 - (1) To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the Owner shall use native plant species and seed mixes and seed all appropriate areas within the Facility Area. Any project which is designed to incorporate agricultural or farm-related activities or uses within the Facility Area may be excluded from this requirement based on the amount of space actually occupied by the agricultural use(s). This exclusion will only be allowed based on the Planning Board's determination that these lands are being used for actual agricultural uses.
 - (2) Use of pesticides (including herbicides) for long-term operation and site maintenance shall be limited or avoided entirely, and the rationale for any proposed pesticide use shall be thoroughly documented by the Operator, subject to Planning Board approval.
- iii. Slopes. Development on Steep Slopes, and Very Steep Slopes shall be avoided to the maximum extent practical. Development on Excessively Steep Slopes is prohibited.
- iv. Compliance with applicable overlay district standards, including the Critical Environmental and Scenic Resources Overlay Districts.
- p. Agricultural Resources. Utility-Scale Solar Collector Systems for which the Facility Area includes lands consisting of Prime and other Important Farmlands, or is proposed on a site with Active Agricultural Land, shall adhere to the following requirements:
 - i. When proposed on Active Agricultural Land located within an Agricultural District designated under Section 303 of the NYS Agricultural and Markets Law, Utility-Scale Solar Collector

Systems shall, to the maximum extent practical, avoid impacts to Active Agricultural Land and Productive Farmland.

- ii. To the maximum extent practicable, Utility-Scale Solar Collector Systems located on Prime and other Important Farmlands shall be constructed, monitored, and decommissioned in accordance with the Solar Guidelines.
- iii. Where the Utility-Scale Solar Collector System Facility Area includes 25% or more Prime and other Important Farmlands, Active Agricultural Land, and/or Productive Farmland, as identified in the approved Agricultural Inventory and Integration Plan, Agricultural Mitigation Measures shall be provided as follows:
 - (1) An Environmental Monitor (EM) shall be designated to oversee the construction, restoration and follow-up monitoring in agricultural areas, in accordance with the Solar Guidelines. The EM shall be available for consultation and/or on-site whenever construction or restoration work that causes Ground Disturbance is occurring on agricultural land.
 - (2) A Post-Construction Restoration security may be required by the Planning Board to implement monitoring and remediation, as set forth in the Solar Guidelines, for any areas of Important Farmlands, Active Agricultural Land, and/or Productive Farmland impacted but proposed to return to agricultural uses. The amount of the security shall be determined by the Planning Board.
 - (3) An additional Agricultural Areas Post-Decommissioning Restoration security shall be required in order to implement decommissioning and monitoring thereof, in accordance with the Solar Guidelines. The amount of the security shall be established by the Planning Board and incorporated into the Decommissioning Plan as required by this Section.
- q. Ownership Changes. If the owner or operator of the Solar Energy System changes or the owner of the property changes, the special use

permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the decommissioning plan. A new owner or operator of the Solar Energy System shall notify the zoning enforcement officer of such change in ownership or operator within 30 days of the ownership change. Failure to provide this notice will result in forfeiture of all or a portion of the certificate of occupancy, special use permit, and/or deposit/decommissioning fee.

- r. After completion of a Utility-Scale Solar Collector System, the owner or operator shall provide documentation, certified to the Town, from a professional engineer registered in New York State that the project complies with applicable codes and industry practices, and has been constructed and is operating according to the design plans. The applicant shall further provide certification from the utility that the facility has been inspected and connected.
- s. Annual Report. The Utility-Scale Solar Collector System owner shall, on a yearly basis, provide the Code Enforcement Officer a report showing the rated capacity of the system and the amount of electricity that was generated by the system and transmitted to the grid over the most recent twelve-month period. The report shall also identify any change in ownership of the Utility-Scale Solar Collector System and/or the land upon which the system is located and shall identify any change in the party responsible for decommissioning and removal of the system upon its abandonment. The annual report shall be submitted no later than 45 days after the end of the calendar year. Every third year, to coincide with the filing of evidence of financial security, the annual report shall also include a recalculation of the estimated full cost of decommissioning and removal of the Utility-Scale Solar Collector System . The Code Enforcement Officer may require an adjustment in the amount of the surety to reflect any changes in the estimated cost of decommissioning and removal. Failure to submit a report as required herein shall be considered a violation subject to the penalties of the Town of Canajoharie Zoning Law.
- t. The Utility-Scale Solar Collector System approval shall include appropriate conditions to mitigate adverse impacts of the solar energy system, including, but not limited to:
 - i. The decommissioning plan shall run to the benefit of the Town of Canajoharie and be executed by the operator as well as the owners and such signatures shall be notarized in a format that

allows the plan to be recorded at the Office of the Montgomery County Clerk. This document shall be recorded as an irrevocable deed restriction indexed against the property upon which the solar energy system is to be constructed.

- ii. Initial and annual site-specific training shall be provided for the Code Enforcement Officer, fire department, emergency response, Montgomery County emergency management system, and police department, with expenses for such training covered by the operator.
- iii. The operator shall identify a responsible person with contact information for public inquiries from the commencement of construction of the solar energy system until the completion of the decommissioning plan.
- iv. A certificate of Comprehensive General Liability coverage Insurance Policy with minimums of at least \$300,000.00 to \$500,000.00, naming the property owner, or to the satisfaction of the reviewing Board.

6. Compliance with Site Plan and Special Use Permit

a. Inspection of Improvements

- i. The Planning Board's designated engineer, or another responsible party as may otherwise determined by the Planning Board, shall be responsible for the overall inspection of site improvements, including coordination with the Code Enforcement Office and other officials and agencies, as appropriate.
- ii. The Planning Board may impose, as a condition of site plan approval, that the Developer and/or Owner reimburse the Town for inspection of improvements services provided in accordance with this Section.

b. Performance Guarantee

- i. As a condition to the approval the Developer and/or Owner may be required to post financial security to insure the completion and the proper performance of the improvements with the Town. The Planning Board shall determine the adequacy of the amount sufficient to cover the cost of the required improvements. The Planning Board may consult with

its designated engineer as part of determining adequacy and sufficiency of the financial security.

- ii. Such financial security shall be in a form acceptable to the Town and approved by the Town Attorney as to form, sufficiency, surety, and manner of execution.
- iii. Such performance bonds shall run for a term to be fixed by the Town, but in no case for a longer term than three (3) years.
- iv. If the Planning Board shall decide at any time during the term of the performance bond that certain improvements are no longer warranted, or that some improvements have been installed, or that additional improvements are necessary, the amount of the financial security may be reduced or increased by an appropriate amount to cover the estimated cost of the incomplete improvements or the additional improvements required by the Board.
- v. In the event that any improvements have not been installed as required by the Planning Board within the term of such financial security, the Planning Board may thereupon declare the holder of the financial security to be in default and collect the sum remaining payable thereunder; upon receipt of the proceeds thereof, the Town may install the improvements covered by such financial security which are commensurate with the extent of the development of the subject site plan that has taken place, but not exceeding in cost the amount of such proceeds.
- vi. If the Planning Board, or an appropriate Town officer appointed by it, shall find upon inspection that any of the required improvements have not been constructed in accordance with the site plan and conditions approved and specified by the Planning Board, then the Developer and/or Owner and the bonding company (if any) shall be severally and jointly liable for the costs of completing said improvements as originally specified by the Planning Board.

E. 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 Solar Energy System is located in an ambulance district, the local ambulance corps.
3. If Energy Storage Devices are included as part of the Solar Energy System, they shall meet the requirements of any applicable fire prevention and building code 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.
4. Where deemed necessary by the Planning Board, the Applicant shall ensure emergency access to the Facility Area for local first responders by installing an emergency lock box or similar device, in a location subject to approval by the Code Enforcement Officer and responding fire department(s).

F. Permit Timeframe and Abandonment

1. The Special Use Permit and site plan approval for a Utility-Scale Solar Collector System shall be valid for a period of 36 months, provided that construction is commenced within that timeframe. In the event construction is not commenced in accordance with the final site plan – as may have been amended and approved – as required by the Planning Board, within 36 months, the applicant may request to extend the time to commence construction for 12 months. Approval of a request to extend the time to complete commence construction shall not be unreasonably withheld by the Town. If having, commenced construction, the owner and/or operator fails to complete construction within 36 months after having commenced construction, the approvals shall expire and a new application begun and any fees resubmitted prior to any construction recommencing. If the owner or operator fails to perform, the Town may notify the owner or operator to implement the decommissioning plan. In such instance, the decommissioning plan must be completed within 150 days of notification by the Town.
2. Cessation of electricity being generated for a period of twelve months constitutes abandonment of the Utility-Scale Solar Collector System project, unless an agreement was previously reached between the Town and the owner/operator and/or construction company in question. Upon cessation of electricity generation of a Utility-Scale Solar Collector System on a continuous basis for 12 months, the Town may notify and instruct the owner and/or operator of Utility-Scale Solar Collector System to implement the decommissioning plan. The decommissioning plan must be completed within 12 months of notification.

3. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, utilize the bond and/or security for the removal of the Utility-Scale Solar Collector System and restoration of the site in accordance with the decommissioning plan. Notwithstanding the foregoing, the Town shall first attempt to secure payment for such costs and expenses from the security made with the Town as set forth herein. In the event the costs incurred by the Town to implement the decommissioning plan are not obtained from the security, the Town shall next attempt to secure payment for such costs and expenses from the operator; however, in the event the Town is not made whole following reasonable attempts to collect such costs and expenses from the operator of the installation, the Town reserves all rights to pursue payment for such costs and expenses from the owner of the real property on which the installation in question is located. Such costs shall be assessed against the property, shall become a lien and tax upon the property, and shall be enforced and collected with interest by the same officer and in the same manner as other taxes.
 4. With the consent of the owner, the Code Enforcement Officer, along with the Town Engineer and the Planning Board, may allow the operator to implement the decommissioning plan while allowing the landscaping to remain.
- G. 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 or land use regulations of the Town of Canajoharie.

Section 5. 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.

EXHIBIT A

NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS

Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands (Revision 10/18/2019)

The following are guidelines for mitigating construction impacts on agricultural land during the following stages of a solar energy project: Construction, Post-Construction Restoration, Monitoring and Remediation, and Decommissioning. These guidelines apply to project areas subject to ground disturbance¹ within agricultural lands including:

- Lands where agriculture use will continue or resume following the completion of construction (typically those lands outside of the developed project's security fence);
- Lands where the proposed solar development will be returning to agricultural use upon decommissioning, (typically those lands inside of the developed project's security fence);
- Applicable Area under review pursuant to Public Service Law Article 10 Siting of Major Electric Facilities.

The Project Company will incorporate these Guidelines into the development plans and applications for permitting and approval for solar projects that impact agricultural lands. If the Environmental Monitor, hereafter referred to as EM, determines that there is any conflict between these Guidelines and the requirements for project construction that arise out of the project permitting process, the Project Company and its EM, will notify the New York State Department of Agriculture and Markets (NYSDAM), Division of Land and Water Resources, and seek a reasonable alternative.

Environmental Monitor (EM)

The Project Company (or its contractor) shall hire or designate an EM to oversee the construction, restoration and follow-up monitoring in agricultural areas. The EM shall be an individual with a confident understanding of normal agriculture practices² (such as cultivation, crop rotation, nutrient management, drainage (subsurface and/or surface), chemical application, agricultural equipment operation, fencing, soils, plant identification, etc.) and able to identify how the project may affect the site and the applicable agricultural practices. The EM should also have experience with or understanding of the use of a soil penetrometer for compaction testing and record keeping. The EM may serve dual inspection roles associated with other Project permits and/or construction duties, if the agricultural workload allows. The EM should be available to provide site-specific agricultural information as necessary for project development through field review and direct contact with both the affected farm operators and NYSDAM. The EM should maintain regular contact with appropriate onsite project construction supervision and inspectors throughout the construction phase. The EM should maintain regular contact with the affected farm operator(s) concerning agricultural land impacted, management matters pertinent to the agricultural operations and the site-specific implementation of agricultural resource mitigation measures. The EM will serve as the agricultural point of contact.

¹Ground Disturbance is defined as an activity that contributes to measurable soil compaction, alters the soil profile or removes vegetative cover. Construction activities that utilize low ground pressure vehicles that do not result in a visible rut that alters soil compaction, is not considered a Ground Disturbance. Soil compaction should be tested using an appropriate soil penetrometer or other soil compaction measuring device. The soil compaction test results within the affected area will be compared with those of the adjacent unaffected portion of the agricultural area.

² An EM is not expected to have knowledge regarding all of the listed agricultural practices, but rather a general understanding such that the EM is able to perform the EM function.

1. For projects involving less than 50 acres of agricultural land within the limits of disturbance (LOD),³ the EM shall be available for consultation and/or on-site whenever construction or restoration work that causes Ground Disturbance is occurring on agricultural land.
2. For projects involving 50 acres or more of agricultural land within the (LOD) (including projects involving the same parent company whether phased or contiguous projects), the EM shall be on site whenever construction or restoration work requiring or involving Ground Disturbance is occurring on agricultural land and shall notify NYSDAM of Project activity. The purpose of the agency coordination would be to assure that the mitigation measures of these guidelines are being met to the fullest extent practicable. The Project Company and the NYSDAM will agree to schedule inspections in a manner that avoids delay in the work. NYSDAM requires the opportunity to review and will approve the proposed EM based on qualifications or capacities.

Construction Requirements

- Before any topsoil is stripped, representative soil samples should be obtained from the areas to be disturbed. The soil sampling should be consistent with Cornell University's soil testing guidelines, and samples should be submitted to a laboratory for testing PH, percent organic material, cation exchange capacity, Phosphorus/Phosphate (P), and Potassium/Potash (K). The results are to establish a benchmark that the soil's PH, Nitrogen (N), Phosphorus/Phosphate (P), and Potassium/Potash (K) are to be measured against upon restoration. If soil sampling is not performed, fertilizer and lime application recommendations for disturbed areas can be found at https://www.agriculture.ny.gov/ap/agsservices/Fertilizer_Lime_and_Seeding_Recommendations.pdf.
- Stripped topsoil should be stockpiled from work areas (e.g. parking areas, electric conductor trenches, along access roads, equipment pads) and kept separate from other excavated material (rock and/or sub-soil) until the completion of the facility for final restoration. For proper topsoil segregation, at least 25 feet of additional temporary workspace (ATWS) may be needed along "open-cut" underground utility trenches. All topsoil will be stockpiled as close as is reasonably practical to the area where stripped/removed and shall be used for restoration on that particular area. Any topsoil removed from permanently converted agricultural areas (e.g. permanent roads, etc.) should be temporarily stockpiled and eventually spread evenly in adjacent agricultural areas within the project Limits of Disturbance (LOD); however not to significantly alter the hydrology of the area. Clearly designate topsoil stockpile areas and topsoil disposal areas in the field and on construction drawings; changes or additions to the designated stockpile areas may be needed based on field conditions in consultation with the EM. Sufficient LOD (as designated on the site plan or by the EM) area should be allotted to allow adequate access to the stockpile for topsoil replacement during restoration.
 - Topsoil stockpiles on agricultural areas left in place prior to October 31st should be seeded with Aroostook Winter Rye or equivalent at an application rate of three bushels (168 lbs.) per acre and mulched with straw mulch at rate of two to three bales per 1000 Sq. Ft.
 - Topsoil stockpiles left in place between October 31st and May 31st should be mulched with straw at a rate of two to three bales per 1000 Sq. Ft. to prevent soil loss.
- The surface of access roads located outside of the generation facility's security fence and constructed through agricultural fields shall be level with the adjacent field surface. If a level road design is not

³ The Limits of Disturbance (LOD) includes all project related ground disturbances and all areas within the project's security fencing.

feasible, all access roads should be constructed to allow a farm crossing (for specific equipment and livestock) and to restore/ maintain original surface drainage patterns.

- Install culverts and/or waterbars to maintain or improve site specific natural drainage patterns.
- Do not allow vehicles or equipment outside the planned LOD without the EM seeking prior approval from the landowner (and/or agricultural producer), and associated permit amendments as necessary. Limit all vehicle and equipment traffic, parking, and material storage to the access road and/or designated work areas, such as laydown areas, with exception the use of low ground pressure equipment.⁴ Where repeated temporary access is necessary across portions of agricultural areas outside of the security fence, preparation for such access should consist of either stripping / stockpiling all topsoil linearly along the access road, or the use of timber matting.
- Proposed permanent access should be established as soon as possible by removing topsoil according to the depth of topsoil as directed by the EM. Any extra topsoil removed from permanently converted areas (e.g. permanent roads, equipment pads, etc.) should be temporarily stockpiled and eventually spread evenly in adjacent agricultural areas within the project Limits of Disturbance (LOD); however not to significantly alter the hydrology of the area.
- When open-cut trenching is proposed, topsoil stripping is required from the work area adjacent to the trench (including segregated stockpile areas and equipment access). Trencher or road saw like equipment are not allowed for trench excavation in agricultural areas, as the equipment does not segregate topsoil from subsoil. Horizontal Directional Drilling (HDD) or equivalent installation that does not disrupt the soil profile, may limit agricultural ground disturbances. Any HDD drilling fluid inadvertently discharged must be removed from agricultural areas. Narrow open trenches less than 25 feet long involving a single directly buried conductor or conduit (as required) to connect short rows within the array, are exempt from topsoil segregation.
- Electric collection, communication and transmission lines installed above ground can create long term interference with mechanized farming on agricultural land. Thus, interconnect conductors outside of the security fence must be buried in agricultural fields wherever practicable. Where overhead utility lines are required, (including Point(s) of Interconnection) installation must be located outside field boundaries or along permanent access road(s) wherever possible. When overhead utilities must cross farmland, minimize agricultural impacts by using taller structures that provide longer spanning distances and locate poles on field edges to the greatest extent practicable.
- All buried utilities located **within** the generation facility's security fence must have a minimum depth of 18-inches of cover if buried in a conduit and a minimum depth of twenty-four inches of cover if directly buried (e.g. not routed in conduit).⁵
- The following requirements apply to all buried utilities located **outside** of the generation facility security fence:
 - In cropland, hayland, and improved pasture buried electric conductors must have a minimum depth of 48-inches of cover. In areas where the depth of soil over bedrock is less than 48-inches, the

⁴ low ground pressure vehicles that do not result in a visible rut that alters soil compaction.

⁵ Burial of electrical conductors located within the energy generation facility may be superseded by more stringent updated electrical code or applicable governing code.

electric conductors must be buried below the surface of the bedrock if friable/rippable, or as near as possible to the surface of the bedrock.

- In unimproved grazing areas or on land permanently devoted to pasture the minimum depth of cover must be 36-inches.
- Where electrical conductors are buried directly below the generation facility's access road or immediately adjacent (at road edge) to the access road, the minimum depth of cover must be 24-inches. Conductors must be close enough to the road edge as to be not subject to agricultural cultivation / sub-soiling.
- When buried utilities alter the natural stratification of soil horizons and natural soil drainage patterns, rectify the effects with measures such as subsurface intercept drain lines. Consult the local Soil and Water Conservation District concerning the type of intercept drain lines to install to prevent surface seeps and the seasonally prolonged saturation of the conductor installation zone and adjacent areas. Install and/or repair all drain lines according to Natural Resources Conservation Service conservation practice standards and specifications. Drain tile must meet or exceed the AASHTO M-252 specifications. Repair of subsurface drains tiles should be consistent with the NYSDAM's details for "*Repair of Severed Tile Line*" found in the pipeline drawing A-5 (<http://www.agriculture.ny.gov/ap/agsservices/Pipeline-Drawings.pdf>).
- In pasture areas, it may be necessary to construct temporary fencing (in addition to the Project's permanent security fences) around work areas to prevent livestock access to active construction areas and areas undergoing restoration. For areas returning to pasture, temporary fencing will be required to delay the pasturing of livestock within the restored portion of the LOD until pasture areas are appropriately revegetated. Temporary fencing including the project's required temporary access for the associated fence installations should be included within the LOD as well as noted on the construction drawings. The Project Company will be responsible for maintaining the temporary fencing until the EM determines that the vegetation in the restored area is established and able to accommodate grazing. At such time, the Project Company should be responsible for removal of the temporary fences.

Post-Construction restoration requirements applicable to continued use agricultural areas that suffered ground disturbance due to construction activities (typically lands outside of the developed project's security fence).

- All construction debris in active agriculture areas including pieces of wire, bolts, and other unused metal objects will need to be removed and properly disposed of as soon as practical to prevent mixing with any topsoil.
- Excess concrete will not be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas. Remove all excess subsoil and rock unearthed from construction related activities occurring in areas intended to return to agricultural use. On-site disposal of such material is not permissible in active agricultural lands. Designated spoil disposal locations should be specified in the associated construction plans. If landowner agreements, LOD boundary, or Project's land use approvals do not allow for on-site disposal, material must be removed from the site.⁶

⁶ Any permits necessary for disposal under local, State and/or federal laws and regulations must be obtained by the facility operator, with the cooperation of the landowner when required.

- Excess stripped topsoil shall not be utilized for fill within the project area. Any extra topsoil removed from permanently impacted areas (e.g. roads, equipment pads, etc.) should be evenly spread in adjacent agricultural project areas, however not to significantly alter the hydrology of the area.
- Regrade all access roads outside of the security fencing (as determined necessary by the EM), to allow for farm equipment crossing and restore original surface drainage patterns, or other drainage pattern incorporated into the design.
- Repair all surface or subsurface drainage structures damaged during construction as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design. Correct any surface or subsurface drainage problems resulting from construction of the solar energy project with the appropriate mitigation as determined by the Environmental Monitor, Soil and Water Conservation District and the Landowner.
- On agricultural land needing restoration because of ground disturbance, postpone any restoration practices until favorable (workable, relatively dry) topsoil/subsoil conditions exist. Restoration must not be conducted while soils are in a wet or plastic state of consistency. Stockpiled topsoil must not be regraded, and subsoil must not be decompacted until plasticity, as determined by the Atterberg field test, is adequately reduced. No permanent project restoration activities shall occur in agricultural areas between the months of October through May unless favorable soil moisture conditions exist.
- In all continued use agricultural land where the topsoil was stripped, subsoil decompaction shall be conducted prior to topsoil replacement. Following construction, all such areas will be decompacted to a depth of 18 inches with a tractor mounted deep ripper or heavy-duty chisel plow. Soil compaction results shall be no more than 250 pounds per square inch (PSI) throughout the decompacted 18 inches as measured with a soil penetrometer. Following decompaction, all rocks 4 inches and larger in size unearthed from decompaction will be removed from the surface of the subsoil prior to replacement of the topsoil. The topsoil will be replaced to original depth and the original contours will be reestablished where possible. All rocks 4 inches and larger from topsoil shall be removed from the surface of the topsoil. Subsoil decompaction and topsoil replacement must be avoided after October 1, unless approved on a site-specific basis by the landowner in consultation with NYSDAM. All parties involved must be cognizant that areas restored after October 1st may not obtain sufficient growth for stabilization⁷ to prevent erosion over the winter months. If areas are to be restored after October 1st, necessary provisions must be made to prevent potential springtime erosion, as well as restore any eroded areas in the springtime, to establish proper growth. Excess stripped topsoil shall be evenly spread in the adjacent project areas, or adjacent agricultural areas (within the LOD), however, not to significantly alter the hydrology of the area.
- In all continued use agricultural areas where the topsoil was not stripped, including timber matted areas, the EM shall determine appropriate activities to return the area to agricultural use. These activities may include decompaction, rock removal, and revegetation. Soil compaction should be tested in the affected areas and the affected area's adjacent undisturbed areas using an appropriate soil penetrometer or other soil compaction measuring device as soon as soils achieve moisture equilibrium with adjacent unaffected areas. Compaction tests will be made at regular intervals of distance throughout the affected areas, including each soil type identified within the affected areas. Soil compaction results shall be measured with a soil penetrometer not exceeding more than 250 pounds per square inch (PSI), by

⁷ Sufficient growth for stabilization should be determined by comparison with unaffected crop production. Annual crops restored after normal planting window (as determined by the landowner or associated producer) should be stabilized with Aroostook Winter Rye at the rate of 150/100 lbs. per acre (broad cast/drill seeder).

comparing probing depths of both the affected and unaffected areas. Where representative soil density of the affected area's collective depth measurements present compaction restrictions exceeding an acceptable deviation of no more than 20% from the adjacent undisturbed area's mean soil density, additional decompaction may be required to a depth of 18-inches with a tractor mounted deep ripper or heavy-duty chisel plow. Following decompaction, remove all rocks unearthed from decompaction activities 4 inches and larger in size from the surface. Revegetation shall be performed in accordance with the instructions below.

- Seed all agricultural areas from which the vegetation was removed or destroyed with the seed mix specified by the landowner/agriculture producer or as otherwise recommended in the Department's fertilizer, lime and seeding guideline: [https://www.agriculture.ny.gov/ap/agsservices/Fertilizer_Lime_and_Seeding_Recommendations.pdf]. Soil amendments should be applied as necessary so that restored agricultural areas' soil properties, at minimum, reasonably reflect the pre-construction soil test results or as otherwise agreed to by the involved parties to ensure continued agricultural use. All parties must be cognizant that areas restored after October 1st may not obtain sufficient growth to prevent erosion over the winter months. If areas are to be restored after October 1st, necessary provisions must be made to restore and/or re-seed any eroded or poorly germinated areas in the springtime, to establish proper growth.

Monitoring and Remediation

Project Companies shall provide a monitoring and remediation period of one complete growing season following the date upon which the desired crop is planted. All projects subject to NYS Public Service Law Article 10 will provide a monitoring period of two complete growing seasons following the date upon which the project achieves the establishment of the desired crop.

On site monitoring shall be conducted seasonally at least three times during the growing season (Spring, Summer, Fall). Monitoring is required to identify any remaining impacts directly associated with the construction of the project on agricultural lands proposed to remain or resume agriculture production, including the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring observations can be made. NYSDAM expects the Project Company (or its contractor) to retain the EM for follow-up monitoring and remediation (as needed) in agricultural areas. Monitoring is limited to the restored agricultural area. Non-project related impacts affecting the restored project area will be discussed with NYSDAM staff and considered for omission from future monitoring and remediation. The EM is expected to record the following observations from onsite inspections:⁸

- **Topsoil Thickness and Trench Settling** – The EM observations may require small hand dug holes to observe the percentage of settled topsoil in areas where the topsoil was stripped, or trenching was performed without stripping topsoil. Observations concerning depth of topsoil deficiencies shall require further remediation by re-appropriating additional topsoil. Acceptable materials for remediation are: known areas of native excess topsoil (according to records of project specific excess topsoil disposal spread within the original LOD) or imported topsoil free of invasive species that is consistent with the quality of topsoil on the affected site.

⁸ The activities that follow are not necessary for restored agricultural lands on which the farmer or landowner has commenced activities, including agricultural activities or other use that tend to reverse restoration or create conditions that would otherwise trigger restoration. Should NYSDAM contend upon inspection that conditions indicate that post-construction restoration activities were improperly performed or insufficient, NYSDAM may inform the project company and NYSERDA for further investigation and remediation.

- **Excessive Rock (>4-inches)** - Determined by a visual inspection of disturbed areas as compared to unaffected portions of the same field located outside the construction area. Observations concerning excess stone material in comparison to off-site conditions shall require further remediation including removal and disposal of all excess rocks and large stones.
- **Soil Compaction** - Project affected agricultural soils should be tested using an appropriate soil penetrometer or other soil compaction measuring device. Compaction tests will be made at regular intervals of distance throughout the access or work areas, including each soil type identified on the affected agricultural areas. Where representative soil density of the affected area exceeds the representative soil density of the unaffected areas, additional decompaction may be required. Consultation with NYSDAM staff and the agricultural producer(s) should be conducted prior to scheduling additional decompaction. If warranted, decompaction to a depth of 18-inches with a tractor mounted deep ripper or heavy-duty chisel plow. Restoration of displaced topsoil to original depth and re-establish original contours where possible. Decompaction deep shattering will be applied during periods of relatively low soil moisture to ensure the desired mitigation and to prevent additional soil compaction. Oversized stone/rock (Four-inches) material that is uplifted/unearthed to the surface as a result of the deep shattering will be removed.
- **Drainage** – The EM shall visually inspect the restored agricultural areas in search of pervasive stunted crop growth due to seasonal saturation, not previously experienced at the site and not resulting from the agricultural producer’s irrigation management or due to excessive rainfall. Identified areas of stunted crop growth shall be compared to the nearest undisturbed adjacent areas under a substantially equivalent terrain and crop management plan. Drainage observations should be evaluated to determine if the project affected surface or sub-surface drainage during construction or restoration. Project caused drainage issues affecting or likely to reduce crop productivity of the adjacent areas will have to be remediated via a positive surface drainage, sub-surface drainage repair or an equivalent.
- **Agriculture Fencing and Gates** – The EM shall inspect Project associated fencing and gates (installed, altered or repaired) within the Project’s LOD associated with agricultural activities for function and longevity. The Project Company is responsible during the Monitoring and Remediation Phase for maintaining the integrity of Project associated fencing and gates.

The Project Company (or its contractor) shall consolidate each applicable growing season’s observations into an annual report during the monitoring period and shall be provided upon request to NYSDAM. Annual reports should include date stamped photographs illustrating crop growth in comparison with unaffected portions the agricultural areas.

The EM shall record observations of the establishment of the desired crop and subsequent crop productivity within restored agricultural areas and shall be evaluated by comparing its productivity to that of the nearest adjacent undisturbed agricultural land of similar crop type within the same field. If a decline in crop productivity is apparent the Project Company as well as other appropriate parties must determine whether the decline is due to project activities. If project activities are determined to be the primary detrimental factor, the project EM will notify NYSDAM concerning unsuccessful restoration and to potentially schedule a NYSDAM staff field visit. If project restoration is determined to be insufficient, the Project Company will develop a plan for appropriate rehabilitation measures to be implemented. NYSDAM staff will review and approve said plan prior to implementation. Additional monitoring may be required depending on additional restoration activities needed.

The Project Company is not responsible for site conditions and/or potential damages attributable to the agricultural producer's land use management or others' land use management.

Decommissioning

If the operation of the generation facility is permanently discontinued, remove all above ground structures (including panels, racking, signage, equipment pad, security fencing) and underground utilities if less than 48-inches deep. All concrete piers, footers, or other supports must be removed to a minimum depth of 48-inches below the soil surface. The following requirements apply to electric conductors located at the respective range of depth below the surface:

- 48-inches plus: All underground electric conduits and direct buried conductors may be abandoned in place. Applicable conduit risers must be removed, and abandoned conduit must be sealed or capped to avoid a potential to direct subsurface drainage onto neighboring land uses.
- Less than 48-inches: All underground direct buried electric conductors and conductors in conduit and associated conduit with less than 48-inches of cover must be removed, by means of causing the least amount of disturbance as possible.

Access roads in agricultural areas must be removed, unless otherwise specified by the landowner. If access is to be removed, topsoil will have to be returned from recorded project excess native topsoil disposal areas, if present, or imported topsoil free of invasive species that is consistent with the quality of topsoil on the affected site. Restore all areas intended for agricultural production, according to recommendations by the current landowner or leasing agricultural producer, and as required by any applicable permit, the Soil and Water Conservation District, and NYSDAM.

Monitoring and restoration requirements in accordance to the prior sections of these guidelines, will be required for the decommissioning restoration. NYSDAM requires notice before the Project Company undertakes decommissioning.