

§ 48-44.3. Solar farm law. [Added 2-23-2016 by L.L. No. 1-2016; amended 5-18-2017 by L.L. No. 2-2017; 6-21-2018 by L.L. No. 3-2018]

- A. Definitions. As used in this section, unless the context requires otherwise, the following terms shall have the meanings indicated:

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

SOLAR FARM — The use of land where a series of one or more solar collectors are placed in an area on a parcel of land for the purpose of generating photovoltaic power and said series of one or more solar collectors placed in an area on a parcel of land collectively has a nameplate generation capacity of greater than 26 kilowatts (kW) direct current (dc) or more when operating at maximum efficiency.

- B. Purpose. The requirements of this section are established for the purpose of allowing the development of solar farms in the Town and to provide standards for the placement, design, construction, operation, monitoring, modification, and removal of these systems.
- C. Applicability. The standards found in this section are applicable to "solar farms" as defined in § 48-44.3A above and shall supersede the environmental regulations and performance standards in Chapter 19 of the Town Code that are applicable to other nonresidential uses. The term "solar farm" shall not be construed to include, so as to prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property. The term "solar farm" shall also not be construed in such a way as to prohibit the installation or mounting of a series of one or more solar collectors upon the roofs of residential and/or commercial structures regardless of whether the said series of one or more solar collectors collectively has a total nameplate generation of at least 15 kilowatts (kW) direct current (dc) or more when operating at maximum efficiency.
- D. Zoning.

- (1) Notwithstanding anything to the contrary in §§ 48-18 and 48-20; solar farms are allowed only in low-density residential districts ~~in all zoning districts~~ of the Town subject to special use permit requirements; provided, however, if the Town has an Agricultural and Farmland Protection Plan, then no solar farm shall be permitted on any prime farmland, as designated in such plan. All solar farm ~~Special use~~ permit applications shall contain the following:

- (a) Blueprints or drawings of the solar photovoltaic installation signed by a licensed professional engineer showing the proposed layout of the system and any potential shading from nearby structures.
- (b) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation, or structures.
- (c) A description of the solar farm facility and the technical reasons for the proposed location and design shall be prepared and signed by a licensed professional

engineer.

- (d) Verification that the solar farm will be constructed and operated in compliance with all applicable federal and state standards.
 - (e) Stamped drawings signed by a licensed professional engineer.
 - (f) One of three line electrical diagrams detailing the solar farm layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code-compliant disconnects and overcurrent devices.
 - (g) Documentation of the major system components to be used, including the PV panels, mounting system, and inverter.
 - (h) An operation and maintenance plan which shall include measures for maintaining safe access to the installation, stormwater controls, as well as general procedures for operational maintenance of the installation.
 - (i) Information on noise (inverter) and reflectivity/glare of solar panels, and identification of potential impacts to abutters.
 - (j) Certification as to the existing soil classifications for the soil at the proposed development site as provided by the current United States Department of Agriculture Natural Resource Conservation Services Web Soil Survey, or as provided by such other state or local governmental agency maintaining official records of local soil classifications.
 - (k) The provisions of this Subsection D(1) shall not apply where the owner of property designated as prime farmland establishes to the Code Enforcement Officer that such property does not contain any prime soils, as defined by the New York State Department of Agriculture. **[Added 9-19-2019 by L.L. No. 1-2019]**
- (2) The standards found in this section are applicable to "solar farms" as defined in § 48-44.3A above and shall supersede the general standards applicable to special use permits for other uses under the Town's zoning laws. Notwithstanding the foregoing, solar farms shall be fully subject to site plan review under Chapter 37 of the Code of the Town of Mt. Morris and any attorney fees incurred by the Town for the review of the special use permit and site plan application shall be paid by the applicant.

E. Minimum requirements. ~~In any district requiring a special use permit for a solar farm, t~~The development shall conform to the following standards which shall be regarded as minimum requirements:

- (1) All ground-mounted panels shall not exceed 12 feet in height.
- (2) All mechanical equipment on a solar farm, including any structure for batteries or storage cellars, are completely enclosed by a fence with a self-locking gate with a height that matches or exceeds the fence height requirements contained in the NFPA 70 standard. Notwithstanding the foregoing, the Planning Board has the discretion to lower the required minimum fence height for a solar farm. **[Amended 9-19-2019 by L.L. No. 1-2019]**

- (3) The installation of a vegetated buffer to provide year-round screening of the system is required along a public right-of-way and, if a solar array or appurtenant structures, including but not limited to equipment shelters, storage facilities, transformers and substations, will be in the field of view from a residence on an adjoining property, along such field of view. Installed vegetation must be at least two feet in height at the time of planting.
- (4) Because of neighborhood characteristics and topography, the Planning Board shall examine the proposed location on a case-by-case basis in order to ensure no detrimental impact to Town residents, businesses, or traffic.
- (5) All solar energy production systems are designed and located in order to prevent reflective glare toward any habitable buildings, as well as streets and rights-of-way.
- (6) All on-site utility and transmission lines are, to the extent feasible, placed underground.
- (7) The installation of a clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
- (8) All solar collectors shall have a 100-foot setback in the front from the center line of the highway and twenty-foot setbacks from the sides and the back unless there exist abutting residential uses, in which case all such components shall be a minimum of 200 feet from any principal residential structures that are off-site, deviation from which requires an area variance. The foregoing side and back setback requirements shall not apply to adjacent participating parcels regarding the placement of solar collectors and their related components in relation to other solar collectors and their related components located in an adjacent participating parcel. **[Amended 9-19-2019 by L.L. No. 1-2019]**
- (9) Lighting of solar farms shall be consistent with state and federal law. Lighting of appurtenant structures shall be limited to that required for safety and operational purposes and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cutoff fixtures to reduce light pollution.
- (10) A sign is required that identifies the owner and operator with an emergency telephone number where the owner and operator can be reached on a twenty-four-hour basis. There shall be no other signs except announcement signs, such as "no trespassing" signs or any signs required to warn of danger.
- (11) There shall be a minimum of one parking space to be used in connection with the maintenance of the solar photovoltaic facility and the site. Such parking space shall not be used for the permanent storage of vehicles.

F. Additional conditions.

- (1) The solar farm owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. Upon request, the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar farm shall be clearly marked. The owner or operator

shall identify a responsible person for public inquiries throughout the life of the installation. A Knox-Box® shall be required for access by the local fire department.

- (2) No solar farm shall be approved or constructed until evidence has been given to the Planning Board that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar farm owner's or operator's intent to install an interconnected customer-owned generator.
- (3) A solar farm owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local fire chief and emergency medical services. The owner or operator shall be responsible for the cost of maintaining the solar farm and any access road(s), unless accepted as a public way.
- (4) No solar farm shall cover an area of land greater than 10 acres.
- (5) Every solar farm shall be in compliance with the comprehensive plan of the Town.
- ~~(3)~~(6) Prior to issuance of a building permit for the solar farm, the operator for which a solar farm with a nameplate capacity of over 1MW is to be developed shall enter into a host community agreement with the Town for payment by the operator to the Town of an agreed upon monetary amount or provision of a specified public improvement or improvements that shall act to offset the potential adverse impacts that may be associated with a solar farm.
- (7) PILOT Agreement.
 - (a) Where the solar farm is designed, installed, and operated so that the anticipated annual total amounts of electrical energy generated exceed the anticipated annual total electricity consumed on the property by more than 110%, the operator shall be required to enter into an agreement for a payment in lieu of taxes (PILOT) with the Town pursuant to Real Property Tax Law § 487. This PILOT agreement shall be drafted by the Town Attorney in consultation with the Town Supervisor. A PILOT agreement executed with the Livingston County IDA, acceptable to the Town, in its sole discretion, for the solar farm may serve to meet the requirements of this subsection.
 - (b) No building permit shall be issued, or construction commenced for a solar farm requiring a PILOT until such time as the PILOT agreement has been executed by all parties.
 - (c) The PILOT shall run to the benefit of the Town of Mount Morris and be executed by the operator and the owners of the real property upon which the solar farm is to be located.
 - ~~(4)~~(d) Community host agreement. Prior to issuance of a building permit for the solar farm, the operator for which a solar farm with a nameplate capacity of over 1MW is to be developed shall enter into a community host agreement with the Town for payment by the operator to the Town of an agreed upon monetary amount or provision of a specified public improvement or improvements that shall act to offset the potential adverse impacts that may be associated with a solar farm.

- G. Decommissioning/removal. All applications for a solar farm shall be accompanied by a decommissioning plan to be implemented upon abandonment and/or in conjunction with removal of the installation. Prior to removal of the solar farm, a permit for removal activities shall be obtained from the Code Enforcement Officer. Notwithstanding the foregoing, projects regulated under Article 10 of the PSL shall be subject to the decommissioning requirements set forth in 16 NYCRR 1001.29. For all other solar farms subject to regulation under this section, the decommissioning plan shall include the following provisions:
- (1) The owner, operator, or his/her successors in interest shall remove any ground-mounted solar collectors which have reached the end of their useful life or have been abandoned. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Town Code Enforcement Officer by certified mail of the proposed date of discontinued operations and plans for removal.
 - (2) Physical removal of all ground-mounted solar collectors, structures, equipment, security barriers, feeders and branch circuit wiring from the site.
 - (3) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
 - (4) Stabilization or revegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
 - (5) Absent notice of a proposed date of decommissioning and written notice of extenuating circumstances, the solar farm shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board ("abandonment"). If the owner or operator of the solar farm fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town may enter the property and physically remove the installation.
 - (6) Upon the decommissioning of the project and removal of all equipment, the soils at the site shall be restored to the condition and classification that existed prior to the construction of the project, or, if the Town has an Agricultural And Farmland Protection Plan, that is in compliance with such plan, and in connection with § 48-44.3G(4) above, except where the underlying fee owner of the land requests otherwise, as specified in the project application pursuant to Town Code § 48-44.3D(1)(j).
 - (7) Letter of credit or other form of security. **[Added 9-19-2019 by L.L. No. 1-2019]**
 - (a) As part of the decommissioning plan, the owner or operator of solar farm shall provide the Town with an irrevocable standby letter of credit or other form of security reasonably acceptable to the Town attorney, which 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 letter of credit or other security shall be in the amount of 100% of the cost of removal of the solar farm and restoration of the property, which shall be renewed every five years. Delivering of the letter of credit to the Town shall occur prior to the commencement of operations.
 - (b) In the event of default upon performance of such conditions, after proper notice and

expiration of any cure periods, the letter of credit or other security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The letter of credit or other security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.

- (c) In the event of default or abandonment of the solar farm, the system shall be decommissioned as set forth in this Subsection G.
- H. Costs of decommissioning/removal. The operator of an installation and the owner of the real property on which such installation is located shall be jointly and separately liable for all costs and expenses of the Town incurred during and relating to the removal of an installation under § 48-44.3G(5). Notwithstanding the foregoing, the Town shall first attempt to secure payment for such costs and expenses from the operator of the installation; 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 under the Code to pursue payment for such costs and expenses from the owner of the real property on which the installation in question is located.
- I. The invalidity of any clause, sentence, paragraph, or provision of this section shall not invalidate any other clause, sentence, paragraph, or part thereof.
- J. All local laws or ordinances or parts of local laws or ordinances in conflict with any part of this section are hereby repealed.
- K. For projects regulated under Article 10 of PSL, any provisions of this section that conflict with Article 10 of PSL shall be read to mean that the provisions of Article 10 of PSL shall apply.
- L. This section shall take effect upon filing in the office of the New York State Secretary of State.
- M. Owners and operators of solar farms are encouraged to permit secondary use of the real property where such solar farms are located with respect to grazers and pollinators. **[Added 9-19-2019 by L.L. No. 1-2019]**
- N. In the construction, restoration, monitoring, development and operation of solar farms, owners and operators thereof will adhere to the following agricultural mitigation guidelines: **[Added 9-19-2019 by L.L. No. 1-2019]**
- (1) An environmental monitor, hired and paid for by the owner or operator, shall be on site whenever construction or restoration work is occurring on agricultural land and shall coordinate with the New York State Department of Agriculture and Markets, Division of Land and Water Resources with the purpose of developing an appropriate schedule for inspections, to assure that this section is being met.
 - (2) In all cases, the environmental monitor shall contact the New York State Department of Agriculture and Markets, Division of Land and Water Resources, if farm resource concerns, management matters pertinent to the agricultural operation, and site-specific implementation conditions found in these guidelines, cannot be resolved.
 - (3) The owner and operator of the solar farms shall comply with the following:
 - (a) Construction requirements.

- [1] The surface of access roads constructed through agricultural fields must be level with the adjacent field surface.
- [2] Culverts and waterbars must be installed to maintain natural drainage patterns.
- [3] Strip all topsoil from agricultural areas used for vehicle and equipment traffic, parking, and equipment laydown and storage areas. Limit all vehicle and equipment traffic and parking to the access road and/or designated work areas, such as laydown areas.
- [4] When an open trench is required for cable installation, topsoil stripping from the entire work area will be necessary. Stockpile topsoil stripped from work areas (parking areas, electric cable trenches, along access roads) separate from other excavated material (rock and/or subsoil). At least 50 feet of temporary workspace is needed along "open-cut" electric cable trenches for proper topsoil segregation. All topsoil will be stockpiled immediately adjacent to the area where stripped/removed and shall be used for restoration on that particular site. Clearly designate topsoil stockpile areas in the field and on construction drawings.
- [5] Interconnect cables must be buried in agricultural fields wherever practicable. Interconnect cables and transmission lines installed above ground must be located outside field boundaries wherever possible. When aboveground cables and transmission lines 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.

- [6] All buried electric cables in cropland, hayland and improved pasture must have a minimum depth of 48 inches of cover. In unimproved grazing areas and land permanently devoted to pasture, the minimum depth of cover must be 36 inches. In areas where the depth of soil over bedrock ranges from zero to 48 inches, the electric cables must be buried entirely below the top of the bedrock or at the depth specified for the particular land use, whichever is less. At no time shall the depth of cover be less than 24 inches below the soil surface.
 - [7] When buried electric cables 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 cable installation zone and adjacent areas. Install all drain lines according to Natural Resource Conservation Service standards and specifications. Drain tile must meet or exceed the AASHTO M252 specifications.
 - [8] Remove all excess subsoil and rock from the site. On-site disposal of such material is only allowed if approved by the owner.
 - [9] Construct temporary or permanent fences around work areas to prevent livestock access, consistent with landowner agreements.
 - [10] Pick up all pieces of wire, bolts, and other unused metal objects and properly dispose of as soon as practical to prevent mixing with any topsoil.
 - [11] 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.
 - [12] Any permits necessary for disposal under local, state and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the owner when required.
- (b) Restoration requirements.
- [1] All agricultural areas temporarily disturbed by construction must be decompacted to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. Soil compaction results must be no more than 250 pounds per square inch (PSI) as measured with a soil penetrometer. In areas where the topsoil was stripped, soil decompaction must be conducted prior to topsoil replacement. Following decompaction, remove all rocks four inches and larger in size from the surface of the subsoil prior to replacement of the topsoil. Replace the topsoil to original depth and reestablish original contours where possible.
 - [2] Remove all rocks four inches and larger from the surface of the topsoil. Subsoil decompaction and topsoil replacement must be avoided after October 1. If areas are to be restored after October 1, necessary provision must be made to restore and/or reseed any eroded or poorly germinated areas in the

springtime to establish proper growth.

- [3] Regrade all access roads to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the design.
- [4] Seed all restored agricultural areas with the seed mix specified by the owner, in order to maintain consistency with the surrounding areas.
- [5] 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.
- [6] On affected farmland, 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 project restoration activities shall occur in agricultural fields between the months of October through May unless favorable soil moisture conditions exist.
- [7] Following restoration, remove all construction debris from the site.

(c) Monitoring and remediation.

- [1] The owner or operator shall provide a monitoring and remediation period of no less than 365 days following the date upon which the project achieves commercial operation. The one-year period allows for the effects of climatic cycles, such as frost action, precipitation and growing seasons, to occur, from which various monitoring determinations can be made. The monitoring and remediation phase is used to identify any remaining agricultural impacts associated with construction that are in need of mitigation and to implement the follow-up restoration.
- [2] General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed subsurface drain lines, fences, etc.
- [3] Topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the affected site. Determine excessive amounts of rock and oversized stone material by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. Remove and dispose of all excess rocks and large stones.
- [4] When the subsequent crop productivity within affected areas is less than that of the adjacent unaffected agricultural land, the owner or operator as well as other appropriate parties, must determine the appropriate rehabilitation measures to be implemented.

- (d) Notwithstanding anything else contained herein, the provisions of this Subsection N may be waived by the Code Enforcement Officer upon a showing of hardship by the property owner or operator to the complete and sole satisfaction of the Code Enforcement Officer.