§ 280-11.3. Solar energy systems. [Added 2-27-2020 by L.L. No. 1-2020]

A. Authority. This solar energy section is adopted pursuant to §§ 261 through 263 of the Town Law and § 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 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.

B. Statement of purpose. This solar energy section is adopted to advance and protect the public health, safety, and welfare of the Town by creating regulations for the installation and use of solar-energy-generating systems and equipment, with the following objectives:

(1) To take advantage of a safe, abundant, renewable and nonpolluting energy resource;

(2) To decrease the cost of electricity to the owners of residential and commercial properties, including single-family houses;

(3) To increase employment and business development in the Town, to the extent reasonably practical, by furthering the installation of solar energy systems;

(4) To mitigate the impacts of solar energy systems on environmental resources such as important agricultural lands, forests, wildlife, and other protected resources; and

(5) To maintain the rural character of the Town of Tully and to intergrate solar energy usage in the Town in such a way as to minimize the visual impact on the community.

C. Definitions. As used in this section, the following terms shall have the meanings indicated:

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM — A combination of solar panels and solar energy equipment integrated into any building envelope system, such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for on-site consumption.

FARMLAND OF STATEWIDE IMPORTANCE — Land, designated as "farmland of statewide importance" in the U.S. Department of Agriculture Natural Resources Conservation Service's (NRCS)

Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that is of statewide importance for the production of food, feed, fiber, forage, and oil seed crops as determined by the appropriate state agency or agencies. Farmland of statewide importance may include tracts of land that have been designated for agriculture by state law.

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

GROUND-MOUNTED SOLAR ENERGY SYSTEM — A solar energy system that is anchored to the ground via a pole or other mounting system, detached from any other structure, that generates electricity for on-site or off-site consumption.

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

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

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

QUALIFIED SOLAR INSTALLER — A person who has the skills and knowledge related to the construction and operation of solar energy systems. Persons who are on the list of eligible photovoltaic installers maintained by NYSERDA, or who are certified by NABCEP, shall be deemed to be qualified. Persons who are not on either of these lists may be deemed qualified if the Town Code Officer determines that they have adequate training and experience to perform the installation safely.

ROOF-MOUNTED SOLAR ENERGY SYSTEM — A solar energy system located on the roof of any legally permitted building or structure that produces electricity for on-site or off-site consumption.

SOLAR ACCESS — Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive solar energy systems on individual properties.

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

SOLAR ENERGY SYSTEM — The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, solar panels and solar energy equipment. The area of a solar energy system includes all the land inside the perimeter of the solar energy system, which extends to any interconnection equipment. A solar energy system is classified as a Tier 1, Tier 2, or Tier 3 solar energy system as follows:

(1) Tier 1 solar energy systems include the following:

   (a) Roof-mounted solar energy systems.

   (b) Building-integrated solar energy systems.

   (c) Permits for all Tier 1 solar energy systems are issued by the Town Code Officer.

(2) Tier 2 solar energy systems are ground-mounted solar energy systems that are affixed to the ground either directly or by mounting devices and are not attached or affixed to a building or structure. All applications for Tier 2 solar energy systems are reviewed and approved or denied by the Town Planning Board.

(3) Tier 3 solar energy systems are systems that are not included in the list for Tier 1 and Tier 2 solar energy systems. All applications for Tier 3 solar energy systems are approved or denied by the Town Board after review of the application, including the site plan application, by the Planning Board and after the Planning Board has filed an advisory report to the Town Board. This report must be filed with the Town Board within 45 days of the completed application being filed with the Town or such additional time as may be deemed appropriate by the Town Board.

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

STORAGE BATTERY — A device that stores energy and makes it available in an electrical form.

D. Applicability.

(1) The requirements of this section shall apply to all solar energy systems permitted, installed, or modified in the Town after the effective date of this section, excluding general maintenance and repair.

(2) Solar energy systems constructed or installed prior to the effective date of this section shall not be required to meet the requirements of this section.

(3) Modifications to an existing solar energy system that increase the solar energy system area by more than 5% of the original area of the solar energy system (exclusive of moving any fencing) shall be subject to this section.

(4) All solar energy systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the New York State Uniform Fire Prevention and Building Code ("Building Code"), the New York State Energy Conservation Code ("Energy Code"), and the Town Code.

E. General requirements.

(1) A building permit shall be required for installation of all solar energy systems and, installation must be performed by a qualified solar installer as approved by the Town Codes Officer.

(2) Solar energy systems, unless a part of a Tier 3 solar energy system, shall be permitted to provide for power for use by owners, lessees, tenants, residents or other occupants of the premises on which they are erected, but nothing contained in this provision shall be construed to prohibit the sale of excess power through a net metering arrangement in accordance with the New York Public Service Law or similar state or federal statute. However, solar energy systems applications in a residential setting and serving residential use on a single parcel or lot shall be limited to 25 kW and 110% of energy consumed on the site in the prior 12 months. Solar energy system applications serving a commercial or industrial use shall be limited to no more than 110% of the energy consumed on the site in the prior 12 months.

(3) Issuance of permits and approvals by the Town Board and Codes Officer shall include review pursuant to the State Environmental Quality Review Act ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA").

(4) Prior to operation, electrical connections must be inspected by an appropriate licensed electrical inspection person or agency, as determined by the Town. An electrical inspector must supply written verification that all electrical connections pass inspection.

(5) Connection to the public utility grid must be inspected by the appropriate public utility, and proof of inspection shall be provided to the Town.

(6) Solar energy systems shall be permitted only if they are determined by the Town not to present any unreasonable safety risk, including but not limited to weight load, resistance and ingress and egress in the event of fire or other emergency.

(7) Also energy systems shall comply with all relevant and applicable provisions of the New York State Uniform Fire Prevention and Building Code Standards.

(8) If storage batteries are included as part of the solar energy system, they must be placed in a secure container or enclosure under the requirements of the New York State Uniform Fire Prevention and Building Code when in use, and when no longer in use shall be disposed of in accordance with the laws and regulations of the Town and other applicable laws and regulations.

(9) All utility services and electrical wiring/lines shall be placed underground and otherwise be placed within the walls or unobstructive conduit. Conduits or feeds which are laid on the roof shall be camouflaged to blend in with the roof and reduce statically objectionable impacts.

(10) If solar energy systems, except for Tier 3 systems which have separate regulations under this section, cease to perform their originally intended function for more than 12 consecutive months, the property owner shall completely remove the system, mounts and all associated equipment and components by no later than 90 days after written notice from the Town. The zoning enforcement officer shall have the right, at any reasonable time after notice, to enter in company of

the owner or his agent to ensure that the solar energy system remains operational.

(11) Design, construction, operation and maintenance of the solar energy system shall prevent direction, misdirection and/or reflection of solar arrays and/or glare onto neighboring properties, public roads, public parks and public buildings.

(12) Prior to the time of the issuance of a solar building permit, the applicant/owner shall demonstrate to the code enforcement officer a reliable and safe master method for the deenergizing of the solar energy system in the event of an emergency.

F. Permitting requirements for Tier 1 solar energy systems. All Tier 1 solar energy systems shall be permitted in all zoning districts and shall be exempt from site plan review under this section, subject to the following conditions for this type of solar energy system:

(1) Roof-mounted solar energy systems.

(a) Roof-mounted solar energy systems shall incorporate the following design requirements:

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

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

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

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

[5] Solar energy systems, to the extent possible, shall have neutral paint colors to achieve harmony with the surrounding area.

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

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

G. Permitting requirements for Tier 2 solar energy systems.

(1) Districts where allowed. Tier 2 solar energy systems are permitted in all districts.

(a) A solar/building permit and special use permit from the Planning Board shall be required for the installation of all ground-mounted solar energy systems.

(b) Front yards.

[1] Ground-mounted solar energy systems are prohibited in front yards. In addition, ground-mounted solar energy systems shall comply with the most restrictive area, yard and total area/lot coverage restrictions based on the specific zoning regulation in each applicable zoning district in which the ground-mounted solar system is constructed. Further, additional setbacks and yard requirements in total area/lot coverage restrictions may be required by the Planning Board in order to protect the public safety, health and welfare.

[2] A front yard, for the purposes of this section, is defined as a line drawn parallel to the highway drawn on a point from the corner of the residence or principal structure on the structure closest to the highway.

(c) Ground-mounted solar energy systems shall only be permitted on lots which are 20,000 square feet or larger.

(d) The height of solar collector/panels in any amounts shall not exceed 10 feet in height in R-1, R-2 and R-3 Districts and 15 feet in A-1, A-2, B-1, Industrial and Commercial Districts when orientated at the maximum tilt measured from the ground, including any base.

(e) As a part of the special use permit review process, the Planning Board will determine that a ground-mounted solar energy system shall be screened to the extent possible from adjoining lots and street rights-of-way through the use of architectural features, earth berms, landscaping, fencing or other screen which will

harmonize with the character of the property and the surrounding area.

(f) The ground-mounted solar energy system shall be located in a manner to minimize view blockage reasonably for surrounding properties and shading of property while still providing adequate solar access for the solar energy system.

(g) Neither the ground-mounted solar energy system nor any component thereof shall be cited within any required buffer area, easement, right-of-way or setback.

(h) No special use permit shall be issued by the Planning Board unless they determine that the proposed activity will:

[1] Be consistent with and not impede an appropriate goal or objective of the Town Comprehensive Plan.

[2] Be consistent with and not impede the lawful use and development of contiguous and neighboring properties and not unreasonably affect their enjoyment and value.

H. Permitting requirements for Tier 3 solar energy systems. All Tier 3 solar energy systems are permitted through the issuance of a special use permit within all zoning districts; however, and in R-1, R-2, and R-3 Districts, the minimum lot size for any Tier 3 solar energy system shall be 100 acres, and all systems are subject to the site plan application requirements set forth in this section. In the granting of a special use permit, the Town Board will strive to permit the location of Tier 3 solar energy systems in such a manner so that no one area or neighborhood in the Town would be over-burdened by the placement of Tier 3 solar energy systems.

(1) Applications for the installation of Tier 3 solar energy system shall be:

(a) Reviewed by the Code Enforcement Officer for completeness. Applicants shall be advised within 15 business days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.

(b) Subject to a public hearing to hear all comments for and against the application. The Town Board shall have a

notice printed in a newspaper of general circulation in the Town at least 10 days in advance of such hearing. Applicants shall have delivered the notice by first-class mail to adjoining landowners or landowners within 400 feet of the property at least 10 days prior to such a hearing. Proof of mailing shall be provided to the Town Board at the public hearing.

(c) Referred to the County Planning Department pursuant to General Municipal Law § 239-m and the Town Planning Board for site plan review and advisory report.

(d) Upon closing of the public hearing, the Town Board shall take action on the application within 62 days of the public hearing, which can include approval, approval with conditions, or denial. The sixty-two-day period may be extended upon consent by both the Town Board and applicant.

(2) Underground requirements. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles with new easements and right-of-way.

(3) Vehicular paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.

(4) Signage.

(a) No signage or graphic content shall be displayed on the solar energy systems except the manufacturer's name, equipment specification information, safety information, and twenty-four-hour emergency contact information. Said information shall be depicted within an area no more than eight square feet.

(b) As required by the 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.

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

(6) Lighting. Lighting of the solar energy systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.

(7) Tree-cutting. Removal of existing trees larger than six inches in diameter should be minimized to the extent possible.

(8) Decommissioning.

(a) Solar energy systems that have been abandoned for one year and/or are not producing electricity for a period of one year at least 50% of its intended usage, shall be removed at the owner's and/or operator's expense which, at the owner's option, may come in part or whole from any security made with the Town.

(b) A decommissioning plan signed by the owner and/or operator of the solar energy system shall be submitted by the applicant, addressing the following:

[1] The cost of removing the solar energy system.

[2] The time required to decommission and remove the solar energy system from any ancillary structures.

[3] The time required to repair any damage caused to the property by the installation and removal of the solar energy system.

[4] The Town at its option may obtain its own decommissioning plan, the cost of which shall be paid for by the applicant.

(c) Security, assessment of expenses and insurance.

[1] The deposit, executions, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town attorney and/or engineer, shall be in an amount sufficient to ensure the good-faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be 125% of the cost of removal of the Tier 3 solar energy system and restoration of the property with an escalator of 2% annually for the life of the solar energy system.

[2] 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 cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed. The Town may also bring legal action action against the applicant for any unrecovered losses.

[3] In the event of default or abandonment of the solar energy system, the system shall be decommissioned as set forth in Subsection N(2) and (3) herein.

[4] Any expenses or losses incurred by the Town and not reimbursed by any security in connection with the cost of removal of abandoned equipment or other related items and legal fees and expenses shall be levied and collected in the same manner as provided in the Town Law for the levy and collection of a special ad valorem levy on the real property on which the solar energy system is located. This assessment shall be assessed on the next assessment against said property, and the same shall be levied and collected in the same manner as the regular Town tax.

[5] Insurance. The applicant and/or owner shall maintain a current insurance policy which will cover the installation and operation of the Tier 3 project at all times in the minimum amount of $5,000 property and personal liability coverage and provide proof of such policy to the Town on an annual basis.

I. Site plan application. For any solar energy system requiring a special use permit, site plan approval shall be required. Any site plan application shall include the following information:

(1) Property lines and physical features, including roads, and all improvements for the project site as shown on a current survey prepared and signed by a licensed surveyor.

(2) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.

(3) A one- or three-line electrical diagram detailing the solar energy system layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code-compliant disconnects and over-current devices.

(4) A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of a building permit.

(5) Name, address, and contact information of the proposed or potential system installer and the owner and/or operator of the solar energy system. Such information of the final system installer shall be submitted prior to the issuance of a building permit.

(6) Name, address, phone number, 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 solar energy system.

(7) Zoning district designation for the parcel(s) of land comprising the project site.

(8) Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.

(9) Erosion and sediment control and stormwater management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.

(10) Prior to the issuance of the building permit or final approval by the Town Board, engineering documents must be signed and sealed by a New York State (NYS) licensed professional engineer or NYS registered architect.

(11) The Planning Board shall complete site plan review within 45 days from the receipt of all relevant and required documents from the applicant and, for Tier 3 applications, forward its report with any recommendations to the Town Board unless the time is extended by the Town Board.

(12) Special and additional requirements for all Tier 3 applications:

(a) Plans and drawings of the proposed Tier 3 installation signed, marked and/or stamped by a professional engineer or architect registered in New York State showing the proposed layout of the entire solar farm along with a description of all components whether on-site or off-site, existing vegetation and proposed clearing and grading of all sites involved. Clearing and/or grading activities are subject to review by the Town Board and shall not commence until the issuance of site plan approval. The plans and development plan shall be drawn in sufficient detail and shall further describe:

[1] Property lines and physical dimensions of the proposed site, including contours at five-foot intervals.

[2] Location, approximate dimensions and types of all existing structure(s) and uses on the site.

[3] Location and elevation of the proposed Tier 3 installation.

[4] Location of all existing aboveground utility lines showing the connection of the system to the utility line within 1,200 linear feet of the site.

[5] Where applicable, the location of all transmission facilities proposed for installation. All transmission lines and wiring associated with a Tier 3 project shall be buried underground and include necessary encasements in accordance with the National Electric Code and Town requirements. The Town Board may recommend waiving this requirement if sufficient engineering data is submitted by the applicant demonstrating that underground transmission lines are not feasible or practical. The applicant is required to show the locations of all proposed overhead electric utility/transmission lines, including substations and junction boxes and other electrical components for the project on the site plan. All transmission lines and electrical wiring shall be in compliance with the public utility company's requirements for interconnection. Any connection to the public utility grid must be inspected by the appropriate public utility.

[6] Location of all service structures proposed as part of the installation and primary equipment sheds.

[7] Landscape plan showing all existing natural land features, trees, forest cover and all proposed changes to these features, including size and type of plant material. The plan shall show any trees and/or vegetation which is proposed to be removed for purposes of providing greater solar access. Removal of existing trees larger than six inches in diameter shall be minimized to the greatest extent possible.

[8] A berm, landscape screen, or any other combination acceptable to the Town capable of screening the site, shall be provided along any property line as may be required by the Planning Board during review.

[9] Soil type(s) at the proposed site.

[10] Photographic simulations shall be included showing the proposed solar farm along with elevation views and dimensions and manufacturer's specifications and photos of the proposed solar energy systems, solar collectors, solar panels and all other components comprising the Tier 3 project.

[11] Prior to the issuance of a solar/building permit, certification from a professional engineer or architect registered in New York State indicating that the building or structure to which a solar panel or solar energy system is affixed is capable of handling the loading requirements of the solar panel or solar energy system and various components.

[12] Documentation of access to the project site(s), including location of all access roads, gates, parking areas, etc.

[13] A plan for clearing and/or grading of the site and a stormwater pollution prevention plan (SWPPP) for the site.

[14] Documentation of utility notification, including an electric service order number.

[a] The manufacturer's or installer's identification and appropriate warning signage shall be posted at the site and be clearly visible.

[15] Solar energy systems shall be marked in order to provide emergency responders with appropriate warning and guidance with respect to isolating the electric systems. Materials used for marking shall be weather resistant. The marking shall be placed adjacent to the main service-disconnect location clearly visible from the location where the lever is operated.

[16] The height of the solar panel array shall conform to the height restrictions for an accessory structure in the applicable zoning district, but in no case shall exceed 15 feet measured from the ground, and including any base or supporting materials. Neutral paint colors, materials and textures may be required for Tier 3 project components, buildings and structures to achieve visual harmony with the surrounding area.

[17] The design, construction, operation and maintenance of the solar energy system shall prevent the direction, misdirection and/or reflection of solar rays and/or glare onto neighboring properties, public roads, public parks and public buildings.

[18] Artificial lighting of solar arms shall be limited to lighting required for safety and operational purposes, shall be shielded from all neighboring properties and public roads.

[19] Noise. To the extent possible, all equipment that produces noise shall be placed in the center of the solar array. Further, and at the property line of any solar energy system, the noise level shall not exceed 60 dB.

J. Special use permit.

(1) Lot size.

(a) The property on which a Tier 3 solar energy system is placed shall meet the lot size requirements of the underlying zoning district except that in R-1, R-2 and R-3 Districts, a minimum of 100 acres is required.

(b) Tier 2 solar energy systems are only permitted on lots which are 20,000 square feet or larger.

(2) Setbacks.

(a) All Tier 3 solar energy systems shall be set back at least 100 feet from all property lines unless the solar energy system crosses multiple lots, then 100 feet from the exterior perimeter of the combined lots.

(b) Tier 2 setbacks are as permitted in the Code except as modified by Subsection G(1)(b)[1] of this section.

(3) Height.

(a) The height of all Tier 3 systems shall not exceed 15 feet.

(b) See Subsection G(1)(d) of this section, for Tier 2 solar energy projects.

(4) Lot coverage.

(a) The following components of a Tier 3 solar energy system shall be considered included in the calculations for lot coverage requirements:

[1] Foundation systems, typically consisting of driven piles or monopoles or helical screws with or without small concrete collars.

[2] All mechanical equipment of the solar energy system, including any pad-mounted structure for batteries, switchboard, transformers, or storage cells.

[3] Paved access roads servicing the solar energy system.

[4] All area within the fenced-in perimeter.

(b) Lot coverage of Tier 3 solar energy system, as defined above, shall not exceed 75% of the lot.

(c) Lot coverage for Tier 2 solar energy systems shall not exceed the maximum lot coverage requirement of the underlying zoning district except as modified by Subsection G(1)(b)[1] of this section.

(5) Fencing requirements. All mechanical equipment, including any structure for storage batteries, shall be enclosed by a seven-foot-high fence, as required by NEC, with a self-locking gate to prevent unauthorized access.

(6) Screening and visibility.

(a) Solar energy systems smaller than 10 acres shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.

(b) Solar energy systems larger than 10 acres shall be required to:

[1] Conduct a visual assessment of the visual impacts of the solar energy system on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including, for example, a digital viewshed report, may be required to be submitted by the applicant.

[2] Submit a screening and landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of solar panels and solar energy equipment shall be minimized as reasonably practical from public roadways and adjacent properties to the extent feasible.

[a] The screening and landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system, following the applicable rules and standards established by the Town.

K. Agricultural resources. For projects located on agricultural lands:

(1) The Town Board on any Tier 3 solar energy system located on the areas that consist of prime farmland or farmland of statewide importance shall give special consideration to the removal of such farmland in granting a special use permit under this section.

(2) To the maximum extent practicable, Tier 3 solar energy systems located on prime farmland shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets.

(3) Tier 3 solar energy system owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes.

L. 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 special use permit, site plan approval, and decommissioning plan. A new owner or operator of the solar energy system shall notify the Town of such change in ownership or operator within 10 days of the ownership change by certified mail to both the Town Clerk and Town Supervisor and addressed to the Tully Town Hall.

M. Safety.

(1) Solar energy systems and solar energy equipment shall be certified under the applicable electrical and/or building codes as required.

(2) Solar energy systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 3 solar energy system is located in an ambulance district, the local ambulance corps.

(3) If storage batteries are included as part of the solar energy system, they shall meet the requirements of any applicable 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.

N. Permit time frame and abandonment.

(1) The special use permit and site plan approval for a solar energy system shall be valid for a period of 18 months after issue. In the event construction is not completed in accordance with the final site plan and special permit, as may have been amended and approved, as required by the Town Board within 18 months after approval, the Town may extend

the time to complete construction for 90 days and will take into consideration any extensions required as a result of NYSERDA requirements.

(2) Upon cessation of electricity generation of a solar energy system on a continuous basis for 12 months and/or the reduction of proposed usage in the amount of 50% for 12 months, the Town may notify and instruct the owner and/or operator of the solar energy system to implement the decommissioning plan. Decommissioning must be completed within 200 days 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 solar energy system and restoration of the site in accordance with the decommissioning plan.

O. 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.

P. 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.

Q. Waiver. The Town Board may, under appropriate conditions or circumstances, and in its absolute discretion, waive one or more of the submission requirements contained herein.

R. Fees. Fees for application are those as established by the Town of Tully, and it shall be the responsibility of the applicant to reimburse the Town for any and all reasonable and necessary legal, engineering and other professional fees incurred by the Town in reviewing and administering an application for a solar energy system under this section.