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Local Law Filing

TOWN OF CHERRY VALLEY
Local Law of the year 2021

A LOCAL LAW REGULATING SOLAR ENERGY SYSTEMS IN THE TOWN OF CHERRY VALLEY

Local Law No _____ of 2021 Adopting Solar Energy Systems Regulations for the Town of Cherry Valley

Be it enacted by the Town Board of the Town of Cherry Valley, Otsego County, New York, as follows:

Part 1. Title

This local law shall be known as the “Town of Cherry Valley Solar Energy Systems Law”. This local law shall also be referred to herein for convenience simply as “The Solar Law”.

Part 2. Enactment

This local law is adopted and enacted pursuant to the authority and power granted by Articles 2 and 3 of the New York State Municipal Home Rule Law, and pursuant to Article 2 of the New York State Statute of Local Governments.

Part 3. Regulations

Article I: Purpose and Intent

1. The Town of Cherry Valley recognizes that solar energy is a clean, readily available, and renewable energy source that can address climate change and decrease reliance on fossil fuels, and desires to see individual homes, businesses, and farms use the technology. It also recognizes the potential for some solar energy generation systems to have adverse impacts and the need for proper facility siting in order to protect and preserve important environmental resources in the Town.
2. The purpose of these regulations is to balance the environmental benefits of renewable energy with potential adverse impacts of solar energy generating systems on the environment and on the community while preserving the rights of the property owners to install solar collection systems without excess regulation.

3. This local law is intended to promote the effective and efficient use of solar energy resources and to set provisions for the placement, design, construction, and operation of such systems to be consistent with the Town of Cherry Valley's Comprehensive Plan.
4. It is not intended by this section to repeal, except as herein stated, abrogate, or impair existing conditions previously made or permits previously issued relating to the use of buildings or premises or to impair or interfere with any easements, covenants or agreements existing between parties. Except as otherwise provided herein, whenever this section imposes a greater restriction upon the use of buildings or premises that is required by existing provisions of law, ordinance, regulations or permits or by such easements, covenants or agreements, the provision of this section shall control.

Article II: Definitions

As used in this section, the following terms shall have the meanings as indicated:

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.

AMBIENT SOUND LEVEL: Also referred to as Ambient Noise Level and Ambient Sound Pressure Level, means the background (exclusive of the development proposed) Sound Level (L₉₀) found to be exceeded 90 percent (90%) of the time over which sound is measured in a noise analysis. Unless indicated otherwise, frequency weighting according to the A-weighting scale is understood to be applicable.

BATTERY: A device that stores energy generated from the sun or another source and makes it available for later use.

BUILDING-INTEGRATED SYSTEM: A solar energy system that consists of integrating photovoltaic modules into the building structure, such as the roof materials or façade and which does not alter the relief of the roof.

BUILDING-MOUNTED SOLAR ENERGY SYSTEM: A solar energy system that is affixed to the roof or side(s) of a building or other structure either directly or by means of support structures or other mounting devices. Solar energy systems constructed over a parking lot are considered building-mounted solar energy systems. Building-mounted could be either flush-mounted or rooftop mounted systems.

FLUSH-MOUNTED SOLAR PANEL: A building-mounted solar energy system installed flush to the surface of a roof or wall of a principal and/or an accessory structure and which cannot be angled or raised for the direct conversion of solar energy into electricity.

FRONT YARD: That portion of the open area of a lot extending from the property line along the road upon which the parcel is fronted, across the full width of the lot and lying between the front lot line of the lot and the nearest point of the building.

GLARE: The effect produced by light with intensity sufficient to cause annoyance, discomfort, or loss in visual performance and visibility.

GROUND-MOUNTED SOLAR ENERGY SYSTEM: A solar energy system that is affixed to the ground either directly or by support structures or other mounting devices and that is not attached or affixed to an existing structure. Pole mounted solar energy systems shall be considered ground-mounted solar energy systems for the purposes of this local law.

LARGE-SCALE SOLAR ENERGY SYSTEM: An energy generation facility designed to convert solar energy to electricity, whether by photovoltaics, concentrating solar thermal devices or other solar technologies, designed, and intended to supply energy solely into a utility grid for sale to the general public and which generates more than 25 kW and less than 20 megawatts of electricity on a parcel of land no more than ten (10) acres in size.

MATURE FOREST: Any unimproved land in excess of one (1) acre with trees that are predominantly six (6) inches in diameter or more.

PHOTOVOLTAIC (PV) SYSTEMS: A solar energy system that produces electricity by the use of the semiconductor devices, called photovoltaic cells, that generate electricity wherever light strikes them.

PRIME FARMLAND, PRIME SOILS AND PRIME SOIL LANDS: Agricultural land meeting: (1) the national parameters for "Prime Farmland" as described in the then current guidelines set forth in the National Soil Survey Handbook § 622.03/Farmland Classification, as amended from time to time; and (2) "farmland of statewide importance," pursuant to the State of New York classification system for Otsego County.

REFLECTOR: A device, the sole purpose of which, is to increase the solar radiation received by a solar collector.

ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM: A building-mounted solar energy system in which solar collectors are mounted on top of the structure of a roof of any legally permitted building either as a flush-mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle.

SETBACK: The distance from a front lot line, side lot line, or rear lot line of a parcel within which a ground-mounted solar energy system is installed.

SMALL-SCALE SOLAR ENERGY SYSTEM: Any solar energy system that is an accessory use or structure designed and intended to generate energy for a principal land use located on the lot and that produces up to twenty-five (25) kilowatts (kW) of energy. Small-scale solar energy systems located on a farm operation as defined as per New York State Agriculture and Markets Law (AML) §301(11) and located in a New York State Agricultural District producing up to 110% of the farm's needs shall also be considered a small-scale energy system.

SMALL PORTABLE UNITS: Solar energy systems intended to be portable and sized to produce a small amount of electricity to power things such as, but not limited to, garden lights, electric fences, camping lights, power systems for RV's and campers, and pumps used irrigation from ponds and other water bodies.

SOLAR ACCESS: Space open to the sun and clear of overhangs or shade so as to permit the use of a solar energy system on individual properties.

SOLAR ARRAY: A group of multiple solar modules with purpose of harvesting solar energy.

SOLAR COLLECTOR: A solar or photovoltaic cell, plate, panel, film, array, reflector, or other structure affixed to the ground, a building or other structure that harnesses solar radiation to directly or indirectly generate thermal, chemical, electrical, or other usable energy, or that reflects or concentrates solar radiation to a solar or photovoltaic cell, plate, panel, film, array, reflector, or other structure that directly or indirectly generates thermal, chemical, electrical, or other usable energy.

SOLAR ENERGY EQUIPMENT: Solar collectors, controls, energy devices, heat pumps, heat exchangers, and or other materials, hardware, or equipment necessary to the process by which solar radiation is collected, converted into another form of energy, stored, protected from unnecessary dissipation, and distributed.

SOLAR ENERGY SYSTEM: A complete system intended for the collection, inversion, storage, and/or distribution of solar energy and that directly or indirectly generates thermal, chemical, electrical, or other usable energy. A solar energy system consists of, but is not limited to, solar collectors, mounting devices or structures, storage, maintenance, and/or other accessory buildings, inverters, combiner boxes, meters, transformers, and all other mechanical structures. Solar energy systems include solar thermal, photovoltaic, and concentrated solar and are either small-scale, large-scale or utility-scale in size.

SOLAR PANEL: A device for the direct conversion of solar energy into electricity.

SOLAR THERMAL SYSTEM: A system that directly heats water or other liquid using sunlight.

UTILITY SCALE SOLAR ENERGY SYSTEM: An energy generation facility designed to convert solar energy to electricity, whether by photovoltaics, concentrating solar thermal devices or other solar technologies, designed, and intended to supply energy solely into a utility grid for sale to the general public and which generates twenty (20) megawatts (MW) or more of electricity.

Article III: Applicability

1. The requirements of this local law shall apply to all solar energy system installations modified or installed after the effective date of this law with the exception of small portable units and building integrated systems.
 - a. In order to promote innovative design and encourage the inclusion of alternative energy systems within the overall design of a building, solar energy systems determined to be building integrated systems, as defined herein, are exempt from the requirements of this Article. Such systems are still required to meet the applicable building codes and obtain all necessary permits.
2. Solar energy systems for which a valid building permit has already been properly issued, for which installation has commenced before the effective date of this law, or for which a building permit is not required, shall not be required to meet the requirements of this law.

However, any modifications, expansions, or alterations to existing solar energy systems which are to take place after the effective date of this law shall be subject to its provisions.

3. All solar energy systems, except for small portable units, shall be designed, erected, and installed according to the New York State Uniform Fire Prevention and Building Code and the New York State Energy Conservation Code.

Article IV: Small-Scale Solar Energy Systems

1. No small-scale solar energy system shall be installed or operated in the Town of Cherry Valley except in the compliance with the applicable provisions of this local law.
2. Small-scale solar energy systems shall be permitted in all land use districts in the Town of Cherry Valley. The installation of a small-scale solar energy system, whether attached to the main structure, an accessory structure, or as a ground mounted system shall be permitted as an accessory structure to the principal use.
3. Prior to the installation and operation of a small-scale solar energy system, persons seeking to install those systems shall meet all applicable requirements of this local law and (a) obtain a permit pursuant to the aforementioned Codes; (b) obtain an electrical permit from the Otsego County Building Department; and (c) be inspected and pass inspection by the Otsego County Building Department.
4. No review by the Town of Cherry Valley Planning Board shall be required.
5. Any variance to these requirements imposed by this local law must be sought from the Cherry Valley Board of Appeals (Town Board) prior to building permit approval pursuant to the Cherry Valley Land Use Law Article 10.
6. Siting and Other Requirements for Small-Scale Solar Energy Systems.
 - a. Setbacks for Ground-Mounted Small-Scale Solar Energy Systems:
 - (1) Solar collectors or panels are subject to minimum setbacks as defined in Cherry Valley's Land Use Law, Section 4.03. For installation of a ground-mounted, small-scale solar energy system the front setbacks shall be 75 feet from the street centerline and 25 feet from the side or rear lot line.
 - (2) Corner lots shall be considered to have two front yards and shall meet front setbacks on both sides.
 - b. Height limits for All Small-Scale Solar Energy Systems:
 - (1) Rooftop mounted solar collectors shall be no higher than the highest part of the roof. Solar collectors on flat roofs shall not extend above the top of the surrounding parapet, or more than three (3) feet above the flat surface of the roof, whichever is higher.
 - (2) Ground mounted small-scale solar collectors shall not exceed 15 feet in height when oriented at maximum tilt.

- (3) Rooftop units must be three feet from any chimney and shall not be permitted on any roof overhangs.
- c. All solar collectors and their associated support elements shall, at the time of installation, be designed according to generally accepted engineering practice to withstand wind pressures applied to exposed areas by wind from any direction, to withstand reasonably anticipated snow loads, to minimize the migration of light or sound from the installation, and to minimize sight obstructions for adjacent structures or land parcels.
- d. In order to ensure firefighters' and other emergency responders' safety, Small-Scale Solar Energy Systems shall meet the following requirements:
 - (1) Small-scale solar energy systems and equipment shall be clearly marked in order to provide the public and emergency responders with appropriate warning and guidance with respect to isolating the electrical system serving the solar system. Materials used for marking shall be weather resistant. For residential applications, the marking may be placed within the main service disconnect. If the main services disconnect is operable with the service panel closed, then the marking should be placed on the outside cover. When the small-scale solar energy system generates electricity for commercial buildings, the marking shall be placed adjacent to the main service disconnect in a location clearly visible from the location where the lever is operated.
 - (2) If solar storage batteries are included with a small-scale system, they must be placed in a secure container or enclosure meeting the requirements of the New York State Building Code when in use. When they are no longer in use, they shall be disposed of in accordance with all applicable federal, state, and local laws, rules, and regulations.
- e. Glare and heat. No direct or unreasonable glare or transmission of heat shall be produced that is perceptible beyond the boundaries of the lot on which the small-scale solar energy system is situated. All small-scale solar collectors and related equipment shall be surfaced, designed, and sited so as not to reflect glare onto adjacent properties and roadways.
- f. Solar collectors and energy equipment shall be located in a manner that reasonably minimizes shading of adjacent property and blockage for surrounding properties while still providing adequate solar access for collectors.
- g. If a small-scale solar collector ceases to perform its originally intended function for more than twelve (12) consecutive months, the property owner shall remove the collector, mount, and associated equipment, no later than six (6) months after the end of the twelve-month period.

Article V: Large-Scale Solar Energy Systems

- 1. Applicability
 - a. This Article V is applicable to all large-scale solar energy systems and shall not apply to small-scale solar energy systems as defined in this local law.
 - b. The Town of Cherry Valley desires to balance certain land uses and to foster economic opportunities within the Town, provided that such uses do not unreasonably and adversely affect neighboring properties, the natural environment, the rural and

- agricultural character of the Town or the long-term development of the Town. Large-Scale Solar Energy systems, therefore, are permitted only upon issuance of site plan approval and a special use permit approved by the Planning Board in order to ensure that this use is appropriate to their surroundings and satisfy performance criteria on a case-by-case basis. The Town of Cherry Valley Planning Board is hereby authorized to review and either approve, approve with conditions, or disapprove applications for Large-Scale Solar Energy Systems.
- c. Large-scale solar energy systems shall be allowed in any land use district in Cherry Valley only subject to prior Site Plan and Special Use Permit approval by the Planning Board and shall be in compliance with this Article V.
 - d. In any instance where the specific permitted uses, area and/or height standards, development guidelines, and/or review procedures that are specifically set forth in this Article conflict with any other Cherry Valley local law provision or requirements, the particular provisions set forth in this local law shall take precedence and control. In all instances not specifically addressed in this local law, the Town of Cherry Valley Land Use Law and Town of Cherry Valley Site Plan Law shall apply.
 - e. Application for Area Variance. Where a proposed site plan review or special use permit application for a large-scale solar energy system contains one or more dimensional and area features which do not comply with the regulations of this local law, application may be made to the Board of Appeals (Town Board) for an area variance pursuant to Article 10 of the Cherry Valley Land Use Law.
2. Process and Application Submittals Required
- a. All applications for large-scale solar energy systems shall be accompanied by an application form for a special use permit and site plan review as provided by the Town, and all applicable fees as established by the Town Board. All fees shall also be submitted with the application to the Planning Board prior to initiation of any review process.
 - b. Project Review Process. In summary, the review process shall be as follows:
 - (1) The Planning Board shall concurrently review the application for site plan approval and special use permits. All procedures of the Town of Cherry Valley Site Plan Law shall be followed.
 - (2) The application shall be submitted to the Town Clerk at least ten (10) days prior to the date of the next regular meeting of the Town Planning Board.
 - (3) The application shall be deemed complete for review when all required submittals are deemed sufficient by the Planning Board. No timeframes for hearing or decision making as established in this local law or the Site Plan Law shall commence until the application is deemed complete by the Planning Board.
 - (4) Notice to Applicant and Otsego County Planning Board. Upon deemed complete by the Planning Board and at least ten (10) days before any hearing as required by the Site Plan Review Law or this local law, the Planning Board shall refer the application to the Otsego County Planning Board as required by Section 239-m of the General Municipal Law.
 - (a) No action shall be taken on applications referred to the County Planning Department until its recommendation has been received, or 30 days have

- elapsed after its receipt of the complete application, unless the County and Town agree to an extension beyond the 30-day requirement for the County Planning Department's review.
- (b) County Disapproval. A majority-plus-one vote of the Planning Board shall be required to grant site plan approval on an application which receives a recommendation of disapproval from the County Planning Department. The Planning Board shall, in writing, inform the County setting forth the reasons for such contrary action.
- (4) The Planning Board shall also follow all procedures and requirements of 6 NYCRR Part 617.
- (5) When an Agricultural Data Statement has been submitted as part of the application, the Planning Board shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within the agricultural district. If an agricultural data statement has been submitted, the Planning Board shall, upon receipt of the application, mail written notice of the special use permit application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location. The cost of mailing the notice shall be fully borne by the applicant.
- (6) Public Hearing and Notice.
- (a) The Planning Board shall hold a public hearing on a complete application within 62 days from the determination by the Planning Board that the application is complete. The time in which a public hearing must be held may be lengthened only upon consent of the Applicant and Planning Board.
- (b) At least five (5) days prior to the date of such hearing, the Planning Board shall give public notice by causing the publication of a notice of such hearing in the official newspaper and by mailing a notice thereof to all adjoining property owners and to any other property owners in the affected area that the Planning Board may require to be notified. The Board shall also accept written comments and shall establish the time frame for acceptance of such comments in the legal notice for the hearing.
- (7) Action. The Planning Board shall grant, deny, or grant with conditions, the application for a site plan and for a special use permit within 62 days after the hearing. Any decision by the Planning Board shall contain written findings explaining the rationale for the decision in light of the criteria and any other applicable provisions of this local law. The Planning Board shall file their decision in the Office of the Town Clerk within five business days after a decision is made, and a copy mailed to the applicant.
- (8) Conditions. In granting a special use permit, the Planning Board may impose conditions that it considers necessary to protect the health, safety, and welfare of the Town and to achieve the purposes contained in this law, the Town's Comprehensive Plan, and the Town of Cherry Valley Land Use Law.

- (9) Subsequent to Planning Board Approval for a Special Use Permit, the following shall be met:
- (a) Approvals for Special Use Permits granted for large-scale solar energy systems shall be assignable or transferable to future landowners of that system on the approved parcel so long as they are in full compliance with this local law and all conditions imposed by the Planning Board. The approved special use permit shall be reviewed every three years by the Planning Board and renewed for a subsequent three-year period provided the conditions of the permit are complied with. The Planning Board is authorized to revoke the special use permit on the grounds of failure to comply with the special use permit conditions and requirements pursuant to this local law Article V (2) (b) (9) (d).
 - (b) Any post-construction changes or alterations to the solar energy system shall be done by amendment to the Special Use Permit by the Planning Board and subject to the requirements of this local law.
 - (c) After the completion of a large-scale solar energy system, the applicant shall provide a post-construction certification from a New York State licensed Professional Engineer that the project complies with applicable codes and industry practices and has been constructed and is operating in accordance with design plans. The applicant shall further provide certification from the utility that the facility has been inspected and connected.
 - (d) On or before December 31 of each year that the solar system is in operation, the landowner, system operator, or the system lessee shall file a written report demonstrating that the system is in compliance with all of the applicable conditions and requirements that were part of the Planning Board's approval of the special use permit and site plan. The report shall contain a detailed explanation of compliance for each condition of approval. Such report shall be delivered to and filed with the Town Clerk and with the Otsego County Building Department. Copies of the report shall also be provided to the Town Planning Board.

Any deviation from permit approvals and conditions imposed on the project by the Planning Board shall be considered a violation of this local law which shall be enforced pursuant to Section 9.03 of the Town of Cherry Valley Land Use Law. Should a solar energy system become inoperable, or should any part be damaged, or violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Town Planning Board. The applicant shall have 90 days after written notice to cure any deficiency. An extension of the 90-day period may be considered by the Town Planning Board, but the total period shall not exceed 180 days. If the system is not repaired or made operational or brought into compliance after said notice, the Planning Board may, after a public hearing at which the operator or owner shall be given opportunity to be heard and present evidence including a plan to come into compliance, order either remedial action within a particular timeframe or order revocation of the solar energy system special use permit.

- (e) Revocation of special use permit. Any special use permit issued by the Planning Board pursuant to this local law may be revoked by the Planning Board, after public hearing, if it is found and determined that there has been a substantial failure to comply with any of the terms, conditions, limitations, and requirements imposed by the special use permit. After a public hearing, any decision by the Planning Board to revoke a special use permit shall be made in writing and shall identify and describe the reasons for the revocation and identify all such evidence upon which the determination is based.
- c. In addition to site plan application requirements which are set forth in the Town of Cherry Valley Site Plan Review Law at Article 3, all applications for large-scale solar energy systems shall also include eight (8) printed copies and one fully digital copy of the following:
 - (1) Impact Mitigation Narrative. Applicants shall use the adopted Town of Cherry Valley Comprehensive Plan to identify and describe in a narrative, how the proposed large-scale solar energy system shall avoid or mitigate adverse impacts to important resources identified in that Plan in the Town and how the proposal is consistent with the goals and policies established in such plan. The narrative shall include identify any resources on the proposed parcel that are included on the Town of Cherry Valley Environmental Natural Resources and Conditions map(s). Other environmental features, including but not limited to any mapped features present on the Town natural resource maps, shall also be placed on the site plan and identified. The applicant shall submit information about potential adverse impacts to farmland and agricultural uses in the Town.
 - (2) Lease Agreement. In the case of an application for a large-scale solar energy system proposed on private lands owned by a party other than the applicant, a copy of the fully executed lease agreement with the property owner shall be required to be part of the complete application.
 - (3) Proof of Insurance. The applicant and the owner of the property where the large-scale solar energy system is to be located shall include with the application proof of insurance coverage for personal injury and damages to property.
 - (4) Site Plan. Plans and drawings of the large-scale solar energy system installation signed by a New York State-licensed professional engineer depicting the property upon which the system is located as well as the proposed layout of the entire solar energy system along with a description of all the components, whether on site or off site. Identification of prime farmland soils, mature forest, other existing vegetation, and proposed clearing and grading of all sites involved shall also be shown.
 - (5) Electrical Diagram. An electrical diagram detailing the solar energy system installation, associated components, batteries, transformers, poles, and electrical interconnections methods, with all disconnects and over-current devices identified. The application shall depict the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan.

- (6) Electrical Capacity Narrative. The applicant shall provide written confirmation that the electric grid has the capacity to support the energy generated from the utility solar energy system. Electrical and land-based telephone utilities extended to serve the site shall be underground. The applicant shall also provide documentation of utility notification, including an electrical service order number.
- (7) Documentation for Access to Site. Documentation of access to the project site(s), including location of all access roads, gates, parking areas, etc.
- (8) Grading Plan. A plan for grading of the site, including methods to stockpile, reduce erosion of, and reuse all disturbed topsoil. Grading activities are subject to review by the Planning Board and shall not commence until the issuance of both site plan approval and special use permits.
- (9) Clearing Plan. A plan for the clearing of the site shall be submitted including depiction of the location of trees to be cleared, documentation of the number of trees in excess of 8-inch dbh to be cleared, and description of type of trees and forestland to be cleared.
- (9) Stormwater Plan. All large-scale solar energy system applications shall include a stormwater pollution prevention plan (SWPPP) even if land disturbance is less than one acre. Such plan shall be consistent with NYS Department of Environmental Conservation (NYS DEC) requirements to detail storm water runoff management and erosion control for the site. Such plan shall address pollution prevention methods to be used to address clay soils and overland flow common throughout Cherry Valley. Further, the application shall address any location that contains the proposed solar energy system that includes portions of, tributaries to, or the watershed of the Cherry Valley Creek. In such case, the application shall specifically identify such creek resources.
- (10) Documentation of Wildlife Use of Site. The site plan shall include identification of wildlife species that may use the parcel including potential wildlife travel corridors, migration paths, or critical habitats as identified by the NYS DEC, The Nature Conservancy or through field studies by a professional biologist or ecologist. Identify any species utilizing the area that are listed as threatened, endangered or special concern, and any critical or significant natural areas established by the New York State Natural Heritage Program. The Planning Board may require installation of wildlife corridors to be installed within the facility to allow for passage of wildlife.
- (11) Viewshed Analysis.
 - (a) For all large-scale solar facilities, the applicant shall provide a viewshed analysis using a 2-mile radius showing locations in the Town of Cherry Valley where the solar site can be viewed from. The viewshed analysis should account for the full height of the proposed panels and should include multiple “target” points spread across the proposed array. Viewer height should also be accounted for in the analysis. The Planning Board may require photosimulations at key locations

showing existing and post-construction conditions at 1-, 5- and 10-year intervals. Key viewpoints could include but are not limited to those locations that have public use areas, historic sites, and roadways where 400 feet or more of the road has been identified as being within the predicted visibility as determined in the viewshed analysis. Mitigation including but not limited to landscaping, screening, and site design pursuant to Article V (3) shall be required to minimize or eliminate adverse impacts on viewsheds.

- (b) Because the Town of Cherry Valley Comprehensive Plan recognizes the importance of the Route 20 and Route 166 corridors to the Town's rural and scenic character, and in recognition of the Route 20/166 Scenic Byway that was established and approved of by the NYS Department of Transportation, the following additional analysis requirement shall be conducted to further minimize or eliminate adverse impacts to the scenic corridors:
 - 1. Applications for large-scale solar energy systems located within areas shown on the "Viewshed Analysis of the Route 20 and Route 166 Corridors" map as "visible" shall include photo simulations from Route 20 and/or Route 166 to the proposed site based on predicted visibility as determined from the viewshed analysis pursuant to (11) (a) above. Photo simulations shall be required to include the large-scale solar energy system and all of its above-ground components in relation to the building site and shall take into account existing tree lines, surrounding topography, and elevations. The photo simulation shall also indicate any visual screening incorporated into the project that is intended to lessen the system's visual prominence at 1-, 5-, and 10-year intervals. At a minimum, photo simulations shall be required from the mid-point of any stretches of Route 20 and/or 166 that are 400 feet in length or longer. Additional points may be required as identified by the Planning Board.
- (12) Environmental Assessment Form (EAF). Part I of the SEQRA Full EAF form fully completed and signed as required.
- (13) Noise Information. Any part of the solar system or related solar system land use activity that will generate sound or noise shall be identified in the application along with the detail about the noise-producing equipment or activities that may be generated by the facility. Details shall include, but not be limited to a description of the noise or sound, a description in decibels of the magnitude of the sound, and an identification of the times during the day or night when the sound or noise will be generated. The Town or Planning Board may require a noise analysis to determine the potential adverse noise impacts.
- (14) Landscape Plan. A detailed landscape plan including all seeding, trees, shrubs, fences, berms, and other landscaping features shall be provided. A long-term landscape maintenance plan shall also be provided that outlines regular maintenance activities, including mowing, tree trimming, replacement of dead vegetation, and other methods such as grazing, or use of herbicides. The Planning Board may require use of a vegetated berm to reduce visibility of the facility. In such

case, any stormwater pollution prevention plan shall be established to take into account the berm in the design of appropriate stormwater control methods.

- (15) Decommissioning Plan. A decommissioning plan shall be provided pursuant to this sub-section and Article VII. The decommissioning plan shall include the following at a minimum: 1) the anticipated life of the solar energy system; 2) the estimated decommissioning costs in current dollars and how such cost was determined; 3) the method of ensuring that funds will be available for decommissioning and restoration; 4) the method, such as by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and 5) the manner in which the solar energy system will be decommissioned and the site restored. Restoration, at a minimum, shall include the removal of all structures and debris, restoration of the soil, and restoration of vegetation consistent and compatible with surrounding vegetation. The Planning Board shall have its engineering consultant and Town attorney review the decommissioning plan. Upon recommendation by the engineer and the Town attorney, and when in a form acceptable to the Planning Board, a performance bond amount shall be set based on the final plan to ensure compliance with such decommissioning plan.
- (16) Property Appraisal. Applications shall include a property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties neighboring solar energy generating sites. Such analysis should include actual data concerning the impacts of previously constructed facilities in the State of New York on property values.
- (17) Cultural Resource Identification. Applications shall include information on historic or archaeological resources that may be present or impacted by the proposal. Such information shall be collected in coordination with the New York State Office of Parks, Recreation and Historic Preservation (OPRHP). If such resources are found in or near the site, the Town Board or Planning Board may require a follow-up study pursuant to NYS OPRHP.
- (18) Glare Reduction Plan. The Planning Board may require a glare study and/or use of anti-reflective coatings. No direct or unreasonable glare shall be produced that is perceptible beyond the boundaries of the lot on which the large-scale solar energy system is situated. All solar collectors and related equipment shall be surfaced, designed, and sited so as not to reflect glare onto adjacent properties and roadways.
- (19) Agriculture Data Statement. Any application for a special use permit that would occur on property within a New York State Certified Agricultural District [designated by the County pursuant to the NYS Agriculture and Markets Law(AML)] containing a farm operation, or on property with boundaries within five hundred (500) feet of a farm operation located in such agricultural district, shall include an agricultural data statement as defined in AML Article 12.

3. Large-Scale Solar Energy System Development Standards.

- a. In considering and acting on the special use application, the Planning Board shall consider the public health, safety, and general welfare and the requirements of this local law. The Board shall also consider potential environmental impacts and the impacts on the public in general and impacts to the adjacent residents of the proposed development and the land uses of the immediate surrounding area. The Board may prescribe such appropriate conditions and safeguards as may be necessary in order that the results of its action shall, to the maximum extent possible, further the accomplishment of the purposes of this local law and the following special use criteria.
 - (1) Compatibility. The proposed solar system is of a character compatible with the surrounding neighborhood, incorporates a site design which is consistent with the rural character of the town, and is in harmony with the land use policies and goals as officially adopted in the Comprehensive Plan for the Town.
 - (2) Intensity and Scale. The proposed solar system is of such character as to be compatible with any adjacent or nearby agricultural operations, that the scale of use is consistent with the rural character of the neighborhood and Town, and that the intensity of use shall not cause any nuisance or loss of value of surrounding properties.
 - (3) Natural Features. The proposed solar system, together with all of its components are compatible with geologic, hydrologic, and soil conditions of the site and of adjacent areas, and that existing natural, forested, wildlife, and scenic features are preserved, and aquifers and watersheds protected to the maximum extent possible.
 - (4) Landscaping and Screening. That all access roads, electrical equipment, solar panels, and other components of the solar energy systems are screened to the maximum extent feasible at all seasons of the year from the view of adjacent residential areas, from locations identified in the Town of Cherry Valley Scenic Viewshed, and that the general landscaping of the site is in character with the surrounding areas. Such screening shall be maintained according to the approved maintenance plan as a condition of the special use permit.
- b. In addition to meeting all requirements as above for a special use permit, all site plan requirements as established in the Town of Cherry Valley Site Plan Law shall also be met. Further, all large-scale solar energy systems shall also be designed, constructed, and operated so as to meet all the following specific standards:
 - (1) All large-scale solar energy systems shall adhere to all applicable New York State Uniform Fire Prevention and Building Code and the New York State Energy Conservation Code.
 - (2) No large-scale solar energy system, including any of its associated equipment, roads, and components shall be larger than ten (10) acres, regardless of the total parcel size.

- (3) There shall be a minimum of 100 feet buffer between any component of the large-scale solar energy system and any front, side, and rear parcel boundary line. The Planning Board is authorized to increase the width of this buffer after analysis of the site conditions and adjacent land uses.
- (4) The average height of the solar panel arrays shall not exceed twelve (12) feet. This height can be waived if there is a demonstrated need to increase the height in order to: (a) incorporate agrivoltaic dual uses, (b) to minimize adverse impacts, or (c) in situations where added height will not have any demonstratable adverse visual impacts. In no case, however, shall the height be more than 15 feet.
- (5) It is a goal of the Town to preserve, to the maximum extent practicable, agricultural land having Prime Farmland Soils. No Large-Scale Solar Energy System shall disturb more than two (2) acres of Prime Farmland Soils as those soils are defined in this law. The applicant shall submit information to demonstrate that the project will not disturb more than two (2) acres of such soils.
 - (a) The Planning Board may allow or require a solar energy system on farmland to be designed so the land is used both for energy generation and farming concurrently. Dual uses allow for the co-usage of the lands under and around installed solar collectors for grazing or growing of crops that could be grown or harvested without damaging or interfering with solar facilities. While allowing design flexibility to support varying agricultural activities without unnecessary costs, a solar system designed for dual use should result in less than fifty percent (50%) shading of the underlying land.
 - (b) The Town shall also require full compliance with the most current version of the NYS Department of Agriculture and Markets Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (Guidelines) or other guidelines as may be established by organizations such as the American Farmland Trust. This shall include designating an environmental monitor, implementing the specific construction requirements, establishing post-construction restoration requirements, providing monitoring and remediation, and implementing decommissioning requirements.
- (6) It is a goal of the Town to preserve, to the maximum extent practicable, mature forests as they are defined in this law. No large-scale solar energy system shall be placed on any site that either: (i) contains more than one (1) acre of mature forest at the time the application was filed, or (ii) was a mature forest one (1) year prior to the submission of an application for a large-scale solar system.
- (7) Development and operation of a solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Cherry Valley or other governmental regulatory agencies. Lands which have the highest ecological values shall be avoided. Examples of those areas are those areas containing large, contiguous areas of forest, undisturbed drainage areas or wetlands, regulated streams (Class C and higher), NYS DEC identified critical habitats, or rare plant and animal populations. The foregoing are examples of lands with high ecological values. These are provided for illustration purposes. They shall not be construed to be a complete or exhaustive

list. Grading, clearing, and other activities that have the potential to adversely impact a drainage area or riparian buffer area of a regulated stream, especially the Cherry Valley Creek, shall be prohibited.

- (8) The Planning Board may require any site containing a large-scale solar energy system to be enclosed by a perimeter fence to restrict unauthorized access at a height of eight feet, maximum. The design of the fence shall be subject to review and approval by the Planning Board. When a fence is required:
- (a) The Planning Board may require that a perimeter fence allow for space at the bottom to facilitate passage by small wildlife species.
 - (b) The Planning Board may also require that fencing contain wildlife corridors that allow for passage of larger wildlife species.
 - (c) The Planning Board may also require that there shall be created and maintained within such fence, and between such fence and the components, structures, or fixtures of the solar energy system, a clear and unobstructed buffer area at least twenty-five (25) feet in width encircling the entire perimeter of the facility, with an unpaved surface and grade suitable for the safe passage of fire trucks and other emergency vehicles.
- (9) Roadways within the site shall be constructed of pervious materials and shall be designed to minimize both the number and size of roadways constructed and soil compaction.
- (10) Native grasses and pollinator-friendly vegetation shall be included in the landscaping and maintenance plan below and around the arrays and other areas to be landscaped or screened. No chemicals shall be used in the maintenance plan.
- (a) Pollinator-friendly flowers and grasses shall include a mixture of at least nine native flower species and two native grasses. Clover should be included in the mix. Applicants shall follow the NYS Utility Corridor Pollinator Habitat Guidelines, especially related to site preparation, choice of seed mix, seeding, and maintenance. Use seed mix as per the aforementioned NYS Guidelines.
 - (b) The solar facility, including any proposed off-site infrastructure, shall be located, and screened in such a way as to avoid or minimize visual impacts as viewed from public locations, public dedicated roads and highways, residences located on contiguous parcels, or other locations identified by the Planning Board. Acceptable screening would include maintenance of existing vegetation, new vegetative barriers or berms, landscape screen or other opaque enclosures, or



Figure 1. Photograph depicting desired screening for a solar facility.

any combination thereof acceptable to the Town capable of fully screening the site. The applicant shall guarantee that all plantings part of the approved landscape and screening plan will maximally screen the system within five (5) years and remain until it is decommissioned.

- (1) When the site is surrounded by existing mature trees, a buffer where no trees shall be cut shall be established and maintained at least within the required setbacks along the boundaries of the project.
 - (2) Trees to be included in screening shall be native species, a minimum of 8' tall and 2.5" in caliper. Eastern red cedar, and white spruce are examples of acceptable evergreen trees to include in screening.
 - (c) The Planning Board shall require creation of a buffer that has an offset, double row of densely growing evergreens with the addition of some smaller trees and shrubs in front to create more of a naturalized hedgerow habitat. The double row will provide additional screening early while the trees are still small. While the evergreens should be the dominant tree for screening, addition of some smaller trees and shrubs would be beneficial for wildlife and aesthetics. The buffer should mimic a forest edge habitat (shown in Figure 1) with the shrubs in front and evergreens behind. Appropriate shrubs and small trees to include to create a hedgerow could be shadbush, flowering dogwood, serviceberry, flowering raspberry, maple leaved viburnum, nannyberry, and choke cherry.
 - (d) The Planning Board shall ensure maximum buffering and screening of large-scale solar systems that are determined to be within or can be seen from the Route 20 or Route 166 Scenic Byway Corridors as evidenced from the viewshed analysis pursuant to this local law Article V (11) and may require mitigation measures to be used both onsite and offsite to mitigation adverse impacts.
- (11) The design, construction, operation, and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists. No transmission of heat shall be produced that is perceptible beyond the boundaries of the lot on which such use is situated.
 - (12) All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth tone color to aid in blending the facility into the existing environment.
 - (13) All transmission lines and utility wires associated with a solar energy system shall be buried and include necessary encasements in accordance with the Otsego County requirements. All transmission lines and utility wiring shall be in compliance with the utility company's requirements for interconnection.
 - (14) Artificial lighting of solar energy systems shall be limited to lighting required for safety and operational purposes. All lighting sources and fixtures shall be fully shielded from all neighboring properties and public roads and comply with

International Dark-Sky Association lighting standards. No other artificial lighting of the solar energy systems shall be permitted.

- (15) All noise generated by the equipment or activities to take place on the site shall be fully mitigated to ensure that ambient noise conditions are not adversely affected.
 - (16) Any signage shall be limited to a small manufacturer/installer identification sign and appropriate warning signs and shall be posted at the site and be clearly visible.
 - (17) When a parcel proposed for a large-scale solar energy system is adjacent to an already-established large-scale solar energy system, the Planning Board may modify landscaping requirements on such adjacent parcels to ensure that any landscaping proposed there is low-growth vegetation that will not obstruct the solar sky space of the adjacent facility at mature height.
 - (18) Following construction of a large-scale solar energy system, all disturbed areas where soil has been exposed shall be reseeded with grass and/or planted with low-level vegetation capable of preventing soil erosion and airborne dust.
 - (19) The applicant shall be responsible for repair of all damages to Town Roads occurring during the construction or maintenance of a solar energy system. A public improvement bond shall be posted prior to the issuance of any building permit in an amount, determined by the Planning Board, sufficient to compensate the Town for any damage to local roads.
4. Expenses. In addition to any fee that may be established by the Town Board for site plan review and special use permit applications, the Planning Board shall require the applicant to pay all the Planning Board's associated costs incurred in connection with the conduct of its review of an application, including its environmental review pursuant to the State Environmental Quality Review Act (SEQRA).
- a. The Planning Board may also incur expenses in order to properly review documents or conduct special studies in connection with the proposed application for a special use permit. Those costs may include, but not be limited to, the cost of the Planning Board's engineering, legal, environmental, planning consultants, or other expenses in connection with the review of a special use permit application. All reasonable fees shall be charged to the applicant. The Planning Board shall make a reasonable estimate of the amount of expenses that it expects to incur during the course of each application for a site plan review. The amount so determined by the Planning Board shall be deposited by the applicant in escrow with the Town Clerk prior to the Board's commencing any review of the application. If the amount so deposited is exhausted or diminished to the point that the Planning Board determines that the remaining amount will not be sufficient to complete the review of the application, then the Planning Board shall notify the applicant of the additional amount that must be deposited with the Town Clerk. If the applicant fails to replenish the escrow account or there are unpaid amounts for which the applicant is responsible, the Planning Board, in its discretion, may cease review of the application until such amounts are paid or deny the application. In no event, however, shall any final site plan or special use permit be approved until such sums have been paid in full.

- b. The applicant shall be responsible for the total cost of environmental reviews determined to be necessary by the Planning Board as an involved agency to meet requirements of SEQRA as per 6NYCRR Part 617.13.
- 5. Application of Special Use Permit. A special use permit shall apply to the use for which it has been granted, as well as to any subsequent similar use of the property which complies with all terms and conditions of the special use permit and which does not involve any new construction, enlargement, exterior alteration of existing structures, or changed use of outdoor areas. Any enlargement, alteration, or site changes to a use with an approved special use permit shall require review and approval of an amended permit by the Planning Board prior to commencement of such changes.

Article VI: Utility-Scale Solar Energy Systems

- 1. Prohibition. All utility-scale solar energy systems shall be prohibited in all land use districts within the Town of Cherry Valley.
 - a. Rationale.
 - (1) To further the stated goals of the Town of Cherry Valley to maintain its essential rural, agricultural, scenic, and historic character and economy, and in recognition of the Town's environmentally sensitive resources, biodiversity, and its' existing climate resilient landscape, the Town has determined that utility-scale solar energy systems are not consistent with the Town's Comprehensive Plan or its environment and are not appropriate land uses for the Town. In particular, the Town of Cherry Valley Comprehensive Plan establishes the following goals and issues that are at the foundation of the prohibition of utility-scaled solar energy systems:
 - a) Forest or woodlands are the dominant land features in Cherry Valley (page 44);
 - b) Woodlands or forest provide a number of significant benefits to a community (page 44);
 - c) Fragmentation of forestlands is identified as an issue (page 45);
 - d) A goal of the community is to 'sustain enhance Cherry Valley's forested land, and its value as an economic, recreational, and scenic resource by addressing the issues or threats to which they are currently subjected.' (page 45);
 - e) Historical, cultural, and aesthetic/visual resources are important attributes in Cherry Valley (pages 48 – 49) and that the Town seeks to "Provide the maximum protection available for these often-unrecognized resources and ensure that future development does not threaten or destroy them." (page 49);
 - f) There is a need to "adequately protect prime and productive agricultural soils from indiscriminate or inappropriate development." (Page 61) and that the Town's goal is to "To accommodate suitably located and designed development while protecting and enhancing the quality of life, property values, and natural, scenic, agricultural, and historic resources of Cherry Valley." (page 61); and
 - g) Recommends creation of overlay districts to protect valued resources in Town (Page 61 and 62).

- (2) The Town of Cherry Valley has made a careful evaluation of the environmental and natural resources within the Town through a comprehensive planning process consistent with NYS Town Law Section 272-a and through a careful evaluation of environmental features found in Cherry Valley. Comprehensive mapping has been conducted to identify critical environmental resources in the Town. The Town has also evaluated studies pertaining to the Cherry Valley Creek, NYS DEC data (Natural Resource Mapper), OPRHP data (CRIS), and data from The Nature Conservancy (Resilient Land Mapping Tool) to inventory natural resources in Town. The Town has further evaluated the Otsego County Agricultural and Farmland Protection Plan, which includes Cherry Valley, and which plan notes that the Town has one of the largest concentrations of prime agricultural soils in the County. These evaluations have identified significant environmental sensitivities and resources within the Town. Based on those evaluations, Cherry Valley has determined that utility-scale solar energy systems with a nameplate capacity of twenty (20) megawatts or greater will cause significant adverse environmental impacts to the numerous critical and important environmental resources present within the Town of Cherry Valley.
- (3) Such prohibition of utility-scale solar energy systems is further consistent with aiding Cherry Valley meet the climate resiliency goals of New York State. The State policy establishes that

"DEC staff, within their areas of responsibility, are directed to maximize the use of their existing authorities to: reduce GHG emissions and promote energy efficiency; encourage "low-carbon" design including smart growth and other sustainable development; encourage resilience of human and natural communities to climate change; elevate climate change awareness and research; foster carbon sequestration in our forests, soils and wetlands; conserve and restore habitats, landscape connections and hydrological functions that facilitate ecosystem resiliency; and engage other state agencies, local governments and stakeholders in the State's collective effort to reduce emissions and minimize the effects of climate change on public health, communities and the environment."

The State policy further establishes a mitigation objective to: "Maintain and enhance carbon sinks, such as forested and agricultural lands, wetlands and green infrastructure." The Town of Cherry Valley has used its local authority to inventory and evaluate its natural resources and established goals to conserve and protect sensitive environmental features in its adopted Comprehensive Plan. This local law is based upon that Town plan and is fully consistent with the NYS DEC policy to minimize the effects of climate change on public health, its community, and its environment by prohibiting utility-scale solar systems that risk creating adverse impacts to those very resources that serve to make Cherry Valley more climate resilient (forests, soils, wetlands, habitats, landscape connections, hydrologic functions).

The State policy further establishes that the NYS DEC further address climate adaptation objectives including to "Incorporate measures that enhance the capacity

of ecosystems and communities to absorb and/or accommodate the impacts of climate change (e.g. management measures that allow for species adaptation, maintain native biodiversity, provide migration corridors, protect hydrologic function, employ green infrastructure practices, and protect communities and public infrastructure); "and "Protect and restore the habitat and hydrologic functions of natural systems, such as forests, streams, wetlands and riparian buffers." This local law is fully consistent with this NYS DEC policy to incorporate management measures designed to enhance capacity to address impacts of climate change. It does this by prohibiting utility-scale solar systems in order to preserve Cherry Valley's biodiversity, protect migration corridors along its streams and forest links, and protect hydrologic function dependent on wetlands, streams, soils, and forests.

Since 2009, New York State has been engaged in an interagency initiative to combat climate change. The Climate Smart Communities (CSC) program is jointly sponsored by six (6) State agencies including the Department of Environmental Conservation (NYS DEC), the New York State Energy Research and Development Authority (NYSERDA), Department of Public Service, Department of State, Department of Transportation, Department of Health, and the Power Authority. The CSC program promotes a suite of actions that local governments can take to mitigate and adapt to climate change at the local level. Those state-recommended actions are the very same as those that the Town of Cherry Valley promotes in its prohibition of utility-scale solar energy systems.

In recognition that New York's natural resources are at risk from climate change, the NYS DEC identified that it must incorporate climate change considerations into all aspects of its activities." As such, the NYS DEC Commissioner formulated a Policy on Climate Change and NYS DEC Action. This establishes the framework for how the NYS DEC will address climate change.

The Town has identified the same natural resources as those identified in the CSC program as needing protection because they enhance climate resiliency. The CSC establishes a variety of actions designed specifically to address climate change. These actions are organized into twelve (12) major goals. Among those goals, two specifically address the connection between land uses and climate resiliency and are relevant to the purposes of this local law. Cherry Valley recognizes the strong nexus between protection of the Town's farmlands, forests, wetlands, streams, floodplains, and natural habitats and New York State's own policies and programs (the CSC) designed to address climate change at the local level.

- a. Specifically, the CSC program seeks local governments to implement the following:

CSC Action 6: Implement Climate-Smart Land Use (6.7): Adopt Land Use Policies That Support or Incentivize Farmers' Markets, Community Gardens and Urban and Rural Agriculture. "Local governments have begun to take an interest in agriculture as a way to address food security, promote public health, support economic and community development, and to improve the urban environment. Increasing the availability of local foods is also an important

strategy being used to reduce greenhouse gas emissions from the long-distance transport of food into a region. Rural communities can also promote and preserve agricultural areas through agriculture plans or districts or land preservation."

(6.19): Preserve Natural Areas Through Zoning or Other Regulations. "Natural areas (including forests, wetlands, rivers, lakes, floodplains, and coastal shorelines) play an essential role in communities. They provide clean air and water, stormwater regulation, food and forestry products, scenic areas, outdoor recreation opportunities, and protect important ecological functions. In addition, natural areas often represent a chunk of stored carbon that, if developed, would enter the atmosphere and contribute to greenhouse gas emissions. Functioning ecosystems also sequester carbon and can help to mitigate a community's greenhouse gas emissions. For these reasons, the Climate Smart Communities (CSC) program encourages local governments to use their land-use authority to preserve natural areas."

CSC Action 7: Enhance Community Resilience to Climate Change.

Restoration of Floodplains and Riparian Buffers. "Healthy vegetated riparian buffers can intercept rainfall, filter runoff, capture sediment, absorb excess floodwaters, provide shade and reduce stream temperatures, reduce erosion, and slow down the flow of the water. They also offer benefits to habitat and contribute to ecosystem resiliency. Riparian buffers can help reduce the effects of heavy precipitation events and store water through droughts. Restoring vegetated buffers is important in flood-prone areas, but also in areas upstream of those places to reduce the speed and potentially the volume of floodwaters. In general, the wider the buffer, the more effective it can be in providing all of the benefits described above. To address flooding, the most effective buffers should include the entire width of the floodplain."

Conservation of Natural Habitats. "Large, natural areas with diverse physical conditions and little fragmentation by roads or development are most likely to maintain diverse ecosystems and ecological processes important for resiliency. Habitat fragmentation can result in species endangerment and loss of ecosystem services, including carbon sequestration. Sustaining resilient ecosystems in a changing climate requires conserving a sufficient variety and amount of connected habitat through a network of natural areas, corridors, and habitat islands that allow plants and animals to move northward and up in elevation as temperatures increase." The CSC promotes protection of areas that provide natural habitat connectivity and support ecosystem resilience through tools like zoning and conservation easements.

Conserve Wetlands and Forests to Manage Stormwater, Recharge Groundwater and Mitigate Flooding. "It is far more cost-effective to protect natural areas than to restore them, or the streams they are protecting, after they have been degraded. Conserving wetlands and forests in floodplain areas is particularly important but conserving these areas throughout the watershed can contribute numerous benefits. These benefits include providing clean water, improving air

quality, moderating extreme heat, and serving as critical wildlife habitat." And "Local Governments can play an important role in filling the gap in wetland and forest protection through comprehensive planning, zoning, regulations and land acquisition in fee or conservation easements."

The Town of Cherry Valley prohibition of utility-scale solar energy systems is further consistent to ensure maintenance of what is already a climate resilient landscape. The Town has a high degree of climate resilient sites, high connectivity and climate flow, and areas recognized as having biodiversity value – all key considerations in climate resiliency, as identified by The Nature Conservancy. Resiliency also includes protection of the natural functioning of floodplain areas, streams and their riparian buffers, wetlands, core woodland areas, and maintenance of meadow and grassland habitats to enhance biodiversity.

- (4) The prohibition against utility-scale solar energy systems is further consistent with aiding Cherry Valley meet the agricultural goals of New York State. A significant portion of the town is covered with prime farmland soils, soils of statewide significance, and prime farmland soils when drained as established in the Otsego County Soil Survey. The majority of the Town is included in a New York State Certified Agricultural District.

Prime farmland soils are recognized by both New York State and the United States Department of Agriculture (USDA) as crucial to continued agricultural activity and sustainability of our farms and are the best land for producing food, feed, fiber forage and oilseed crops. The New York State Agriculture and Markets Law (AML) § 25-AA establishes that

"It is the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products." Further, the constitution of the State of New York directs the legislature to provide for the protection of agricultural lands and 25-AA was established to 'provide a locally-initiated mechanism for the protection and enhancement of New York State's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance.'

The Town of Cherry Valley's Comprehensive Plan establishes the importance of prime and soils of statewide as a critical environmental resource and not appropriate for conversion to other uses. Adverse environmental impacts to these soils, or the loss of significant uses of these soils for food production will adversely affect the viability of Cherry Valley's agricultural community and economy.

Solar development will remove land from agricultural production for the duration of the life of the facility, typically decades. Loss of farmland has many implications for local and regional food production, the economy, and the economic health of the farmer. Loss of important soils for food production not only affects food safety and thus human health but has off-site impacts to agriculture as well.

Farmers that rely on rented farmland for their operations will have loss of access to those fields which have been converted to solar use. This loss can disrupt farm viability even if the actual farm is not adjacent to a proposed solar site. When farmers rent land slated for solar development, they lose their ability to implement whole-farm nutrient management plans. Loss of leased farmlands will decrease farm density, which will also affect farm suppliers, services, and the regional economy.

Although solar panels are frequently cited as being a temporary land use and that farming could continue after decommissioning, Cherry Valley recognizes that due to the recent nature of the development of large-scale solar systems in New York, there is no experience or previous knowledge as to the long-term soil preservation implications. Nor have the long-term impact of removal of the supports and buried electrical conduits and other soil disturbances been evaluated. At best, it is unclear whether agriculture can be maintained coincident to large scale solar systems.

Further, without maintenance of a critical mass of farmland and the farm economy in which farmers are able to successfully farm with intact infrastructure to support it, there may be no farmers in the future that could return the land to agriculture. Thus, the Town acknowledges that there is a high probability that a site will never return to farming, and they seek to prevent this.

- (5) The Town recognizes that the individual natural resources identified in in Cherry Valley are part of a broader ecological system that supports human life. In its planning, the Town has described how land use changes can degrade the environment and understands that degradation of one environmental component impacts the others. Preservation of natural resources, and especially protection of farmlands and maintenance of local farms in the age of pandemics and global climate change is recognized as essential to local health security, food safety, and food availability.

This local law is established in furtherance of, and consistent with significant and long-standing NYS policies related to protection of farmland soils, wetlands, and floodplains, and protection of threatened and endangered species, protection of water quality, and improving food accessibility and food security. As such, the Town has established that utility-scale solar systems that generate electricity primarily for off-site consumption are not consistent with either the goals and needs of the Town or with the environmental conditions of Cherry Valley.

- (6) For the above reasons, the Town of Cherry Valley has determined that renewable energy systems with a nameplate capacity of 20 megawatts or larger for off-site consumption are intensive land uses incompatible with the environmental health of the Town and that they will cause significant adverse environmental impacts to important natural resources and the ecosystem in which they exist as identified within the Town of Cherry Valley.

2. NYS Executive Law 94-c.

- a. Local laws which apply to major renewable energy facilities are considered to be important by NYS Executive Law § 94-c. Section 94-c(5)(e) expressly states that: “A final siting permit may only be issued if the office makes a finding that the proposed project, together with any applicable uniform and site-specific standards and conditions would comply with applicable laws and regulations.”

The importance of local laws is manifest from this statement. In choosing to make this statement in the law, the State Legislature explicitly expresses the intent that the content of local laws shall be a very important consideration for the Siting Office in deciding whether to grant or deny permits for major renewable energy systems. In crafting NYS Executive Law § 94-c, the State Legislature would have been within its authority to supersede all local laws and regulations without making reference or statement to them. The existence of this language in the statute represents a conscious choice by the State Legislature to make this statement that the Siting Office must find that the project, together with applicable uniform and site-specific standards, would comply with local laws and regulations.

- b. The Town of Cherry Valley specifically requests that, with regard to any major renewable energy systems proposed within the Town of Cherry Valley, that the Siting Office honor and enforce this prohibition. Based upon the comprehensive environmental analysis completed for Cherry Valley, the Town specifically requests that, with regard to any proposed renewable energy facility having a nameplate capacity of 20 MW or greater or others being reviewed under NYS Executive Law § 94-c(2)(h), that the NYS Office of Renewable Energy Siting honor and enforce this prohibition.
- c. Election by New York State Office of Renewable Energy Siting not to apply local prohibition on major renewable energy systems.

(1) Introduction and purpose statement.

Despite the stated importance of local municipal regulation in NYS Executive Law § 94-c (as described above), the Town of Cherry Valley recognizes that § 94-c(5)(e) gives the Siting Office the authority to elect not to apply, in whole or in part, any local law or ordinance which would otherwise be applicable if it makes a finding that, as applied to the proposed major renewable energy facility, it is unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the proposed major renewable energy facility.

In recognition of this authority, and in instances where the Siting Office determines not to apply the prohibition of major renewable energy systems in the Town of Cherry Valley, this law hereby provides that the Siting Office shall consider the environmental resources and site-specific adverse environmental impacts set forth herein.

While Section 94-c establishes a consolidated approach to the review and approval of major renewable energy systems, it simultaneously mandates protection from

adverse environmental impacts. This is particularly important since the provisions of the State Environmental Quality Review Act (SEQRA) do not apply to these systems.

Section 94-c(1) says:

Purpose. It is the purpose of this section to consolidate the environmental review and permitting of major renewable energy systems in this state and to provide a single forum in which the office of renewable energy siting created by this section may undertake a coordinated and timely review of proposed major renewable energy systems to meet the state's renewable energy goals while ensuring the protection of the environment and consideration of all pertinent social, economic and environmental factors in the decision to permit such systems as more specifically provided in this section [emphasis added]

Later in § 94-c(3)(c), in discussing the uniform standards and conditions to be developed and promulgated by the Siting Office, it states that those standards and conditions:

shall be designed to avoid or minimize, to the maximum extent practicable, any potential significant adverse environmental impacts related to the siting, design, construction, and operation of a major renewable energy facility [emphasis added].

Section 94-c(3)(d) addresses the issue of site-specific environmental impacts that may be caused or contributed to by a specific proposed major renewable energy facility and are unable to be addressed by the uniform standards and conditions. Section 94-c(3)(d) further requires the Siting Office, in the event that a particular major renewable energy facility is to be approved, to draft in consultation with the NYS DEC, site-specific permit terms and conditions for site-specific significant adverse environmental impacts, including provisions for the avoidance and mitigation thereof.

- (2) Consideration of Specific Environmental Resources in Cherry Valley. With the foregoing in mind, the Town of Cherry Valley has made a careful evaluation of the environment and natural resources within the Town. This evaluation has identified significant environmental sensitivities and numerous resources within the Town.
3. State Election to Not Comply with This Law. In the event that the Siting Office elects not to require compliance with this local law's prohibition against utility-scale solar energy systems for a particular proposed project, this law shall mandate that the Siting Office shall expressly consider in its review of the proposed project, the site-specific potential adverse impacts of the project to the sensitive environmental resources set forth in this local law and summarized below. This law shall further mandate that the Siting Office incorporate all development standards of Article V (3) of this local law in the siting of utility-scale solar energy systems. Further, in making its determination, the Siting Office shall require that potential significant impacts to these sensitive environmental resources shall be avoided completely or mitigated to the maximum extent practicable.

These resources are:

- a. Sensitive Environmental Areas (Streams/Wetlands/Floodplain) as shown in the Town of Cherry Valley Comprehensive Plan;
 - b. Steep Slopes > 15% as shown in the Town of Cherry Valley Comprehensive Plan;
 - c. Grassland and Open Habitats required by species that are state or federally listed;
 - d. Prime Agricultural Soils as shown in the Town of Cherry Valley Comprehensive Plan;
 - e. Historic Districts as shown in the Town of Cherry Valley Comprehensive Plan and in the NYS OPRHP CRIS data;
 - f. Mature woodlands as discussed in the Town of Cherry Valley Comprehensive Plan; and
 - g. Route 20 and Route 166 Viewsheds as shown in the Cherry Valley Viewshed Analysis Map.
4. In the event that a 20 MW or greater renewable energy facility proceeds under Section 94-c, and the Siting Office continues its review, the Town reserves the right to provide further comments during the review process and comment period.

Article VII: Abandonment, Decommissioning, and Compliance of Large-Scale Systems

1. All applications for a large-scale solar energy system shall include a decommissioning plan and description of financial surety to be implemented upon abandonment, or a cessation of activity, or in conjunction with removal of the solar energy system. The decommissioning plan shall identify the anticipated life of the project, method, and process for removing all components of the solar energy system and returning the site to its preexisting condition, and estimated decommissioning costs including any salvage value.
2. Solar energy systems which have not been in active and continuous services for a period of one (1) year shall be removed at the owner's or operator's expense. All safety hazards created by the installation and operation of the solar energy system shall be eliminated and the site restored to its preexisting condition within six months of the removal of the solar energy system.
3. Prior to issuance of a building permit, the owner or operator of the facility or structure shall post a performance bond or other suitable guarantee in a face amount of not less than 150% of the estimated cost of decommissioning, as determined by the licensed Professional Engineer retained by the Town, to ensure removal of the facility or structure as well as restoration and revegetation in accordance with the decommissioning plan described below and as approved by the Planning Board. The form of the guarantee must be reviewed and approved by the Town's consulting engineer and the Town Attorney, and the guarantee must remain in effect until the system is removed.

- a. Decommissioning Cost Estimate: the applicant or lessee shall provide a Decommissioning Cost Estimate prepared by a NY State Licensed Professional Engineer prior to the issuance of the building permits. The cost shall be calculated by the taking of the Gross Cost plus the Administrated Factor of 20 percent (20%) minus the salvage cost in order to determine the Decommissioning Cost Estimate for bonding and insurance purposes. The applicant or lessee must provide a revised and updated Decommissioning Cost Estimate on every fifth anniversary of the date of the project first began continuously delivering electric energy to the electric grid for commercial sales.
 - b. The cost of the review of the guarantee by the Town's consulting engineer and the Town Attorney shall be paid from a Town escrow funded by the applicant.
 - c. As a condition of the certificate of compliance, applicants shall post a surety in an amount and form acceptable to the Town for the purposes of removal or abandonment. The amount shall be determined by an estimate of a NY State licensed Professional Engineer. Acceptable forms shall include, in order of preference; cash; letter of credit; or a bond that cannot expire; or a combination thereof. Such surety will be used to guarantee the removal of the utility-scale solar energy system should the system be abandoned.
4. All violations shall be addressed pursuant to Section 9.03 of the Town of Cherry Valley Land Use Law. If the owner of the site fails to comply with any conditions of the approval during construction or as part of the long-term maintenance of the site, all costs of the Town incurred to comply with conditions of the approval shall be paid using the surety provided by the applicant. Failure to comply with the conditions of the approval or to maintain an acceptable level of surety will result in revocation of the special use permit, or the certificate of occupancy, or both. The applicant will be responsible for any legal fees incurred by the Town in enforcing this law.
5. Removal: Prior to removing a large-scale solar energy system or structure, the applicant shall obtain a demolition permit from the Otsego County Building Department. The large-scale solar energy system, including any accessory structures and/or equipment, shall be dismantled and removed from the site when the utility-scale solar energy system has been inoperative or abandoned for twelve (12) consecutive months. Abandonment shall be assumed by the Town if the annual documentation as required in the utility-scale solar energy system (Article V, #2, section c (23) is not provided by the owner, applicant, or lessee for one year to the Town of Cherry Valley Board. With the assistance of a NY State licensed Professional Engineer, the Town Code Enforcement Officer shall then provide written notice to the owner to remove the utility-scale collector system, and the owner shall have six (6) months from written notice to remove the utility-scale solar energy system, including any associated accessory structures and/or equipment, and restore the site to a condition approved by the Planning Board; to include, but not limited to, water and soil contamination. If the owner, applicant, or lessee fails to remove any associated structures or restore the site to the condition approved by the Planning Board, the Town may enter upon the property and restore the site. In that event, all costs incurred by the Town to restore the site to the condition approved by the Planning Board shall be paid using the surety or performance guarantee provided by the applicant.

Article VIII: Storage Batteries

1. Storage batteries for small-scale or large-scale systems that are located on the same parcel as the solar system shall be considered part of the solar system and shall be reviewed as such. All batteries and battery and storage structures shall comply with all applicable laws, codes, regulations, and standards including, but not limited to, ensuring they are screened and sited in the same manner as all other structures related to the solar system.
2. Storage batteries for large-scale solar systems that are located on a different parcel than the solar system shall be considered an additional principal use as per the Town of Cherry Valley Land Use Law and shall be reviewed and permitted separately.

Article X. Fees

1. Fees related to small-scale solar energy system building permits, electric permits and inspections shall be pursuant to the Otsego County Building Department.
2. Fees related to large-scale solar energy system for Town special use permits and site plan approvals shall be pursuant to the Town of Cherry Valley Fee Schedule as may be determined by the Town Board. These shall be in addition to any building permit, electric permit, and inspection fees pursuant to the Otsego County Building Department.

Part 4. Severability

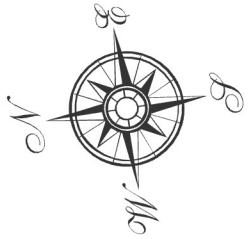
The invalidity of any part or provision (e.g., word, section, clause, paragraph, sentence) of this Law shall not affect the validity of any other part of this Law which can be given effect in the absence of the invalid part or provision.

Part 5. Supersession

This local law is intended to supersede any provisions of the Town Law, the laws of the Town of Cherry Valley and the New York State General Municipal Law which are inconsistent with the provisions of this local law.

Part 6. Effective Date

This local law shall take effect immediately upon the filing with the Office of the Secretary of State of the State of New York, in accordance with the applicable provisions of law.



Town of Cherry Valley

Viewshed Analysis of the Route 20 and Route 166 Corridors

A viewshed analysis was prepared to evaluate the potential visibility from Route 20 and 166 in the Town of Cherry Valley. Since the viewshed tools only allow for determining visibility from points, and not a line, a series of evenly spaced points were created along the two routes. A spacing of 200 feet was selected to balance a high density of points along the lines with the practicality of running the analysis. This resulted in 517 points that fed into the viewshed. For a location to be displayed as "visible" it had to be seen from at least three of these points. Reportedly, at 45+ MPH a location would need to be visible for 400' of travel distance, or more, to be seen and appreciated. A viewer elevation of 3.5' at each point was used to simulate the typical eye height within a vehicle, and a "target" elevation of 6' was used to simulate the mid-point of a height of a typical ground-mounted solar panels (where the top of the panel would be at approximately 9').

Two scenarios were evaluated, one accounting for existing vegetation and structures, and one for "bare earth" which only accounts for the ground surface, absent of features above ground level. The bare earth methodology over estimates visibility as there will always be view obstructions from trees and buildings, however it is a good way to show how topography alone influences potential views. The scenario that accounts for vegetation and buildings may under represent visibility as a thin line of trees will "block" visibility in the model, but may be sparse enough to see through in real life. Also visibility will vary based on season - in the winter when there is no foliage views may be greater than in the summer when less trees are needed to obstruct a view.

The landscape for the model was constructed using USGS 2015 LiDAR point cloud data to create a digital surface model (DSM). The bare earth model uses a digital elevation model (DEM) which was mosaiced from 1-meter USGS and NYS elevation data.

Predicted Visibility

Visible from Route 20 and/or Route 166 accounting for existing vegetation and buildings

Visible in the absence of trees and buildings (bare earth)

Tax Parcels

Village of Cherry Valley

Map prepared by Rick Lederer-Barnes, June 2021