



Chautauqua County
DEPARTMENT OF PLANNING AND DEVELOPMENT

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February 16, 2022

Re: Utility-Scale Solar Decommissioning Template

Chautauqua County Municipalities,

On behalf of the Chautauqua County Legislature (“Legislature”) and Chautauqua County Agricultural and Farmland Protection Board (“AFPB”), the Chautauqua County Department of Planning & Development (“CCDPD”) is pleased to provide a template of recommendations for developing and/or updating local municipal laws specific to decommissioning utility-scale solar facilities.

The need to better protect priority farmland and to support agriculture as a viable economic driver within the County stems from the AFPB’s request letter to the Legislature dated September 13, 2021, wherein the requested that the County create a template to aid municipalities in planning for the following concerns (as they relate to utility-scale solar projects):

- Keep productive soils and priority farmland in production;
- Ensure soils are restored to their original productivity after the lifespan of these projects; and,
- Ensure developers and operators are held responsible for the financial and physical removal of projects after their lifespan and/or after a period of no generation.

This document is intended for use by Chautauqua County’s local municipalities when developing and/or updating their local laws specific to decommissioning of utility-scale solar projects. This document, which provides municipal leaders with recommendations, has been developed by the County based on research, best practices, and guidance documents listed in the reference section at the end of this template. CCDPD reviewed numerous municipal solar laws, reached out to an assortment of solar developers to evaluate specific decommissioning plans, reviewed New York State Energy Research & Development Agency and New York State Department of Agriculture and Market’s guiding documents, considered the American Planning Association and New York Planning Federation’s recommendations, and went through Solar Energy Industries Association’s resources.

By creating this informal document, Chautauqua County is by no means responsible for any outcomes or lack of outcomes that may arise from either implementing these recommendations or not. Again, it is a series of recommendations/best practices that the CCDPD was able to aggregate from many different sources.

Utility-Scale Solar Decommissioning Template for Chautauqua County Municipalities

Decommissioning

1. Utility-scale solar facilities which have been abandoned, have reached the end of their lifespan, or are no longer producing electricity for a period of 12 months, as determined by the municipal Zoning Officer or Owner/Operator, shall be removed at the Owner's or subsequent Owner's expense, as an option defined in section 5.
2. Projects being repowered or demonstrate a force of majeure event (I.e. catastrophic event) and may result in longer repairs, shall be rectified by the Owner with the determination of adequate proof that the facility is still viable and operational; expenses for such shall be borne by the Owner/Operator. Repairs/modifications to make the solar facility operational or removal of the solar facility shall occur no later than 60 days after the initial determination. If not, Owner/Operator must demonstrate that they are making every attempt to get the solar facility operational or to communicate what is preventing this from happening.
3. If the Owner/Operator begins, but does not complete, construction of the project within 18 months after receiving final site plan approval, this may be deemed abandonment of the project and require implementation of the decommissioning plan to the extent applicable.
4. Prior to issuing a building permit, a decommissioning and site restoration plan signed by the governing body and the Owner/Operator of the utility-scale solar facility shall be submitted. The plan shall be prepared by a licensed decommissioning engineer, paid for by the Owner/Operator, and shall address the following:
 - a. Contact Information: Current contact information for the Owner/Operator.
 - b. Project Information: Project information including, but not limited to; address, tax ID, project size, property owner, and site agreement.
 - c. Project Lifespan: The anticipated viable lifespan of the utility-scale solar facility in accordance with industry standards.
 - d. Current Conditions: Photo documentation and archival color images of the site in its pre-construction condition for the purpose of future reference during site remediation.
 - e. Equipment Dismantling and Removal: Indicate the safety and removal of all above-ground and below-ground equipment, structures, and foundations including but not limited to; solar electric systems, buildings, cabling electrical components, security barriers, roads, foundations, pilings, and any other associated facilities, so that any agricultural ground upon which the facility or system was located is again tillable and suitable for agricultural uses.
 - f. Environmental Effects: Decommissioning activities could result in environmental impacts similar to those that occur during the construction phase. As such, mitigation measures, management practices, and permitting requirements applied during construction shall be applied during decommissioning, including construction

requirements outlined in the New York State Department of Agriculture and Markets (NYSDAM) Guidelines for Solar Projects.

- g. Management of Materials and Waste: The Owner/Operator shall adhere to all state laws and regulations in effect at the time of decommissioning regarding the disposal and recycling of components. The Owner/Operator or future Owner/Operator shall be responsible for the logistics of collecting and recycling all solar equipment, as well as disposition documentation.
 - h. Site Restoration: The project site shall be regraded and reseeded to as natural condition as possible within a reasonable timeframe after equipment is removed, excluding any invasive species.
 - i. Timeframe: The Plan shall include a timeframe for the completion of site restoration work, including repair of any damage caused to the property by the installation and removal of the utility-scale solar facility.
 - j. Agreements: Description of any agreement (e.g., lease) with landowner regarding decommissioning shall be included with the plan.
 - k. Approvals: The decommissioning of the utility-scale solar facility shall follow all regulatory standards. The Owner/Operator or future Owner/Operator shall ensure that any required permits are obtained prior to decommissioning. Before final electrical inspection, the Owner/Operator shall provide evidence that the decommissioning plan was recorded with the Register of Deeds. Any revisions to the decommissioning plan shall require review and approval from the governing body.
5. The decommissioning cost shall be guaranteed by cash escrow at a federally insured financial institution approved by the municipality before any building permits are issued. The governing body may approve alternative methods of surety or security deposit, such as cash, performance bond, letter of credit (LOC), or other financial assurance approved by the governing body and shall be established by the Owner/Operator to be held by the governing body hosting facility components. The Owner/Operator shall provide a reliable and detailed cost estimate for decommissioning of the facility prepared by a third party, professional decommissioning engineer/contractor, which shall be approved by the governing body, and the governing body shall select and/or approve the third party, professional decommissioning engineer/contractor who has expertise in the removal of solar facilities. The decommissioning cost estimate shall explicitly detail the cost and shall include 125% of the cost of removal of the utility-scale solar facility and restoration of the property with an escalator of 2.5% annually for the viable life to the utility-scale solar facility. This includes a 15% contingency cost. Security shall cover the full decommissioning costs without recoverable costs from salvage value; owner/operator to include anticipated salvage value, but this shall not be factored into the decommissioning costs. This cost estimate shall be recalculated every four (4) years and the surety shall be updated in kind. The decommissioning plan shall be updated to reflect these recalculations every four (4) years.
6. If the Owner/Operator, or future Owner/Operator cannot execute the decommissioning within a 180-day time period or 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 governing body. The governing body may commence the decommissioning through the financial surety established to cover the expenses. 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. In the event of default or abandonment of the utility-scale solar facility, the system shall be decommissioned as set forth herein.

7. Ownership Changes: If the Owner/Operator of the utility-scale solar facility changes or the owner of the property changes, the new Owner/Operator shall notify the Zoning Officer of such change in ownership or operator within 30 days of the ownership change. The successor Owner or Operator shall assume in writing all of the obligations within the decommissioning plan.

References:

Aura Power Solar. July 2021

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City of Olean. April 2015. <https://www.cityofolean.org/council/minutes/ccmin2015-04-14.pdf>

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Delaware River Solar. July 2017. http://dryden.ny.us/wp-content/uploads/2011/08/AttG1_DRS-Decomm-Plan.pdf

New York State Department of Agriculture and Markets. October 2019.

https://agriculture.ny.gov/system/files/documents/2019/10/solar_energy_guidelines.pdf

New York Planning Federation. <https://nypf.org/clean-energy-resource-center/>

New York State Energy Research & Development Agency. *Solar Guidebook*.

<https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Siting/Solar-Guidebook>

Solar Energy Industries Association. January 2020. <https://www.seia.org/sites/default/files/2020-11/SEIA-Recycling-Program-Factsheet-January%202020%20final.pdf>

Town of Amherst. [Town of Amherst, NY USE REGULATIONS \(ecode360.com\)](http://www.ecode360.com/34911369?highlight=decommissioned,decommissioning,solar&searchId=3703925751917698#34911369)

Town of Dunkirk

https://locallaws.dos.ny.gov/sites/default/files/drop_laws_here/ECMMDIS_appid_DOS20211231124027/Content/090213438030abce.pdf

Town of Evans

<https://ecode360.com/34911369?highlight=decommissioned,decommissioning,solar&searchId=3703925751917698#34911369>

Town of Geneva <https://ecode360.com/28823382#28823382>

Town of Hanover

<https://www.hanoverny.com/CodeForms/Town%20of%20Hanover%20Zoning%20Law%2012-11-20.pdf>