HIGH RIVER ENERGY CENTER

Case No. 17-F-0597

1001.31 Exhibit 31

Local Laws and Ordinances

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Exhibit 31: Local Laws and Ordinances

This Exhibit will track the requirements of proposed Stipulation 31, dated August 26, 2019, and therefore, the requirements of 16 NYCRR § 1001.31. All of the local law provisions discussed herein are contained in Town of Florida Zoning Ordinance, a copy of which is attached hereto as Appendix 31-1.

The Project will be located in the Town of Florida, Montgomery County, New York. As the Project was bid into, and eventually selected for, NYSERDA's 2017 Renewable Energy Standard Solicitation Request for Proposal (RESRFP 17-1), and as recently as the filing of the Applicant's PSS and response to PSS comments in November and December 2018, respectively, High River Energy Center had intended to design the Project in compliance with the substantive requirements of the Town of Florida's Solar Energy Systems and Equipment Law (Section 45.5 of the Town's Zoning Ordinance of May 23, 2016). However, in March 2019, the Town of Florida passed Local Law No. 1 of 2019 amending the Town of Florida zoning ordinance by amending provisions relating to solar energy systems. The intent of this local law was to amend the Town of Florida Zoning Ordinance to include provisions that address the installation of solar energy systems within the municipal boundaries of the Town of Florida. The local law was incorporated into the Town's zoning ordinance (Article VIII, Section 45.5) in a July 17, 2019 update.

As described in Exhibit 2, the Applicant has been implementing the Public Involvement Program (PIP) Plan for the Project. The Applicant has consulted with the Town, Montgomery County, landowners, and the Montgomery County Industrial Development Agency (IDA) and others as part of the PIP Plan. The Meeting Log is included as Appendix 2-4. Outreach to municipal stakeholders has included presentations at town board meetings and open house events to introduce the Applicant and the Project to the community. Coordination included the Applicant providing Project-specific information to the municipality, as well as consulting and responding to comments from agency stakeholders, such as the USFWS and NYSDAM, among others. The Applicant is also working with the Town of Florida (Supervisor Mead), the Amsterdam School District (Interim Superintendent), and Montgomery County IDA with the intention of executing a Payment in Lieu of Taxes (PILOT) agreement prior to construction of the Project.

Outreach to the Town of Florida for agreement on substantive and procedural requirements has been performed in accordance with the Article 10 requirements, and results of the coordination are summarized in the following sections.

31(a) Local Procedural Requirements Applicable to Construction/Operation of the Project Supplanted by Article 10

The following section contains lists of local ordinances, laws, resolutions, regulations, standards, and other requirements applicable to the construction and operation of the Project that are of a procedural nature for the Town of Florida. These local procedural requirements are supplanted by PSL Article 10 unless the Board expressly authorizes the exercise of the procedural requirement by the local municipality or agency.

Town of Florida Zoning Ordinance; see Appendix 31-1

- Article VII: Site Plan Approval and Special Permits
- Article VIII, Section 45.5.C.1: Application Requirements
    - Article VIII, Section 45.5.C.1.a(1-10): Solar – Large/Utility Scale Special Use Permit Application Requirements
    - Article VIII, Section 45.5.C.3.(a), (d), (e), (f) and (h): Additional Requirements
- Article XI: Administration

31(b) Local Procedural Requirements Requested to be Expressly Authorized by the Board

Except with respect to the New York State Uniform Fire Prevention and Building Code, as explained below, the Applicant does not request the Board to authorize a municipality to implement any local procedural requirements.

31(c) Local Agency Review and Approval of Compliance with Building Codes

The Town of Florida has adopted and incorporated the New York State Uniform Fire Prevention and Building Code for administration into its local electric, plumbing and building codes; therefore the Applicant may make a request to the Board during the Article 10 proceeding pursuant to subdivision (b) of this section that the Board expressly authorize the exercise of the electric, plumbing, and building permit application, inspection, and certification processes by the Town of Florida.

The Code Enforcement Officer for the Town of Florida is responsible for reviewing and approving building plans, inspecting construction work, and certifying compliance with the New York State Uniform Fire Prevention and Building Code, the Energy Conservation Construction Code of New York State, and the substantive provisions of any applicable local electrical, plumbing, or building

code. If necessary, the Code Enforcement Officer can hire consultants to assist with the review and approval. To the extent the Applicant requests the Board to make the aforementioned authorization to the Town, the Applicant is willing to fund those consultations, to the extent such fees are not paid for from the fund for municipal and local party intervenors.

31(d) Substantive Requirements

This section identifies the local ordinances, laws, resolutions, regulations, standards and other requirements applicable to the construction or operation of the proposed Project that are of a substantive nature. The text of these substantive requirements and the Project's compliance with them are presented in Table 31-2 below. The dimensional requirements under the local solar ordinance are presented in Table 31-1.

Town of Florida Zoning Ordinance; see Appendix 31-2

- Article V. Use Regulations – Section 9: A-Agricultural District
- Article VI. Area and Height Regulations-Lots, Yards and Buildings
- Article VIII. Section 34 – Signs
- Article VIII. Section 36 – Vision Clearance at Intersections
- Article VIII. Section 37 – Landscaping Requirements
- Article VIII. Section 42 – Exterior Lighting
- Article VIII. Section 44 – Public Utility and Facilities Personal Wireless Service Facility
- Article VIII. Section 45.3 – Wellhead Protection
- Article VIII, Section 45.5.C.2: Specific Standards for Large-Scale Solar Systems as a Special Use
- Article VIII, Section 45.5.C.3.(b), (c), (g), (i) and (j): Additional Requirements

Table 31-1. Town of Florida Zoning Dimensional Requirements Summary for Large Scale Solar

DIMENSIONS	LARGE SCALE SOLAR ENERGY SYSTEM REQUIREMENTS	PROVIDED
Maximum Height	20 Feet	13 Feet
Minimum Setback from All Parcel Boundaries	500 Feet	I. 80 Feet in Area 6 (North of Pattersonville Road & West of Bulls Head Road)* II. 25 Feet where participation agreements would be in place* III. 200 Feet Remainder of Project Area* IV. Varies from 14 Feet to > 1,000 Feet in Area 6A (North of Pattersonville Road & East of Bulls Head Road)*
Minimum Setback from Wetlands, Ponds, and Streams	200 Feet	0 to 25 Feet from non-state-regulated wetlands and streams*
Minimum Lot Size	10 Acres	34.97 Acres
Maximum Megawatts	5 MW	90 MW*
Maximum Acreage Encompassed by Solar Energy System	25 Acres	480.7 Acres*
Maximum Lot Coverage	50%	50%*
Maximum Elevation for Siting Solar Energy System	Elevation 700 Feet	Elevation 892 Feet*
Maximum Percent Slope	12%	20%*
Maximum Clear Cutting	9 Acres	55.3 Acres*
Minimum Fence Height	8 Feet	8 Feet

*Denotes a waiver is requested from the Board

31(e) Local Substantive Requirements Applicant Requests the Board Not Apply

The Project is designed and will operate in compliance with applicable substantive local laws and regulations with the exception of 11 substantive requirements of the Town of Florida zoning ordinance:

- Allowable Uses in A-Agricultural District (Article V Section 9);
- Barbed-wire and electrically charged fences (Article VI Section 15.C.1);
- Height and setbacks (Article VIII Section 45.5.C.2.a);
- Lot and system size (Article VIII Section 45.5.C.2.b);
- Lot coverage (Article VIII Section 45.5.C.2.c);
- Elevation and slopes (Article VIII Section 45.5.C.2.d);
- Clear cutting (Article VIII Section 45.5.C.2.f);
- Prime agricultural soils (Article VIII Section 45.5.C.2.g);
- Snow removal within 24 hours of a minimum 6 inches of snow (Article VIII Section 45.5.C.2.n);
- Herbicides (Article VIII Section 45.5.C.3.i); and
- Decommissioning Schedule (Article VIII Section 45.5.C.3.j).

The Applicant is requesting that the Board elect not to apply these requirements as they are unreasonably burdensome in the view of existing technology, cost/economics, or consumer needs and would prevent the Project from being built.

The land area making up the Project Area is particularly well-suited for development of a solar energy system due to its location directly adjacent to existing electric transmission infrastructure with available capacity and the availability of large open space. As previously stated, the above requirements would be unreasonably burdensome. As to the needs of consumers, High River Energy Center promotes the goals of the Climate Leadership and Community Protection Act (CL&CPA), the Clean Energy Standard (CES), and the most recent State Energy Plan (SEP).

Moreover, High River Energy Center has executed a contract with NYSERDA to sell the renewable energy attributes generated by the Project, in furtherance of the aforementioned CL&CPA, CES, and SEP. By adding 90 MW of clean, renewable, solar power into the New York State energy market, the Project helps NYS achieve its targets of 70% renewable generation by 2030, zero emissions from the statewide electrical demand system by 2040, an 85% reduction in greenhouse gas emissions by 2050, and the operation of 6 GWs of solar generation by 2025.

With the exception of those provisions identified above, the Applicant has determined that none of the remaining local substantive requirements are unreasonably burdensome in terms of existing technological, cost/economics, or consumer needs. Therefore, there are no additional substantive requirements which the Applicant is requesting that the Board elect not to apply.

The following provides additional information supporting the Applicant's request that the Siting Board elect not to apply these 11 requirements.

Permitted Uses within A-Agricultural District: Statement of Justification

Article V Section 9 of the Town of Florida Zoning Ordinance regarding use regulations in the A-Agricultural District does not list Large/ Solar Energy Systems as a permitted use or use allowed by Special Permit. Additionally, Article VIII Section 45.5.C states the following: *Large Scale Solar Energy Systems are permitted through the issuance of a special use permit within the C-1 Commercial, C-2 Commercial, Industrial Business Parks [IBP], and Natural Products [NP] Districts, subject to the requirements set forth in this section, including site plan approval by the Planning Board.* As the Project is proposed within the A-Agricultural Zoning District, a waiver from the Town's Use Regulations is required from the Siting Board to allow a Large/ Scale Solar Energy Systems.

The Town's zoning ordinance limits the development of large/commercial-scale solar energy systems to only the C-1, C-2, IBP, and NP zoning districts. These four zoning districts consist of an area of approximately 2,135 acres or 6.6% of the entire approximately 32,256-acre area of the Town. Most of the land in these districts is already developed with warehouses, commercial and residential developments, and a quarry, leaving only approximately 325 acres of non-contiguous vacant land. By limiting development of large/commercial-scale solar to only these four zoning districts, the Town is essentially excluding the development of large/commercial-scale solar energy systems and making it impossible to build the Project.

Pursuant to 16 NYCRR § 1001.31(h)(1), the Applicant requests that the Board refuse to apply this local governmental restriction because it is unreasonably burdensome in view of the existing technology. In the first instance, the zoning ordinance precludes construction in the Project Area of the proposed technology. Secondly, even if the Applicant attempted to comply, the necessary facility component bulk of the Project (i.e., the area that must be covered by the solar panels and other Project for components) make compliance technologically impossible impracticable, or unreasonable for all Project components to be installed in the non-contiguous, available area in the permitted districts since approximately 480 acres are needed to construct the Project and only 325 acres of non-contiguous land is even available in the non-contiguous permissible zoning districts.

In addition, pursuant to 16 NYCRR § 1001.31(h)(3), the goals of the CL&CPA, the SEP, and the CES, as explained above, promote the urgent needs of consumers to reduce greenhouse gas emissions and those needs outweigh the insignificant potential impacts on the community that could result by the Board refusing to apply this substantive restriction. Moreover, pursuant to 16 NYCRR § 1001.31(h)(2), the economic benefits to the community from payments to landowners, construction jobs, and PILOT payments outweigh the benefits of applying this provision. Thus, the factors all weigh in favor of the Board refusing to apply the restriction.

Barbed Wire Fence Restriction: Statement of Justification

Article VI.C.1 of the Town of Florida Zoning Ordinance states the following: *No barbed-wire fences or electrically charged fences shall be permitted except by authorization and permit issued by the Town of Florida Building Department.* The requirement to obtain authorization and permit for barbed-wire fences is procedural and therefore supplanted by Article 10. Nevertheless, the Project must use barbed-wire fences in certain places and it would be unreasonably burdensome to comply with a prohibition on them.

Barbed-wire fences are required around the substation for safety and security purposes, per NESC Section 11 Article 110 A.11.b. Barbed-wire fences are not proposed anywhere else. This is where the Project begins to deliver power to the POI on the transmission grid's critical infrastructure. Barbed-wire fences typically surround substations as an additional deterrent to prevent trespass. Pursuant to 16 NYCRR 1001.31(h), design changes cannot reasonably obviate the need for barbed-wire fencing here. Further, pursuant to 16 NYCRR 1001.31(h)(1), existing technology available for Project materials makes compliance with a prohibition on barbed-wire

fencing impractical or otherwise unreasonable because alternatives would leave the substation less safe and secure. Therefore, the Applicant requests that the Board elect not to apply the local prohibition on barbed-wire fences.

Height and Setbacks: Statement of Justification

Article VIII Section 45.5.C.2.a of the Town of Florida Zoning Ordinance states the following: *The Solar Energy System shall have a maximum height of twenty (20) feet from ground elevation and shall be setback at a minimum of five hundred (500) feet from all of the parcel's boundary lines and two hundred (200) feet from all wetlands, ponds and streams. Buildings and accessory structures other than Solar Energy Equipment, if any, shall adhere to the height and setback requirements of the underlying zoning district*.

The Project complies with the maximum height specified in the local ordinance; however, it cannot meet the local minimum setbacks. During public outreach efforts, adjacent landowners and residents of the Town of Florida requested that the Project be designed so as to provide adequate setbacks from adjacent landowners. In order to do so, portions of the Project Area considered for siting of the solar arrays, that were near clusters of adjacent residential uses were given preference and, therefore, were assigned the maximum setbacks. Where the Project Area abuts existing, undeveloped agricultural areas, smaller setbacks were used in order to increase the setback distances near residential uses. In some areas, adjacent landowners willingly agreed to allow minimum setbacks of 25 feet, as will be memorialized in participation agreements. To the north of Pattersonville Road and west of Bulls Head Road, where the Project Area abuts the National Grid right-of-way and Interstate 90, a minimum setback of 80 feet is proposed along the parcel's northeastern and northwestern boundaries. An 80-foot setback is reasonable here as the parcel abuts the existing National Grid transmission right-of-way and Interstate 90 to the northeast and the distance to the nearest residential structure to the northwest is greater than 480 feet. A minimum setback of 200 feet has been provided in this area along Pattersonville Road and Bulls Head Road. At Area 6A, located to the north of Pattersonville Road and East of Bulls Head Road adjacent to National Grid's existing transmission right-of-way, proposed setbacks vary from 14 feet to the northwest lot line to greater than 1,000 feet to the south east lot line. The Applicant sited the arrays along the existing electric transmission right-of-way in order to limit views along Pattersonville Road. While the minimum setback is 14 feet to the property line, the nearest residences is setback over 100 feet from the proposed array and several hundred feet from other residences in this area. Existing vegetative hedgerows will provide screening of the proposed

arrays. Additionally, the Applicant will offer to provide supplemental landscape buffers on directly abutting landowner's properties.

The remainder of the Project has been designed to provide a minimum setback of 200 feet, with a much larger setback proposed in several areas. Federally-regulated wetlands, ponds, and streams will generally have a minimum setback of 25 feet, exceeding what is required by applicable federal regulations. There are no State-regulated wetlands in the Project Area.

Limiting a large/commercial-scale solar energy system to minimum setbacks of 500 feet from parcel boundaries and 200 feet from wetlands, ponds, and streams imposes a technological restriction on the Project, making it impossible to build. In order to meet its obligations under its contract awarded by NYSERDA for the 2017 Renewable Energy Standard Solicitation (RESRFP 17-1), the Project must have a generating capacity of 90 MW. An area of approximately 479 acres is required to site the number of solar panels and the supporting components of the Project necessary to reach this generating capacity.

Furthermore, this local law provision does not differentiate between regulated and unregulated wetlands. There are State and federal programs intended to protect higher value wetlands, and the Project complies with those setbacks. Applying the local provision, therefore, would be unreasonable and would prevent the Project from being built to its 90MW capacity.

Restricting the Project to the setbacks described above within the 1,221-acre Project Area would not allow the Project to achieve the required 90 MW generating capacity. Limiting development of the Project Area to these setbacks imposes a technological restriction on the Project related to necessary facility component bulk, making compliance impossible. Thus, pursuant to 16 NYCRR § 1001.31(h)(1), the Applicant requests that the Board refuse to apply this local governmental restriction because it is technologically impossible, impracticable, or unreasonable for all necessary Project components to be installed if the Project were compelled to comply with this restriction.

In addition, pursuant to 16 NYCRR § 1001.31(h)(3), the Board should elect to refuse to apply this local governmental restriction because the urgent needs of consumers to have GHG emissions reduced, through the goals, targets and strategies embodied in the CL&CPA, CES, and SEP, outweigh the potential insignificant impacts to the community. This Application details the measures being proposed to mitigate any potential impacts to the maximum extent practicable. Moreover, pursuant to 16 NYCRR § 1001.31(h)(2), the economic benefits to the community from

landowner payments, construction jobs, PILOT payments, and host community agreements outweigh the benefits of applying the provision. Thus, the factors all weigh in favor of the Board refusing to apply the Town's minimum setbacks and adopting High River's proposed setbacks instead.

On a related matter, High River interprets the term "setback" to apply to the boundaries of the Project Area, and not the individual boundaries of the parcels within the Project Area. In the context of solar facilities, the Town's Zoning Ordinance defines "setback" as "[t]he distance from a front lot line, side lot line, or rear lot line of a parcel within which a free standing or ground mounted solar energy system is installed." Large/commercial-scale solar facilities require large sites, which often necessarily include multiple parcels. Thus, common sense dictates that setbacks in a local law governing large/commercial-scale solar would apply to the boundaries of the entire site. Furthermore, the participating landowners have agreed that the larger setbacks are not required for their properties and they are being compensated for that agreement.

The section of the Zoning Ordinance governing solar facilities uses other similar terms in a way that indicate that a large/utility-scale solar facility site is treated as one entire parcel. In one instance, the lot and system size restrictions apply "regardless of whether the System is contiguous or noncontiguous" (Section 45.5(C)(2)(b)). This implies that a solar facility could be on multiple parcels. Similarly, the lot coverage restrictions state that "[i]f the area in which the Solar Energy System is to be placed is leased, then the terms 'lots' and 'entire lot size' shall mean the land area that is leased" (Section 45.5(C)(2)(c)). In addition, the term "site" is used in the singular in several places (Section 45.5(C)(1)(a)(6) and (8); Section 45.5(C)(2)(j) and (m); Section 45.5(C)(3)(h) and (j)). This suggests that the Zoning Ordinance's solar provisions treat multiple parcels as one site.

A potential interpretation of this definition would be that the 500-foot minimum setback from "all of the parcel's boundary lines" applies to every individual parcel within a solar project's overall site. Such an interpretation defies logic. Under this interpretation, a solar facility's components would be spread out across the site in islands 1,000 feet apart from each other.

High River requests that the Board elect not to apply the latter interpretation. Designing the Project in this manner would be impractical because it unnecessarily spreads out components over a larger area to achieve the desired generating capacity and adds significant lengths of collection lines. It would be unreasonable because it could increase environmental impacts by requiring

more land than the interpretation the Applicant believes is the reasonable one. Further, a design change to comply with this interpretation while also meeting the Project's obligation to have a generating capacity of 90 MW is not feasible within the Project Area, especially when other siting factors, such as avoiding and/or minimizing impacts environmental impacts, are considered. Because of the necessary facility component bulk for the Project, this interpretation would render the Project impossible to build within the Project Area in view of existing technology.

In addition, as with the setback distances discussed above, the economic benefits to the community outweigh the benefits of applying the latter interpretation, and the GHG emissions reductions outweigh the minimal impacts on the community that would result from refusing to apply this interpretation. Therefore, this interpretation is unreasonably burdensome in view of existing technology and the needs of consumers, and should not be applied.

Lot and System Size: Statement of Justification

Article VIII Section 45.5.C.2.b of the Town of Florida Zoning Ordinance states the following: *Large-Scale Energy Systems shall only be located on lots with a minimum lot size of ten (10) acres. The size of the Solar Energy System shall be limited to a maximum of 5 MW of electrical energy generation per design at peak levels of operation or the land surface covered by the Solar Energy System including internal access roads, Solar Panels, and all System components and Solar Equipment, shall not encompass more than twenty-five (25) acres of the lot regardless of whether the System is contiguous or noncontiguous.*

The Project has been awarded a contract with NYSERDA to sell renewable energy credits (RECs) generated by a 90 MW solar facility at the proposed site. Limiting a Large-Scale Energy System to 5 MW imposes a technological restriction on the Project, making it impossible to build. Furthermore, approximately 5 to 10 acres are typically required to generate one MW of energy under NYS solar conditions. Therefore, a maximum of 25 acres makes it impossible to construct a 90 MW facility.

Pursuant to 16 NYCRR § 1001.31(h)(1), the Applicant requests that the Board refuse to apply this local restriction because the Project's necessary facility component bulk makes compliance technologically impossible, impracticable, or unreasonable.

In addition, pursuant to 16 NYCRR § 1001.31(h)(3), the Board should elect to refuse to apply this local governmental restriction because the urgent needs of consumers to have GHG emissions

reduced, through the goals, targets and strategies embodied in the CL&CPA, CES, and SEP, outweigh the potential insignificant impacts to the community. This Application details the measures being proposed to mitigate any potential impacts to the maximum extent practicable. In addition, pursuant to 16 NYCRR § 1001.31(h)(2), the economic benefits to the community from landowner payments, construction jobs, payments in lieu of taxes, and host community agreements outweigh the benefits of applying this provision.

Lot Coverage: Statement of Justification

Article VIII Section 45.5.C.2.c of the Town of Florida Zoning Ordinance states the following: *For purposes of this section, the surface area covered by Solar Panels, Solar Equipment and all System components including internal access roads shall be included in total lot coverage. If the area in which the Solar Energy System is to be placed is leased, then the terms "lots" and "entire lot size" shall mean the land area that is leased. A Large Scale Solar Energy System shall not exceed the maximum lot coverage of the lot on which it is installed as follows: . . . For lots greater than 25 acres, the maximum total lot coverage shall be 1/2 (50%) of the entire lot size with a maximum system size as set forth in subsection b above*.

High River interprets the term "lot" to refer to the entire Project Area and not the individual parcels within the Project Area. Large/commercial-scale solar facilities require large sites, which often necessarily include multiple parcels. Thus, common sense dictates that a law governing large/commercial-scale solar lot coverages would apply to the entire site. Project components cover approximately 40% of the Project Area; therefore, the Project complies with this substantive requirement.

The term "lot" might, however, potentially be interpreted as referring to the individual parcels, meaning that each individual parcel can only have 50% lot coverage. Such an interpretation would hamper the ability of developers to site components in a manner that avoids and/or minimizes impacts.

High River requests that the Board elect not to apply the latter interpretation. Similar to the setback interpretation discussed above, designing the Project in this manner would be impractical because it unnecessarily spreads out components over a larger area to achieve the desired generating capacity and adds lengths of collection lines. It would be unreasonable because it could increase environmental impacts by requiring more land than the interpretation the Applicant believes is the reasonable one. Further, a design change to comply with this interpretation while

also meeting the Project's obligation to have a generating capacity of 90 MW is not feasible within the Project Area, especially when other siting factors, such as avoiding and/or minimizing impacts environmental impacts, are considered. Because of the necessary facility component bulk for the Project, this interpretation would render the Project impossible to build within the Project Area in view of existing technology.

In addition, the economic benefits to the community outweigh the benefits of applying the latter interpretation, and the GHG emissions reductions outweigh the minimal impacts on the community that would result from refusing to apply this interpretation. Therefore, this interpretation is unreasonably burdensome in view of existing technology and the needs of consumers, and should not be applied.

Clear Cutting: Statement of Justification

Article VIII Section 45.5.C.2.f of the Town of Florida Zoning Ordinance states the following: *Significant clearing of mature tree growth and hedgerows should be avoided to the maximum extent possible. Installation of Large Scale Solar Energy Systems on fields or land areas which do not require significant clearcutting is preferred. In no case shall the Solar Energy System require clearcutting of more than 9 acres. Once the land is cleared and the Solar Energy System is installed, the land disturbed must be reseeded or replanted with a combination of native plant species and native grass. Ground cover of gravel or other non-vegetative cover should only be used for access and internal roads to the maximum extent practicable.*

As discussed in detail in Exhibit 22, the Project Area consists of approximately 215.6 acres of forested areas (17.7% of Project Area). In order to construct and operate the Project, the Applicant is proposing to clear approximately 30.1 acres of forested area, or 14% of existing woodlands within the entire Project Area. In addition, approximately 25.2 acres of hedgerows and non-forested areas that contain sparse tree cover (e.g., successional old fields) will be cleared.

Limiting clear cutting to 9 acres imposes a technological restriction on the Project, making it impossible to build when considering other siting constraints and requirements such as wetlands, streams, setbacks and landowner requested exclusionary areas to continue farming. Accordingly, the burden caused by imposing this local restriction is unreasonable. The request cannot be obviated by a design change. It is the minimum necessary in order to build the Project selected by NYSERDA to sell RECs, and this Application details how potential adverse impacts have been mitigated to the maximum extent practicable. In addition, impacts are being minimized by the

adoption of a landscaping plan, contained in Appendix 11-1, where trees and vegetation are being planted in multiple areas along the perimeter of the Project.

As determined through public outreach efforts, adjacent landowners and residents of the Town of Florida requested that the Project be designed so as to provide adequate setbacks from adjacent landowners. In order to do so, portions of the Project Area considered for siting of the solar arrays that were set back the greatest distance from clusters of adjacent residential uses were given preference. In some cases, this included areas of existing trees. Although the majority of the Project Area consists of open agricultural fields, areas of existing trees are proposed to be cleared and used for solar arrays in order to provide greater distances from adjacent residential uses. Additionally, the Applicant has designed the Project to maintain existing tree hedgerows along the perimeter of the Project in order to limit its visibility. Limiting the total area of trees allowed to be cleared to 9 acres would result in the Applicant having to use existing agricultural areas closer in proximity to residential uses, particularly in the area of Bulls Head Road and Pattersonville Road.

For these reasons, pursuant to 16 NYCRR § 1001.31(h)(1), the Applicant requests that the Board refuse to apply this local governmental restriction because it is technologically impossible, impracticable, or unreasonable for all Project components to be installed if the Project were compelled to comply with this restriction.

In addition, pursuant to 16 NYCRR § 1001.31(h)(3), the Board should elect to refuse to apply this local governmental restriction because the urgent needs of consumers to have GHG emissions reduced, through the goals, targets and strategies embodied in the CL&CPA, CES, and SEP, outweigh the potential insignificant impacts to the community. As noted above, refusing to apply this provision actually decreases the impacts to the community. In addition, the economic benefits to the community from landowner payments, construction jobs payments in lieu of taxes, and host community agreements outweigh the benefits of applying this provision.

Elevation and Slopes: Statement of Justification

Article VIII Section 45.5.C.2.d of the Town of Florida Zoning Ordinance states the following: *No part of a Large Scale Solar Energy System shall be located above the elevation of 700 feet, along ridgelines, on hilltops, or on slopes greater than 12%*.

Portions of the Project will be located above an elevation of 700 feet. The Project Area is located within the Mohawk Valley ecoregion, which is irregular and hilly, with a sometimes narrow floodplain (Geological Service, 2010). Within the Town of Florida, elevations range from 240 feet to 1,162 feet and approximately 35% of the land is located above 700 feet in elevation. Limiting the Project to areas below 700 feet in elevation imposes a technological restriction that makes it impossible to build when considering other siting constraints and requirements.

Accordingly, the burden caused by imposing this local restriction is unreasonable. The request cannot be obviated by a design change.

The Town's policy statement regarding solar energy systems (Article VIII Section 45.5.A.3) states that one of the Town's specific policies is to "not impair scenic views or vistas" and also notes "that certain scenic views and vistas are important to the Town and should be preserved since they significantly contribute to the Town's rural residential character." Presumably, the elevation restriction is meant to help achieve this policy. What the elevation restriction does not account for is the fact that a solar energy system sited at an elevation below 700 feet could have greater visibility than one sited above this elevation given the fact that approximately 35% of the land in the Town is above this elevation. For example, a solar array sited within the Mohawk River Valley would be visible from ridgelines both to the north and south of the Valley. Selecting an arbitrary elevation above which to prohibit siting solar arrays is less successful in limiting visibility of a project than making careful, deliberate siting decisions and conducting a visual impact analysis, as High River did for the Project. As documented in Exhibit 24, Project visibility has been limited and mitigated to the greatest extent practicable.

Pursuant to 16 NYCRR § 1001.31(h)(1), the Applicant requests that the Board refuse to apply the elevation restriction because Project components must occupy some of the Project Area that is above 700 feet in elevation; therefore, the necessary facility component bulk makes compliance technologically impossible, impracticable, or unreasonable.

In addition, pursuant to 16 NYCRR § 1001.31(h)(3), the Board should elect to not apply this local restriction because the urgent needs of consumers to have GHG emissions reduced, through the goals, targets and strategies embodied in the CL&CPA, CES, and SEP, outweigh the potential insignificant impacts to the community. This Application details the measures being proposed to mitigate any potential impacts to the maximum extent practicable. In addition, pursuant to 16 NYCRR § 1001.31(h)(2) the economic benefits to the community from landowner payments,

construction jobs payments in lieu of taxes, and host community agreements outweigh the benefits of applying the local restriction.

Regarding the 12% slopes restriction, portions of the Project will be located in areas where existing slopes are greater than 12%. Approximately 56 acres (12%) of the areas hosting Project Components have existing slopes greater than 12%; however, the Applicant will grade all of those areas down to a 12% slope to comply with this local requirement. Accordingly, no portion of the Project Components will be on slopes greater than 12% following grading of the Project Area.

Nevertheless, the local law does not distinguish between existing slopes and post-grading slopes, and it might be interpreted as limiting solar facilities to existing 12% slopes. Such an interpretation would make the Project impossible to build. Therefore, this potential interpretation is unreasonably burdensome and the Applicant requests that the Board elect not to apply it.

Pursuant to 16 NYCRR § 1001.31(h)(1), the Applicant requests that the Board refuse to interpret the slope limitation as applying to existing slopes because Project components must occupy some of the Project Area that has existing slopes greater than 12%; therefore, the necessary facility component bulk makes compliance technologically impossible, impracticable, or unreasonable.

In addition, pursuant to 16 NYCRR § 1001.31(h)(3), the Board should elect to not apply this local restriction because the urgent needs of consumers to have GHG emissions reduced, through the goals, targets and strategies embodied in the CL&CPA, CES, and SEP, outweigh the potential insignificant impacts to the community. This Application details the measures being proposed to mitigate any potential impacts to the maximum extent practicable. In addition, pursuant to 16 NYCRR § 1001.31(h)(2) the economic benefits to the community from landowner payments, construction jobs payments in lieu of taxes, and host community agreements outweigh the benefits of applying the local restriction.

Prime Agricultural Soils: Statement of Justification

Article VIII Section 45.5.C.2.g of the Town of Florida Zoning Ordinance states the following: *Installation of Large Scale Solar Energy Systems on land areas which contain prime agricultural soils shall be avoided to the maximum extent possible. In no case shall the Solar Energy System cover more than 5 acres of prime agricultural soils*.

Although prime agricultural soils were avoided to the maximum extent practicable, approximately 429 acres of the Project will be located on land that contains prime agricultural soils. Of this area,

approximately 346 acres is used for non-alfalfa hay, 79 acres is used for corn, 4 acres is used for alfalfa, and 0.01 acre is used for pasture. As the majority of the Town (75%) consists of land containing prime agricultural soils, limiting Solar Energy Systems to covering no more than 5 acres of prime agricultural soils imposes a technological restriction on the Project, making it impossible to build when considering other siting constraints and requirements.

Accordingly, the burden caused by imposing this local restriction is unreasonable. The request cannot be obviated by a design change. The Project was sited to avoid prime agricultural soils to the maximum extent practicable, considering that impacts to environmental resources, together, with setbacks requested by adjacent landowners, require careful balancing. This Application details why potential adverse impacts have been mitigated to the maximum extent practicable as part of this balancing effort.

Though mapped as prime agricultural soils, nearly all agriculture within the Project Area consists of hay and corn. The Applicant has worked with participating landowners who have determined which parts of their land should be excluded from hosting Project components so that they can continue agricultural practices as they see fit. Additionally, the Project will occupy 479 acres of land classified as an Agricultural District. Although the Project is sited within mapped Agricultural Districts, the Project will only occupy 0.27% of all lands designated as mapped Agricultural Districts within Montgomery County. Furthermore, the Project will only occupy 1.9% of all lands designated as mapped Agricultural Districts within the Town of Florida. Accordingly, the Project represents a minimal portion of available agricultural land within the Town and County and will provide participating landowners with supplemental revenue to invest back into their existing agricultural operations and the community.

Pursuant to 16 NYCRR § 1001.31(h)(1), the Applicant requests that the Board elect not to apply this local restriction because the Project's necessary facility component bulk make compliance technologically impossible, impracticable, or unreasonable.

In addition, pursuant to 16 NYCRR § 1001.31(h)(3), the Board should elect not to apply this local restriction because the urgent needs of consumers to have GHG emissions reduced, through the goals, targets and strategies embodied in the CL&CPA, CES, and SEP, outweigh the potential insignificant impacts to the community. This Application details the measures being proposed to mitigate any potential impacts to the maximum extent practicable. In addition, pursuant to 16 NYCRR § 1001.31(h)(2), the economic benefits to the community from landowner payments,

construction jobs and payments in lieu of taxes weigh in favor of the Board refusing to apply the local restriction.

Snow Removal within 24 hours of a Minimum 6" of Snow: Statement of Justification

Article VIII Section 45.5.C.2.n of the Town of Florida Zoning Ordinance states the following: *Roadways must be properly maintained and kept free of debris and snow. Snow removal shall be within 24 hours of accumulation of a minimum of 6" of snow*. While the Applicant fully intends to properly maintain internal access roads and keep them free of debris and snow, setting a numerical limit as to how soon access roads, internal to the Project Area, are plowed is unreasonable. Solar facilities are a passive use and require minimal access during operation. The Applicant intends to contract with a local snow removal contractor to plow internal access roads after snowfall events. Doing so will keep access roads accessible for Project maintenance personnel and in the event that emergency first responders need to access the site. However, requiring snowfall removal within 24 hours is unreasonable as contractor availability and snowfall conditions could potentially require a timeframe greater than 24 hours. Furthermore, the risk of fire in heavy snow conditions is greatly mitigated by those conditions.

Herbicides: Statement of Justification

Article VIII Section 45.5.C.3.i of the Town of Florida Zoning Ordinance states the following: *Native grasses and vegetation shall be maintained below the arrays and shall not include use of herbicide*.

Native grasses and vegetation will be maintained beneath the arrays. Mowing and weed whacking will be the primary methods of vegetation maintenance during operation of the Project; however, herbicides approved for use by the New York State Department of Environmental Conservation may be used as a secondary means of control where necessary and will be applied in accordance with label instructions and applicable regulations, as described in the Preliminary Operations and Maintenance Plan in Appendix 5-3. All applications would be handled in spot treatment method and target specific discrete locations; broadcast or aerial applications of herbicides are not proposed. There are weeds or other vegetation that cannot be controlled with mechanical means to effectively prevent them from interfering with the operation of the solar arrays. For example, spot application of herbicides may occur if a specific weed is growing at a much faster rate than the surrounding vegetation and cannot be managed by mechanical methods. Prohibiting all use

of herbicides would impose a technological restriction on the Project, restricting the required maintenance of the Facility.

Accordingly, the burden caused by imposing this local restriction is unreasonable. The request cannot be obviated by a design change. Herbicide use will be limited, selective and only used as a secondary means of control.

Pursuant to 16 NYCRR § 1001.31(h)(1), the Applicant requests that the Board refuse to apply this local governmental restriction because the need to protect the panels and associated equipment from intrusive vegetation make compliance technologically impracticable, or unreasonable.

In addition, pursuant to 16 NYCRR § 1001.31(h)(3), the Board should elect to refuse to apply this local governmental restriction because the urgent needs of consumers to have GHG emissions reduced, through the goals, targets and strategies embodied in the CL&CPA, CES, and SEP, outweigh the potential insignificant impacts to the community. This Application details the measures being proposed to mitigate any potential impacts to the maximum extent practicable. In addition, the economic benefits to the community from landowner payments, construction jobs payments in lieu of taxes, and host community agreements weigh in favor of the Board refusing to apply the local restriction.

Decommissioning Schedule: Statement of Justification

Article VIII Section 45.5.C.3.j states the following: *Upon abandonment or discontinuance of use, the system owner or operator shall in addition to complying with the decommissioning plan, assure, if not part of the approved decommissioning plan, physical removal of the Solar Energy System, and all accessory structures and/or equipment within 90 days from the date of abandonment or discontinuance of use. "Physically remove" shall include, but shall not be limited to: (i) removal of panels, collectors, support units (including all underground wiring), mounts, equipment shelters and security barriers from the property; (ii) proper disposal of the waste material from the site in accordance with local and state solid waste disposal regulations; and (iii) restoring the land area where the Solar Energy System was located to its natural condition, except that any landscaping and grading may remain in the "after" condition.*

As explained in Exhibit 29, the decommissioning process is expected to take approximately four to six months. Decommissioning a solar facility as large as the Project takes significant effort,

including preparation, dissembling components, and removing access roads. It cannot be done safely and completely within 90 days.

Therefore, pursuant to 16 NYCRR § 1001.31(h)(1), the Applicant requests that the Board elect not to apply the 90-day requirement because the necessary facility component bulk and materials make compliance technologically impossible.

31(f) Procedural Requirements Applicable to Interconnections in Public Rights of Way

The Applicant has determined that there are no procedural requirements applicable in local laws or regulations to the interconnection or use of water, sewer, or telecommunication lines that are applicable to the Project.

31(g) Substantive Requirements Applicable to Interconnections in Public Rights of Way

The Applicant has determined that there are no substantive requirements in local laws or regulations applicable to the interconnection or use of water, sewer, or telecommunication lines that are applicable to the Project.

31(h) Requirements Applicable to Interconnections in Public Rights of Way that the Applicant Requests the Board Not Apply

As there are no procedural or substantive requirements applicable to the interconnection or use of water, sewer, or telecommunication lines as identified above in Sections 31(f) and 31(g), there are no requirements which the Applicant is requesting that the Board elect not to apply.

31(i) List of Applicable Local Substantive Requirements and Compliance Assessment

Table 31-2. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Requirement	Project Compliance
Town of Florida Zoning Ordinance	
Article V. Section 9. Use Regulations: A-Agricultural District See Appendix 31-1 for schedule of uses	This section is supplanted by Article VIII § 45.5(C) of the Town's Zoning Ordinance.
Article VI. Section 14. Regulations in Schedule A. The Town's dimensional regulations for the A-Agricultural District are included in Schedule A in Appendix 31-1.	This section is supplanted by Article VIII § 45.5(C)(2) of the Town's Zoning Ordinance.

Local Requirement	Project Compliance
Article VI. Section 15. Walls, Fences and Hedges. A. Location and Height 1. Fences shall be permitted anywhere on a residential lot or parcel of land, provided that the height thereof does not exceed four feet in a front yard or six feet in a side or rear yard, measured from ground level on the interior side of the fence to the uppermost part thereof.	This section is supplanted by Article VIII § 45.5(C)(i) Town's Zoning Ordinance. As noted below, the Project will comply with the fencing requirements applicable to solar facilities.
Article VI. Section 15. Walls, Fences and Hedges. A. Location and Height 3. Location of any and all private property lines shall be determined by a surveyor licensed to practice in the State of New York, at the expense of the property owner retaining such services.	This section is supplanted by Article VIII § 45.5(C)(i) of the Town's Zoning Ordinance. As noted below, the Project will comply with the fencing requirements applicable to solar facilities.
Article VI. Section 15. Walls, Fences and Hedges. B. Aesthetics: The more aesthetically attractive side of the fence shall face abutting properties. The side which is more aesthetically attractive shall be the side which is more pleasing in appearance because of finish, woodwork or for whatever other reason.	This section is supplanted by Article VIII § 45.5(C)(i) and of the Town's Zoning Ordinance. As noted below, the Project will comply with the fencing requirements applicable to solar facilities.
Article VI. Section 15. Walls, Fences and Hedges. C. Barbed-wire and Electrically Charged Fences 1. Permit required. No barbed-wire fences or electrically charged fences shall be permitted except by authorization and permit issued by the Town of Florida Building Department. Such permit shall not be issued except for the following: a. Fences situated in the business and industrial zoning districts may be topped with barbed wire, provided that the bottommost strand of barbed wire is at least six (6) feet above ground level.	The Applicant is requesting the Board not apply the restriction on barbed-wire fences. See justification at Section 31(e) above.

Local Requirement	Project Compliance
b. Electrically charged fences may be permitted on Agriculturally-zoned land for the purpose of providing an enclosure / barrier to contain the roaming of animals.	
Article VI. Section 15. Walls, Fences and Hedges. D. Yard Requirements: The yard requirements of this ordinance shall not prohibit any necessary retaining wall nor any fence, wall or hedge permitted by Town Ordinance, provided that in any residence, such fence, wall or hedge shall comply with the following provisions: 1. A fence, wall or hedge shall be no closer than two (2) feet from the front lot line, and shall provide necessary visibility on corner lots. 2. A fence, wall or hedge shall be no closer than two (2) feet from any side or rear yard property line, providing a strip of land on each side of the property line for abutting property owners to maintain their fence without trespassing on the lands of the abutting property owner.	This section is supplanted by Article VIII § 45.5(C)(i) of the Town's Zoning Ordinance. As noted below, the Project will comply with the fencing requirements applicable to solar facilities.
Article VIII. Section 34. Signs. Signs shall comply with the following regulations: 2. In A-Agricultural, C-1 Commercial, IBP – Industrial Business Park, and NP – Natural Products District, non-flashing, non-advertising signs are permitted as follows: a. A business sign or signs directing attention to the business or profession conducted, or a commodity, service or entertainment offered or sold on the premises shall be permitted. Such sign can be town sided with a maximum of thirty-two (32) square feet on each side. The size of the sign may increase if the road frontage, on which the sign is displayed, is over five hundred (500) feet. For each additional five hundred (500) feet of road frontage, the sign may increase twenty-five (25) square feet on each side with a maximum total of one hundred (100) square feet on each side.	The Project will comply with the substantive standards as identified in this Section.

Local Requirement	Project Compliance
No sign shall project into or over the public right-of-way. In case of a retail store or other group of related buildings, in addition to the general sign, each individual unit may display an identification sign affixed flat against the building. Said sign may be a maximum of ten (10) percent of the vertical square feet of the side of the building it is attached to. b. If illuminated, the source of light shall not be visible. c. Non-illuminated real estate signs, not over sixteen (16) square feet in aggregate area, advertising the sale, rental or lease of the premises on which they are located are permitted, but not in any required yard.	
Article VIII. Section 36. Vision Clearance at Intersections. No obstructions to vision, such as shrubbery, brush, trees, earth, or structure, shall be permitted at road intersections within the triangle formed by the intersections of road center lines and a line drawn between points along such lines 20 feet distance from their point of intersection.	The Project will comply with the substantive standards as identified in this Section.
Article VIII. Section 37. Landscaping Requirements. A. Where any permitted non-residential land use, multiple-family development or mobile home park abuts an existing residential parcel or vacant parcel where residential development could occur, a strip of land at least 20 feet wide shall be maintained as a landscaped area in the front, side and/or rear yard which adjoin these uses. B. Required landscaping shall be installed and maintained in a healthy growing condition and shall take the form of any of the following: shade trees, deciduous shrubs, evergreens, well-kept grassed areas or ground cover. In any case, all such landscaping shall be a minimum of four (4) feet in height.	The Project will comply with the substantive standards as identified in this Section.

Local Requirement	Project Compliance
Article VIII. Section 42. Exterior Lighting. In no case shall any exterior lighting be directed toward the highway so as to interfere with the vision or attract the attention of the driver of a motor vehicle, nor shall the light be directed toward any other lot or cause excessive illumination of adjacent lots.	The Project will comply with the substantive standards as identified in this Section.
Article VIII. Section 44. Public Utility Facility Personal Wireless Service Facility. Public utility substations and similar structures, shall comply with the following: A. Facility shall be surrounded by a fence set back from the property lines in conformance with district regulations for front, side and rear yards. B. Landscaped area at least 20 feet wide shall be maintained in front, side and rear yards. C. There shall be no equipment visible from surrounding property. D. Public Utility Services' line poles and attendant lines will be allowed, as necessary, in all districts.	The Project will comply with the substantive standards as identified in this Section.
Article VIII. Section 45.3. Wellhead Protection. A. Purpose: The Town realizes and understands the importance of preservation and protection of the natural resources that enable its residents, property owners, and visitors to occupy and comfortably enjoy their stay within the Town. It is therefore established that, in order to preserve and protect the water supply that lies beneath our soils, the Town does hereby adopt and will enforce the following Wellhead Protection Code. The Town will continue to encourage, adopt, promulgate, and enforce this code that enables the Town to protect its watershed areas by properly controlling uses in areas that have the potential to affect the quality of the water. B. Wellhead Protections Measures and Prohibited Activities 1. Livestock and manure stockpiles shall be kept no less than one-hundred (100) linear feet away from any potable water	The Project will comply with the substantive standards as identified in this Section.

Local Requirement	Project Compliance
wellhead, if the wellhead is uphill from the manure/livestock location. 2. Livestock and manure stockpiles shall be kept no less than two-hundred (200) linear feet away from any potable water wellhead, if the wellhead is downhill from the manure/livestock location. 3. If livestock are kept on a parcel that draws its water from an on-site wellhead, said wellhead shall be surrounded by a livestock-proof fence or barrier meeting the separation distances in 45.3(C)(1) & 45.3(C) (2) of this ordinance. The fence shall be in conformance with the requirements set forth in Section 15 of this code. 4. If an existing livestock barrier, fence or pen is located on the parcel, said enclosure shall meet the separation requirements listed in subparts 45.3(C)(1) & 45.3(C) (2) of this ordinance. The fence shall be in conformance with the requirements set forth in Section 15 of this code. 5. The storage of salt, chemicals, petroleum products, paint, pesticides, or other materials that could potentially endanger a potable water source shall not be stored within 100 feet of any wellhead. 6. Machinery shall not be stored or refueled within one-hundred (100) feet of any wellhead. 7. Wells abandoned, or no longer in use, shall be sealed according to the standards set by the State of New York Department of Health, in order to prevent potential contamination to waters within the aquifers.	
Article VIII. Section 45.5.C.1. Application Requirements Large-Scale Solar Energy Systems are permitted through the issuance of a special use permit within the C-1 Commercial, C-2 Commercial, Industrial Business Parks, and Natural Products Districts, subject to the	The Applicant is requesting the Board not apply the restriction on solar facilities in the A-Agricultural Zoning District. See justification at Section 31(e) above. The requirement to obtain a special use permit is procedural and supplanted by Article 10.

Local Requirement	Project Compliance
requirements set forth in this section, including site plan approval by the Planning Board.	
Article VIII. Section 45.5.C.1.a. Special Use Permit Application Requirements 10) Decommissioning Plan. To ensure the proper removal of Solar Energy Systems and Equipment, a Decommissioning Plan shall be submitted as part of the application. Compliance with this plan shall be made a condition of the issuance of a special use permit under this Section. The Decommissioning Plan must identify who will be responsible for the removal of the System after the Large-Scale Solar Energy System is no longer in use. The Decommissioning Plan shall demonstrate how the removal of all infrastructure and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to installation. The Plan shall also include an expected timeline for execution. A cost estimate detailing the projected cost of executing the Decommissioning Plan shall be prepared by a Professional Engineer or Contractor. Cost estimations shall take into account inflation. Removal of Solar Energy Systems must be completed in accordance with the Decommissioning Plan. The Town shall also require a decommissioning bond or other financial security in which to finance the cost of such removal and restoration if not removed by the party designated in the plan as the party responsible for removal of the System within the time specified for removal in the Decommissioning Plan.	The Project will comply with the substantive standards as identified in this Section subject to the Article 10 Certificate Conditions. Article 10 requires a decommissioning plan and posting of financial assurance to be held by and on behalf of the Town. Accordingly, compliance with the substantive requirements is achieved.
Article VIII. Section 45.5.C.2. Specific Standards for Large-Scale Solar Systems as a Special Use a) Height and Setback. The Solar Energy System shall have a maximum height of	The Applicant is requesting the Board not apply the setback requirements of this Section. The Project will comply with the remaining substantive requirements of this

Local Requirement	Project Compliance
twenty (20) feet from ground elevation and shall be setback at a minimum of five hundred (500) feet from all of the parcel's boundary lines and two hundred (200) feet from all wetlands, ponds and streams. Buildings and accessory structures other than Solar Energy Equipment, if any, shall adhere to the height and setback requirements of the underlying zoning district.	Section. See justification at Section 31(e) above.
Article VIII. Section 45.5.C.2. Specific Standards for Large-Scale Solar Systems as a Special Use b) Lot and System Size. Large-Scale Energy Systems shall only be located on lots with a minimum lot size of ten (10) acres. The size of the Solar Energy System shall be limited to a maximum of 5 MW of electrical energy generation per design at peak levels of operation or the land surface area covered by the Solar Energy System including internal access roads, Solar Panels and all System components and Solar Equipment, shall not encompass more than twenty-five (25) acres of the lot regardless of whether the System is contiguous or noncontiguous.	The Applicant is requesting the Board not apply the lot and system size requirements of this Section. See justification at Section 31(e) above.
Article VIII. Section 45.5.C.2. Specific Standards for Large-Scale Solar Systems as a Special Use c) Lot Coverage. For purposes of this section, the surface area covered by Solar Panels, Solar Equipment and all System components including internal access roads, shall be included in total lot coverage. If the area in which the Solar Energy System is to be placed is leased, then the terms "lots" and "entire lot size" shall mean the land area that is leased. A Large-Scale Solar Energy System shall not exceed the maximum lot coverage of the lot on which it is installed as follows:	The Applicant is requesting the Board not apply the lot coverage requirements of this Section. The Project will comply with the remaining substantive requirements of this Section. See justification at Section 31(e) above.

Local Requirement	Project Compliance
– For lots consisting of 10 to 15 acres, the maximum total lot coverage shall be 1/3 (33/3%) of the entire lot size. – For lots consisting of 15 to 25 acres, the maximum total lot coverage shall be 2/5 (40%) of the entire lot size. – For lots greater than 25 acres, the maximum total lot coverage shall be 1/2 (50%) of the entire lot size with a maximum system size as set forth in subsection b above.	
Article VIII. Section 45.5.C.2. Specific Standards for Large-Scale Solar Systems as a Special Use d) No part of a Large-Scale Solar Energy System shall be located above the elevation of 700 feet, along ridgelines, on hilltops, or on slopes greater than 12%.	The Applicant is requesting the Board not apply the elevation and slope requirements of this Section in selected locations of the Project Area/these select locations will have a 12% slope after being graded. See justification at Section 31(e) above.
Article VIII. Section 45.5.C.2. Specific Standards for Large-Scale Solar Systems as a Special Use e) All Solar Energy Systems shall be sited and screened in such a manner to have the least possible visual effect on neighboring properties, public roads and recreational areas, important scenic vistas and the general aesthetic environment. Screening by existing topography, trees and vegetation shall be incorporated to the maximum extent practicable and where not practicable screening must be installed such as vegetative berms or deer resistant evergreen plantings or a combination thereof.	The Project will comply with the substantive standards as identified in this Section subject to the Article 10 Certificate Conditions.
Article VIII. Section 45.5.C.2. Specific Standards for Large-Scale Solar Systems as a Special Use f) Significant clearing of mature tree growth and hedgerows should be avoided to the maximum extent possible. Installation of	The Applicant is requesting the Board not apply the clear cutting limit of this Section. See justification at Section 31(e) above. The Project will comply with the remaining substantive requirements of this

Local Requirement	Project Compliance
Large-Scale Solar Energy Systems on fields or land areas which do not require significant clearcutting is preferred. In no case shall the Solar Energy System require clearcutting of more than 9 acres. Once the land is cleared and the Solar Energy System is installed, the land disturbed must be reseeded or replanted with a combination of native plant species and native grass. Ground cover of gravel or other non-vegetative cover should only be used for access and internal roads to the maximum extent practicable.	Section subject to the Article 10 Certificate Conditions.
Article VIII. Section 45.5.C.2. Specific Standards for Large-Scale Solar Systems as a Special Use g) Installation of Large-Scale Solar Energy Systems on land areas which contain prime agricultural soils shall be avoided to the maximum extent possible. In no case shall the Solar Energy System cover more than 5 acres of prime agricultural soils.	The Applicant is requesting the Board not apply the 5 acres of prime agricultural soils limit of this Section. See justification at Section 31(e) above. The Project will comply with the remaining substantive requirements of this Section subject to the Article 10 Certificate Conditions.
Article VIII. Section 45.5.C.2. Specific Standards for Large-Scale Solar Systems as a Special Use h) The materials used for the Solar Energy System shall not be conducive to glare visible from beyond the lot's boundary lines. The Solar Energy System shall not generate noise or heat detectable from beyond the lot's boundary lines.	The Project will comply with the substantive standards as identified in this Section subject to the Article 10 Certificate Conditions.
Article VIII. Section 45.5.C.2. Specific Standards for Large-Scale Solar Systems as a Special Use i) All Large-Scale Solar Energy Systems shall be enclosed by fencing no less than 8 feet in height to prevent unauthorized access. Warning signs with the owner's contact information shall be placed on the entrance and perimeter of the fencing. The type of fencing shall be determined by the	The Project will comply with the substantive standards as identified in this Section subject to the Article 10 Certificate Conditions.

Local Requirement	Project Compliance
Town Board or Planning Board. The fencing may need to be setback from boundary lines and roads and further screened by any landscaping needed to avoid adverse aesthetic and safety impacts.	
Article VIII. Section 45.5.C.2. Specific Standards for Large-Scale Solar Systems as a Special Use j) Any associated structure shall be screened, placed underground, depressed, earth bermed or sited below the ridgeline to the greatest extent feasible, particularly in areas of high visibility, and the same shall be noted in the Site Plan. Where feasible, all utilities serving the site shall be underground.	The Project will comply with the substantive standards as identified in this Section subject to the Article 10 Certificate Conditions.
Article VIII. Section 45.5.C.2. Specific Standards for Large-Scale Solar Systems as a Special Use l) No artificial light is permitted, unless the same is required by a federal, state or local authority or regulation. Exterior lighting may be provided for associated accessory structures and access entrances as may be determined appropriate for security purposes only. If lighting is proposed a lighting plan shall be included with the Site Plan that is compliant with lighting standards set forth in the Zoning Ordinance.	The Project will comply with the substantive standards as identified in this Section.
Article VIII. Section 45.5.C.2. Specific Standards for Large-Scale Solar Systems as a Special Use m) Roadways within the site for solar access shall not be constructed of impervious materials and shall be designed to minimize the extent of roadways constructed and soil compaction, while providing sufficient ability, including but not limited to load bearing ability, to	The Project will comply with the substantive standards as identified in this Section.

Local Requirement	Project Compliance
accommodate fire and other emergency apparatus. The layout, location, and number of access roads will be subject to site plan review.	
Article VIII. Section 45.5.C.2. Specific Standards for Large-Scale Solar Systems as a Special Use n) Roadways must be properly maintained and kept free of debris and snow. Snow removal shall be within 24 hours of accumulation of a minimum of 6" of snow.	The Applicant is requesting the Board not apply the snow plowing requirements of this Section. The Project will comply with the remaining substantive requirements of this Section. See justification at Section 31(e) above.
Article VIII. Section 45.5.C.3. Additional Requirements a) The owner or operator shall maintain general liability insurance coverage on any solar energy system in the amounts of $1,000,000 for injuries and $500,000 for property damages, naming the Town of Florida as additional insured.	The Project will comply with the substantive standards as identified in this Section.
Article VIII. Section 45.5.C.3. Additional Requirements b) If in the course of the delivery, installation, maintenance, dismantling, removal or transport of the solar energy system or any components thereof the property of the Town of Florida, including but not limited to roadways, shoulders, drainage structures, signage, guide rails, etc., is damaged by the efforts of the applicant or any agents thereof, the applicant shall, within 30 days of the damage, completely replace or repair all damage to the satisfaction of the Town.	The Project will comply with the substantive standards as identified in this Section.
Article VIII. Section 45.5.C.3. Additional Requirements	The Project will comply with the substantive standards as identified in this Section.

Local Requirement	Project Compliance
c) Any damaged or unused components of the system shall be removed from the premises within 30 days and disposed of legally. All maintenance equipment and spare parts shall be kept in a designated storage area which is fenced and screened.	
Article VIII. Section 45.5.C.3. Additional Requirements g) No part of the Solar Energy System, including area of lot coverage, shall be used for the display of any advertising, decorative flags, streamers, or any other decorative items.	The Project will comply with the substantive standards as identified in this Section.
Article VIII. Section 45.5.C.3. Additional Requirements h) When any Solar Energy System is installed and before it becomes active, the owner of the site and/or the Solar Energy System must contact the Town's emergency responder departments to make arrangements for a meeting at the site to review the components of the array and to be educated on safety issues and procedures for emergency response. This shall include detailed discussion related to the location of labeled warnings, access to the site and information on emergency disconnection of the system	The Project will comply with the substantive standards as identified in this Section.
Article VIII. Section 45.5.C.3. Additional Requirements i) Native grasses and vegetation shall be maintained below the arrays and shall not include use of herbicides.	The Applicant is seeking a waiver of the herbicide prohibition in this Section. The Project will comply with the remaining substantive requirements of this Section. See justification at 31(e) above.
Article VIII. Section 45.5.C.3. Additional Requirements	The Applicant is seeking a waiver of the decommissioning schedule in this Section. The Project will comply with

Local Requirement	Project Compliance
j) Decommissioning: Large-Scale Solar Energy Systems are considered abandoned after 18 months without electrical energy generation and must be removed from the property. Applications for extensions may be submitted to and are reviewed by the Town Board for a period of additional 6-month periods not to exceed a total of 18 additional months. The owner of a solar energy system shall annually, by January 15, file a declaration with the Town of Florida certifying the continuing safe operation of said system installed subject to these regulations, as well as the status notification set forth in subsection f above. Failure to file a declaration shall mean that the system is no longer in use and shall be considered abandoned. At the time that a system owner plans to abandon or discontinue operation of a solar energy system, such owner must notify the Town, in writing, of the proposed date of abandonment, or discontinuance of operations. In the event that a system owner fails to give notice, the system shall be deemed abandoned upon such discontinuance of operations. In any event, a Solar Energy System shall also be considered abandoned when it has not been used for the purpose for which it was permitted, for a period of 18 months. Upon abandonment or discontinuance of use, the system owner or operator shall in addition to complying with the decommissioning plan, assure, if not part of the approved decommissioning plan, physical removal of the Solar Energy System, and all accessory structures and/or equipment within 90 days from the date of abandonment or discontinuance of use. "Physically remove" shall include, but shall not be limited to: (i) removal of panels, collectors, support units (including all underground wiring), mounts, equipment shelters and security barriers from the property; (ii) proper disposal of the waste material from the site in accordance with local and state solid waste disposal	the remaining substantive requirements of this Section subject to the Article 10 Certificate Conditions. See justification at 31(e) above.

Local Requirement	Project Compliance
regulations; and (iii) restoring the land area where the Solar Energy System was located to its natural condition, except that any landscaping and grading may remain in the "after" condition. If the owner of the system fails to properly remove said Solar Energy System and associated structures and equipment within 90 days from the date of abandonment, the Town may exercise its option to remove said system at its own discretion upon notification to the owner of the system and the property owner, at the expense of the owner or owners for which the surety, as described below, shall be used. The applicant must provide the Town with written authority from the owner or owners of record for the subject property where the Large-Scale Solar Energy System is located to bind successors and assigns to allow the Town to enter onto the subject property to physically remove the system in the event that the party identified as the party responsible for removal of the System fails to timely remove the system in accordance with the requirement of this Section and the special use permit. Prior to commencement of construction of the approved Solar Energy System, the applicant shall provide the Town with a bond or other acceptable security in an amount determined by the Town Board, but in no case less than 125% of the cost for the removal of the system and remediation of the landscape, in the event the Town must remove the facility. The terms of the bond or other security shall be clear as to who is responsible for removal of the System, the time in which removal must occur, and when or upon what circumstances the security is to be transferred to the Town.	

31(j) Zoning

The entire Project Area is located in the Agricultural Zoning District. Under Article VIII, Section 45.5 of the Town of Florida Zoning Ordinance, Large-Scale Solar Energy Systems are permitted only in the C-1 Commercial, C-2 Commercial, Industrial Business Parks, and Natural Products zoning districts of the Town of Florida. As such, Large-Scale Solar Energy Systems are not a permitted use in the Agricultural Zoning District. High River is requesting that the Board elect not to apply this prohibition, as explained in Section 31(e) above.

Parcel ID	Zoning District
72.-1-18	A-Agricultural District
72.-1-16.1	A-Agricultural District
88.-1-13	A-Agricultural District
88.-1-12	A-Agricultural District
73.-1-37	A-Agricultural District
73.-1-28.1	A-Agricultural District
73.-1-35	A-Agricultural District
88.-1-39	A-Agricultural District
73.-1-37	A-Agricultural District
73.-1-31.1	A-Agricultural District
89.-1-8.11	A-Agricultural District
89.-1-8.11	A-Agricultural District
73.-1-28.1	A-Agricultural District
88.-1-24.1	A-Agricultural District

31(k) Town of Florida Applicable Laws, Codes, and Regulations

On March 21, 2019 Local Law No. 1 of the year 2019 Town of Florida, County of Montgomery was filed with the Department of State. This local law amends the Town of Florida Zoning Ordinance by amending provisions relating to solar energy systems. A copy of the Town of Florida Zoning Ordinance is provided in Appendix 31-1.

References

Town of Florida, Montgomery County, New York Zoning Ordinance, May 23, 2016 (Updated July 17, 2019).