

Draft Town of Callicoon Renewable Energy Law
An Amendment to Chapter 203 (Zoning) 5 7 21

Draft Local Law 1 of 2021

Town of Callicoon Local Law Regulating Renewable Energy Generating Systems

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A LOCAL LAW establishing regulations for siting renewable energy generating systems within the Town of Callicoon.

BE IT ENACTED by the Town Board of the Town of Callicoon as follows:

SECTION I: INTRODUCTORY PROVISIONS

A. Title

This local law shall be known as “The Town of Callicoon Renewable Energy Systems Law.”

B. Authority

This Local Law is enacted pursuant to the authority and power granted by Articles 2 and 3 of the New York State Municipal Home Rule Law, Article 2 of the New York Statute of Local Governments, and Article 16 of the New York State Town Law and the powers pursuant to Section 263 of Town Law, of the State of New York, which authorizes the Town of Callicoon to adopt provisions that advance and protect the health, safety, and welfare of the community, and to make provision for, so far as conditions may permit, the accommodation of renewable generating systems.

C. Purpose and Intent

The Town of Callicoon has determined that comprehensive regulations regarding the development of renewable energy generating systems are necessary to protect the interests of the Town, its residents, and its businesses. This Local Law aims to accommodate renewable energy generating systems that are consistent with the Town of Callicoon Comprehensive Plan while balancing the potential impacts on neighbors and the environment and preserving the rights of property owners to install such energy generating systems.

SECTION 2. AMENDMENT TO TOWN OF CALLICOON ZONING LAW

This local law establishes a new Zoning Chapter 203, Article XI as follows:

Article XI Renewable energy generating systems.

§ 203-59 Purpose and Applicability

- A. Purpose. The purpose of this section is to allow for community, farm, business, and residential use of renewable energy generating systems in the Town of Callicoon, including geothermal, solar and wind energy generating systems as defined herein in a manner consistent with the Town of Callicoon Comprehensive Plan and the Town's environment. It is further intended to ensure proper placement of required infrastructure for such systems on building and lots, recognizing these facilities often involve specific design and location requirements. This section is additionally intended to provide standards for the development and operation of both small-scale and commercial renewable energy generating systems in the Town of Callicoon, subject to the following process and other reasonable conditions that will protect the public health, safety, and welfare. This section is intended to promote the effective and efficient use of renewable energy resources; to set provisions for the placement, design, construction, and operation of such systems in such a way as to uphold the public health, safety, and welfare; and to ensure that such systems will not have a significant adverse impact on the environment or on the aesthetic qualities and character of the Town.
- B. Applicability. The requirements of this section shall apply to all renewable energy generating systems proposed, operated, modified, or constructed after the effective date of this section. Modification of existing systems shall be allowed pursuant to 203-61 (c) of this Article but pre-existing solar installations that do not otherwise currently meet the standards of the Town of Callicoon Renewable Energy Systems Law shall be considered exempt from these regulations and shall be allowed to continue as a non-conforming pre-existing use.

§ 203-60 Definitions.

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

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM

A solar energy system that consists of integrating photovoltaic modules into the building materials such as vertical facades including glass and other material, semi-transparent skylight systems, roofing materials, siding, and shading over windows.

BUILDING-MOUNTED SOLAR COLLECTORS

An array of solar collectors mounted securely to racks attached to roof mounts of any building or structure for the purpose of producing electricity.

DECOMMISSIONING PLAN

Detailed steps to remove unused or inactive renewable energy generating systems, the elimination of all safety hazards, the remediation of the site, cost estimates to accomplish these requirements, and the provisions of financial security therefor.

FREESTANDING OR GROUND-MOUNTED SOLAR ENERGY SYSTEM

A Solar Energy System that is anchored to the ground via a pole or other mounting system, detached from any other structure, that generates electricity for onsite or offsite consumption.

GLARE

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

GEOHERMAL ENERGY SYSTEM

Equipment that transfers thermal energy to and/or from the ground for the purposes of heating and/or cooling a building. A geothermal energy system consists of a closed-loop system of pipes filled with liquid, a heat exchanger and heat pump.

NEW YORK INDEPENDENT SYSTEM OPERATOR (NYISO)

NYISO is a not-for-profit organization formed in 1998 as part of the restructuring of New York State's electric power industry. Its mission is to ensure the reliable, safe, and efficient operation of the state's major transmission system and to administer an open, competitive and nondiscriminatory wholesale market for electricity in New York State.

ON-SITE CONSUMPTION

Energy generated primarily for the purpose of providing power to the owners, lessees, tenants, residents, or other occupants of the parcel on which the renewable energy generating systems are erected.

PUBLIC ROAD

A road that is maintained by the Town, county, or state.

QUALIFIED SOLAR INSTALLER

A person listed as an eligible photovoltaic installer by the New York State Energy Research and Development Authority (NYSERDA) or who is listed as a certified solar installer by the

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North American Board of Certified Energy Practitioners (NABCEP).

RATED NAMEPLATE CAPACITY

The maximum rated output of electric power production of a photovoltaic system in watts of direct current (DC).

RENEWABLE ENERGY SYSTEM

An energy system which derives energy from resources that are regenerative. Renewable energy generating systems, as set forth in this Article, shall be geothermal energy generating systems, solar energy generating systems and wind energy generating systems.

SOLAR ACCESS AREA

Space open to the sun, mostly clear of overhangs or shade, that allows the use of solar energy generating systems on individual properties.

SOLAR ARRAY

A group of multiple solar panels or modules linked into a single unit or system.

SOLAR COLLECTOR

A photovoltaic cell, panel, array, or other device that converts solar radiation to electricity or transfers solar energy to air, water, or another storage media.

SOLAR EASEMENT

An easement recorded pursuant to New York Real Property Law § 335-b, the purpose of which is to secure the right to receive direct sunlight across neighboring property to operate a solar energy generating system.

SOLAR ENERGY SYSTEM

Equipment that directly collects, converts, stores, and then transfers or stores solar energy into usable forms of thermal or electrical energy. This term includes all solar panels, mountings, and related solar energy equipment. For the purposes of this Article, a solar energy system does not include any solar collection system of 100-square feet in size or less.

SOLAR ENERGY GENERATING SYSTEM

A combination of components that utilize solar radiation (direct, diffused, or reflected) to produce energy designed to provide heating, cooling, hot water and/or electricity, including solar photovoltaic systems and facilities and solar thermal systems and facilities. Facilities shall be classified as small-scale or commercial based on the following criteria:

- (1) **SMALL-SCALE SOLAR ENERGY GENERATING SYSTEM.** Solar energy systems with a rated nameplate capacity of up to 25 kilowatts (kW) or solar thermal systems which

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are for on-site consumption and serve the buildings on the property. However, this provision shall not be interpreted to prohibit the sale of excess electricity from time to time to a utility. A solar energy generating system designed to provide electricity to a farm operation as defined by New York State Agriculture and Markets Law 305-a and located in the New York State certified Agricultural District and that produces no more than 110% of the electrical needs of such farm operation shall also be considered a small-scale solar generating system.

- (2) **COMMERCIAL SOLAR ENERGY GENERATING SYSTEM.** Solar energy systems with a rated nameplate capacity of more than 25 kilowatts (kW) but less than 20 MW and intended to supply energy primarily into a utility grid for sale to the general public or to supply multiple users located off-site on which the energy system is located.
- (3) **UTILITY-SCALE SOLAR ENERGY GENERATING SYSTEM.** Solar energy systems with a rated nameplate capacity of 20 MW and larger and that are regulated and permitted by the State of New York.

SOLAR PHOTOVOLTAIC SYSTEMS

Systems that collect and convert solar radiation directly into electricity.

SOLAR STORAGE BATTERY

A device that stores energy generated from the sun and makes it available in an electrical form.

SOLAR THERMAL SYSTEMS

Systems that collect and convert solar radiation into forms of energy for water heating, space heating, or space cooling.

WIND ENERGY SYSTEM

Equipment used to produce electricity by converting the kinetic energy of wind to rotational, mechanical, and electrical energy. A wind energy system consists of the turbine apparatus (rotor, nacelle, and tower) and any other buildings, support structures, or other related improvements necessary for the generation of electric power.

- (1) **SMALL-SCALE WIND ENERGY GENERATING SYSTEM.** Wind energy generating systems with a rated capacity of up to 100 kW and that are intended to supply energy for on-site consumption and to serve the buildings on the property. However, this provision shall not be interpreted to prohibit the sale of excess electricity from time to time to a utility. A wind energy generating system designed to provide electricity to a farm operation as defined by New York State Agriculture and Markets Law 305-a and located in the New York State certified Agricultural District and that produces no more than 110% of the electrical needs of such farm operation shall also be considered a small-scale wind generating system.

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- (2) **COMMERCIAL WIND ENERGY GENERATING SYSTEM.** Wind energy generating systems with a rated capacity of more than 100 kW but less than 20 MW and that are intended to supply energy primarily into a utility grid for sale to the general public or to supply multiple users located off-site on which the energy system is located.
- (3) **UTILITY-SCALE WIND ENERGY GENERATING SYSTEM.** Wind energy generating systems with a rated nameplate capacity of 20 MW and larger and that are regulated and permitted by the State of New York.

§ 203-61 General Provisions.

A. Use classification.

- (1) All small-scale solar energy generating systems shall be considered accessory uses allowed in conjunction with any principal use permitted in any zoning district. Such accessory uses shall meet all standards as required in the zoning Law for accessory uses and this Article XI and shall require a building permit. Solar energy systems 100 square feet or less in size are exempt from this Article.
- (2) All small-scale wind energy generating systems shall be allowed in any zoning district only upon approval of a site plan pursuant to 203-27.
- (3) Small-scale energy generating systems designed to provide electricity to a farm operation as defined by New York State Agriculture and Markets Law 305-a and located in the New York State certified Agricultural District in Callicoon and that produces no more than 110% of the electrical needs of such farm operation shall be considered and allowed as an agricultural structure. Such systems, however, shall require a building permit.
- (4) Commercial solar and commercial wind energy generating systems shall be considered light manufacturing uses for purposes of this Article and shall be permitted only upon approval of a conditional use permit approved by the Planning Board and subject to the requirements, limitations and provisions as set forth in this section and in Section 203-27.
- (5) Utility-scale solar and wind energy generating systems shall be prohibited in all districts within the Town of Callicoon pursuant to 203-66 (c).
- (6) Geothermal energy systems shall be allowed in all districts with a building permit and shall meet all requirements of 203-62. Geothermal systems that have heat exchangers located in a lake or pond shall require site plan approval by the Planning Board. No geothermal heat exchanger shall be allowed in any stream.

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- B. Qualified installations. Except for exempt solar energy systems, no renewable energy generating system may be constructed installed, replaced, or modified except by a qualified solar or wind installer, or qualified geothermal installer. All regulated renewable energy generating systems must be inspected and approved by a qualified third-party electrical inspector approved by the Town of Callicoon and, if connected to the local electric utility transmission grid, approved by the appropriate utility.
- C. Replacement or modification. Replacement in-kind or modification of a small-scale renewable energy generating system may occur without Planning Board approval, provided there is no increase in total size, no change in the size or location of the energy generating equipment or siting of any structures, no additional lighting, or change in facility color, but the Code Enforcement Officer/Building Inspector must be notified. Any change to a commercial system shall be reviewed and approved of by the Town of Callicoon Planning Board.
- D. Compliance with Building Code. Any installation of a renewable energy generating system, regardless of size or energy generating capacity except for exempt solar energy systems, shall comply with all applicable provisions of the New York State Uniform Fire Prevention and Building Code and other associated codes.
- E. Setbacks.
 - (1) Small-scale solar ground-mounted energy generating systems are not permitted in any front, rear, or side yard setback, except for any underground component (such as wiring) of such systems, which may extend to within five feet of a property line. No small-scale solar energy generating system shall block the majority of sunlight from entering the window of any structure on an adjoining property.
 - (2) Small-scale wind energy generating systems shall be setback one and one-half times the height of the wind tower.
 - (3) Commercial solar energy generating systems shall have a minimum side and rear setback of 150 feet and shall have a minimum 150-foot front setback.
 - (4) Commercial wind energy generating systems shall have a minimum setback from any rear, side, or front yard equal to one and one-half times the height of the wind tower.
- F. Lot Size and Coverage. The minimum lot size allowed for any commercial solar or wind energy generating system shall be 20 acres. The maximum lot coverage for any commercial solar energy generating system including all panels, equipment, batteries, and other accessories and structures related to the energy generating system shall be 75 percent. No commercial solar farm shall be more than 40 acres.

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G. Public Service Agency Notification. The owner of a renewable energy generating system shall provide evidence that the applicable public service agency and utility has approved the owner's intent to install an interconnected customer-owned solar or wind energy generating system. Off-grid solar or wind energy generating systems shall be exempt from this requirement.

H. Limitations of approvals for any renewable energy generating systems.

- (1) Nothing in this section shall be deemed to give any applicant or system owner the right to have trees and vegetation cut down on any property over which the applicant or system owner does not have ownership or other legal control in order to increase direct sunlight or wind to their energy generating system.
- (2) Nothing in this section shall be deemed a guarantee against any future construction or improvements or Town approvals of future construction or improvements that may in any way impact the sunlight or wind flow to any renewable energy generating system.
- (3) It shall be the sole responsibility of the applicant or system owner to acquire any necessary solar or wind energy easements or rights in order to provide for and maintain appropriate solar or wind access areas.

I. Location.

- (1) Small-scale energy generating systems as accessory uses may be placed on a lot separate from the principal use they serve, provided such principal use is in the Town of Callicoon or an adjoining municipality and within 500' of the principal use.
- (2) The location of a renewable energy generating system shall be one demonstrably suitable and sized for such use, including, but not limited to, proper drainage and provisions for stormwater control such that the amount of water leaving the site after development shall not be greater than prior to development. There shall be no net increase in water discharge from any site containing a renewable energy generating system.
- (3) All renewable energy generating systems must demonstrate the ability to screen such use from surrounding properties through use of existing mature vegetation, new plantings and landscaping, appropriate fencing, earthen and landscaped berms, or any combination thereof to the maximum extent feasible. The Planning Board may require photosimulations in order to fully evaluate visual impacts and screening mitigation.
- (4) A solar energy generating system shall be located to avoid concentrated glare or reflection onto habitable structures. In addition, the solar system shall be designed

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and located to avoid concentrated glare or reflection onto adjacent roads and shall not interfere with traffic or create a safety hazard. The Planning Board may require a glare study and/or use of anti-reflective coatings.

J. Abandonment or decommissioning for a commercial renewable energy generating system.

- (1) If a renewable energy generating system ceases to perform its originally intended function for more than 12 consecutive months, the system shall be deemed abandoned and the owner or operator shall be required to remove the system per order of the Code Enforcement Officer/Building Inspector, including but not limited to any mounts and associated equipment. Removal shall occur no later than 150 days after being deemed abandoned. The process for deeming a renewable energy generating system abandoned shall follow all processes of this sub-section for decommissioning of a commercial renewable energy generating system.
- (2) Decommissioning commercial renewable energy generating systems shall be required to follow the approved decommissioning plan for such facility. All sites shall be restored to as natural and original condition as possible.
- (3) Inspection and report. When, in the opinion of the Code Enforcement Officer/Building Inspector, a renewable energy generating system shall be deemed abandoned or decommissioned, the enforcement officer shall inspect and report in writing to the Town Board his or her findings and recommendations regarding the abandonment or decommissioning.
- (4) Order; service of notice. The Town Board shall consider the report after it is submitted by the Code Enforcement Officer/Building Inspector. If the Board finds that there are grounds to believe that such renewable energy generating system has been abandoned or decommissioned, the Town Board, by resolution, shall order it to be removed and the site restored to as natural and original a condition as possible. The Town Board shall further order that a notice shall be served upon the owner of the property or the owner's executors, legal representatives, agents, lessees, or any other person having a vested or contingent interest in the premises, as shown by the records of the Receiver of Taxes and/or by the records of the Sullivan County Clerk's office, by registered mail, addressed to his or her last known address, and by securely posting a copy of such notice upon said premises. For commercial solar energy generating systems, the Town Board shall additionally order that a notice shall also be served upon the owner, operator, or successor in interest of the commercial solar energy generating system as listed on the filed decommissioning plan or addendum thereto, by registered mail to the address listed on the filed decommissioning plan or any addendum.

(a) Contents of notice. The notice shall contain the following statements:

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1. A description of the premises.
 2. A statement of the particulars to establish that the renewable energy generating system has ceased to perform its originally intended function for more than 12 consecutive months.
 3. An order requiring the same to be removed and the site to be restored to as natural and original a condition as possible. For commercial energy generating systems, the notice shall require that the owner/operator shall either restore operation equal to at least 80% of approved capacity or implement the approved decommissioning plan within 150 days of notice being served.
 4. Date and time of a hearing.
- (5) Hearing; decision.
- (a) At the time and date specified in the notice to remove and restore the site, the Town Board shall conduct the public hearing.
 - (b) At the conclusion of the hearing, the Town Board shall determine whether to revoke the order to remove and restore or direct the owner and other persons of interest to complete the work to make the system functional within a specified time. Such time shall be reasonable as to the time needed to perform the work.
- (6) Filing of notice.
- (a) A copy of the notice served in accordance with this Subsection shall be filed in the Sullivan County Clerk's office pursuant to Article 65 of the Civil Practice Law and Rules and shall have the same effect as a notice of pendency as therein provided.
 - (b) A notice so filed shall be effective for a period of one year from the date of filing; provided, however, that it may be vacated upon the order of a judge or justice of a court of record or upon the consent of the Attorney for the Town.
 - (c) The Sullivan County Clerk shall mark such notice and any record or docket thereof as canceled of record upon the presentation and filing of such consent or of a certified copy of such order.
- (7) Failure to comply with order. If the owner and/or operator fails to fully implement the decommissioning plan within the 150-day time period and restore the site as required, the Town may, at its own expense, provide for the restoration of the site in accordance with the decommissioning plan and may, in accordance with the law, recover all expenses incurred for such activities from the defaulted owner and/or operator. The cost incurred by the Town shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the same officer and in the same manner as other taxes.

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- (8) If construction of a commercial renewable energy generating system is not complete within twelve months of the commencement of such construction, the Town may notify the owner and/operator to complete construction and installation of the facility within 150 days. If the owner and/or operator fails to perform, the Town may notify the owner and/or operator to remove the structures and to implement the decommissioning plan. The decommissioning plan must be completed within 150 days of notification by the Town. An owner/operator may seek a one-time six-month extension of time to complete construction from the Planning Board for commercial renewable energy systems or from the Code Enforcement Officer/Building Inspector for small-scale renewable solar energy systems.
- (9) New York State Real Property Tax Law exemption. The Town exercises its right to opt out of the tax exemption provisions of § 487 of the Real Property Tax Law of New York State pursuant to Local Law 2 of 2017.

§ 203-62 Geothermal energy system standards.

A. The following shall apply to all geothermal energy generating systems:

- (1) Location. Ground source geothermal energy generating systems shall be located entirely within the subject property or within appropriate easements secured for this particular purpose. No part of any such system shall be located within public rights-of-way.
- (2) Water well protection zones. Geothermal energy generating systems within designated water well protection zones shall comply with all State of New York and Town of Callicoon requirements pertaining to protection of public water supply systems and be subject to site plan review by the Town of Callicoon Planning Board. Vertical or deep-bore geothermal systems are not permitted within these zones.
- (3) Open-loop geothermal systems that include one or more supply wells and one or more diffusion, recharge, return or injection wells shall comply with all New York State Department of Environmental Conservation standards and be subject to site plan review by the Town of Callicoon Planning Board. Water removed from an aquifer must be returned to that same aquifer and within 50 feet vertically, in either direction, of the withdrawal point.
- (4) For geothermal wells drilled deeper than 500 feet below the earth's surface, all regulations of NYS ECL Article 23-0304 (14) shall be met and a site plan approval by the Planning Board required. For geothermal wells up to 500' deep, all requirements of the NYS DEC Division of Water must be met.

§ 203-63 Small-scale solar energy generating systems.

A. The following requirement shall be met:

(1) General application.

- (a) Small-scale building-mounted and ground-mounted solar energy generating systems are permitted in all zoning districts as an accessory use pursuant to 203-9 (B) and 203-61, provided such systems comply with the requirements of this section.
- (b) A small-scale solar energy generating system shall provide electricity and/or hot water for the principal use and/or accessory use of a lot of record upon which the solar energy system is located. However, this provision shall not be interpreted to prohibit the sale of excess electricity from time to time to a utility.
- (c) There is no minimum lot size required for small-scale solar energy generating systems.

(2) Small-scale building-mounted solar energy generating systems.

- (a) Small-scale building-mounted solar energy generating systems shall include systems mounted on the top of a structure either as a flush-mounted system or as panels fixed to frames which can be mounted at an optimal angle towards the sun.
- (b) Such systems may be mounted flat or peaked roofs on a principal and/or accessory structure and shall not be more than two feet higher than the highest point of the roof to which they are mounted.
- (c) In order to ensure firefighter and other first responder safety, and in accordance with the New York State Uniform Fire Prevention and Building Code, there shall be a minimum perimeter area around the edge of the roof and structurally supported pathways to provide space on the roof for walking around all rooftop and building-mounted solar collectors.

[1] Additionally, installations shall provide for adequate access and spacing to:

- [a] Ensure access to the roof;
- [b] Provide pathway to specific areas of the roof;
- [c] Provide for smoke ventilation opportunity areas; and
- [d] Provide emergency egress from the roof.

[2] Exceptions to these requirements may be requested where access, pathway or ventilation requirements are reduced due to:

- [a] Alternative access opportunities (such as from adjoining roofs);
- [b] Ground-level access to the roof area in question;
- [c] Adequate ventilation opportunities afforded by the panel set back from other rooftop equipment;
- [d] New technology, methods, or other innovations that ensure adequate emergency responder access, pathways, and ventilation opportunities.

[3] In the event any of the standards in this Subsection A(2)(c) are more stringent than the New York Uniform Fire Prevention and Building Code, they shall be

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deemed to be installation guidelines only and the standards of the state code shall apply.

- (d) Prior to obtaining a building permit from the Code Enforcement Officer/Building Inspector, applicants shall submit a report prepared and sealed by a registered design professional that documents the suitability of the proposed system, including the ability of the structure being mounted upon to support the additional imposed loads.
 - (e) Small-scale building-mounted solar energy generating systems may be placed on existing structures deemed to be legal non-conforming structures deemed to be such due to size, building location or lot configuration.
- (3) Small-scale ground-mounted solar energy generating systems.
- (a) Small-scale ground-mounted solar energy generating systems have solar panels that are freestanding and mounted directly to the ground.
 - (b) The height of such systems shall not exceed 15 feet when oriented at maximum tilt unless a variance is obtained from the Zoning Board of Appeals.
 - (c) Except for underground components of the system such as wiring, such systems and related mechanical equipment shall not be in any front, side, or rear yard setback (see setback requirements that may differ for each zoning district) and shall also conform to the rear and side yard requirements of the applicable zoning district.
 - (d) The total surface area of such a system, regardless of the mounted angle, shall be considered impervious and calculated in the building coverage of the lot of record on which the system is located.
 - (e) All plumbing and/or power transmission lines from a ground-mounted solar energy generating system shall be located underground.
 - (f) Ground-mounted or freestanding solar energy generating systems shall not be in the following areas:
 - Floodways as shown on the Town of Callicoon FIRM Floodplain Map;
 - Wetlands as identified and regulated by the NYS DEC;
 - Wetlands as identified and regulated by the United States Army Corps of Engineers; or
 - Slopes greater than 20%.

§ 203-64 Wind energy system standards.

A. Permitting

- (1) All small-scale wind energy generating systems shall be subject to site plan review and approval by the Town Planning Board prior to construction pursuant to 203-61 (A).

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- (2) All commercial wind energy generating systems shall be subject to both site plan review and conditional use permit approvals by the Town Planning Board and are allowed only in the RU and CD districts.
 - (3) Utility-scale wind energy generating systems are prohibited pursuant to 203-66.
- B. The following standards shall apply to small and commercial wind energy systems.
- (1) Setbacks. Small-scale wind energy generating systems shall have a minimum setback from any front, rear, or side yard equal to one and one-half times the height of the wind tower. Commercial wind energy generating systems shall have a minimum setback from any rear, side, or front yard equal to one and one-half times the height of the wind tower.
 - (2) Lot Size and Coverage. For small-scale wind energy generating systems, the lot size shall be one that can accommodate the one and half times the height of the wind system setback on all front, side, and rear sides. The minimum lot size allowed for any commercial wind energy system shall be 20 acres. The maximum lot coverage for any commercial wind energy system including for all towers and other accessories related to the energy system shall be 75 percent. No wind generating facility shall be a maximum size of 40 acres.
 - (3) Height. No part of any small-scale wind energy system, accessory or otherwise, including the rotor blades while in operation, shall exceed 145 feet above ground level. No part of any commercial wind energy system, accessory or otherwise, including the rotor blades while in operation, shall exceed 200 feet above ground level.
 - (4) Clearance of blades. No part of a wind energy system shall extend within 30 feet of the ground. No blades shall extend over parking areas, driveways, or sidewalks.
 - (5) Transmission lines. Power transmission lines from the tower to any building or other structure shall, to the maximum extent practicable, be located underground.
 - (6) Communications equipment. No television, radio or other communications antennas may be affixed or otherwise made part of any wind turbine only upon site plan approval by the Town of Callicoon Planning Board. The Planning Board shall ensure such equipment will not interfere with existing communications equipment or overwhelm the primary purpose of generating renewable energy.
 - (7) Visual impacts. No advertising signs are allowed on any part of any wind energy facility, including fencing and support structures. Other measures to reduce the visual impact of wind turbines shall also be employed to the maximum extent

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practicable. Monopole towers shall be used wherever practicable. All structures in a project shall be finished in a single, nonreflective matte-finished color or a camouflage scheme. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.

- (8) Commercial wind energy generation systems development standards. Commercial wind energy generating systems shall be subject to the following standards and procedures:
- (a) All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.
 - (b) No tower shall be lit, except to comply with Federal Aviation Administration (FAA) requirements. Minimum security lighting for ground-level facilities shall be allowed as approved on the wind energy facility development plan.
 - (c) Commercial wind turbines shall use tubular towers. All structures in a project shall be finished in a single, nonreflective matte-finished color or a camouflage scheme. Wind turbines within a multiple-wind-turbine project shall be generally uniform in size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
 - (d) Guy wires shall not be permitted except to address unique safety issues, and then only with specific permission by the Planning Board in the form of a waiver.
 - (e) No wind turbine shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other communications systems would produce electromagnetic interference with signal transmission or reception. If it is determined a wind turbine is causing electromagnetic interference, the operator shall take necessary corrective action to eliminate this interference, including relocation or removal of the facilities or resolution of issues with the affected parties. Failure to remedy electromagnetic interference is grounds for revocation of the wind energy facility permit for the specific wind turbine or wind turbines causing the interference.
 - (f) All construction debris shall be removed from the site or otherwise disposed of in a manner acceptable to the Planning Board.
 - (g) Wind turbines shall be designed to minimize the impacts of land clearing and the loss of important open spaces. Development on agricultural lands shall follow the Guidelines for Agricultural Mitigation for Windpower Projects, published by the State Department of Agriculture and Markets, to the maximum extent practicable.
 - (h) Wind turbines shall be located in a manner that minimizes significant negative impacts on animal species in the vicinity. To minimize collisions with wildlife, the lighting system for the site shall be designed in accordance with latest United States Fish and Wildlife Service guidelines.

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- (i) No shadow flicker shall be permitted on any off-site residences.
- (j) All wind turbines shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.
- (k) Wind energy facilities or portions thereof may be required to be gated or fenced to prevent unrestricted public access to the facilities and reduce any attractive nuisance aspects of the use.
- (l) Warning signs shall be posted at the entrances to the wind energy facility when gated or fenced, and at base of each tower warning of electrical shock or high voltage and containing emergency contact information.
- (m) No climbing pegs or tower ladders shall be located closer than 15 feet to the ground level at the base of the structure for freestanding single pole or guyed towers.
- (n) The minimum distance between the ground and any part of the rotor or blade system shall be 30 feet.
- (o) Wind turbine facilities shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are always kept securely locked.
- (p) The Planning Board may require construction and delivery vehicles for wind turbines and/or associated facilities to have designated traffic routes to minimize traffic impacts from construction and delivery vehicles, wear and tear on local roads, or impacts on local business operations.
- (q) The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a wind turbine. The applicant may be subject to the Town of Callicoon Road Use and Preservation Law (Local Law 2 of 2012). A public improvement bond may be required 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 Town roads if any of these roads will be among the designated traffic routes. The applicant shall consult with the Town Highway Superintendent to obtain a written recommendation for bonding form and amount, which form, and amount shall be approved by the Planning Board.
- (r) As per the Town of Callicoon Road Use and Preservation Law (Local Law 2 of 2012), the applicant shall provide predevelopment and post-development photographic evidence of the condition of any Town roads along the proposed route.
- (s) Each wind turbine shall be set back a distance of 500 feet or 1 1/2 times the total height of the largest wind turbine, whichever shall be greater, from any public road, off-site residence, lodging facility, public building, church, and other institution. No wind turbine shall be located within its own total height of a site boundary line.
- (t) Noise. All turbines shall be designed and sited to minimize noise including mechanical sounds generated. All commercial wind turbines shall comply with

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the International Electrotechnical Commission IEC 61400-11 Standard: Wind turbine generator systems – Part 11: Acoustic noise measurement techniques [IEC, 2002]. Noise from a wind energy system shall be limited no more than 10 dB(A) over the ambient baseline sound level. The ambient baseline is defined as the sound level that is exceeded 90% of the time, the L90 level. “Pure tones” generated by the turbine, defined as an octave band, may be no greater than 3 dB(A) over the two adjacent octave bands. All noise readings shall be measured at the property line or at any inhabited buildings located within the property. The Planning Board may require a noise study to verify that the maximum level is not being exceeded. All ambient noise-level measurements shall be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation.

- [1] If proposed wind project sites include more than one parcel, the noise requirement shall apply to the combined properties.
 - [2] Independent verification by an acoustical engineer certified with the Institute of Noise Control Engineering shall be provided before and after construction to demonstrate compliance with this requirement.
 - [3] The applicant shall fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as biannually, or more frequently upon request of the Planning Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the wind energy facility permit and this Article and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Planning Board to cure any deficiency. An extension of the ninety-day period may be considered by the Planning Board, but the total period may not exceed 180 days.
- (u) If any wind turbine remains nonfunctional or inoperative for a continuous period of 12 months, the applicant shall remove the system at its own expense following the requirements of the decommissioning plan pursuant to 203-61 (J). The Planning Board shall require the posting of a removal bond to be held in escrow to provide for the decommissioning of the commercial wind energy system.
 - (v) A wind turbine shall always be maintained in operational condition, subject to reasonable maintenance and repair outages. "Operational condition" includes meeting all noise requirements and other permit conditions. Should a wind turbine become inoperable or should any part of the wind turbine be damaged, or should a wind turbine violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Planning Board. An extension of the ninety-day period may be considered by the Planning Board, but the total period may not exceed 180 days. Should a

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wind turbine not be repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence or a plan to come into compliance, order either remedial action within a particular time frame or order revocation of the wind energy facility permit for the wind turbine and require its removal within 90 days. If the wind turbine is not removed, the Planning Board shall have the right to use the security posted as part of the decommission plan to remove the wind turbine.

- (w) Proof of insurance. The applicant and owners of the property shall file proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with construction and operation thereof as determined by the Planning Board.

§ 203-65 Commercial solar energy systems.

A. General application.

- (1) Commercial solar energy generating systems are only permitted in the CD (Conservation) and RU (Rural) zoning districts and shall require both site plan review and conditional use permit approval by the Planning Board pursuant to § 203-27. Review by the Planning Board shall include, but not be limited to:
- (a) Consideration of the requirements of this section;
 - (b) The visual effect of the proposed commercial solar energy generating system;
 - (c) Protection of the environmental, scenic values, rural character, visual qualities of Callicoon's landscape; and
 - (d) Impact on continuing agriculture within the New York State certified Agricultural District.
- (2) Site plan requirements. Commercial solar energy generating systems require a site plan and drawings of the solar energy generating system signed by a licensed professional engineer. Site plans should include those items generally required for site plans and conditional use plans as detailed in § 203-27 as well as the following:
- (a) A description of the solar energy generating system or solar power plant and the technical, economic, and other reasons for the proposed location and design.
 - (b) One- or three-line electrical diagram detailing the solar system layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over-current devices.
 - (c) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and all proposed screening vegetation or structures. This shall include a landscape plan showing all existing natural land features, trees, forest cover and all proposed changes to these features.
 - (d) Photographs of the property demonstrating its current condition.
 - (e) Confirmation that the solar energy generating system or solar power plant complies

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with all applicable federal and state standards.

- (f) Documentation of the major system components to be used, including the photovoltaic panels, mounting system batteries and inverter, and any battery storage facilities that may be associated with the facility.
- (g) An operation and maintenance plan which shall include measures for maintaining safe access to the installation, stormwater controls, and general procedures for operational maintenance of the installation. Such plan shall also include property upkeep such as mowing and trimming, fence maintenance and proposed use of herbicides or pesticides.
- (h) Information on noise (inverter) and reflectivity/glare of solar panels and identifying potential impacts to nearby properties. The Planning Board may require a glare analysis.
- (i) Location of the nearest residential structure(s) on the site and located off the site, and the distance from the nearest proposed solar energy generating system equipment.
- (j) Erosion and sediment control and a full stormwater pollution prevention plan prepared to New York State Department of Environmental Conservation standards and to such standards as may be established by the Planning Board. A commercial solar energy facility shall be considered an impervious surface and a stormwater pollution prevention plan shall be prepared to ensure that the facility is designed so that there is no net increase in water discharge from the site. The total surface area of such a system, regardless of the mounted angle, shall be considered impervious, calculated in the lot coverage calculation, and considered in the stormwater pollution prevention plan.
- (k) A construction schedule describing commencement and completion dates, including a traffic analysis with a description of the routes to be used by construction and delivery vehicles. The applicant may be subject to the Town of Callicoon Road Use and Preservation Law (Local Law 2 of 2012).
- (l) List of property owners, with their mailing addresses, within 500 feet of the outer boundaries of the proposed site.
- (m) A full environmental assessment form, pursuant to 6NYCRR Part 617 (the New York State Environmental Quality Review Act). This full environmental assessment shall, at a minimum contain a visual impact study that includes photosimulations of the site from all key locations that can view the site, a study of light reflection, a fire protection and emergency response plan, and evidence of potential impacts on neighboring property values compiled by a licensed appraiser based on experience at other locations, extrapolating that evidence to analyze potential impacts on property values near the site. The Planning Board may require an applicant to submit a viewshed analysis to identify key locations for development of photosimulations.
- (n) Identification of wildlife species that may use the parcel including potential wildlife travel corridors, or critical habitats.
- (o) Proof of insurance. The applicant and owners of the property shall file proof of

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insurance in a sufficient dollar amount to cover potential personal and property damage associated with construction and operation thereof as determined by the Planning Board.

- (p) Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the system. Such information of the final system installer shall be submitted prior to the issuance of a building permit.
 - (q) Decommissioning Plan as per subsection 5, below and 203-61 (J). The Planning Board shall require the posting of a removal bond to be held in escrow to provide for the decommissioning of the commercial solar energy system.
- (3) Minimum design standards. Commercial solar energy generating systems shall conform to the following standards, which shall be regarded as minimum requirements:
- (a) The minimum lot size for a commercial solar energy system shall be 20 acres. The maximum allowable lot coverage for a commercial solar energy system, including all accessory structures that may be associated with it shall be 75 percent. No commercial solar energy system shall be more than 40 acres.
 - (b) All ground-mounted panels shall not exceed 15 feet in height.
 - (c) All panels, mechanical equipment, including any structure for batteries or storage cells, shall be completely fenced. The fence shall be a maximum of eight feet in height. The height of the fence may be adjusted by the Planning Board considering visual impact upon neighboring properties. The type, material and color of perimeter fencing shall be subject to approval by the Planning Board. The fence may be required to be further screened by landscaping to avoid adverse aesthetic impacts. The Planning Board may also require fencing to be designed that allows for small animal passage.
 - [1] The perimeter fencing shall be set back so that there is a clear and unobstructed buffer area at least 25 feet in width encircling the entire perimeter of the facility, with a grade suitable for the safe passage of fire trucks and other emergency vehicles.
 - (d) The maintenance of existing vegetation or installation of a vegetated perimeter buffer shall be required to provide year-round screening of the system from adjacent properties and public roads. The system shall be screened using architectural features, earth berms, landscaping, or other screening which will harmonize with the character of the property and surrounding area. Screening must be approved by the Planning Board.
 - (e) All solar energy production systems shall be designed and located to prevent reflective glare toward any habitable buildings, as well as streets and rights-of-way. All structures and devices used to support the solar system shall be non-reflective and/or painted subtle or earth-toned colors to aid in blending the facility into the existing environment.
 - (f) All power transmission lines from shall be located underground.
 - (g) The installation of a clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.

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- (h) All solar energy system components shall have a minimum 150' setback from public roads and property lines.
 - (j) Lighting of commercial solar energy generating systems shall be consistent with state and federal law. Lighting of appurtenant structures shall be limited to that required for safety and operational purposes and shall be reasonably shielded from abutting properties. Lighting of the solar system shall be directed downward and shall incorporate full cutoff fixtures to reduce light pollution.
 - (k) "No Trespassing" signs and any signs required to warn of danger are required. A sign that identifies the owner and operator with an emergency telephone number where the owner and operator can be reached on a twenty-four-hour basis is also required. All other signage must be approved by the Planning Board. As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on site.
 - (l) Solar storage battery facilities used for generating electricity for on-site consumption shall be permitted. Solar storage batteries used to store electricity for later discharge into the grid system shall be included on all site plans and shall meet all requirements of this section and Section 203-27 and may be subject to the Town's Bulk Energy Storage Law as may be adopted.
- (4) Additional conditions.
- (a) The commercial solar energy generating system or solar power plant owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire department. Upon request, the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar plant shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
 - (b) A commercial solar energy generating system or solar power plant owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local fire department and emergency medical services.
 - (c) Equipment and parts maintenance. Any damaged or unused equipment and parts shall be removed from the premises within 30 days or kept in a secured, designated storage area. Maintenance equipment, spare parts and petroleum products shall be kept in a secured, designated storage area.
 - (d) The Planning Board may require a commercial solar energy generating system located within two miles of any other existing or proposed commercial energy generating system to be reviewed with the additional consideration of the cumulative impacts.
- (5) Decommissioning Plan. All applications for a commercial solar energy generating system shall be accompanied by a decommissioning plan to be implemented upon

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abandonment and/or in conjunction with removal of the facility. Such Plan shall include the following as well as all requirements and procedures pursuant to 203-61 (J). Prior to removal of the system, a permit for removal activities shall be obtained from the Code Enforcement Officer/Building Inspector.

- (a) The plan shall include details on how the applicant plans to address the following requirements:
- [1] The owner, operator, or his successors in interest shall remove any ground-mounted solar collectors that have reached the end of their useful life or have been abandoned. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Town Code Enforcement Officer/Building Inspector by certified mail of the proposed date of discontinued operations and plans for removal.
 - [2] Physical removal of all ground-mounted solar collectors, structures, equipment, security barriers and transmission lines from the site.
 - [3] Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
 - [4] Stabilization or revegetation of the site as necessary to minimize erosion.
 - [5] The site shall be restored to as natural a condition as possible within six months of the removal of all equipment, structures, and foundations. Such restoration shall include, where appropriate, restoration of the surface grade and soil after removal of all equipment and revegetation of restored soil areas with native seed mixes.
 - [6] Any access roads created for building or maintaining the system shall also be removed and replanted with vegetation. The site terrain shall be restored and regraded, if necessary, to a condition generally comparable to its original condition and replanted with native vegetation.
- (b) The decommissioning plan shall include:
- [1] An estimate of the anticipated operational life of the system.
 - [2] Identification of the party responsible for decommissioning.
 - [3] Description of any agreement with the landowner regarding decommissioning.
 - [4] Schedule showing the time frame over which decommissioning will occur and for completion of site restoration work.
 - [5] A cost estimate prepared by a qualified professional engineer, estimating the full cost of decommissioning and removal of the solar PV system. The cost estimates shall account for inflation.
 - [6] A financial plan to ensure that financial resources will be available to fully decommission the site.
 - [7] The Planning Board shall, as a condition of approval, require the posting of a removal bond in an amount adequate to provide for the removal of the commercial solar energy system's structures and equipment and for

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restoration of the site.

- (c) Absent notice of a proposed date of decommissioning and written notice of extenuating circumstances, the commercial solar system shall be considered abandoned if a solar energy generating system ceases to perform its originally intended function for more than 12 consecutive months. If the owner or operator of the solar system fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town may enter the property and physically remove the installation at the expense of the property owner or against any financial surety assigned to the Town.
 - (d) Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSEERDA, New York Independent System Operator, or by lack of income generation. The applicant shall make available suitable evidence as required by the Code Enforcement Officer/Building Inspector.
 - (e) Upon abandonment or decommissioning the owner/operator must fully comply with the filed decommissioning plan.
- (6) Estimate and financial surety. A valid surety assigned to the Town of Callicoon will be required for all commercial solar energy generating systems.:
- (a) As part of its application, the applicant shall provide an estimate, prepared by a qualified engineer, setting forth the costs associated with decommissioning the commercial solar energy generating system at issue.
 - (b) In the event the Planning Board grants a conditional use permit pursuant to this section, the Planning Board, with advice from the Planning Board engineer, must also establish a recommended amount of surety to be furnished by the applicant prior to the issuance of a building permit.
 - [1] The amount of the surety must be sufficient to pay for the costs and expenses of removal of the solar energy system and related equipment and structures and the restoration of the site. The surety amount is subject to approval by the Planning Board's professional engineer and the Planning Board.
 - [2] Upon receipt of monies, the Town Supervisor shall cause the monies to be placed in a separate non-interest-bearing account in the name of the Town and shall keep a separate record of all such monies so deposited in the name of the applicant for whom such monies were deposited.
 - [3] The amount of the surety must be approved by the Town Board prior to the issuance of a building and/or conditional use permit. The surety shall remain in full force and effect until all solar energy system equipment, structures and materials have been properly removed and the site restoration is complete. After Town approval and issuance of a building permit, the surety amount shall be reviewed once every five years to ensure that such amount is sufficient to cover the expenses of removal of the solar energy system and related structures.

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[4] If the amount of the surety does not fully cover such fees, costs, and expenses ("costs") or if the Town cannot recover adequate proceeds of the surety, then the owner and operator of the solar energy system and the property owner shall be jointly and severally, and corporately and personally, liable for the costs not recovered. In addition, the Town may assess such costs against the property, which assessment shall constitute a lien on the property, and which amount may be collected in the same manner as real property taxes.

(7) Issuance of conditional use permit.

- (a) The Planning Board shall, within 62 days of determining the application is complete, and upon consideration of the standards in this section and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated. This time may be extended with consent of the applicant.
- (b) If approved, the Code Enforcement Officer/Building Inspector will issue a building permit upon satisfaction of all conditions for said permit, and upon compliance with the New York State Building Code.
- (c) The decision of the Planning Board shall be filed within 15 days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.
- (d) If any approved solar energy generating system is not substantially commenced within 12 months of issuance of the conditional use permit, the permit shall expire, unless the Planning Board shall have granted an extension.

H. The Town of Callicoon shall require any applicant to pay all associated costs for any application review, including but not limited to, engineering, legal, environmental, planning and the review required under this Article or under SEQRA. When the Planning Board determines that a review is anticipated to require engineering, legal, environmental, or planning costs, they shall provide an estimate to the applicant. Subsequently, funds adequate to cover such estimated costs shall be placed into escrow by the applicant prior to commencement of any further Planning Board review and shall be replenished or increased at the direction of the Planning Board.

§ 203-66 Utility-scale solar and wind energy

A. The Town of Callicoon finds that certain areas of the Town have environmental sensitivities that need to be protected from intensive development, and that if developed with utility-scale wind or solar energy, would result in significant adverse environmental impacts. These natural features and resources include:

- (1) Flood Hazard Areas as identified in the Town of Callicoon Flood Insurance Rating Maps (FIRM).

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- (2) Prime farmland soils as identified in the Town of Callicoon Agricultural and Farmland Protection Plan.
 - (3) Steep slopes in excess of 25% as identified in the Town of Callicoon Comprehensive Plan, and Agricultural and Farmland Protection Plan.
 - (4) NYS DEC regulated streams as identified and described in the Town of Callicoon Comprehensive Plan and as mapped and regulated by the New York State Department of Environmental Conservation. Regulated streams classified as B, B(ts), C(t) and C(ts) can be found throughout the Town. In addition to the regulations of New York State related to these streams, the Town of Callicoon has identified these areas as important environmental resources and sensitive to development in the Comprehensive Plan.
 - (5) Federal and NYS regulated wetlands as identified and described in the Town of Callicoon Comprehensive Plan and as mapped and regulated by the US Army Corps of Engineers and the New York State Department of Environmental Conservation. Similar to NYS policies and regulations designed to protect these sensitive areas, the Town of Callicoon Comprehensive Plan also recognizes these natural resources and has included them as environmentally sensitive locations.
 - (6) Priority farms in the Town of Callicoon have been identified as priority farmlands in both the town-level Agricultural and Farmland Protection Plan, and in the Sullivan County Agricultural and Farmland Protection Plan.
- B. The Town of Callicoon has a long history of planning that establishes the role and importance of the above stated environmental resources as being important to the general health, safety, and welfare of the Town residents. These plans are:
- (1) Town of Callicoon 2009 Agricultural and Farmland Protection Plan. This municipally adopted plan, approved by the New York State Department of Agriculture and Markets, meets the statutory requirements of Section 324-a of Article 25-aa of the New York State Agriculture and Markets Law. This Plan was funded and formally approved of by the New York State Department of Agriculture and Markets as part of their farmland protection program. It identified trends and issues facing agriculture and developed specific strategies to help the Town reach their agricultural vision and goals. This plan also developed a priority ranking system identifying locations that are critical to continuing agriculture in Callicoon. This Plan maps both prime farmland soils and priority farmlands to be preserved.
 - (a) Prime farmland soils are recognized 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. New York State AML 25-aa establishes that "It is the declared policy of the state to conserve, protect and encourage the development

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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 Callicoon’s Agricultural and Farmland Protection Plan was established to be consistent with those goals. To be consistent with the Town’s adopted agricultural and farmland protection plan, Callicoon considers prime farmland soils to be a critical environmental resource and not appropriate for conversion to other uses.

- (2) Town of Callicoon 2009 Build Out Analysis. As part of the State-funded and sanctioned agricultural and farmland protection plan, this planning analysis identified environmental sensitivities that are barriers to development including regulated streams, 100-year flood hazards, a 100’ water and stream buffers, regulated wetlands and their buffers, and steep slopes > 25%. The build-out analysis was included in the adopted agricultural and farmland protection plan and the subsequent Town Comprehensive Plan.
- (3) Town of Callicoon 2013 Comprehensive Plan. This plan was developed and adopted by the Town pursuant to New York State Town Law 272-a and establishes the long-term vision, goals, and development policies for the Town of Callicoon. The key policies established in this Plan include preserving and protecting agriculture as an economic asset, ensuring that new commercial and industrial development is compatible with Callicoon, and conserving open space and natural resources as economic, social, and public health assets. This Plan established that threats related to “new industrial and commercial uses, if not regulated by zoning, could be sited in incompatible locations, jeopardizing neighborhood character and potentially harming our roads and environment.”
- (4) Sullivan County 2014 Agricultural and Farmland Protection Plan. This municipally adopted plan, approved by the New York State Department of Agriculture and Markets, meets the statutory requirements of Section 324-a of Article 25-aa of the New York State Agriculture and Markets Law. This Plan was funded and formally approved of by the New York State Department of Agriculture and Markets as part of their farmland protection program. This Plan establishes the importance of prime farmland soils and priority farmlands needing to be preserved to maintain the critical mass of farmland and farm activities in the County. Many farms in the Town of Callicoon are identified as the highest priority farmlands in the County and constitute a large proportion of the Counties’ critical mass of farmland considered to be of the highest ranked priority farmlands.

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C. To further the stated goals of municipally adopted plans and environmental features to be protected as described above, the Town of Callicoon has determined that utility-scale solar or wind energy generating systems are not appropriate land uses for the Town. As such, all utility-scale solar and wind energy generating systems shall be prohibited in all zoning districts within the Town of Callicoon.

(a) Rationale. Local laws which apply to major renewable energy facilities are considered to be important by New York State (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”.

[1] 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 New York State Office of Renewable Energy Siting (Siting Office) in deciding whether to grant or deny permits for major renewable energy facilities. In crafting Section 94-c, the State Legislature would have been within its authority to supersede all local laws and regulations without making reference to them or statement about them. So, 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.

[2] The Town of Callicoon has made a careful evaluation of the environment and natural resources within the Town through a comprehensive planning process consistent with Town Law Section 272-a and through an Agricultural and Farmland Protection Plan adopted by the Town and approved by the Commissioner of the NYS Department of Agriculture and Markets. These evaluations have identified significant environmental sensitivities and resources within the Town. Based on those evaluations, the Town of Callicoon has determined that renewable energy facilities with a nameplate capacity of twenty (20) MW or greater will cause significant adverse environmental impacts to the numerous critical and important environmental resources present within the Town of Callicoon.

At the same time, NYS Executive Law § 94-c (6) does not allow local municipalities to establish a local review and permitting process for major renewable energy facilities generating twenty (20) MW or greater. And Section 94-c(3)(e) provides that the Siting Office may collect a fee from facility applicants as a means of achieving off-site mitigation of site-specific impacts. The Town has determined however, that these provisions will not allow for effective mitigation of adverse impacts associated with major

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renewable energy facilities with a nameplate capacity of twenty (20) MW or greater.

- b) The Town of Callicoon specifically requests that, with regard to any major renewable energy facilities generating twenty (20) MW or greater proposed within the Town of Callicoon, the Siting Office honor and enforce this prohibition.

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 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. In 2014, the Governor's Office directed NYS DEC "to develop and implement strategies to address the cause and effects of climate change, including strengthening our resiliency against storms and flooding." The CSC program is the result of that directive.

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. The Town of Callicoon 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.

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

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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

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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."

- c) Prohibition. Consequently, renewable energy facilities having a capacity of twenty (20) MW or greater, and specifically including all major renewable energy facilities as they are defined in New York State (NYS) Executive Law Section 94-c (2)(h) are prohibited in all Zoning Districts in the Town of Callicoon. Based upon the comprehensive environmental analysis completed for the Town of Callicoon, the Town specifically requests that, with regard to any proposed renewable energy facility having a capacity of 20 MW or greater or others being reviewed under NYS Executive Law Section 94-c (2)(h), the New York State Office of Renewable Energy Siting honor and enforce this prohibition. This prohibition will not be unreasonably burdensome in achieving the renewable energy targets established in the Climate Leadership and Community Protection Act ("CLCPA") due to the availability of more suitable alternative sites found throughout the entire State of New York.

[1] Decision by New York State Office of Renewable Energy Siting Not to Apply Local Prohibition.

- (a) Introduction and purpose statement. Despite the stated importance of local municipal regulation in NYS Executive Law § 94-c (as described above), the Town of Callicoon recognizes that Section 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.

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In recognition of this authority, and in instances where the Siting Office determines not to apply the prohibition of major renewable energy facilities in the Town of Callicoon in any Zoning District in the Town, this law hereby requires that the Siting Office shall consider the environmental and agricultural resources and site-specific adverse environmental impacts set forth herein.

- (b) Consideration of Environmental Impacts Under Section 94-c. While Section 94-c establishes a consolidated approach to the review and approval of major renewable energy facilities, it simultaneously mandates protection from adverse environmental impacts in Section 94-c (1) (3c), and (3d).
- (c) Consideration of Specific Environmental Resources in Callicoon. With the foregoing in mind, the Town of Callicoon has made a careful evaluation of the environment and natural resources within the Town and has identified significant environmental sensitivities and numerous resources within the Town in this Article. In the event that the Siting Office elects not to require compliance with the Town of Callicoon Zoning Law prohibition against utility-scale renewable energy facilities for a particular proposed project, this law further mandates that the Siting Office shall expressly require full compliance with the NYS Department of Agriculture and Markets Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (Revision 10/18/19) (Guidelines). This shall include designating an environmental monitor, implementing the specific construction requirements, establishing post-construction restoration requirements, provide monitoring and remediation, and implementation of decommissioning requirements pursuant to the Guidelines.

Further, the Siting Office shall evaluate all the site-specific potential adverse impacts of the project to the sensitive environmental resources set forth in this Article and summarized below. In making its determination, the Siting Office shall require that potential significant impacts to these sensitive environmental resources be avoided completely or mitigated to the maximum extent practicable. The Siting Office shall require incorporation of the general design and siting criteria as per this Article. Resources deemed unsuitable for placement of a utility-scale solar energy system are:

- I. Wetlands and wetland buffers as regulated by the NYS DEC or the US Army Corps of Engineers.
- II. Steep Slopes >25%.
- III. Floodways as shown on the Town of Callicoon FIRM Floodplain Map.
- IV. Important habitats and natural heritage communities as inventoried by

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the New York State Natural Heritage Program.

- V. Prime Farmland Soils, Soils of Statewide Importance, and priority farmlands as mapped by the Sullivan County Soil Survey, the Town of Callicoon Comprehensive Plan, the Sullivan County Agricultural and Farmland Protection Plan, and the Town of Callicoon Agricultural and Farmland Protection Plan.

SECTION 3. SEVERABILITY

Each separate provision of this local law shall be deemed independent of all other provisions herein, and if any provisions shall be deemed or declared invalid, all other provisions hereof shall remain valid and enforceable.

SECTION 4. CONFLICT WITH OTHER LAWS

Where this Law differs or conflicts with other laws, rules, and regulations, unless the right to do so is preempted or prohibited by the County, State or Federal government, the more restrictive or protective law of the Town and the public shall apply.

SECTION 5. EFFECTIVE DATE

This Local Law shall take effect immediately, as provided by law, upon filing with the Secretary of State.