

**Town of Rotterdam  
Planning Commission  
May 21, 2024**

**Workshop (2<sup>nd</sup> Floor Conference Room) – 7:00pm**

1. **Body By Morgana LLC (contract vendee) – 2601 Curry Road.** The applicant requests a Waiver of Site Plan review to operate a fitness center/yoga studio, ±3,136 gross floor area, former Crosstown Vet, on a ±0.92-acre parcel.
2. **TwistN Flip Gymnastics – 93 W. Campbell Road.** The applicant requests a Waiver of Site Plan review to operate a gymnastics facility in combined tenant spaces C-110, C-112 and C-114, formerly Limited Too, The Finish Line and Glenpeter Jewelers, ±9200 square feet, from June 1, 2024 – May 31, 2029, in ViaPort Rotterdam.

**Agenda (V. Dalton Bambury Hearing Room 2<sup>nd</sup> Floor) – 7:30pm**

*Approval of the Summary of Minutes May 7, 2024*

1. **Michael Demers – 595 Currybush Road.** Final Two (2) Lot Subdivision Public Hearing: Lot 1 = ±2.68 acres with existing single-family residence, Remaining Lands = ±95.61 acres. Engineer: Ingalls & Associates, LLP.
2. **Town of Rotterdam – Code Amendment.** Report and Recommendation to the Town Board to amend Chapter 270, entitled “Zoning” to repeal Local Law #1 of the Year 2017 entitled Solar Energy Facilities with associated fees related to “green” energy and adopt an updated Solar Energy Facilities code.

**Workshop (2<sup>nd</sup> Floor Conference Room) – 7:00pm**

1. **Body By Morgana LLC (contract vendee) – 2601 Curry Road.** The applicant requests a Waiver of Site Plan review to operate a fitness center/yoga studio, ±3,136 gross floor area, former Crosstown Vet, on a ±0.92-acre parcel.
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**WAIVER OF SITE PLAN REVIEW**

**Date Reviewed:** May 21, 2024

**PC2024-W21**

The Town Planning Commission Office has received the attached application and accompanying documents. The below-identified applicant requests a waiver of Article XVII "Site Plan Approval", stating that a site plan review and approval is unnecessary and would not serve the purpose of the Article.

**APPLICANT:** Body By Morgana, LLC

**Attn:** Morgana Cuomo

**ADDRESS:** 2004 Hamburg Street  
Schenectady, NY 12303

**PROJECT LOCATION:** 2601 Curry Road

**APPLICANT IDENTIFIED AS:**                      **Owner**                      **XX Lessee**                      **Contract Vendee**

**REQUEST:** The applicant requests a Waiver of Site Plan review to operate a small fitness center/yoga studio, ±3,136 gross floor area, former Crosstown Vet, on a ±0.92 acre parcel.

**Action Taken by Commission:**

In accordance with Chapter 270 of the Town of Rotterdam Zoning Ordinance, Article XVII, "Site Plan Approval", Section 270-130(C) the Planning Commission waives the requirements set forth in said Article, conditionally.

Conditions imposed, if any, are as follows:

1. Approvals are contingent upon compliance with all NYS Building and Fire Codes.
2. Applicant must obtain a Fire Inspection and/or Building Permit and be issued a Certificate of Occupancy from the Town of Rotterdam Building Inspector/Code Enforcement Officer prior to operation.
3. Applicant to comply fully with Town Sign Code and obtain a building permit for any signage.
4. Owner/applicant shall install Knox box for emergency personnel. Please contact Fire District #3 for specifications.

The Commission action on the Waiver application took place at the Planning Commission meeting of May 21, 2024 and authorized the Commission Chairman to execute the Waiver. The issuance of this Waiver is contingent upon the applicant complying with all conditions as stated above. Failure to adhere to conditions may result in revocation of Waiver by the Town of Rotterdam Planning Commission and requirement of a full Site Plan.

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**Peter J. Comenzo**  
Senior Planner

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**Kimberly Ricker Scannell, Chairman**  
Planning Commission



RECEIVED

MAY 09 2024

Town of Rotterdam  
Waiver of Site Plan Review Application

TOWN OF ROTTERDAM

The following applicant requests a Waiver of Site Plan Review. The following documentation is required for Planning Commission review:

1. Copy of Deed and/or executed lease agreement or contract to purchase.
2. Copy of Site Plan that identifies:
  - All structures on site.
  - All parking areas on site (parking spaces 9' x 18').
  - Handicap parking and accessibility as required by New York State Building Code.
  - Interior floor plan of usable area by applicant.
  - Proposed site improvements including parking, structural additions, landscaping and other pertinent information as identified in Section 270-132 of Town Code.
3. On a separate sheet of paper provide a descriptive narrative of use and activity occurring on the site including but not limited to the number of employees, exact nature of business, hours of operation and expected customers to the site daily.
4. A completed Commercial or Residential Building Permit Application.
5. \$100.00 application fee (cash or check – payable to the Town of Rotterdam). Fee in lieu of parkland for residential developments: \$600 per dwelling unit.
6. Does any Town officer, employee or family member thereof have a financial interest (as defined by General Municipal Law Section 809) in this application? YES (NO). If yes, a statement disclosing the name, residence, nature and extent of this interest must be filed with this application.

PRESENT OWNER(S): Lupien Realty Co. INC.

APPLICANT(S)/LESSEE: Body By Morgan LLC, Morgan Cuomo

MAILING ADDRESS: 2004 HAMBURG ST

CITY: Schenectady STATE: NY ZIP: 12304

DAYTIME TELEPHONE: 518 810 4821 EMAIL ADDRESS ASSELLIC3@gmail.com

PROJECT ADDRESS: 2601 Curry Rd, Schenectady NY 12303

APPLICANT IDENTIFIED AS: Owner      Lessee      Contract Vendee     

REQUEST: I AM BUYING BUILDING and plan to open a small group/ yoga studio there

By signing the application, it is understood by the applicant that he/she must fully comply with the Town Code and obtain any required permits.

SIGNATURE OF APPLICANT [Signature] DATE 5/9/24

\* The Planning Commission meets on the first and third Tuesday of each month. All pertinent information and fee(s) must be submitted to the Planning Commission Office at least ten (10) days prior to the meeting.

\*\* All businesses located in the Town of Rotterdam must receive Planning Commission approval and a Certificate of Compliance issued by Building Inspector prior to occupancy.

Body by Morgana business at 2601 Curry Rd, Schenectady NY 12303

Morgana Cuomo plans to buy the building named above. She plans to operate a small group fitness/Yoga studio there.

Morgana works alone teaching the classes.

The original layout will work good for the business and we intend to do cleanup, painting, and minor repairs to the building and parking area.

The class sizes vary through the day from individual to 15 students. Most of the instruction is one on one providing injury prevention and rehabilitation.

Business hours 7:30AM – to 8:00PM Mon-Friday and 7:30 – 12:00PM Sat, Sun

We would like to install a sign in front of the building.

# Town of Rotterdam

## Fire inspection / Assembly Inspection

dpw@rotterdamny.org

Office Use Only
Application Number _____
Cost of permit _____
Approved by _____
Fire District _____

The applicant and/or owner agrees to comply with all applicable laws, ordinances, and regulations, and also will allow inspectors access to the property for the required inspections

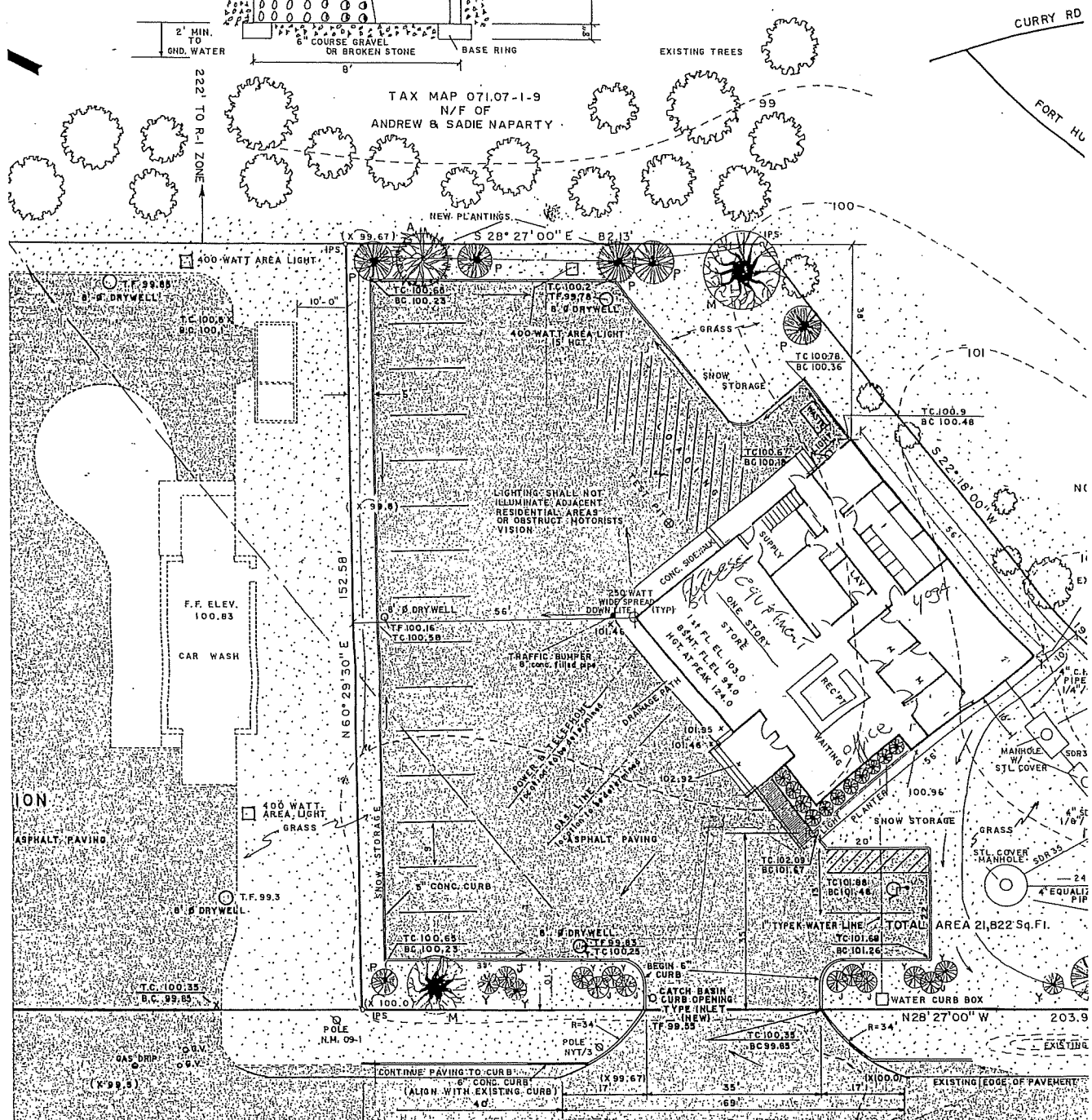
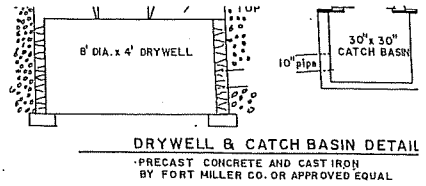
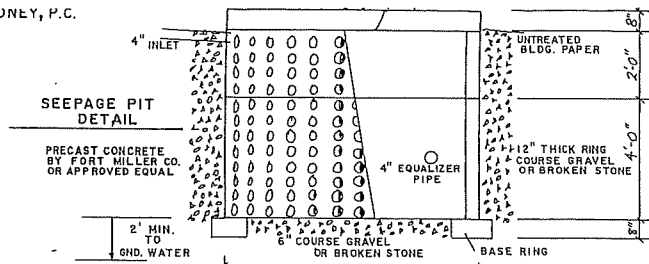
Property Address	2601 Curry Rd., Schenectady NY 12303
Property Owner	Body By MORGANA LLC - MORGANA CUOMO
Property Owner address	2004 HANBUCK ST SCHENECTADY NY 12304
Property Owner Phone number	518 810 4821
Property owner Email Address	ASSELLIC3@gmail.com
Applicant	MORGANA CUOMO
Applicant Address	2004 HANBUCK ST SCHENECTADY NY 12304
Applicant Phone Number	518 810 4821
Applicant Email Address	ASSELLIC3@gmail.com

**Type of Business:** please check the correct listing (see attached)

- Theatre/ Concert Halls/ Restaurants (A-1)     Indoor Sporting Events (A-4)  
 Outdoor Activity's (A-5)     Bar, Restaurant, Banquet Hall, Casino, Night Club, Cafeteria (A-2)  
 Other: Funeral Parlors, Worship, Recreation, Amusement, (A-3)

**Dates of Last Inspection (please attach CURRENT inspection reports) see above email**

Fire Alarm	
Fire Sprinkler	
Hood Cleaning	
Elevator	
Knox Box installed ?	<b>Y / N</b> please circle one
Fire District	



OT COVERAGE  
 ING AREA: 3136 Sq.Ft. = 14.4%  
 IG AREA: 10180 Sq.Ft. = 46.6%  
 N SPACE: 8506 Sq.Ft. = 39.0%  
 TOTAL 21,822 Sq.Ft.

**CURRY ROAD EXTENSION**

NOTE: CORPORATION STOP AND CURB BOX TO BE LOCATED AND INSTALLED BY THE TOWN OF ROTTERDAM

**DESIGN BASIS**

**DRAINAGE DESIGN BASIS**

sal system. Reference: ment Works Intermediate employees x 15 gal/day 3' dia. x 6' depth = //s.f. = 300 gallons/day. followed by a 750 gallon concrete distribution box oved equal.

Max. 1 hr rainfall in 10 years - 1.8"  
 S.R.O. before development - 20 c.f., after development - 309 c.f.  
 Increase in runoff - 291 c.f.  
 3 - 8' dia. x 4' drywells = 480 c.f. initial abstraction.  
 Max. 24 hr rainfall in 10 years - 4"  
 S.R.O. before development - 1127 c.f., after development - 2418 c.f.  
 Increase in runoff - 1291 c.f.  
 3 drywells initial abstraction 480 c.f., thereafter infiltration at 1200 c.f. per day based on 2"/hr infiltration.

OWNER:	JAMI RT. 2 RD 2
ENGINEER:	LAN RD 2 DEL (518)

**WAIVER OF SITE PLAN REVIEW**

**Date Reviewed:** May 21, 2024

**PC2024-W22**

The Town Planning Commission Office has received the attached application and accompanying documents. The below-identified applicant requests a waiver of Article XVII "Site Plan Approval", stating that a site plan review and approval is unnecessary and would not serve the purpose of the Article.

**APPLICANT:** Ron Barnes  
TwistN Flip Gymnastics  
**ADDRESS:** 20 Petra Lane #6  
Albany, NY 12205

**PROJECT LOCATION:** 93 W. Campbell Road

**APPLICANT IDENTIFIED AS:** Owner XX Lessee Contract Vendee

**REQUEST:** The applicant requests a Waiver of Site Plan review to operate a gymnastics facility in combined tenant spaces C-110, C-112 and C-114, formerly Limited Too, The Finish Line and Glenpeter Jewelers, ±9200 square feet, from June 1, 2024 – May 31, 2029, in ViaPort Rotterdam.

**Action Taken by Commission:**

In accordance with Chapter 270 of the Town of Rotterdam Zoning Ordinance, Article XVII, "Site Plan Approval", Section 270-130(C) the Planning Commission waives the requirements set forth in said Article, conditionally. Conditions imposed, if any, are as follows:

1. Compliance with all NYS Building and Fire Codes.
2. Applicant must obtain a Fire Inspection and Building Permit and be issued a Certificate of Occupancy from the Building Inspector/Code Enforcement Officer prior to operation.
3. Applicant to comply fully with Town Sign Code and obtain a building permit for any signage.
4. Owner/applicant shall install Knox box for emergency personnel. Please contact Fire District #6 and/or #7 for specifics.

The Commission action on the Waiver application took place at the Planning Commission meeting of May 21 2024 and authorized the Commission Chairman to execute the Waiver. The issuance of this Waiver is contingent upon the applicant complying with all conditions as stated above. Failure to adhere to conditions may result in revocation of Waiver by the Town of Rotterdam Planning Commission and requirement of a full Site Plan.

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**Peter J. Comenzo**  
Senior Planner

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**Kimberly Ricker-Scannell, Chairman**  
Planning Commission



RECEIVED

MAY 10 2024

TOWN OF ROTTERDAM  
PUBLIC WORKS

**Town of Rotterdam  
Waiver of Site Plan Review Application  
93 W. Campbell Road**

The following applicant requests a Waiver of Site Plan Review. The following documentation is required for Planning Commission review:

1. Copy of Site Plan Map (8 X 11) that identifies:
  - Kiosk or tenant space (highlighted).
  - Clearly identified with space number
2. On a separate sheet of paper provide a descriptive narrative of use and activity occurring on the site including but not limited to:
  - Number of employees
  - Exact nature of business and hours of operation.
3. A completed Commercial Building Permit Application and/or Fire Inspection Application.
4. ~~\$75.00~~ <sup>\$100.00</sup> application fee (Checks to be made payable to the Town of Rotterdam).

APPLICANT(S): Ron Burnes

ADDRESS: 20 Petra Lane #6 Albany NY 12205

DAYTIME TELEPHONE: 518 522 5570 (FAX) \_\_\_\_\_

PROJECT ADDRESS: 93 W. Campbell Road, Schenectady, NY 12306

REQUEST: Combining spaces 110, 112, & 114 into a single space (110)  
to be used as a gymnastics training center for kids.

LICENSE AGREEMENT DATE: 5/8/24 AREA: \_\_\_\_\_

TERM: FROM 5/8/24 TO 6/1/29 KIOSK OR TENANT SPACE #: 110

By signing the application, it is understood by the applicant that he/she must fully comply with the Town Code and obtain any required permits.

SIGNATURE OF APPLICANT *Ron Burnes* DATE 5/10/24

\* The Planning Commission meets on the first and third Tuesday of each month. All pertinent information and fee must be submitted to the Planning Commission Office at least ten (10) days prior to the meeting.

\*\* All businesses located in the Town of Rotterdam must receive Planning Commission approval and a Certificate of Compliance issued by Building Inspector prior to occupancy.

10.12.18



NOI JUST FEED  
SF 806 C-118

USPS →

SF 225

C-118A

SF 510  
JUST THREADING

C-116

*Formerly 110, 112, 114*

SF 2930

TNF ROTTERDAM

SF 9200

C-110

C-108



Descriptive Narrative  
TwistN Flip Gymnastics  
Via Port Mall  
93 W Campbell Rd  
Schenectady, NY 12306

5/85/2024

Use of facility

TwistN Flip Gymnastics is moving our existing gymnastics facility from Crane St in Schenectady to the Via Port mall. We will offer gymnastics classes for children. Our classes are anywhere from 45 minutes in length for our younger students to 2.5 hours for our older students. Children learn the basics of gymnastics and can progress into our competitive programs.

Our hours of operation are Monday through Saturday from 9:00 am to 8:00 pm. We are typically closed on Sundays. There may be occasional events that will run on a Sunday. Our classes are typically after school hours; M-F 3:30-8:00pm. We will run limited daytime activities for preschool ages during the week. Saturday mornings are more classes from 9:00-12:00. Saturday afternoons are typically birthday parties and other special events. We anticipate hosting a gymnastics meet once or twice per year, this would run Saturday and could overflow to Sundays. When school is out, we will offer all day camps and other activities. This is over the summer vacation as well as the week long vacations during the school year.

We currently have 15 employees; all part time. We anticipate growing our staff with this move, we are planning for 5 additional employees by September 2024.

**DPW Comments**  
**May 21, 2024**

1. **Michael Demers – 595 Currybush Road.** Final Two (2) Lot Subdivision Public Hearing: Lot 1 = ±2.68 acres with existing single-family residence, Remaining Lands = ±95.61 acres. Engineer: Ingalls & Associates, LLP.
  1. Pin and cap new lot corners prior to the Chairman’s Signature.
  2. The final maps (with all necessary changes discussed at the Planning Commission) need to be submitted for signature and filing with Schenectady County.
  3. The Planning Commission Chairman will sign up to two (2) Mylar’s (One for Schenectady County and one for the applicant).
  4. Mylars need to be filed with Schenectady County Clerk’s office within ten (10) days.
  5. After signature and filing with Schenectady County six (6) paper copies shall be returned to the Planning Commission office.

***DPW Comments from April 16, 2024***

1. This project was tabled from the January 23, 2024 Planning Commission meeting.
2. Add note to 95-acre remaining lands: “This property is not a building lot.”
3. Engineer should show sanitary control zone for existing well and verify that it is located on Lot #1.
4. A stream and wetlands exist on the remaining lands and may limit access. Any future development of this property will require further evaluation.

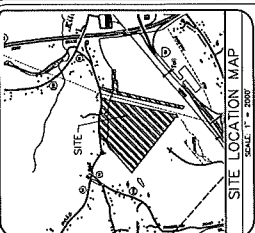
***DPW Comments from January 23, 2024***

1. Add note to 95-acre remaining lands: “This property is not a building lot.”
2. Engineer should show sanitary control zone for existing well and verify that it is located on Lot #1.
3. Construction has occurred at the existing single-family residence without building permits. A stop work order was issued by the Rotterdam Building Inspector on October 18, 2023 and is still not resolved.

**SEQR Requirement:** 6 NYCRR 617 Unlisted Action. Rotterdam Planning Commission declared lead agency on April 16, 2024. The Planning Commission should consider the adoption of a Negative Declaration as prepared by the Town Planner.

**Involved/Interested Agencies**

Schenectady County Economic Development and Planning  
Schenectady County Department of Public Works  
Fire District #6



**LEGEND**

- IRON ROD FOUND
- UTILITY POLE
- WATER MAIN
- SEWER MAIN
- PROPERTY LINE
- OVERHEAD UTILITY LINE
- WOODS LINE/MEADOW
- STRIKING
- CONTOUR

**DEED REFERENCE:**

1) S&L 4728-748 CONVEYED BY BRAM BLIZEN, JAMES W. BLIZEN & ASSOCIATES, LLP FROM A COUNTY CLERK'S OFFICE ON JUNE 23, 2023 IN USER 078

**MAP REFERENCE:**

1) REFERENCE IS HEREBY MADE TO MAP DATED 11/15/22 BY JAMES W. BLIZEN & ASSOCIATES, LLP AND ASSOCIATES, DATED JANUARY 10, 2024, AS PREPARED BY STEWART TITLE INSURANCE COMPANY

**NOTES:**

- 1) SURVEYED PARCELS TOWN OF ROTTERDAM-TA MAP 4308, BLOCK 7, PARCELS B.
- 2) BOUNDARY SURVEY PREPARED BY INGALLS AND ASSOCIATES, LLP FROM A SEPTEMBER 2023 FIELD SURVEY.
- 3) SURVEY IS REFERENCED TO THE NEW YORK STATE PLAINES LAST KNOWN ELEVATION FOR GEOMETRIC PURPOSES ONLY AND NOT TO BE USED TO DESIGN FROM THE RIGHT OF WAY OF CURVE ROAD, HAVING A RIGHT OF WAY OF 45.77'
- 4) SUBJECT TO THE RIGHTS OF THE PUBLIC TO THAT PORTION OF LANDS LYING WITHIN 45.77' SUBJECT TO UTILITY EASEMENTS GRANTED TO VARIOUS ADJACENT PARCELS BY FOUR VARIOUS PARTS, BEING TWENTY-FIVE FEET WIDE DEPARTMENT BY THE PROPERTY OWNER.
- 5) THIS SURVEY IS NOT A SURVEY OF ANY OF THE PARCELS IN THE BLOCK AND IS NOT TO BE CONSIDERED AS A DEED REFERENCE.
- 6) THIS SURVEY WAS MADE ON THE DATE OF JUNE 7, 2024, AS PREPARED BY STEWART TITLE INSURANCE COMPANY
- 7) SUBJECT TO ALL RIGHTS, EASEMENTS, COVENANTS OR RESTRICTIONS, RECORDED OR UNRECORDED.
- 8) THIS SURVEY IS MADE IN ACCORDANCE WITH THE NEW YORK STATE ASSOCIATION OF PROFESSIONAL LAND SURVEYORS CODE OF PRACTICE FOR LAND SURVEYS AS ADOPTED IN EFFECT ON FEBRUARY 14, 1997.
- 9) EXISTING DEPT. FIELD AS SHOWN IS APPROXIMATE BASED UPON FIELD OBSERVANCE.

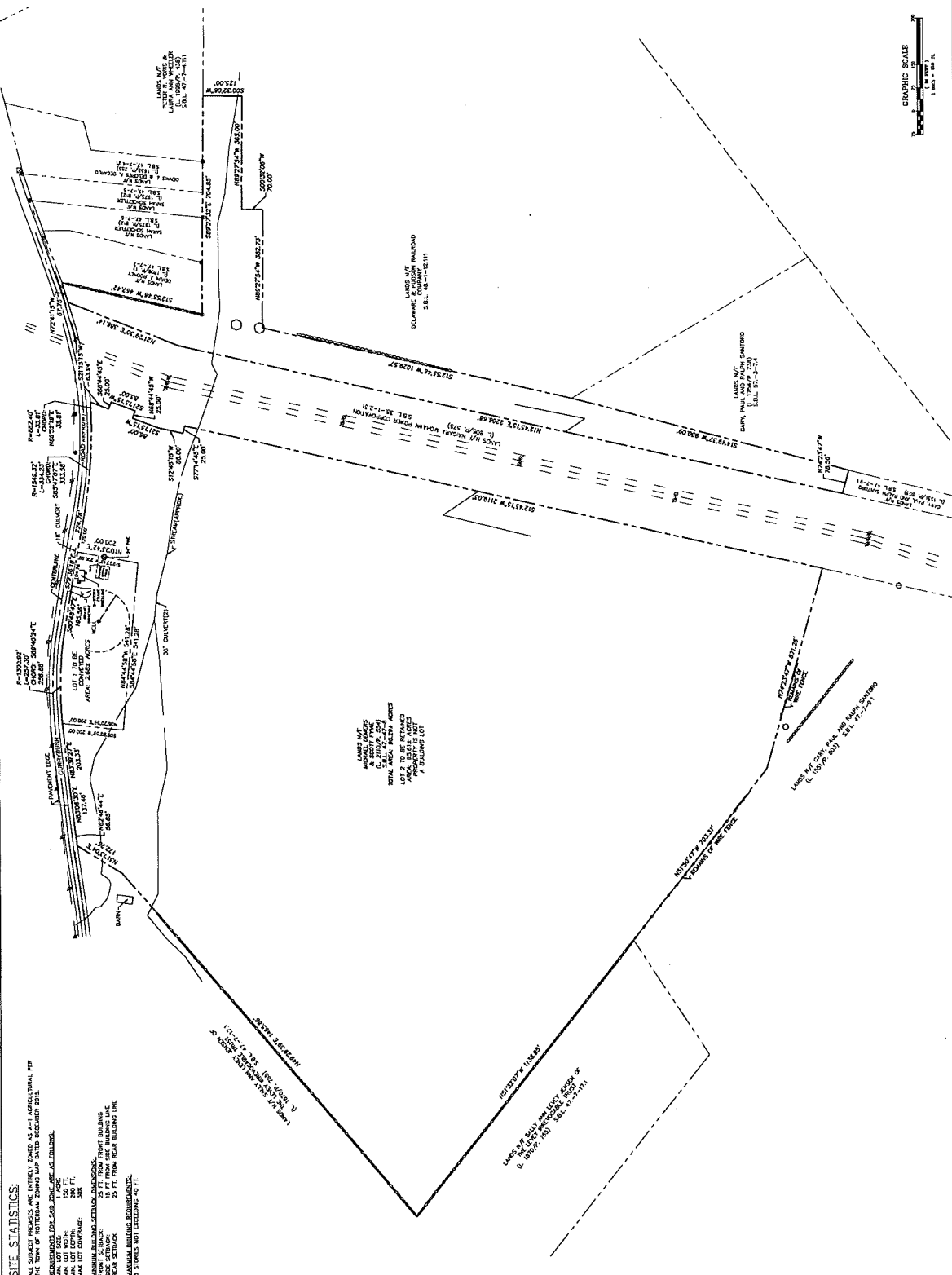
FOR INFORMATION ONLY  
NOT FOR CONSTRUCTION

**INGALLS**  
INGALLS & ASSOCIATES, LLP  
1000 WEST 10TH STREET  
ROCHESTER, NY 14620  
TEL: 716.243.1111  
WWW.INGALLS.COM

**SUBDIVISION MAP OF**  
LANDS N/F MICHAEL DEMERS & SCOTT FVYE  
595 CURRYBUSH ROAD  
TOWN OF ROTTERDAM  
COUNTY OF SCHENECTADY  
STATE OF NEW YORK  
JANUARY 8, 2024  
SCALE: 1" = 150'

RECORDED IN THE OFFICE OF THE COUNTY CLERK OF SCHENECTADY COUNTY, NEW YORK, ON JANUARY 8, 2024, AT 10:25:06 AM. BOOK 21-1000 CO-CORRECTION.

DATE: 01/08/24  
BY: JAMES W. BLIZEN  
FOR: STEWART TITLE INSURANCE COMPANY



**SITE STATISTICS:**

ALL SUBJECT PARCELS ARE HEREBY ZONED AS R-1 (RESIDENTIAL, PER THE TOWN OF ROTTERDAM ZONING AND PLANNING DEPARTMENT.

MIN. LOT SIZE: 1 ACRE  
MIN. LOT AREA: 43,560 SQ. FT.  
MIN. LOT DEPTH: 200 FT.  
MAX. LOT COVERAGE: 50%

MAXIMUM BUILDING SETBACKS: 5 FT. FROM FRONT BUILDING LINE, 15 FT. FROM SIDE BUILDING LINE, 10 FT. FROM REAR BUILDING LINE.  
MAXIMUM BUILDING HEIGHTS: 3 STORIES NOT EXCEEDING 30 FT.

NOTE: 48 HOURS PRIOR TO ANY CONSTRUCTION ACTIVITIES, THE CONTRACTOR SHALL CONTACT UNDERGROUND UTILITIES.

# ZONING COORDINATION REFERRAL

SCHENECTADY COUNTY DEPT. OF ECONOMIC DEVELOPMENT & PLANNING  
Recommendations shall be made within 30 days after receipt of a full statement of the proposed action.

For Use By SCDEDP

Received 4-30-24  
Case No. R-13-24  
Returned 5-7-24

FROM:  Legislative Body  
 Zoning Board of Appeals  
 Planning Board

Municipality:  
Town of Rotterdam

TO: Schenectady County Department of Economic Development and Planning  
Schaffer Heights, 107 Nott Terrace, Suite 303  
Schenectady, NY 12308

(tel.) 386-2225  
(fax) 382-5539

ACTION:  Zoning Code/Law Amendment  
 Zoning Map Amendment  
 Subdivision Review  
 Site Plan Review

Special Permit  
 Use Variance  
 Area Variance  
 Other (specify) \_\_\_\_\_

Received  
Schenectady County

APR 30 2024

Economic Development  
and Planning Dept.

PUBLIC HEARING OR MEETING DATE: May 21, 2024

SUBJECT: Michael Demers – 595 Currybush Road. Two (2) Lot Subdivision: Lot 1 = ±2.68 acres with existing single-family residence, Remaining Lands = ±95.61 acres. Engineer: Ingalls & Associates, LLP

RECEIVED

MAY 10 2024

REQUIRED ENCLOSURES: 1. Public hearing notice & copy of the application.  
2. Map of property affected. (Including Tax Map I.D. number if available)  
3. Completed environmental assessment form and all other materials required by the referring body in order to make its determination of significance pursuant to the state environmental quality review act.

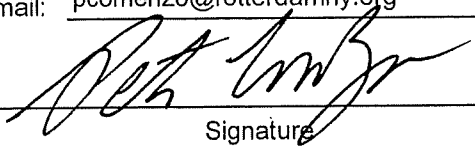
TOWN OF ROTTERDAM  
PUBLIC WORKS

- This zoning case is forwarded to your office for review in compliance with Sections 239-l, 239-m and 239-n of Article 12-B of the General Municipal Law, New York State.
- This material is sent to you for review and recommendation because the property affected by the proposed action is located within 500 feet of the following:

- the boundary of any city, village or town;
- the boundary of any existing or proposed County or State park or other recreation area;
- the right-of-way of any existing or proposed County or State parkway, thruway, expressway, road or highway;
- the existing or proposed right-of-way of any stream or drainage channel owned by the County or for which the County has established channel lines;
- the existing or proposed boundary of any County or State-owned land on which a public building or institution is situated;
- the boundary of a farm operation located in an agricultural district, as defined by Article 25-AA of the agriculture and markets law. The referral requirement of this subparagraph shall not apply to the granting of area variances.

### SUBMITTED BY:

Name: Peter Comenzo Title: Sr. Planner  
Address: 1100 Sunrise Boulevard Schenectady, NY 12306  
E-mail: pcomenzo@rotterdamny.org Phone: 518-355-7575 Ext 338



Signature

Date: 4 23 24



# PLANNING & ZONING COORDINATION REFERRAL

Case No. R-13-24

Applicant Michael Demers

Referring Officer Peter Comenzo

Municipality Rotterdam

Considerations: Regarding a 98.3 acre parcel with a single family dwelling, requesting subdivision approval to create a 2.7 acre parcel for the residence and a remaining vacant 95.6 acre parcel. Located on the south side of Currybush Road (CR 52) approximately .4 miles west of Mariaville Road (SR 158).

## RECOMMENDATION

Receipt of zoning referral is acknowledged on April 30, 2024. Please be advised that the undersigned Commissioner of Economic Development and Planning of the County of Schenectady (having under the Schenectady County Charter the powers and duties of a County Planning Board) has reviewed the proposed action stated on the opposite side of this form and makes the following recommendations:

- \*Approve of the proposal.
- Defer to local consideration (No significant county-wide or inter-community impact)
- Modify/Conditionally Approve. Conditions:

Advisory Note:

Disapprove. Reason:

\*A recommendation of approval should not be interpreted that the County has reviewed all local concerns and/or endorses the project; rather the proposed action has met certain County considerations.

Section 239-m of the general Municipal Law requires that within 30 days after final action, the referring body shall file a report of the final action it has taken with the Schenectady County Department of Economic Development and Planning. A referring body which acts contrary to a recommendation of modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report.

Date

5/6/24

Ray Gillen, Commissioner  
Economic Development and Planning

**6NYCRR PART 617**  
**State Environmental Quality Review**  
**NEGATIVE DECLARATION**  
**Notice of Determination of Non-Significance**

**Date:** May 21, 2024

This notice has been prepared in accordance with Article 8 of the Environmental Conservation Law by the Town of Rotterdam Department of Public Works Department (Reference: 6 NYCRR 617.5 Unlisted Action)

**SEQRA Status:** Type I   
Type II   
Unlisted

**Conditioned Negative Declaration:** Yes   
No

**Owner:** Michael Demers  
590 Currybush Road  
Schenectady, NY 12306

**Tax Map Number(s):** #47.00-47-8

**Project Location:** 595 Currybush Road  
Schenectady, NY 12306

**Zoning:** Agriculture (A-1) Zoning District

**Action:** Creation of a ±2.68-acre lot with an existing single-family residence from a ±98.3-acre parcel.

**Reasons Supporting This Determination:**

(See 617.7(a)-(c) for requirements of this determination)

This project is an Unlisted Action and the Planning Commission conducted as a SEQR coordinated review. The applicant has supplied an Environmental Assessment Form and the Planning Commission has or has caused to complete Part 2 of this checklist. The Department of Public Works for the Town of Rotterdam transmitted the application information to all involved and interested agencies for review on April 16, 2024. All comments and concerns have been addressed.

This subdivision request is for the creation of a ±2.68-acre lot with an existing single-family residence from a ±98.3-acre parcel.

The property is in the Agriculture Industrial (I-1) zone. The existing single-family residence is served by an on-site well and septic system. The remaining lands are being labeled as such and have not been fully surveyed. Any future development of this property will need to be evaluated and approved by the appropriate regulatory agencies. No changes to the existing use of the land is anticipated at this time.

After a review of the application materials, Environmental Assessment Form, and comments received on this proposal, the Town of Rotterdam Planning Commission has determined that this proposal will not have a significant adverse impact on the environment.

**The Planning Commission has considered the following criteria to determine if this proposal has significant adverse impacts on the environment:**

- (i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;
- (ii) the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources;
- (iii) the impairment of the environmental characteristics of a Critical Environmental Area.
- (iv) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;
- (v) the impairment of the character or quality of important historical, archaeological, architectural, or aesthetic resources or of existing community or neighborhood character;
- (vi) a major change in the use of either the quantity or type of energy;
- (vii) the creation of a hazard to human health;
- (viii) a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;
- (ix) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;
- (x) the creation of a material demand for other actions that would result in one of the above consequences;

(xi) changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; or

(xii) two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision.

**The Planning Commission has also considered the reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions, which are:**

(i) included in any long-range plan of which the action under consideration is a part;

(ii) likely to be undertaken as a result thereof; or

(iii) dependent thereon.

(3) The significance of a likely consequence (i.e., whether it is material, substantial, large or important) has been assessed in connection with:

(i) its setting (e.g., urban or rural);

(ii) its probability of occurrence;

(iii) its duration;

(iv) its irreversibility;

(v) its geographic scope;

(vi) its magnitude; and

(vii) the number of people affected

The environmental effects of the above-described action were discussed at regularly scheduled Planning Commission public hearing held on May 21, 2023. Adoption of this negative declaration was moved by XXXXXX, seconded by XXXXXX and approved by the Rotterdam Planning Commission.

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Kimberly Ricker Scannell  
Planning Commission Chairman

**DPW Comments**  
**May 21, 2024**

2. **Town of Rotterdam – Code Amendment.** Report and Recommendation to the Town Board to amend Chapter 270, entitled “Zoning” to repeal Local Law #1 of the Year 2017 entitled Solar Energy Facilities with associated fees related to “green” energy and adopt an updated Solar Energy Facilities code.
  1. The Rotterdam Town Board referred to the Rotterdam Planning Commission and declared lead agency on May 16, 2024.

**SEQR Requirement:** 6 NYCRR 617 Unlisted Action.

**Involved/Interested Agencies**

Schenectady County Economic Development and Planning (239m & 239nn)

239nn to the following municipalities

City of Schenectady

Albany County Town Clerk

Colonie Town Hall

Glenville Municipal Center

Guilderland Town Hall

Montgomery County Town Clerk

Niskayuna Town Hall

Town of Princetown

Village of Florida

**SOLAR ENERGY FACILITIES LAW**

**TOWN OF ROTTERDAM**

**LOCAL LAW No. \_\_\_\_\_ of 20 \_\_\_\_\_**

**BE IT ENACTED** by the Town Board of the Town of Rotterdam, in the County of Schenectady, as follows:

**I. SECTION ONE – TITLE**

This local law shall be known as the “Solar Energy Facilities Law,” and shall repeal and replace Local Law No. \_\_\_\_\_ of the year \_\_\_\_\_.

**II. SECTION TWO – PURPOSE, INTENT AND OBJECTIVES**

The purpose of this law shall be to provide for the siting, development, and decommissioning of solar energy systems subject to reasonable conditions to reduce potential impacts on adjoining properties, while promoting the effective and efficient use of solar energy resources.

The town finds that well-planned and suitably located solar energy systems can be beneficial. This law seeks to foster, thorough project planning and appropriate siting, the following objectives:

- A. Protecting the health, safety, and well-being of our First Responders through responsible siting, pre-incident planning and education, continuing education and training, adequate protection and equipment, and the implementation of best practices to reduce potential hazards.
- B. Allowing Town of Rotterdam residents, landowners, farms, and government to safely take advantage of solar energy resources in a way that is consistent with the nature and character of the Town in accordance with the Town of Rotterdam Comprehensive Plan.
- C. Promoting and supporting our Town’s Open Space Plan with solar code that protects and preserves open space, agricultural lands, and environmentally significant areas of Town as designated by our Comprehensive Plan and Conservation Plan.
- D. Protecting the Town’s unique ecosystem of plants, wildlife, and habitats, particularly in the western upland and rural areas of Town.
- E. Recognizing the importance of Agriculture and protecting water and soils conducive to farming. If agricultural lands are to be used for solar siting, the Town encourages consideration of dual-use projects/agrivoltaics, a mixed land use production system combining the agricultural use of the land with solar energy production.

- F. Protecting and ensuring farmland, agricultural land, and forested land are put to their highest and best use.
- G. Protecting and promoting scenic and environmental resources by minimizing large scale solar energy facilities' impacts on these resources as outlined in the Rotterdam Comprehensive Plan including, but not limited to, fresh watersheds, floodplains, historic sites, conservation easements, trails, parklands, wetlands, wildlife, and scenery, and areas for recreational and outdoor activities.
- H. Protecting the property values of those properties neighboring and within the viewshed and soundshed of a large-scale solar energy facility.
- I. Conserving the rural character of western Rotterdam and rural hamlets, including Rotterdam Junction and Pattersonville.

### **III. SECTION THREE – AUTHORITY**

This local law is adopted pursuant to Sections 10 and 22 of the Municipal Home Rule Law.

### **IV. SECTION FOUR – DEFINITIONS**

The following definitions are as they relate to this Solar Energy Facilities Law:

ANSI – American National Standards Institute.

ATIMA – As Their Interests May Appear.

Ambient Noise: All-encompassing sound that is associated with a given environment, usually a composite of sounds from many sources near and far.

Battery Energy Storage System (BESS) – One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time (not to include a stand-alone 12-volt car battery or an electric motor vehicle).

Battery Management System - An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are identified.

Building-Integrated Photovoltaic System – A combination of photovoltaic building components integrated into any building envelope system, such as vertical facades,

including glass and other façade material, semitransparent skylight system, roofing materials, and shading over windows. Building-Integrated Photovoltaic System are Tier 1 solar energy systems.

Commissioning –A systematic process that provides documented confirmation that a solar energy system functions according to the intended design criteria and complies with applicable code requirements.

Comprehensive Plan – The Town of Rotterdam’s Comprehensive Plan, adopted on January 10, 2024, and as amended.

Decommissioning Plan –a plan to retire the physical facilities of the Project, including but not limited to decontamination, dismantlement, rehabilitation, landscaping, and monitoring.

Facility Area – The cumulative land area occupied during the operation of the solar energy facility. This shall include all areas and equipment within the facility’s fenced perimeter boundary, including the solar energy system, onsite interconnection equipment, onsite electrical energy storage equipment, fencing, and any other associated equipment – as well as any site improvements beyond the facility’s fenced perimeter boundary such as access roads, permanent parking areas, or other permanent improvements. The facility area shall not include site improvements established for impact mitigation purposes, including but not limited to vegetative buffers and landscaping features.

Fenced Perimeter – Any section(s) of Facility Area that is required by regulation or by the Planning Commission to be surrounded by security fencing that meets NEC requirements.

Forest and Woods – for the purpose of this Law, the terms forest, woods, woodlands, timberlands, wood lot and other reasonably synonymous terms shall describe any contiguous land-area where the dominant cover-type of the land is trees, covering at least 25% of the area. Forests and woods typically have thirty (30) years of uninterrupted growth or has surpassed the shrubland stage of primary succession.<sup>1</sup>

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

Ground-Mounted Solar Energy System - A Solar Energy System which is secured to the ground via a pole, ballast system, or other mounting system; is detached from any other structure; and which generates electricity for onsite or offsite consumption. For the

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<sup>1</sup> Combination of the definition of “shrubland” from University of New Hampshire and definition of “forest” from The Society of American Foresters.

purposes of this Solar Energy Facility law, systems affixed to canopies, such as carports in parking lots or driveways, shall be considered a ground-mounted system.

Immaterial Modifications - Changes in the location, type of material or method of construction of a solar energy system that will not: (1) increase the system's area by more than 5 percent (exclusive of moving any fencing) from original approval, (2) result in any new or additional adverse environmental impact not already reviewed and accepted for the project by the Town Planning Commission; (3) cause the project to violate any applicable setbacks or other requirements of this Law; or (4) cause the project not to conform to the State Environmental Quality Review determination or findings issued by the Planning Commission.

ISAOA – Its Successors and Or Assigns.

Kilowatt (kW): A unit of power equal to 1,000 watts. The nameplate capacity of solar energy systems may be described in terms of kW.

Material Safety Data Sheet (MSDS) – is a document that contains information on the potential hazards (health, fire, reactivity and environmental) and how to work safely with the chemical product.

Megawatt (MW): A unit of power equal to 1,000 kW. The nameplate capacity of solar energy systems may be described in terms of MW.

Mineral Soil Groups 1-4 (MSG 1-4): Soils recognized by the New York State (NYS) Department of Agriculture and Markets as having the highest value based on soil productivity and capability, in accordance with the uniform statewide land classification system developed for the NYS Agricultural Assessment Program.

Nameplate Capacity: A solar energy system's maximum electric power output under optimal operating conditions. Nameplate Capacity may be expressed in terms of Alternating Current (AC) or Direct Current (DC).

Nationally Recognized Testing Laboratory - A U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

Non-Participating Property - A property not owned or leased by the solar energy system operator, nor having any land use agreement or easement related to the system.

Participating Property - A property owned or leased by the solar energy system operator, or a property having any land use agreement or easement related to the system. Where

multiple adjacent properties under single ownership are participating in a solar energy system, the combined lots shall be considered as one for the purposes of applying setback requirements.

Point of Interconnection (POI) – the point at which power is delivered to an electrical distribution or transmission system and usually represents demarcation between the Solar Energy System and utility owned electrical infrastructure.

Renewable Energy Substation – An electrical substation used in the generation, transmission, and/or distribution system directly associated with and constructed for a Solar Energy System. Not including utility owned electrical substations already in existence prior to Solar Energy System construction, unless said substation is within the solar Facility Area, and, modified for the Solar Energy System’s use, and owned by the Solar Energy System legal entity.

Roof-Mounted Solar Energy System – A series of solar panels on the roof of any legally permitted building and/or structure for the purpose of producing electricity for on-site and/or off-site consumption.

Severe Weather Event: As defined by the National Weather Service, events such as: floods, tornados and thunderstorm that produces a tornado, winds of at least 58 mph, and/or hail at least 1" in diameter.

Shrubland: For the purpose of this law the terms Shrubland, Brushland, Brush, Scrub Brush, Overgrown, other reasonably synonymous terms shall describe lands with thickets of shrubs and young trees mixed with scattered grasses and wildflowers. Shrubland are areas where open space has been left alone, unmaintained and unmowed for approximately twenty-five to thirty years before becoming early successional forest.<sup>2</sup>

Solar Access - Space open to the Sun and clear of overhangs or shade so as to permit the use of active and/or passive solar energy systems on individual properties.

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

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<sup>2</sup> Definition from University of New Hampshire. <https://extension.unh.edu/resource/shrublands>

Solar Energy Equipment - Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity.

Solar Energy System – Also called solar energy facilities, components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. A Solar Energy System is classified as a Tier 1, Tier 2, Tier 3, Tier 4, or Tier 5 Solar Energy System as follows.

- A. Tier 1 Solar Energy Systems include the following:
  - a. Roof-Mounted Solar Energy Systems.
  - b. Building-Integrated Solar Energy Systems.
  - c. Roof mounted Solar Water Heater systems for the purpose of supplying domestic hot water to the property it is located on, and for no other purpose.
  
- B. Tier 2 Solar Energy Systems include the following:
  - a. Ground-Mounted Solar Energy Systems not included under Tier 1 with a Nameplate Capacity of up to 25 kW AC with a Facility Area of up to 600 sq-ft.
  - b. Ground mounted Solar Water Heater systems with a Facility Area of up to 600 sq-ft, for the purpose of supplying domestic hot water to the property it is located on, and for no other purpose.
  
- C. Tier 3 Solar Energy Systems include the following:
  - a. Ground Mounted Solar Water Heater systems not included under Tier 1 or Tier 2.
  - b. Ground-Mounted Solar Energy Systems not included under Tier 1 or Tier 2 Solar Energy Systems with a Nameplate Capacity of up to 5 MW AC.
  
- D. Tier 4 Solar Energy Systems include the following:
  - a. Ground-Mounted Solar Energy Systems not included under Tier 1, 2 or 3 Solar Energy Systems with a Nameplate Capacity of up to 25 MW AC.
  
- E. Tier 5 Solar Energy Systems are Solar Energy Systems and Solar-Thermal Systems which are not defined under Tier 1, 2, 3 or 4.

Solar-thermal systems – Solar thermal power/electric generation systems collect and concentrate sunlight to produce the high temperature heat needed to generate electricity. Including but not limited to linear concentrating systems, solar power towers, solar dish, solar engine, and similar systems.

Solar Water Heaters – Systems which use solar energy to generate domestic hot water typically for, but not limited to residential use. Systems may be roof or ground mounted.

TDE –Town Designated Engineer.

UL - Underwriters Laboratory, an accredited standards developer in the United States.

Uniform Code - The New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

**V. SECTION FIVE – APPLICABILITY**

- a. The requirements herein shall apply to all solar energy system and equipment installations modified or installed after the effective date of this law, excluding general maintenance and repair.
- b. Solar energy system installations for which a valid building permit has been issued, or, if no building permit is presently required, for which installation has commenced before the effective date of this law shall not be required to meet the requirements of this law.
- c. Modifications to an existing solar energy system that increase the system’s area by more than 5 percent (exclusive of moving any fencing) from original approval shall be subject to this law.
- d. A building permit shall be required for installation of all solar energy systems. All solar energy systems except Tiers 1 and 2 shall require evaluation and approval of a Town Designated Engineer.
- e. All solar energy systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code (“Building Code”) the NYS Energy Conservation Code, and the Town of Rotterdam Code.
- f. To the extent that any other town law, rule or regulation, or parts thereof, are inconsistent with the provisions of this law, the provisions set forth in this law shall control only as they pertain to solar energy systems.
- g. Any proposed solar energy system subject to review by the New York Board on Electric Generation and Siting and the Environment pursuant to Article 10 of the New York State Public Service Law, or the Office of Renewable Energy Siting pursuant to Article 94-c of the Executive Law, shall be subject to all substantive provisions of this law and any other applicable laws, codes, ordinances and regulations of the Town of Rotterdam, and any other applicable state or federal

laws. For the purposes of this provision, such systems shall be classified as Tier 4 herein.

**VI. SECTION SIX – PROHIBITIONS AND EXCEPTIONS**

- a. Installation of any sized solar energy systems on bodies of water or within regulated wetlands is prohibited.
- b. No solar energy system shall be installed within a 100-year flood zone, defined as “A”, or “AE” on FEMA Flood Maps.
- c. Solar collectors that are integrated directly into building materials, such as roof shingles, and that are a permanent and integral part of and not mounted on the building or structure are exempt from the requirements of this law. However, all applicable building codes shall be met, and necessary permits obtained.
- d. Portable solar collectors as part of vehicles, such as campers and similar, or other small, foldable systems meant for temporary use and not in place for longer than 30 calendar days are exempt from the requirements of this article. However, all applicable codes for their operation shall be met, and necessary permits obtained.
- e. Tier 5 facilities, as defined above, are prohibited in all Zoning Districts in the Town of Rotterdam.
  - i. Rationale: Pursuant to the Town of Rotterdam Comprehensive Plan, The Town of Rotterdam can generally be separated into two distinct areas. The eastern part of Town is mostly developed and urbanized and is the location of most of the Town’s infrastructure. The western portion of the Town, however, is distinctly unique in its low level of development, rural character, agricultural lands, and diversity of natural resources. Rotterdam has established an overall policy establishing its desire to maintain its predominantly rural character in the western portion of our Town. Maintaining the rural character shall be accomplished by preserving agricultural landscapes, open space, important scenic views, fresh watersheds, floodplains, historic sites, conservation easements, trails, parklands, wetlands, wildlife, and appropriately sized infrastructure.
  - ii. The Rural, Agriculture and Natural resources component of the Plan’s Vision Map focuses on maintaining and protecting these key resources while supporting agricultural businesses and preserving natural resources.

- iii. 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”.

- iv. 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 referring 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.
- v. The Town of Rotterdam specifically requests that, with regard to any proposed major renewable energy facility having a nameplate capacity of twenty (20) MW or greater or others being reviewed under NYS Executive Law Section 94-c (2)(h), that the NYS Office of Renewable Energy Siting honor and enforce this prohibition.

## **VII. SECTION SEVEN – GENERAL REQUIREMENTS**

The installation of a solar collector or panel, whether attached to the main structure, an accessory structure, or as a detached, freestanding or ground-mounted solar collector, shall meet all requirements of this section.

- a. All proposed solar energy systems shall submit a Town of Rotterdam Solar Development Application and other associated items outlined herein.
- b. All solar energy systems shall adhere to all applicable NYS and Town of Rotterdam building, plumbing, electrical, and fire codes. Except for conditions specified in this law, all systems shall comply with the provisions of the Town zoning ordinance for the zoning district in which they are located.

- c. All solar collectors and their associated support elements shall, at the time of installation, be designed according to generally accepted engineering practice to withstand heavy snow loads and wind pressures applied to exposed areas by wind from any direction, to minimize the migration of light or sound from the installation and to minimize sight obstructions for adjacent structures or land parcels.
- d. All solar collectors shall have anti-reflective coating(s) to reduce glare to the maximum extent practicable. All solar collectors and related equipment shall be placed and arranged such that reflected solar radiation or glare shall not be directed onto adjacent properties or public roadways. Panels shall not reflect more than 2% of incoming sunlight.
- e. All solar collectors and their associated support elements shall have a non-reflective finish and be of neutral paint colors to achieve visual harmony with the surrounding area.
- f. All participating properties for solar energy systems shall have a single landowner. Solar energy system projects shall not be sited on more than one side of a public road, regardless of property ownership or municipality.
- g. Ground-mounted solar energy system height shall not exceed 15 feet when oriented at maximum tilt.
- h. When required, solar energy systems applicant shall pay all associated costs for application review, including but not limited to engineering, legal, environmental, planning, and the review required under SEQRA. When the Planning Commission determines that a review will require such costs, it shall provide an estimate to the applicant. Subsequently, such payment shall be made prior to commencement of full Planning Commission review after an initial meeting.
- i. When solar energy systems are paired with BESS, it shall be noted in the Solar Development Application and be subject to applicable requirements of Town of Rotterdam's BESS code.
- j. Visual Impact: A solar energy system shall not be installed in any location that would substantially detract from or block the view(s) of all or a portion of a recognized scenic viewshed, as viewed from any public road, right-of-way, or publicly owned land within the Town or that extends beyond the border of the Town.
- k. Landscaping and Screening: Landscaping buffer areas shall be required between the Facility Area and adjacent property lines to screen the view of Tier 2 and larger systems. Buffer widths shall be as follows:

- i. Tier 2: 25 feet and may be increased to a maximum of 100-ft by the Code Enforcement officer. The Planning Commission may alter or waive this requirement in the case of carport or canopy systems in parking lots.
- ii. Tier 3: 50 feet and may be increased to a maximum of 100-ft by the Planning Commission.
- iii. Tier 4: 200 feet. If the project is located in zones I-1 or I-2 the buffer width may be reduced to 100-feet or other reasonable width determined by the Planning Commission.

Buffers shall use existing vegetation to the fullest extent practicable. If existing vegetation does not provide the desired screening or buffer width it shall be supplemented with new landscaping to form a continuous hedge at least 14 feet in height at planting shall be required and maintained for the life of the project. Berms, solid fencing, and opaque enclosures are the least desirable method of screening but may be proposed in situations where existing or new landscaping for screening is not practical. New landscaping proposed for the project shall be species native to the region and selected by a Registered Landscape Architect. All landscaping and screening methods shall be maintained and replaced as necessary during the life of the project.

- l. Lighting: Where lighting is required for solar energy systems, it shall be limited to lighting required for safety and operational purposes and shall be cast downward and shielded from all neighboring properties and public roads. Lighting shall be capable of manual or auto-shut off switch rather than motion detection. All lighting sources and fixtures shall fully shield and comply with International DarkSky lighting standards. No light source may exceed a maximum Correlated Color Temperature (CCT) of 3,000K. "Dusk to Dawn" lighting is prohibited.
- m. Fencing: Where fencing is required per this law or NEC code, it shall encompass all solar collectors, electrical and control equipment, substations, batteries, and shall be labeled, and secured to prevent unauthorized access. Such equipment shall be enclosed with a seven (7) foot high fence or per most current NEC requirements. Fencing shall have a self-locking gate to prevent unauthorized access and shall be wildlife permeable/friendly by including one way wildlife gates every 1,000 linear feet of perimeter fencing (minimum of two). Fixed-knot woven wire or other wildlife friendly fencing and mixed used fencing is preferred and shall include areas that shall allow small-to-medium sized animals (e.g., turtles, racoons, birds, etc.) areas which to easily pass through. Fencing shall be located inside any landscaping buffer area required by this Law. Barbed wire fencing is prohibited.
- n. Signage: Warning signage shall be placed on solar equipment to the extent appropriate. All signs, streamers, or similar items, both temporary and permanent,

are prohibited on solar equipment except the following, which must be posted at all points of Facility Area ingress/egress and any substation fencing:

- i. Manufacturers or installer's identification;
  - ii. Appropriate warning signs and placards;
  - iii. Signs that may be required by a federal or state agency;
  - iv. Signs that provide a 24-hour emergency contact phone number and warn of any danger and signs that direct Fire department and Hazmat to emergency safety protocols. Said information shall be depicted within an area of no more than eight square feet.
  - v. As required by the NEC, disconnect and emergency shut off information shall be clearly displayed on a light-reflective surface.
  - vi. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
  - vii. No advertising signage is permitted.
- o. Access Roads and Parking: Where required, roadways and parking will be provided to assure adequate operational and emergency access. Access roads will be reviewed for operational and fire safety purposes by the TDE, who may ask for the Local Fire Department's opinion of the proposed roads. Access roads shall be a minimum of width of 20 feet, and no greater than 26 feet wide. Adequate turnarounds shall be provided as determined applicable codes and the TDE. All roadways and parking areas associated with the solar energy system shall remain unpaved and, to the greatest extent practical, of pervious surfaces.
- p. Site access: The fire break around the Facility Area fencing shall be accessible at all times and maintained at a level acceptable to the local fire department and emergency services, including snow removal. Snow removal on access roads shall be performed within 24 hours of a more than 6 inches snowfall, and at no point shall there be more than 6 inches of snow accumulation on the access roads through the course of winter season.
- q. Slopes: Ground-Mounted Solar Energy Systems and associated equipment shall not be placed on slopes greater than 15 percent covering a minimum horizontal area of  $\frac{1}{4}$  of an acre or 10,890 square feet and a minimum horizontal dimension of 10 feet. No earthwork may be done to for the sole purpose of altering natural slopes for placement of panel arrays to meet this requirement.
- r. Site disturbance, including but not limited to, grading, soil removal, excavation, and soil compaction in connection with installation Facility Area shall be minimized to the greatest extent practical.

- s. Agricultural Areas: Solar energy systems shall limit the use of agricultural areas within their project limits to no more than 10 percent of soils classified by the NYS Department of Agriculture and Markets' Agricultural Land Classification as mineral soils groups 1 through 4. All solar energy systems shall adhere to the Department of Agriculture and Markets' Guidelines for Construction Mitigation for Agricultural Lands. Tier 4 solar energy systems shall not be sited on lands shown on the Schenectady County Agriculture District Map.
- t. Blasting is prohibited for the construction of all solar energy facilities.
- u. There shall be no drilling within 500 feet of active wells for construction of Tier 3 and larger solar energy systems.
- v. No pesticides or herbicides are to be used within the Facility Area for the lifetime of the project.
- w. All electrical lines and wiring associated with solar energy systems shall be buried to the greatest extent practical and include necessary encasements in accordance with the NEC. For Tier 3 and 4 systems, the applicant is encouraged to use ground mounted equipment at the POI to avoid viewsheds impacts to sensitive receptors. The Planning Commission may waive this requirement if sufficient engineering data is submitted, which demonstrates that underground lines are not feasible or practical. The applicant is required to show the locations of all proposed overhead and underground electrical lines including substations, switchyards, junction boxes and other electrical components for the project on the site plan.
- x. Where required and prior to final approval of a solar energy system, all engineering documents, including site plan, Stormwater Pollution Prevention Plan and Decommissioning Plan, etc., shall be signed and sealed by a New York State-licensed professional engineer. The solar energy system shall comply with all requirements of Article XXVI Erosion and Sediment Control of Town Code, and applicable New York State laws periodically amended over time. The site shall be designed to avoid adverse changes to drainage, runoff, and overall site hydrology, which could impact both participating and other non-participating properties.
- y. The Planning Commission or Town Code Enforcement Office may request any other information or documentation reasonably required for review or approval of an application, as applicable.

**VIII. SECTION EIGHT – TIER 1 SOLAR ENERGY SYSTEMS PERMITTING REQUIREMENTS**

- a. Zones Allowed: Allowed in all zones.

b. Applications, Approvals, Fees, and Permits: Solar Development Application and Building Permit. Fees in accordance with the most current version of the Town of Rotterdam Fee Schedule.

c. Setbacks:

1. Tier 1 systems are affixed to structures that shall conform to the setbacks in the subject zoning district. If the structure is existing and nonconforming with its zone requirements, setbacks shall be to the extent the structure remains lawful under other provisions of Town Code.

d. Specific Requirements:

1. Tier 1 systems shall not exceed the maximum allowed height of the principal use in any zoning district.
2. Tier 1 systems shall be mounted as flush as possible to the roof. Solar panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 24 inches above the flat surface of the roof, whichever is higher. Solar panels on pitched roofs shall be installed at the same angle as the roof's surface with a maximum distance of eight inches between the roof and the highest edge of the system. Solar panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached. To achieve proper solar orientation, panels may exceed the roofline by five feet.
3. In order to ensure firefighter and other emergency responder safety, except in the case when solar panels are installed on an accessory structure less than 1,000 square feet in area, there shall be a minimum perimeter provides a 36 inches wide access pathways area around the edge of the roof to provide space on the roof for walking around all solar collectors and panels.
4. All Tier 1 systems shall be required to display a permanent plaque or directory placed in an exterior location near the main or front entry of a residence or other structure that is readily visible to firefighters to identify system disconnect(s) location. The plaque or directory shall meet all New York State Building Code standards for reflection, lettering, and color for easy visibility.

**IX. SECTION 9 – TIER 2 SOLAR ENERGY SYSTEMS PERMITTING REQUIREMENTS**

a. Zones Allowed: Allowed in all zones.

- b. Applications, Approvals, Fees, and Permits: Solar Development Application and Building Permit. Fees in accordance with the most current version of the Town of Rotterdam Fee Schedule.
- c. Setbacks:
  - 1. All Tier 2 systems shall be set back from the property line by the greater of 25 feet or the otherwise applicable setback in the subject zoning district.
- d. Specific Requirements:
  - 1. All applicable requirements listed under Section 7 of this Law.
  - 2. Tier 2 systems shall only be permitted in the side or rear yards of properties. In the case of carport or canopy systems, the applicant may apply to the Planning Commission for consideration of Tier 2 systems in front yards for parking lots and commercial use.
  - 3. The area beneath Tier 2 systems shall be included in calculating lot coverage requirements for the subject zone.
  - 4. The installation of Tier 2 systems shall be considered a land development activity for purposes of Article XXVI of Town Code.
  - 5. Ground-mounted solar energy system shall have views minimized from adjacent properties to the extent reasonably practical. Solar energy equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of other properties.
  - 6. All Tier 2 systems shall be required to display a permanent plaque or directory placed in an exterior location near the main or front entry of the property or other structure that is readily visible to firefighters to identify system disconnect(s) location. The plaque or directory shall meet all New York State Building Code standards for reflection, lettering, and color for easy visibility.

**X. SECTION 10 – TIER 3 SOLAR ENERGY SYSTEMS PERMITTING REQUIREMENTS**

- a. Zones Allowed: Allowed in all zones.
- b. Applications, Approvals, Fees, and Permits: Solar Development Application; Site Plan, Special Use Permit approval process; Building Permit. Fees in accordance with the most current version of the Town of Rotterdam Fee Schedule.

c. Setbacks:

1. All Tier 3 systems shall be set back from the property line by 100 feet as measured to the fenced perimeter of the Facility Area.
2. The following may not be subject to required property line setback herein unless otherwise directed by the Planning Commission.
  - i. Access roads proposed from a public road to the fence of a solar energy system, including any stormwater management, or other necessary infrastructure installed for the purpose of this access road.
  - ii. POI connections to electrical distribution systems on public roads or utility right of ways.

d. Specific Requirements:

1. All applicable requirements listed under Section 7 of this Law.
2. Facility Area shall not exceed 50 percent lot coverage, except in Agricultural Districts which shall not exceed 30 percent lot coverage.
3. All requirements of Article XVII Site Plan Approval and Article XIX Special Use Permit. In addition to these sections, Site Plans for the application shall also contain the following:
  - a. Location map showing types of existing structures and uses on the site, public roads, and other properties within 2,500 feet of the boundaries of the site including any bordering municipalities.
  - b. Site plan shall provide surveyed data of abutting properties to the Participating Property parcel(s) showing all principle and accessory buildings (residential and commercial), roads, utilities and private or public wells; and labeling distances from those features to the Participating Property boundary;
  - c. Location and description of all solar energy system components, whether on site or off site, all above and below-ground utility lines on the site, transformers, POI, Renewable Energy Electrical Substations when required for project, fencing, laydown, and storage areas to be used as part of construction and other ancillary facilities or structures;
  - d. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
  - e. Label all setback distances as required by Town laws;
4. Part 1 of a full a Full Environmental Assessment Form for SEQRA.

5. Upon receipt of an application, the Town requires proof of mailing, at the Applicant's expense, a notice of the proposed project to all owners of property within a one (1) mile radius of the Participating Property boundaries regardless of municipality. Notices shall contain a summary of the project, a designated contact person, with telephone number, e-mail address, and mailing address from whom information will be available on a going forward basis.
6. An electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices identified.
7. Manufacturer data on all proposed solar energy system components.
8. Documentation of access to the Facility Area via a lease agreement or other instrument to show the landowner's consent to the project.
9. Documentation of utility notification, including proof of interconnection agreement. Projects not viable to the utility company shall not be considered by the Planning Commission.
10. Decommissioning plan, including cost estimate and description and form of financial surety as described in other sections of this law.
11. Deforestation: Previously cleared or disturbed areas are preferred locations for solar projects.
  - a. Forested lands and woodlands shall not be deforested to construct solar energy facilities.
  - b. Shrubland, isolated trees or stand of trees in otherwise open space may be cut. However, clear cutting of trees more than three inches in diameter at breast height in a single contiguous area exceeding 20,000 square feet is prohibited. This clearing restriction shall apply to trees cleared for entire facility area, in and outside fenced perimeter of facility area, and on the participating properties.
  - c. The applicant will be required to retain the services of a qualified arborist and/or forester to define, delineate and certify in writing the limits of forest, shrubland, and tree stands. if there is uncertainty in the participating properties' land covers.

- d. Removing trees beyond what is deemed necessary by the Planning Commission to install and maintain the solar energy systems shall be prohibited.
- e. Unless waived or altered by the Planning Commission, trees more than three inches in diameter at breast height that are removed from shall be replaced at a 1:1 ratio on the participating properties, or at other locations within the Town of Rotterdam agreed to by the Planning Commission and involved landowners.

Any portion of a property that has been clear-cut in excess of the area described in the paragraphs above shall not be included in an application for a solar energy facility for a period of three (3) years following such clear-cutting. The applicant shall submit aerial imagery of the participating properties for a period of three (3) years prior to the date of application.

- 12. Renderings: Applicant shall provide a photo simulation by an independent third-party vendor, with scaled color visual renderings to demonstrate the adequacy of proposed buffering/screening at the completion of construction of the solar energy system, and similar visual renderings of the projected maturation of the buffering/screening at five years and 10 years after completion of the solar energy system. The Planning Commission may require the above renderings from multiple angles or perspectives as they deem appropriate.
- 13. Acoustical noise studies by an independent third-party vendor shall be submitted with the application, which provide analysis of all noise-generating equipment that may be included in the project, including for construction. Noise generated from the solar energy system's components and associated ancillary equipment, including but not limited to transformers, inverters, storage devices, substations, and tracking motors shall provide for no discernable difference from existing noise levels at property lines. The study shall contain:
  - a. Actual measurements of existing daytime and nighttime ambient noise at the boundary of the participating properties. Ambient noise testing locations and schedule shall be discussed with the Planning Commission before testing takes place.
  - b. Proposed noise model to predict potential increase in noise from the project for pre-construction and post-construction conditions at both the project boundaries and nearest adjacent receptors (neighboring houses, etc.).
  - c. Noise studies shall follow industry norms and report their findings using A-weighted methodologies.

The Planning Commission may require additional analysis as they deem appropriate and may require noise mitigation or additional setbacks as needed to meet this requirement.

14. Glare studies prepared by an independent third-party vendor shall be submitted with the application, which shall demonstrate that any glare or heat to be produced by the solar project does not have a significant adverse impact on neighboring properties or roadways. The study shall:
  - a. Be prepared to determine predicted glare caused by the proposed solar energy system or facility that may affect off-site property locations and effecting residences and view sheds, which shall be referred to as solar equipment glare.
  - b. Include a statement of projected glare impact, certified, and signed by a qualified specialist or Professional Engineer, stating the proposed glare impact analysis is accurate.
  - c. A post-construction glare monitoring plan shall be submitted, which at a minimum, requires annual certification by a qualified specialist or Professional Engineer of the applicant or facility owner that the solar energy system or facility conforms to the requirements of this section. If no complaints regarding glare are filed with the Town in the initial two-year period after the system or facility becomes operational, the applicant/ facility owner may request that the annual certification be suspended.
15. A storm water pollution prevention plan in accordance with all requirements of Article XXVI Erosion and Sediment Control, and applicable New York State laws periodically amended over time, shall be submitted for review and approval by the Town's MS4 office and the TDE.
16. A 15-foot-wide fire break, in accordance with NYS Fire Code, shall be maintained around the immediately outside the fenced perimeter of the Facility Area.
17. As part of the Operation, Safety and Maintenance Plan in Section 13 of this Law, the applicant shall document existing firefighting resources near or on the Participating Properties that may include, but not limited to: distance to nearest fire hydrant, dry hydrants, ponds, or other waterbodies sufficient for drawing water in emergency situations. If firefighting resources do not exist within a reasonable distance to the project, the Planning Commission, in consultation with the local fire department and TDE may require retention ponds and dry hydrant construction to meet firefighting needs.

18. Construction Hours and Guidelines: Drilling or pile driving for racking foundations or other equipment, truck idling and deliveries shall be limited to Monday through Friday between the hours of 8 a.m. and 6 p.m. and shall not be conducted outside these hours, or on Saturdays, Sundays, and Federal holidays recognized by New York State. Truck idling in excess of 5 minutes is prohibited by State Law, and when it is to legally occur, shall only take place during construction hours listed above. All other activities may follow construction hours guidelines in other sections of Town Code. If, due to safety, emergency or continuous operation requirements, construction activities are required to occur beyond the allowable work hours, the applicant shall notify the Town Code Enforcement Office with forty-eight (48) hours advanced notice, unless such construction activities are required to address emergency situations. In such cases, as much advance notice as is practical shall be provided. Violations and penalties of this provision shall be in accordance with other sections of Town Code concerning noise violations.
19. Construction Equipment Noise: Construction equipment and all trucks delivering to the site shall use alternatives to back-up beepers such as warning alarms, white noise systems, flaggers/spotters, and other OSHA approved systems. Violations and penalties of this provision shall be in accordance with other sections of Town Code concerning noise violations.
20. Within 30 days after completion of the solar energy system, the applicant shall file in the Code Enforcement Office a post-construction certification from a professional engineer registered in New York State stating that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans. The applicant shall further provide certification from the utility that the facility has been inspected and connected.

**XI. SECTION 11 – TIER 4 SOLAR ENERGY SYSTEMS PERMITTING REQUIREMENTS**

- a. Zones Allowed: Allowed by right in Zones I-1 and I-2. Allowed by Solar Energy Overlay District in any other zone pending approvals listed below.
- b. Applications, Approvals, Fees, and Permits: Solar Development Application; Site Plan, Special Use Permit approval process; Solar Energy Overlay District Approval; Building Permit. Fees in accordance with the most current version of the Town of Rotterdam Fee Schedule.

- i. A pre-submission conference with the Town is required. The applicant shall provide the opportunity for an on-site visit by any interested Town committee or board members.
- c. Setbacks:
  1. Tier 4 systems located in zones I-1 and I-2 shall be set back from the property line by 100 feet as measured to the fenced perimeter of the Facility Area. The setback shall be increased to 500 feet for all other zones.
  2. Renewable Energy Substations systems shall be set back 750 feet from property lines and 900 feet from active water wells.
  3. Tier 4 Facility Areas shall be setback at a minimum of 200 feet from regulated wetlands, ponds, and streams, unless otherwise waived from this requirement by the Planning Commission upon receiving proper permit from regulatory agency.
  4. The following may not be subject to required property line setback herein unless otherwise directed by the Town of Rotterdam Planning Commission.
    - a. Access roads proposed from a public road to the fence of a solar energy facility, including any stormwater management, or other necessary infrastructure installed for the purpose of this access road.
- d. Solar Energy Overlay District: In order for Tier 4 systems to be sited in areas of the Town outside of Zones I-1 and I-2, the applicant must petition the Town Board to amend the Town of Rotterdam Zoning Code and Map to include a Solar Energy Overlay District over the Participating Properties. The purpose of the overlay district is to preserve existing zoning where a Tier 4 project is proposed and add to it a use for such a facility, with any condition(s) the Town Board deems necessary to include. Petitioning for this overlay district shall follow all procedures for such process under State and Town law.
- e. Escrow for Review and Operations: Tier 4 projects will require more oversight and services by the Town and their selected consultants. In addition to the normal escrow requirements of section 7, the account shall also include adequate funding for any necessary mailings by the Town, construction inspection, annual inspections, and for monitoring during operation of the facility. The escrow account shall be replenished when required by the Town and shall be maintained for the life of the project. Failing to replenish the account may result in postponing the review of a project or activating the Decommissioning Agreement.

f. Specific Requirements:

1. All applicable requirements listed under Section 7, and all requirements of Section 10 (d) of this Law.
2. Application materials must contain a statement clearly indicating how the proposed facility is consistent with Comprehensive Plan and Open Space Plan.
3. The Applicant shall disclose the full scope of the planned size of the project, including any other involved municipalities, and shall not segment the application for purposes of reducing the apparent significance of proposed plans. Where the Planning Commission or Lead Agency has substantial proof that the ultimate scope of the project may exceed that which is actually being proposed by the Applicant, it shall conduct its review and base its findings on the larger potential scope.
4. Solar Energy Systems shall not be placed on properties included on or in the viewshed of New York State or Natural Register of Historic Places or has submitted an application for inclusion as historic and/or culturally significant resources to the New York State Historic Preservation Office.
5. Solar Energy Systems shall not exceed a maximum project size of 100 contiguous acres.
6. No solar energy systems of Tier 4 and greater may be within a 2.5-mile radius of any other facility of Tier 4 size or greater, regardless of municipality.
7. Solar energy systems of Tier 4 and greater shall not be located above the elevation of 1,000 feet (NAVD 88), or along ridgelines and on hilltops.
8. In addition to Section 10(d)(5) of this Law, required notice to surrounding landowners shall contain a link to a project website, created and paid for by the applicant, which is meant to disseminate information to the public. At the Applicant's expense, publication of notice of application shall be made in newspapers designated by the County of Schenectady and Town of Rotterdam for same. Notice shall also be provided to each member of the State and County Legislature in whose district any portion of the proposed solar facility is located in, or which district the project abuts upon.
9. Upon submission of an application, the Applicant shall conspicuously post signage on the frontage of participating properties at all roads abutting the proposed project and at the proposed entryways/exits to the project. Signage must be at of sufficient size to contain the name of the proposed project, the application number, a rough concept map of the project, and contact information for the developer as well as a

proposed project website address. Signage shall be sized and placed at a safe distance from the public roadway as to not interfere with sight distance on the roadway or any adjacent driveways.

10. In addition to Noise Studies requirements under Section 10(d) of this law, within 90-days of project completion the applicant or facility owner shall conduct a post-construction noise sampling shall at locations and schedule discussed with the Planning Commission prior to testing. If noise sampling is found to be greater than predictions the Applicant may be required to mitigate the sound to a level sufficient to the Planning Commission. Failure to implement mitigation measures within 90-days of notice will result in Abandonment of the project and Decommissioning will commence. The applicant may request one (1) 90-day extension if reasonable evidence that the requested measures cannot be completed in 90-days. Further, violations and penalties of this provision shall be in accordance with other sections of Town Code concerning noise violations. The town may use the project's escrow account to hire an independent, third-party engineer/noise monitor to oversee compliance with noise requirements and the ongoing obligation of same for the lifetime of the project.
11. A GIS viewshed analysis of the Zone of Visual Impact (ZVI) prepared by an independent third-party vendor; defined as the area from which the proposed undertaking may be visible within a one-half mile (0.5) buffer around solar fields covering 4 to 39 acres in size, a one-mile buffer around solar fields covering 40 to 60 acres, a three-mile buffer for solar fields covering 61-80 acres, and a four-mile buffer for solar fields covering 81-100 acres. Positive visibility of the solar field must be based upon bare-earth topography only (do not factor in vegetation). Forested lands shall be assigned a height of 30 feet unless otherwise factually disputed. The analysis should be presented as an orthorectified aerial base map with the buffer boundary and project area indicated and ZVA highlighted. A visual analysis shall be provided from all property owners immediately adjacent to the proposed solar energy system. The analysis shall be for each season and from the building face at eye level from grade. The visual analysis will quantify the severity of the visual impact. A balloon study which provides aerial viewshed maps, model-massing, and photorealistic simulations shall be performed if deemed necessary by the Planning Commission. All required tests must comply with specific balloon test performance criteria and simulation guidelines of the National Park Service and the Bureau of Land Management.
12. In addition to landscaping requirements within this law, the applicant shall prepare a vegetation management plan that includes a list of all proposed plantings and seeding mixes, summarizes clearing operations, discusses the location of offset plantings if offsets are required, provides information on protection of pollinators

and perennial vegetation, and lists the methods and frequency of vegetation maintenance.

13. Wildlife: Development and operation of solar energy systems shall have no significant impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town or other federal or state regulatory agencies. To assure this condition the following must be provided:
  - a. Environmental Resource Map: The Applicant shall generate a site map delineate sensitive environmental features (wetlands, slopes, soils, land covers, etc.) along with other site information to identify and describe how the proposed solar energy system shall avoid or mitigate adverse impacts to these resources. Lands that have the highest ecological value as evidenced by large, continuous areas of forest, undisturbed drainage areas, wetlands or NYSDEC identified critical habitats or rare plant and animal populations shall be avoided.
  - b. Wildlife Habitat Assessment: The Applicant shall employ an independent third-party with qualifications as an ecologist to generate a habitat assessment. The assessment shall include:
    - i. A sketch map (e.g., drawn on an aerial photo image) depicting the habitats and watercourses on and near the property along with roads, existing structures, and other features that would help the applicant and the town understand the spatial relationships of existing natural and cultural features.
    - ii. Describe the habitats and ecological communities on and near the site, using classifications from standard references relevant to this region.
    - iii. Summarize species evident to ecologist that may inhabit the participating properties and surrounding areas.
    - iv. Note any species of concern, threatened, endangered or otherwise.
    - v. Address on-site bird and bat migration, nesting, and habitat surveys and recommend or conduct surveys for such species during the appropriate seasonal windows during the year prior to submittal of an application.
    - vi. Discuss potential impacts due to the proposed Solar Energy System, and potential mitigation if required,
    - vii. Cite all sources and references, including using the most recent New York State Department of Environmental Conservation survey protocols for grassland birds and winter raptors. For other wildlife, applicants shall follow NYSDEC guidance on appropriate survey methods.

- c. Provide additional wildlife surveys as required based on the findings of the Habitat Assessment, or as required by federal, state, and local agencies.
  - d. The applicant shall hire an independent, third-party environmental monitor to oversee compliance with environmental commitments and siting requirement, and the ongoing obligation of same for the lifetime of the project. The environmental monitor shall perform regular site inspections of construction work sites and provide annual inspections of the completed solar energy system at the expense of the developer, ATIMA, ISAOA.
14. Designated traffic routes for construction and delivery vehicles to minimize traffic impacts, wear, and tear on local roads, and impacts on local business operations shall be proposed by the applicant and reviewed by the Planning Commission. At the Planning Commission discretion, a Road-Use Agreement may be required for the desired traffic route.
15. Well water and ground contamination testing shall be required for all Tier 4 and greater projects.
- a. The applicant, Town, and TDE shall develop a list of potential contaminants that will be tested for, and the location of testing based on the proposed equipment for the Tier 4 facility prior to testing.
    - viii. List of contaminants that may be tested for includes but is not limited to: sulfuric acid, mercury, nickel, cadmium (known Carcinogen), cadmium telluride, lead, lithium, cobalt, lithium, iron, arsenic, silicon, copper, silver, selenium, copper indium selenide, copper indium gallium, diselenide, (di)selenide, hexafluoroethane, polyvinyl fluoride, PFAS, and any other contaminant required for testing by the Town, County or State for this type of facility at the time testing takes place.
  - b. At the applicant's cost, an escrow account with the Town shall be established to provide an independent third-party testing agency that may provide testing of the Facility Area and of water wells on properties within 1000-ft of the facility area.
  - c. At the applicant's expense, notice shall be given to all property owners within 1000-ft that water well testing is available.
  - d. Pre-construction testing: Initial testing shall take place within 12-months of establishing special escrow account. Test results for the Participating Properties shall be furnished to the Town. Results for adjacent properties will be given to the property owner to be shared at their discretion.
  - e. Post-construction testing: Post-construction testing shall take place within 24-months of final construction of the Tier-4 facility. Test results

for the Participating Properties shall be furnished to the Town. Results for adjacent properties will be given to the property owner to be shared at their discretion.

## **XII. SECTION TWELVE – REQUIRED AGREEMENTS**

The following applies to Tier 3 and greater solar energy systems, unless waived or altered by the Planning Commission.

- a. Road Use Agreement: The applicant shall execute a road use agreement with the Town if town roads are to be used for the project. Prior to the issuance of the building permit and commencement of construction, an existing condition assessment of the proposed hauling routes using town roads shall be undertaken by the applicant at the applicant's expense. Any damage to a Town road during construction caused by the operator or its subcontractors shall be repaired or reconstructed to the satisfaction of the Town Highway Superintendent at the operator's expense.
- b. Performance Guarantees: The Town will require the applicant or facility owner to provide, prior to construction, a performance bond or cash escrow that names the Town of Rotterdam as the beneficiary, to ensure proper operation and maintenance of all below noted facilities, both during and after construction and until the solar energy facility is removed from operation. If the applicant or facility owner fails to properly operate and maintain below noted facilities, the Town, after giving reasonable notice for non-emergencies, may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs. After which, the account shall be replenished by the applicant or facility owner within 90 days, or else the facility will be considered abandoned, and decommissioning shall be enacted.
  - i. Facilities for performance guarantees:
    1. All proposed landscaping and screening for the project in the amount of 50 percent the installed cost.
    2. Stormwater management and erosion and sediment control facilities required for the project in the amount of 50 percent the installed cost.
    3. Any other facility as part of the proposed project, deemed necessary for inclusion to this section by the Planning Commission.
- c. Decommissioning: The applicant shall execute a decommissioning agreement and financial surety as described in Section Fourteen of this law.
- d. Indemnification: The applicant system shall execute an indemnification agreement with the Town. The agreement shall require the applicant/owner/operator to at all times defend, indemnify, protect, save, hold harmless and exempt the Town and its

officers, councils, employees, attorneys, agents and consultants from any and all penalties, damages, costs or charges arising out of any and all claims, suits, demands, causes of action or award of damages whether compensatory or punitive, or expenses arising therefrom either at law or in equity, which might arise out of or be caused by the placement, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said solar energy system, excepting however any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town or its employees or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultant fees and expert witness fees are included in those costs that are recoverable by the Town.

- e. Payment in-lieu of Taxes: The applicant shall enter into an agreement for a payment in lieu of taxes (PILOT) with the Town Board pursuant to Real Property Tax Law Section 487. This PILOT agreement shall be reviewed and approved by the Town Board. A PILOT agreement executed with the county IDA, acceptable to the Town Board, in its sole discretion, for the solar energy system may serve to meet the requirements of this section.
  - i. No building permit shall be issued, or construction commenced for a solar energy system until such time as the PILOT agreement has been executed by all parties and recorded at the Office of the County Clerk.
  - ii. The PILOT shall run to the benefit of the Town and School District, and be executed by the operator and the owners of the real property upon which the solar energy system is to be located and such signatures be notarized in such a way that allows the PILOT agreement to be recorded at the Office of the County Clerk. Prior to commencement of construction, the PILOT agreement shall be recorded at the Office of the County Clerk as a lien on the property and indexed against the property/properties upon which the solar energy system is to be constructed. The intent of this provision is so that should the operator of the solar energy system default with regard to the PILOT agreement, such obligation will become the responsibility of the then owner of the property upon which the solar energy system is sited and failure to satisfy the terms of such agreement will permit the Town to enforce such agreement against the owner.
  
- f. Community Host: Applicable to only Tier 4 and higher systems, an Open Space Public Benefit Fee shall be paid to the Town as part of site plan approval. Tier 4 Solar Energy Systems constitute a unique land use that impacts the Town's ability to retain its suburban and rural aesthetic and occupies large swaths of green space while converting open and/or agricultural lands with potential for more suitable development.

- i. The Planning Commission, as part of its site plan approval for any Tier 3 Solar Energy System, will require a Fee of seven thousand dollars (\$7,000) per acre, or portion thereof; amount to be based upon all land occupied within the fenced area, as described in Section 7, 2, B, including all solar panels, storage, and related equipment.
- ii. Upon the recommendation of the Planning Commission, the Town Board may reduce this fee to two thousand five hundred dollars (\$2,500) per acre of land, if the dedication of equal or better-quality land (fee simple absolute) is accepted by the Town Board.
- iii. Fees collected pursuant to this section shall be allocated to funds designated for parkland or open space at the Town Boards discretion.
- iv. Open Space shall have the following meaning; any space or area characterized by natural scenic beauty whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding development or would maintain or enhance conservation of natural or scenic resources. For the purposes of this definition, "natural resources" shall include, but not be limited to, agricultural lands defined as open lands actually used in bona fide agricultural production.

### **XIII. SECTION THIRTEEN – SYSTEM OPERATIONS AND SAFETY**

The following applies to Tier 3 and greater solar energy systems, unless waived by the Planning Commission.

- a. Operation, Safety and Maintenance Plan: The applicant shall submit a comprehensive operation, safety and maintenance plan that addressing the following:
  - i. Contains an executive summary sheet at the front of the document which clearly shows the following:
    1. Facility owner information and contact, both phone and current email address.
    2. Landowner information and contact, both phone and current email address.
    3. An emergency contact phone number for a competent person who can be to the facility within one (1) hour or less notice. The individual shall have access to the facility gates, knowledge of the site and able to quickly identify electrical disconnect locations.
    4. An emergency contact at the Utility Company associated with the solar energy system POI.
    5. Contact information for company or individual responsible for regular maintenance and landscaping of the site.

- ii. Describes continuing maintenance and upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code and all applicable codes. Shall address the following:
  1. Broken panels and any other damaged or malfunctioning equipment shall be removed, replaced, or repaired from the site within 30 days of discovery or notification of problem at the expense of the developer, ATIMA/ISAOA.
  2. System equipment, grounds, fencing and buffer areas shall be maintained in good condition by the operator.
  3. Plant growth shall be controlled by mowing or grazing.
  4. The use of herbicides and pesticides within the Facility area is prohibited.
  5. Only DEC approved cleaning products applied by DEC approved applicators are allowed.
  
- iii. The applicant shall prepare an Emergency Operations Plan in cooperation with town emergency service providers, which will become part of the Operation, Safety and Maintenance Plan. A copy of the approved plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials and emergency responders. The emergency operations plan shall include the following information:
  1. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.
  2. Procedures for inspection and testing of associated alarms, interlocks, and controls.
  3. Procedures to be followed in response to notifications from the solar energy system that, when provided, could signify potentially dangerous conditions, including shutting down equipment, summoning service, and repair personnel, and providing agreed upon notification to fire company personnel for potentially hazardous conditions in the event of a system failure. All means of shutting down the solar energy system shall be clearly marked.

4. The property must be inspected after a National Weather Service designation of a Severe Weather event to ensure that the property did not sustain damage. Reports of said inspection shall be filed with the Town Building Inspector.
  5. Emergency procedures to be followed in case of fire, explosion, release of liquids, oils, or vapors, damage to critical moving parts, or other potentially dangerous conditions.
  6. Response considerations similar to a material safety data sheet (MSDS) that will address response safety concerns and extinguishment when an MSDS is not required.
  7. Procedures for dealing with solar energy system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged equipment from the facility. System owner shall provide guaranteed non-emergency and emergency response times of a qualified subject matter expert to the DPW and local emergency responders.
  8. Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.
  9. Procedures and schedules for conducting drills of these procedures and for training local (all agencies within 15 miles) emergency responders on the contents of the plan and appropriate response procedures. Training shall be taught by a New York State certified instructor, performed annually, and shall include local and mutual aid emergency responders. Training and specialty equipment shall be paid for by the developer, ATIMA/ISAOA.
  10. The system owner shall notify the local fire department, county emergency management office and the town building inspector at least one week prior to any scheduled maintenance or equipment swap out.
  11. In the event of a fire, all contaminated soil must be removed and disposed of properly, in accordance with all applicable laws.
- b. Consultation with Town Emergency Services: The applicant shall arrange an on-site meeting with the fire department having primary coverage of the project area

and any other associated emergency service provider or Town department, to review the components of the system, safety issues and procedures for emergency response. This shall include details on the location of labeled warnings, access to the site, and emergency disconnection of the system. A draft version of the Operation, Safety and Maintenance Plan described above shall be made available to attendees of this meeting at least seven (7) calendar days before. The applicant shall take feedback from attendees and amend the Operation, Safety and Maintenance Plan as needed.

- c. Ownership Changes: If the owner or operator of the solar energy system changes or the owner of the property changes, all requirements of the special use permit shall remain in effect. Approval to operate the system shall continue, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, decommissioning plan, security, escrow, and any other binding agreements. A new owner or operator of the solar energy system shall notify the Code Enforcement Officer and the Town Supervisor of such change in ownership or operator 30 days prior to the ownership change. All the terms set forth herein shall be binding on developers, ATIMA/ISAOA.
  
- d. Annual Report/Inspection: On a yearly basis, the solar energy system owner shall provide the Town a report showing the rated capacity of the system and the amount of electricity that was generated by the system and transmitted to the grid. The report shall be submitted no later than 30 days after the end of the calendar year. Additionally, an applicant/operator shall hire an independent, third-party engineer/inspector approved by the Town to oversee compliance with site and operational requirements and the ongoing obligation of same for the lifetime of the project. The engineer/inspector shall perform a site inspection if a complaint regarding the solar energy system and any of its components is made to the Town of Rotterdam Code Enforcement Officer. Annual inspections of the completed solar energy system shall be performed at the expense of the developer, ATIMA, ISAOA.
  
- e. Project Changes: Any changes to the solar energy system that occur after final approval from the Planning Commission, except for immaterial modifications as defined herein, shall be done by amendment to the special use permit only and shall be subject to the requirements of this law.

Unless expressly limited by a condition imposed in the permit, the Code Enforcement Officer, or other Town designee may, during project construction, allow immaterial modifications to the design of the project as represented in the final set of site plans reviewed by the Planning Commission. Such immaterial modifications shall only be allowed in response to a written request by the

applicant. All such requests shall be addressed to the authorized Town designee, with copies to the Chairman of the Planning Commission, and the TDE.

f. Insurance:

i. Unless waived by the Town, the applicant or facility owner shall agree to secure and maintain for the duration of the project, public liability insurance as follows:

1. Commercial general liability covering personal injuries, death and property damage: \$5,000,000 per occurrence, \$10,000,000 aggregate, which shall specifically include the Town and its officers, councils, employees, attorneys, agents and consultants as additional named insured;

2. Umbrella coverage: \$10,000,000.

ii. Insurance Company: The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with at least a Best's rating of "A".

iii. Insurance Policy Cancellation: The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days prior written notice in advance of cancellation.

iv. Insurance Policy Renewal: Renewal or replacement policies shall be delivered to the Town at least 15 days before the expiration of the insurance that such policies are to renew or replace.

v. Copies of Insurance Policy: No more than 15 days after the grant of the permit and before construction is initiated, the permit holder shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

vi. Certificate of Insurance: A certificate of insurance that states it is for information purposes only and does not confer sufficient rights upon the Town shall not be deemed to comply with this law.

g. Construction Inspection: The escrow account required herein shall be used to provide inspection by a town engineering consultant during construction of the solar energy system. Work shall remain accessible and exposed until inspected and accepted by the town's consultant. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to how the work fails to comply with the Uniform Code or conditions of the special

use permit. Work not in compliance shall remain exposed until brought into compliance, reinspected, and found satisfactory as completed. During construction, the Town Building Inspector/Code Enforcement Officer can issue a stop order at any time for violations of the special use permit.

- h. Operational Inspection: Upon 24 hours advance notice to the owner/operator or designated contact person, the Town of Rotterdam Code Enforcement Officer/Building Inspector or his or her designee may enter the solar energy facility to verify compliance with any requirements or conditions. The solar energy system shall be inspected by a New York State licensed professional engineer, under contract with the town and paid by the escrow account required herein, to ensure that it is operating according to the conditions of the special use permit. Such inspections shall be done annually, and at any other time, upon a determination by the Town's Building Inspector that damage may have occurred. The engineer shall file an inspection report with the Town Code Enforcement Officer/Building Inspector. All recommendations for maintenance and repair contained in said report shall be completed by the operator within a written schedule agreed on by the Code Enforcement Officer/Building Inspector.
- i. Groundwater Testing: For Tier 4 or larger facilities, Unadulterated soil samples shall be taken at 4 corners of the proposed site. Testing shall utilize 4-foot holes, with testing at 2-foot increments. One monitoring test hole shall be at the lowest elevation on the site. In the event groundwater contamination occurs as a result of the solar facility, the operator, at its sole expense, shall provide a reliable alternative water source and address the contamination in accordance with all legal requirements.

**XIV. SECTION FOURTEEN – ABANDONMENT OR DECOMMISSIONING OF SYSTEMS**

The following applies to Tier 3 and larger solar energy systems. A proposed Decommissioning Agreement shall be provided by the applicant and approved by the Town Board. No building permit shall be issued for a solar energy system until the Decommissioning Agreement has been executed and financial surety provided as set forth below.

- a. Cause to implement decommissioning plan.
  - i. If a solar energy system ceases to perform its originally intended function for more than 12 months or is considered abandoned by the Code Enforcement Officer for lack of maintenance and other provisions of this law, the Code Enforcement Officer shall notify the owner and/or operator of the facility to implement the decommissioning plan. Within 180 days of notice being served, the facility owner shall either restore operation or complete implementation of the decommissioning plan. If the owner and/or operator fails to fully implement the decommissioning

plan within the 180-day time period and restore the site to original conditions as required, the Town may implement the decommissioning plan in accordance with the law, and recover all expenses incurred for such activities from the financial surety described in other sections of this law, and if required, from the defaulted facility owner.

- ii. If the applicant begins and does not complete construction within eighteen (18) months after receiving final site plan approval, the decommissioning plan may be implemented unless the facility owner can show to the satisfaction of the Code Enforcement Officer good cause as to why this time should be extended for a maximum of 6 months. At which time if the facility is not fully constructed and operating, the Code Enforcement Officer may implement the decommissioning plan in accordance with this law.

b. Decommissioning Plan: The plan shall be submitted as part of the application to the Planning Commission. The decommissioning plan that ensures that the site will be restored to a useful, nonhazardous condition without delay, including but not limited to the following provisions:

- i. The removal of the solar energy system within the from the facility area, including but not limited to all above and subsurface structures, electrical equipment, wires, footings, ground anchors, cables, utility poles, point of interconnection, concrete, switch gears, transformers, fencing, renewable energy electrical substations, inverters, roadways, stormwater management features, roadways, etc.
- ii. Compacted portions of the site shall be decompacted and excavations shall be backfilled to restore the site. Restoration of the original surface grade and topsoil installation after removal of facility.
- iii. Revegetation of restored topsoil areas with native seed mixes, excluding any invasive species.
- iv. The cost of removing the entire solar energy system based upon prevailing wages and any other requirements applicable to municipalities under state or federal law.
- v. No salvage value shall be attributed to any of the components of the solar energy system and/or the solar energy equipment.
- vi. A schedule and methods for the removal of the solar energy system and/or the solar energy equipment, including any ancillary structures.

- vii. A plan for restoring the property to its pre-installed condition, including grading and vegetative stabilization to eliminate any negative impacts to surrounding properties, and, where if it was previously used for farming, with vegetation suitable for farming purposes, i.e. a hay field, crops or grazing. Such restoration shall follow NYS Department of Agriculture & Markets Guidelines for Solar Energy Projects — Construction Mitigation for Agricultural Lands, as updated.

c. Financial Surety

- i. Financial Surety shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal of the solar energy system and restoration of the site subsequent to removal.
- ii. Prior to the issuance of a building permit and every five (5) years thereafter, the solar energy system owner shall file with the Town evidence of financial security to provide for the full cost of decommissioning and removal of the solar system in the event the system is not removed by the system owner. Evidence of financial surety shall be in effect throughout the life of the system and shall be in the form of an irrevocable letter of credit or other security acceptable to the Town Board. The irrevocable letter of credit shall include an automatic extension provision, to be issued by an A-rated institution solely for the benefit of the Town, substantially in the form attached hereto as Exhibit A.
- iii. The amount of the financial surety shall be 150 percent of the estimated cost of removal of the solar energy system and restoration of the property, with an escalator of 2 percent annually (or Consumer Price Index change if more than the annual escalator of 2 percent) for the life of the solar energy system and shall not consider the net salvage value of any such project components. The financial surety established by the agreement shall not be subject to disclaimer or rejection in a bankruptcy proceeding. The amount of the surety shall be determined and certified by the applicant's engineer and shall be reviewed by the TDE. The amount of the surety may be adjusted by the Town during each five (5) year review as required.
- iv. In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The financial surety shall remain in full force and effect until 90 days after the restoration of the property, as set forth in the decommissioning plan, is completed.

- v. Any cost incurred by the Town that exceeds funding available to them from financial surety, which cannot be recovered from the defaulted facility owner, shall be assessed against the property, in a manner appropriate by law, and in the form of tax, lien or other available method enforceable by the Town.

**XV. SECTION FIFTEEN – PUBLIC UTILITY USE**

A solar energy facility shall not be considered a Public Utility Use.

**XVI. SECTION SIXTEEN – SEVERABILITY**

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be impaired, illegal, invalid, unenforceable, or unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect, and shall be fully severed from this Code, and there shall be automatically added in lieu thereof a provision as similar in terms and intent to such severed provision as may legal, valuable, and enforceable.

**XVII. SECTION SEVENTEEN – EFFECTIVE DATE**

This local law shall take effect immediately upon the filing in the office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

**EXHIBIT A**

**EXAMPLE FORM OF LETTER OF CREDIT  
TO BE DETERMINED BY TOWN BOARD, TOWN ATTORNEY  
[ISSUING BANK] IRREVOCABLE STANDBY LETTER OF CREDIT**

**DATE OF ISSUANCE:**

**[Date of issuance]**

Town of Rotterdam (“**Beneficiary**”)

Rotterdam, New York 12306

Attention: Town Supervisor

Re: [ISSUING BANK] Irrevocable Standby Letter of Credit No. \_\_\_\_\_

Sir/Madam:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as “**you**”) this Irrevocable Standby Letter of Credit No. \_\_\_\_\_ (the “**Letter of Credit**”) for the account of \_\_\_\_\_ on behalf of \_\_\_\_\_ located at \_\_\_\_\_ (“**Account Parties**”), effective immediately and expiring on the date determined as specified in numbered paragraph 5 below.

We have been informed that this Letter of Credit is issued pursuant to the terms and conditions of the Decommissioning Agreement to be executed by the Account Parties.

**1. Stated Amount.** The maximum amount available for drawing by you under this Letter of Credit shall be \_\_\_\_\_ United States Dollars (US\$ \_\_\_\_\_) (such maximum amount referred to as the “**Stated Amount**”).

**2. Drawings.** A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to [ISSUING BANK], at any time during its business hours on such Business Day, at [bank address] (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 8 hereof), a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of Attachment A hereto (the “**Draw Certificate**”), appropriately completed and signed by your authorized officer (signing as such) and (ii) your draft substantially in the form of Attachment B hereto (the “**Draft**”), appropriately completed and signed by your authorized officer (signed as such). Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be presented by Beneficiary by means of facsimile to our fax no. **[insert fax number]** or original documents sent by overnight delivery or courier to [ISSUING BANK] at our address set forth above, Attention: \_\_\_\_\_ (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 8 below). If presentation is made by facsimile transmission, you

must contact us at [insert phone number] to confirm our receipt of the transmission. In the event of a presentation by facsimile transmission, the original of such documents need not be sent to us.

3. **Time and Method for Payment.** We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such address by 12:00 noon, (Eastern Standard Time) time on any Business Day, payment will be made not later than our close of business on the third succeeding Business Day and if such Draw Certificate is so presented to us after 12:00 noon, (Eastern Standard Time) time on any Business Day, payment will be made on the fourth succeeding Business Day.

In clarification, we agree to honor the Draw Certificate as specified in the preceding sentences, without regard to the truth or falsity of the assertions made therein.

4. **Non-Conforming Demands.** If a demand for payment made by you hereunder does not, in any instance, materially conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice not later than two (2) Business Days that the demand for payment was not effectuated in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effectuated in conformity with this Letter of Credit, you may correct any such non-conforming demand and re-submit on or before the then current expiry date.

5. **Expiration, Initial Period and Automatic Extension.** The initial period of this Letter of Credit shall terminate on [*one year from the issuance date*] (the “**Initial Expiration Date**”). The Letter of Credit shall be automatically extended without amendment for one (1) year periods from the Initial Expiration Date or any future expiration date, unless at least sixty (60) days prior to any such expiration date we send you notice by registered mail or courier at your address first shown (or such other address as may be designated by you as contemplated by numbered *paragraph 8*) that we elect not to consider this Letter of Credit extended for any such additional one year period. Notwithstanding the foregoing extension provision, this Letter of Credit shall automatically expire at the close of business on the date on which we receive a Cancellation Certificate in the form of *Attachment C* hereto executed by your authorized officer and sent along with the original of this Letter of Credit and all amendments (if any). Upon receipt by you of such notice of non-extension, you may draw hereunder up to the available amount, on or before the then current expiry date, against presentation to us of your draft substantially in the form of *Attachment B* hereto (the “**Draft**”), appropriately completed and signed by your authorized officer (signed as such).

6. **Business Day.** As used herein, “**Business Day**” shall mean any day on which commercial banks are not authorized or required to close in the State of New York, and inter-bank payments can be effected on the Fedwire system.

7. **Governing Law.** THIS LETTER OF CREDIT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590 (THE “ISP98”), AND AS TO MATTERS NOT ADDRESSED IN ISP98, BY THE LAWS OF THE

STATE OF NEW YORK.

8. **Notices.** All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address first shown for you above or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated above, or such other address as may from time to time be designated by us in a written notice to you.

9. **Irrevocability.** This Letter of Credit is irrevocable.

10. **Bankruptcy.** This Letter of Credit and the proceeds thereof shall not be subject to any claims or encumbrances of secured or unsecured creditors of the Applicant and shall not be considered to be property of the estate of the Applicant involving a bankruptcy or insolvency of the Applicant.

11. **Complete Agreement.** This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for the ISP98 and Attachment A, Attachment B, and Attachment C hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

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Sincerely,  
[ISSUING BANK]

\_\_\_\_\_  
By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

**EXHIBIT B**

**FORM OF DRAW CERTIFICATE**  
**TO BE DETERMINED BY TOWN BOARD, TOWN ATTORNEY**

TO: [ISSUING BANK]

[Address]

The undersigned hereby certifies to [ISSUING BANK] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. \_\_\_\_\_ (the “**Letter of Credit**”) issued by Issuer in favor of the undersigned (“**Beneficiary**”), as follows:

- (1) The undersigned is the \_\_\_\_\_ of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Certificate on behalf of Beneficiary.
- (2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary’s presentation of the draft accompanying this Certificate, for payment of \_\_\_\_\_ U.S. dollars (US\$ \_\_\_\_\_), which amount, when aggregated together with any additional amount that has not been drawn under the Letter of Credit, is not in excess of the Stated Amount (as in effect of the date hereof).
- (3) The reasons for a drawing by Beneficiary are pursuant to the terms and conditions of the Decommissioning Agreement.
- (4) You are hereby directed to make payment of the requested drawing to: (insert wire instructions)

Beneficiary Name and Address:

Town of Rotterdam (“**Beneficiary**”)  
Rotterdam, New York 12056  
Attention: Town Supervisor

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

- (5) Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[BENEFICIARY]

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**DRAWING UNDER IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_**

TO: [ISSUING BANK]

[Address]

Date:

PAY TO: [BENEFICIARY]

U.S.\$ \_\_\_\_\_

FOR VALUE RECEIVED AND CHARGE TO THE ACCOUNT OF LETTER OF CREDIT NO.  
\_\_\_\_\_.

[BENEFICIARY]

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT C  
ESCROW AGREEMENT**

**TO BE DEVELOPED BY TOWN ATTORNEY, TOWN BOARD, ASSESSOR, COMPTROLLER**

**EXHIBIT D  
SUCCESSORS IN INTEREST AGREEMENT**

**TO BE DEVELOPED BY TOWN ATTORNEY, TOWN BOARD, ASSESSOR, COMPTROLLER**

## Modifications to Chapter 270-133.1

### § 270-137.1 Application and fees.

[Added 12-9-1992 by L.L. No. 37-1992; amended 8-8-2007 by L.L. No. 9-2007; 2-25-2009 by L.L. No. 1-2009]

#### A.

~~Except as noted below,~~ all site plan applications shall be accompanied by a fee as affixed by the Rotterdam Town Board and designated in Chapter 126 of the Town Code, entitled "Fees."

#### (1)

~~There shall be no fee required to accompany a site plan approval application for any person, firm, corporation, association or partnership that has as the primary purpose of said application to install "green" energy production on improved property or if said application contains the construction or implementation of at least 10% of "green" energy production for the proposed site plan for any new construction. For purposes of this subsection, "green energy production" shall include but is not limited to power obtained through wind, solar, geothermal, hydroelectric, and/or solar voltaic (electric).~~

#### B.

Administrative fees. The costs incurred for the review of a site plan application by the Town Engineer, for consulting engineering fees or other consulting fees in conjunction with the Planning Board's review for a proposed application, including reviews required under the New York State Environmental Quality Review Act,<sup>III</sup> shall be charged to the applicant. The Planning Board shall obtain an estimate from any designated consultant for an amount sufficient to defray the costs of such services. The applicant shall enter into an escrow agreement with the Town of Rotterdam Planning Board, and said agreement shall be executed by the Rotterdam Planning Board Chairman, upon authorization from the Rotterdam Planning Board. The Rotterdam Planning Board Attorney shall prescribe the terms and appropriate form of the escrow agreement. Any portion of the estimated charges so collected by escrow agreement which is not expended by the Town shall be returned to the applicant.