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Town of Tully

Local Law No. One (1) of the year 2016.

A local law amending Chapter 280 of the Town of Tully Code relative to Alternative Energy Facilities.

Be it enacted by the Town Board of the Town of Tully as follows:

Section One (1). Findings, Purpose(s) and Intent.

The Town of Tully Town Board recognizes solar energy as a clean, readily available, and renewable energy source. Development of solar energy offers an energy resource that can provide potential utility costs savings, attract and promote “green” business development, associated tax, financing and funding incentives, and generally positive and beneficial environmental effects. This local law provides for an amendment to Chapter 280 of the Town of Tully Code respecting the existing provisions of the Town Code relating to solar and wind energy systems by repealing same and replacing same with a new Section 280-11.1 relative to the placement management, operation, maintenance, control and the review of applications for solar energy systems and facilities. The regulatory scheme hereunder is intended to facilitate such development while also providing due consideration for and to the protection of quality agricultural lands, open lands and other unique, natural, environmentally and aesthetically significant features of the Town, thus and otherwise maintaining consistency with important objectives determined in the Town Comprehensive Plan and protecting the health, safety and welfare of Town of Tully residents. (A new Section 280-11.2 will deal with regulations of wind energy facilities). This local law is intended to promote the expedient, effective, and beneficial, but also cautious and well planned permitting and operation of solar energy facilities; set provisions for the placement, design, construction, operation, and maintenance of such systems and to uphold the public health, safety, and welfare, and that such systems will not have a significant adverse impact on the aesthetic positive community character attributes of the Town and community, and to assist whenever possible with inducing development of such properly located and operated facilities as may extend the benefits of solar energy to the Town and its residents. As such it is intended that, and this law shall be applied and enforced as both an exercise of the Town of Tully’s zoning, planning and land use authority and of its police powers including relative to the regulation of business operations. Further specific findings, purposes and intent in support of this local law are also stated at Section 280-11.1D(3)(a)-(g) hereof. This local law also provides for modification to the definitional section of Chapter 280 to clarify the meaning of Utility Structure as not including renewable energy facilities and to modify Schedule I (Attachment 2 of the appendices) to reflect the permits and approvals Solar Energy Systems are subject to in respective zoning districts.

Section Two (2). Section 280-11.1 of the Code of the Town of Tully is hereby repealed and replaced with a new Section 280-11.1 of the Code of the Town of Tully with the following language:

§280-11.1 Solar Energy System(s).

A. Definitions. In this local law:

- (1) BUILDING-INTEGRATED SOLAR/PHOTOVOLTAIC SYSTEM (“BIPV”) - A solar energy system incorporated into and becoming part of the overall architecture and design of a building or structure in such design and as constructed such that the solar energy system is a permanent and integral part of the building envelope or structure. In order to promote innovative design and encourage the inclusion of alternative energy systems within the overall design of a building, solar energy systems determined by the Code Enforcement Officer to be building-integrated photovoltaic [BIPV] systems, as defined herein, are exempt from the requirements of this Section 280-11.1. BIPV systems are still required to meet applicable building and related codes and to obtain all necessary permits. The Code Enforcement Officer shall, where such system type is not clearly identifiable as BIPV System request assistance from the Planning Board to determine whether a solar energy system shall be considered a BIPV system with such determination to be conclusive on the issue.
- (2) BUILDING-MOUNTED SOLAR ENERGY SYSTEM - A solar energy system that is affixed to the roof or side (s) of a principal or accessory building or structure either directly or by means of support structures or other mounting devices. Solar energy systems constructed over a parking garage, deck or other structures are considered building-mounted solar energy systems. A Solar Energy System immediately contiguous/adjacent to a principal or accessory building or structure, and attached to same but also being affixed to the ground and having characteristics of a ground mounted system shall be treated as a ground mounted system.
- (3) GROUND-MOUNTED SOLAR ENERGY SYSTEM - A solar energy system that is affixed to the ground either directly or by foundation, pole, footer, slab and/or other type support structures or mounting devices atop, affixed or embodied into the ground.
- (4) MECHANICAL EQUIPMENT - shall mean any and all devices and/or equipment associated with, appurtenant to, or otherwise a part of a solar energy system, such as but not limited to electrical control units, transformers, inverters, switching equipment, electrical cabinets, pumps, regulators and the like that transfer, transmit, switch or regulate energy produced by the system and which transfers the energy to the on-site building, dwelling or similar principal or accessory structure where the energy is consumed, or offsite. Mechanical Equipment shall not include such of the foregoing as connection, transmission or similar components consisting of buried (i.e., sub-ground) wires, cables or pipes, nor shall it include or consist of solar photovoltaic panels, reflectors or similar solar energy collection infrastructure itself.
- (5) SOLAR ENERGY HEATING EQUIPMENT - shall mean any system or device located upon, affixed, immediately adjacent or in substantially similar close proximity to a building, dwelling or similar principal or accessory structure and designed to harness solar radiation to heat water for use in such building, dwelling or similar principal or accessory structures domestic water system, swimming pool, hot tub or other similar fixture or to heat air, water or any other liquid or gas which is then used to condition the temperature of a space occupied by humans or animals. Solar Energy Heating Equipment

with photovoltaic or similar components directly collecting and converting solar energy located upon or affixed to a building, dwelling or similar principal or accessory structure shall be subject to regulation as a Building Mounted Solar Energy System and if free standing adjacent or proximate thereto shall be subject to regulation as a Ground Mounted Solar Energy System.

- (6) SOLAR ENERGY SYSTEM - shall mean any device or facility that converts solar energy into electrical energy either directly as in the case of photovoltaic collection cells (and including any such components utilizing reflector or solar concentrating components and/or other direct collection components as are or may in the future be more technology advanced), or indirectly by first capturing and/or concentrating solar radiation for the purpose of converting any liquid to a gas used to fuel or propel an electrical generator. All references herein to the rated capacity of Solar Energy Systems or Solar Energy Equipment are as stated in the manufacturer's maximum power rating for the solar panel system as direct current (DC) wattage under Standard Test Conditions (STC) of 1,000 W/m² of solar irradiance and 25° CPV module temperature. "Solar Energy Systems" shall include, except as may be expressly provided otherwise herein or as may be waived by the Town Planning Board in the context of any Special Authorization issuance hereunder, Solar Energy Heating Equipment.
- (7) SOLAR ENERGY SYSTEM, UTILITY SCALE - shall mean a ground-mounted solar energy system with a rated capacity in excess of four (4) megawatts, the sole, principal or predominant purpose(s) of which (and however not necessarily requiring the foregoing for qualification as such), is to provide electrical power for distribution or sale to the general power grid. Notwithstanding such definition, and except as may otherwise be specifically provided in this Chapter 280-11.1 any solar energy system of this scale (i.e., rated capacity) and regardless of its sole, principal or predominant purpose(s) shall be subject to the Utility Scale Solar Energy System requirements of this Section 280-11.1. Public utility owned or controlled/managed properties and solar energy systems may benefit from and/or be subject to further or other laws, rules or regulations specific to their nature as a public utility owned facility. Any such laws, rules or regulations applicable to same and having been determined by clear statutory or regulatory language and jurisdictional authority, or by decision or ruling of a court or administrative tribunal or body having jurisdiction to pre-empt or supersede parts of, or all of the applicability of this Chapter 280-11.1, shall to such extent preempt or supersede or have such similar effect, as if same were expressly provided herein and however in such event, and to the extent legally permissible, subject to the provisions of Section Three (Illegality, Severability, Supersession) of this Local Law No. One (1) of 2016 as if fully set forth in this Section 280-11.1 in its entirety.
- (8) SOLAR ENERGY SYSTEM, LARGE shall mean a ground-mounted solar energy system with a rated capacity of in excess of seven hundred fifty (750) kilowatts up to and including four (4) megawatts, the sole, predominant or principal purpose or use of which is/are to provide electrical power for distribution or sale to a preferred, pre-defined and/or contracted for public, institutional, community or other designated group(s) of consumers including through a power purchase or similar agreement as part of a net metering project which may include both physical or virtual ("net metering") aggregation, all or part of which may be consumed on-site, near-site, i.e. a part of or class of consumers within the local community, and/or or through the general power grid. Notwithstanding such definition, and except as may otherwise be specifically provided in this Chapter 280-11.1 any solar energy system of this scale (i.e., rated capacity) and regardless of its sole, principal or predominant purpose(s) shall be subject to the Large Scale Solar Energy System requirements of this Section 280-11.1. Public utility owned or

controlled/managed properties and solar energy systems may benefit from or be subject to further or other laws, rules or regulations specific to their nature as a public utility owned facility. Any such laws, rules and regulations applicable to same and having been determined by clear statutory or regulatory authority, or by decision or ruling of a court or administrative tribunal or body having jurisdiction to preempt or supersede parts of, or all of the applicability of this Chapter 280-11.1, shall preempt or supercede, or have such similar effect, as if same were expressly provided herein, and however in such event and to the extent legally permissible, subject to the provisions of Section Three (Illegality, Severability, Supersession) of this Local Law No. One (1) of 2016 as if fully set forth in this Section 280-11.1 in its entirety. Large Building Mounted Solar Energy Systems, as permitted at Section 280-11.1E(2), shall also comply with those requirements applicable to Building Mounted Solar Energy Systems described at Section 280-11.1C(2),(3) and subparagraphs thereof.

- (9) SOLAR ENERGY SYSTEM, MEDIUM - shall mean a ground-mounted solar energy system with a rated capacity of greater than fifteen (15) kilowatts up to and including seven hundred fifty (750) kilowatts or a Building Mounted Solar Energy System of any rated capacity in excess of fifteen (15) kilowatts and in either case serving, or designed to solely, principally or predominantly serve such on-site or such off-site agricultural, residential, commercial, institutional or industrial use(s) on a single, contiguous or substantially contiguous or nearby grouping of lots and uses, providing electrical power for distribution and/or sale to serve such properties and related defined or contracted for consumers or groups as described at Section 180-11.1A(8) and/or to sell or distribute any surplus electrical power to the general power grid including through a power purchase or similar agreement as part of a net metering project which may include both physical or virtual (“net metering”) aggregation, and/or be entirely consumed on-site or near-site, such as in the local community. Notwithstanding the foregoing purposes or use(s), except as may otherwise be specifically provided in this Chapter 280-11.1, any solar energy system of this scale and regardless of its sole, principal or predominant purpose(s) shall be subject to the Medium Scale Solar Energy System requirements of this Section 280-11.1, and if, and to the extent applicable, may also benefit from or be subject to the same provisions for public utility owned facilities as described at Section 280-11.1A(8) and (9). Medium Building Mounted Solar Energy Systems shall also comply with those requirements applicable to Building Mounted Small Solar Energy Systems described at Section 280-11.1C (2),(3) and applicable subparagraphs thereof.
- (10) SOLAR ENERGY SYSTEM, SMALL - shall mean a solar energy system with a rated capacity of fifteen (15) kilowatts or less and serving, or designed to serve, any residential, agricultural, commercial, institutional and/or industrial use(s) on a single or adjacent lots under common control or ownership but which may provide some surplus energy to the general power grid. Individual photovoltaic cells or small groups of such or similar collection cells attached to and used to either directly power (or charge a battery which does so), any individual device such as a light fixture, fence, gate, radio or water pump shall not be considered a small solar energy system as defined herein and may, as described at Section 280-11.1 be used in any zoning district, however subject only to such provisions applicable generally to the zoning district as provided at Section 280 of the Town Code.
- (11) SUBDIVISION, INCIDENTAL – shall mean any division of five (5) or less lots, for the purpose of creating a separate lot, common access/egress and/or utilities easements or lot for same, lot line relocations, adjustments or alterations, consolidation, or similar redesign for the purpose of establishing a lot or lots upon which development of (a) Solar Energy System(s) and related improvements is intended to be situate, including for incidental benefit (such as for tax credit/exemption and the like).

An Incidental Subdivision must also qualify as a parcel exempt from subdivision review under Section 245-2 of the Town Code (defining “SUBDIVISION” and division of land exempt therefrom). The Planning Board may mandate the Incidental Subdivision of a lot as a condition of approvals together with such easements and rights as are necessary to permit access/egress and utilities upon, access and beneath adjacent/contiguous and/or other nearby lots.

- (12) TOTAL FOOT PRINT AREA – shall mean, as to the principal or accessory building or other similar structure(s), the total area of lot coverage of all constructed improvements within an (the) area defined by the outer perimeter (“Outer Perimeter”) of all walls, porches, garages, decks or patios, entrance and exit ways above or extending from the foundations, slabs and/or similar structural supports for all structural members and walls of such principal or accessory building or other similar structure and as to a Solar Energy System shall mean the area defined by the encirclement of all Ground or Building Mounted Solar Energy System components and incidental infrastructure whatsoever including roads, walkways, aisles, alleyways, parking areas, regular and emergency access and egress, buildings, structures and other improvements including for storage, repairs, maintenance and placement of Mechanical Equipment, above ground lines, pipes, wires, encasements and conduit for same, collection panels or devices, reflector or redirection devices, and security fencing if and to the extent located inside of any required buffering or screening. The Outer Perimeter shall, as to the former (principal, accessory building or structure) be represented by a continuous line encircling all such principal or accessory buildings, and other similar structures, as to the latter a continuous line encircling all Solar Energy System components, and as to both, a continuous line encircling both types of improvements.

B. SOLAR ENERGY SYSTEMS REGULATION; GENERALLY.

- (1) Town CEO Permitting Authority. Small Solar Energy Systems shall be permitted in all zoning districts, and applications for such permits reviewed and issued as a ministerial act by the Town Code Enforcement Officer pursuant to the New York State Unified Solar permitting process adopted by Local Law No. 1 of 2015 and Resolution of the Town Board dated March 11, 2015 both of which to the extent necessary to preclude repeal of same hereunder, and otherwise to effect the provisions hereof, are hereby amended in part, and otherwise reaffirmed and restated in their entirety under this Section 280-11.1B, and subject further to the provisions of Section 280-11.1C hereof.
- (2) Town CEO Waiver Authority. The Code Enforcement Officer shall have such waiver authority respecting Small Energy Systems as does the Planning Board under Section 280-11.1I, and applying the same criteria in his sole discretion, and except however respecting any waiver of the front yard setback requirement (Section 280-11.1C2(a)) or of a side or rear yard immediately adjacent to an existing residential use of more than 33 1/3% of the required setback. The Code Enforcement Officer shall refer all such front and rear/side yard setback waiver requested or required and may refer any other issue or determination that the Code Enforcement Officer determines it requires such assistance with, to the Planning Board for review, and recommendation or waiver prior to permit issuance.
- (3) Planning Board Special Authorization, Site Plan and Incidental Subdivision. All other Solar Energy Systems (i.e., Medium, Large, and Utility Scale Systems) shall require a combined Planning Board Special Authorization (SPB) and Site Plan Review as required hereunder. In connection with Site

Plan review the Planning Board shall include consideration of any Incidental Subdivision requested or required (in the Planning Board's sole discretion) to effect the approvals granted hereunder and including any Incidental Subdivision upon which the Planning Board may condition its approvals hereunder. Except as otherwise expressly provided in this Section 280-11.1, the general provisions relative to Special Authorization and Site Plan Review shall apply, as described under respectively Sections 280-11A, B (1)-(4), C (10) (a) and (b), and D (however the latter applying herein to a Special Authorization of the Planning Board and not Town Board [i.e., a "SPB" and not a "STB"] of the Town Zoning Code, and also therefore not requiring the Planning Board report required under Section 280-11D(1), and Sections 280-11D (6), 280-9.A, B and subparagraphs thereof, C, D and subparagraphs thereof, E and subparagraphs thereof, and F and subparagraphs thereof of the Town Code shall likewise apply to such combined and concurrent review.

- (4) Procedure for Planning Board Review. All such applications shall be reviewed and considered subject and pursuant to the foregoing and except as otherwise specially provided herein those other applicable procedural and substantive provisions of the Town of Tully Zoning and Subdivision Code, the laws governing special use permit, site plan and to the extent applicable Subdivision Review under respectively Town Law Sections 274-a, 274-b and 276-280, and those criteria and requirements including without limitation those specifically articulated at Sections 280-7A-D, 8A-I, 9B(5) subparagraphs thereof, 11B(1)-(4), 11 D, and those applicable provisions of 280-11C, D and subparagraphs thereof, and of Schedules I and II (Attachments 280-2 and 3) of the Zoning Code, and all subparagraphs/sections of this Section 280-11.1C, D, E, G and H following. It is the intent of this Section 280-11.1 that all public hearings for Special Authorization, Site Plan, Incidental Subdivision and SEQRA review required and/or desired by the Planning Board, be scheduled and held wherever possible, concurrently and a decision rendered by the Planning Board within the statutory time periods described under Town Law Sections 274-a and 274-b, and as applicable 276-280; and Chapter 280, and as applicable 245 of the Town Code following a public hearing and the appropriate referrals and notices required under GML §239-m, n and nn. In the event the Planning Board determines that the respective time periods or other procedural requirements not waived by and cannot be timely met by the applicant or Planning Board, same shall not effect a waiver of any of the Planning Boards rights or obligations, under this Section 280-11.1, or any other applicable provisions of the Town Law, the State Environmental Quality Review Act or the Town of Tully Code and in connection with any such extension requested by the Applicant the reason(s) therefore including the estimated time extension requested shall be set forth in a writing from the Applicant or its authorized representative addressed to the Planning Board and which shall be subject to Planning Board consent and which consent may include appropriate conditions. Any failure of the Planning Board or applicant to comply with any such required statutory time periods for holding a public hearing, for decision following close of same and/or similar time periods as aforementioned shall, unless waived by the Planning Board and applicant, effect upon the close of the last day of any such time period that would otherwise result, upon expiration in a default approval, and without any further action of the Planning Board be a deemed denial of the application including all components thereof, without prejudice, except as may have been addressed by a variance previously granted by the Town Zoning Board of Appeals, however also subject to Section 280-11.1L hereof.

C. SMALL SOLAR ENERGY SYSTEMS; GENERAL REQUIREMENTS.

- (1) Small Solar Energy Systems as defined in §280-11.1A herein shall, as previously established and hereby affirmed under Section 280-11.1 B(1) and (2) hereof be considered a permitted accessory use and as relevant, structure in all zoning districts subject to issuance of a building permit with any necessary waivers from the Code Enforcement Officer, and as to the latter, in the Code Enforcement Officer's discretion, the Planning Board. The foregoing notwithstanding, a waiver of the specific front yard setback requirement described at Section 280-11.1C(2)(a) may only be granted by the Planning Board.
- (2) The purpose of this section is to establish regulations to facilitate the installation and construction of Small Solar Energy Systems. The following standards shall apply to the development generally and operations of Building and Ground Mounted Small and, also where incorporated by reference elsewhere herein, to other all Solar Energy Systems:
 - (a) Small Solar Energy Systems shall be classified as permitted principal and accessory structures and uses and the Codes Enforcement Officer shall not have authority to waive, and thus same shall not be located in the front yard within the greater of the required front yard minimum principal structure setback or the front yard within the area between the principal structure's front building line and the public right-of-way, nor within any side or rear yard setback adjacent/contiguous to a residential use if and to the extent such waiver request is for more than 33 1/3% of the required setback except where application for Planning Board waiver has been made and the Planning Board has determined the objectives of this Section 280-11.1 are substantially met by such a location, or if in an R-3 zoning district and as a result of such waiver the Solar Energy System is not fronting on a lake or any of those significant other "natural features" contemplated and referenced at Section 280-6D(5) of the Zoning Code, or where the premises consists of a corner lot having by Town Code definition two (2) front yards. In any such case any grant of a Planning Board waiver shall also provide as deemed reasonably necessary, for reasonable screening from adjacent/contiguous and similarly affected nearby residential districts, structures and uses.
 - (b) Setbacks: The greater of the required setback for the zoning district or twenty (20) feet from adjacent property lines shall be required. For Ground and Building Mounted Systems, where a non-conforming principal or accessory structure (located within the above defined front and/or side yard setback) and upon which such Solar Energy System is to be affixed is located within such required setback areas, the same shall be permitted as a Building Mounted System and provided same is otherwise in compliance with this Section 280-11.1 except to the extent any other waivers have been granted.
 - (c) Height: Ground Mounted Small Solar Energy Systems shall not exceed fifteen (15) feet in height.
 - (d) Size: Ground Mounted Small Solar Energy Systems on residential properties shall not exceed the greater of one-third (1/3) of the Total Footprint Area of the principal structure or six hundred (600) square feet, whichever is greater, and on non-residential properties shall not exceed one half (50%) of the Total Footprint Area of the principal structure, subject however to, in each such case architectural and similar design components screen, any such Solar Energy System from view from the public street(s) and sidewalk(s) fronting the premises (including on corner lots having two (2) front yards).

(3) Small Solar Energy Systems are permitted to be located on and affixed to the roof or exterior wall of a principal or accessory structure subject to the following:

- (a) Building Mounted Small Solar Energy Systems shall wherever possible not be constructed upon sloping roofs facing the public streets and/or sidewalks, and where so located shall be screened at least in substantial part by architectural features that block view from the street and sidewalk fronting the property. Same shall not extend vertically more than three (3) feet above and along the roof line of the structure it is attached to and the solar collection infrastructure/panels shall correspond to the same pitch as the roof line, excepting to the extent of any variable control of the pitch of each panel for optimum solar collection;
- (b) Subject to exception for any structure exceeding height limitations under district requirements as a non conforming structure, and in addition, up to the additional three (3) feet provided in the foregoing subparagraph, Building Mounted Small Solar Energy Systems shall also not exceed the maximum height permitted for the type of structure (principal or accessory) in the zoning district in which it is located plus, and to the extent needed, up to such additional three (3) feet, whichever is less, and in either event, subject to Section 280-11.1C(3)(d); and
- (c) Applicants for Building Mounted Small Solar Energy Systems proposed to be located on the roof or attached to an exterior wall of a structure shall provide, as part of any permit application, a structural certification from a licensed professional engineer (credible documentation to this effect from the system manufacturer may be considered in the alternative) together with the certification of a licensed professional engineer or architect as to the structural integrity and load capacity of a Building Mounted Small Solar Energy System. Any such structural certification shall include appropriate comment if a waiver of any provision under this Section 280-11.1C(3) is sought, including without limitation if the slope of the collection panel array must differ from the roof pitch, the reasons why this is the case and the effect of same, if any.
- (d) Building Mounted Small Solar Energy System collection panels shall not be installed within two (2) feet of any peak, eave, or valley of the roof.

(4) Code Compliance: Small Solar Energy Systems shall comply with all other applicable Town, County and State building, energy, electrical and other applicable codes including those of the International Building Code and Energy Code provisions adopted by the Town and becoming effective on or about October 1, 2016.

(5) Agricultural Use(s): Small Solar Energy Systems located on property utilized solely for and assessed as an agricultural property and use (which property may however contain a dwelling and additional dwelling units for farm workers) shall be permitted to have additional collection systems or a greater capacity system in order to account for each such building, agribusiness related structure on the property. The size of the systems in total however shall be limited to the total collective needs of all such buildings and structures times a multiplier of 1.3, also subject however to the provisions of Section 280-

11.1F (respecting any rights an owner may have under the NYS Agriculture and Markets Law).

- (6) Required Easements: Any property owner or other authorized person(s) applying for such permit, and who has installed or intends to install a Small Solar Energy System shall be responsible for negotiating with other property owners in the vicinity for any necessary easement and/or releases from restrictive covenants and shall present such instrument(s) at or prior to consideration by the Town Code Enforcement Officer, or the Planning Board if a waiver is being sought, and such instrument is relevant to that application, and upon approval, shall as a condition of any permit issued, even if not expressly conditioned therein, record such instrument(s) with the Onondaga County Clerk with certified copy to the Town Clerk of the Town of Tully of the recorded instrument and copy of same to the Attorney for the Town showing the date and Book/Liber, page of recording. Failure to execute and record any such instrument, or deliver it to the Town Clerk, shall be cause for a stop work order or voiding of any certificate of completion, occupancy or with authorization to operate the Solar Energy System in connection therewith.

D. MEDIUM, LARGE, AND UTILITY SCALE SOLAR ENERGY SYSTEMS; GENERAL REQUIREMENTS.

- (1) Medium and certain Large (per Section 280-11.1E(2)) Building Mounted Solar Energy Systems may be attached to or a part of a principal or accessory structure existing or otherwise permitted in the applicable zoning district, and/or located as Ground Mounted Solar Energy Systems. The provisions of Section 280-11.1C(2)(a)-(c), and (3)(a)-(d) shall also apply to any such Building Mounted Medium or Large Scale Solar Energy System, including that, as permitted under Section 280-11.1C3(a) the Solar Energy System may extend to up to three (3) feet above the corresponding roof line and as a result thereof, and otherwise subject to the same provisions described at Section 280-11.1C(3)(a) and (b) for a Ground Mounted Solar Energy System, exceed the maximum height requirement for the Zoning District provided same shall not exceed eighteen (18) feet in height (plus up to the additional three (3) feet hereinbefore described in this Section 280-11.1D(1)). Large and Utility Scale Solar Energy Systems may otherwise only be located on freestanding arrays. In all cases Solar Energy Systems shall be otherwise subject to the applicable setback, height and related provisions for the principal or accessory structure to which same is attached, and for Ground Mounted System the applicable setback for accessory structures in the zoning district subject however to any further restrictions and/ or allowances expressly provided for under this Section 280-11.1, and which express provisions shall control over and supersede those otherwise provided for in the respective Zoning District under the Zoning Code, and further subject to the waiver authority granted to the Planning Board under Section 280.11.1 I hereof.
- (2) Incidental Mechanical Equipment. Mechanical Equipment incidental to any Medium Solar Energy System shall not be located within the applicable minimum front yard setback, and as to all Solar Energy Systems shall be as best as reasonably practicable situate as near as possible to any principal or accessory structure regardless of whether a Building Mounted Solar Energy System on such principal or accessory structure or to a Ground Mounted Solar Energy System and however otherwise subject to the applicable zoning district setback and height limitations for the principal or accessory structure to which same is attached, and for Ground Mounted Systems the applicable setback and height limitations for accessory structures in the respective zoning district, subject however to any further restrictions or allowances expressly provided for under this Section 280-11.1, (if any) and for which express provisions

shall control over and supersede those otherwise provided for accessory structures and uses in the respective Zoning District under the Zoning Code.

(3) Special Determinations and Finding of Town Board.

- (a) Medium, Large and Utility Scale Solar Energy Systems' infrastructure and improvements are hereby legislatively found and determined to be in many cases, as seen from nearby properties, neighborhoods, communities and from differing surrounding directions and elevations, visually, aesthetically and similarly out of context with the natural and/or the preexisting view shed, and therefore as proposed for a site, or at any other location and design on such site, partially or wholly undesirable. As such in certain cases, even where having been designed implementing the most effective measures for mitigating any such potential adverse view shed, community character and similar effects, including specifically where proposed buffering, screening and the like may be as robust, aesthetically and otherwise consistent and compatible with the neighboring and surrounding areas as reasonably or conceivably possible, and at considerable cost, the adverse effect of replacing the preexisting view shed with at worst, a view shed including, at least in part, sharply contrasting mechanical, metallic structures unlike any other class of structures, infrastructure and improvements typically viewed and even at best in effect a solid "green wall" consisting of landscaping, vegetation and berming which regardless of appearance, removes the original view shed from sight, may, given the specific site, not be appropriate and accordingly not permitted and approval hereunder by the Town.
- (b) It is also of significant concern and a specific finding and determination that certain remaining open lands, agricultural and agri-business suited parcels within the Town, such as, for example, those which due to location, soil quality, acreage or similar agricultural related attributes or concerns may be of such significant importance to the Town and community that given the specific site, the proposed use may likewise not be appropriate and accordingly not permitted and approved hereunder.
- (c) While the applicant property owners interests and rights are recognized as of significant importance, public policy, such as reflected in state, county and federal programs and legislation favor both the development of renewable energy sources and of preserving agricultural and open lands. It is specifically recognized that the existing Comprehensive Plan of the Town, and at the time of adoption of this local law, the Town's draft Comprehensive Plans make specific note that the cautious development of open lands, and agricultural lands, and preservation of same for agricultural uses, and agribusiness is and has been an important component of the Town, Village and surrounding Tully community's continued viability, stability and growth as a core centered traditional "bedroom" community serving the surrounding small metropolitan area.
- (d) The Town Board has within the past years prior to adoption hereof, studied and determined that a municipal owned and/or community solar energy facility or component thereof making the benefits of solar energy and lower costs available to the community generally, by reducing Town operating costs, and also by making such benefits available to residents, property owners and users many of whom are unable or unwilling to construct Small

Building or Ground Mounted Solar Energy Systems serving their own properties (and also due to the same being potentially aesthetically unappealing if Small Solar Energy Systems are constructed proximate to residential properties on a widespread basis) are desirable objectives and consistent with proper Town purposes. In this regard proposals submitted in response to a blanket RFP issued by the Town in late 2015, and, given even minimal term lengths for power purchase agreements were not clearly advantageous and in fact propose a risk of exposing the Town and any community solar energy customers to potential long term contract obligations to purchase solar energy generated electric at higher than then existing market rates. Nevertheless, it is conceivable, and of potential local public benefit that a project proposal hereunder might include some component for a reservation of solar energy power at fixed, capped or a similar rate structure, minimizing Town and/or community customer exposure to higher than market rates and if made a part of any proposal might be taken into consideration by the Planning Board. Accordingly, it is specifically determined that such consideration may be taken into account in the review and determination of permitting and approvals under this Section 280-11.1. This is further referenced at Section 280-11.1 hereof. The foregoing notwithstanding however, no proposal under this Section 280-11.1 shall be considered, such that same is approved, denied or conditionally approved based on the inclusion of, or failure of an applicant or proposal to include, a community or local governmental solar component or reserve.

- (e) It is a specific and significant finding and objectives of the Town Board that all Solar Energy System projects, subject to Planning Board review and approval hereunder be located, buffered and screened from the view of and from not only adjacent, contiguous and nearby parcels, but also from and to all lands or parcels within or outside the Town having or potentially having visibility to/from any of the Solar Energy System, including all solar collection panels (or similar infrastructure), related, infrastructure and Mechanical Equipment whatsoever. This requirement of buffering/screening shall be to effect a solid/opaque all season screening effect consisting of such berms, shrubbery, trees and/or other or additional landscape, natural vegetation and other improvements as are aesthetically attractive, and sufficient to, as constructed and maintained, provide a uniform barrier to/from and thereby the maximum mitigation and attenuation possible for any immediate and reasonably foreseeable potential future adverse impacts or effects of development, construction, operation, maintenance and eventual decommissioning and removal of the Solar Energy System, and, including, without limitation any and all view shed, potential aesthetic, other visual (reflection/glare), noise, odor, dust, air, airwave transmission/reception interference and/or similar adverse or potentially adverse effects.
- (f) All Solar Energy Systems collection infrastructure for solar rays shall also be situate and located in such a manner as to prevent any point source, or concentration of solar radiation or glare from being directed, redirected or reflected onto adjacent, contiguous or nearby properties utilized or zoned for use as living or work space improved or having potential (as a use as of right, and/or subject to site plan and/or special authorization approvals) for improvement with a structure having windows, skylights, porches, decks or other similar indoor or outdoor areas exposed to solar rays directly or by reflection or redirection from a Solar Energy Systems collection infrastructure and from any public streets, roads or highways, any public or private property utilized for (a) public assembly, park, recreation, or

similar use(s) including those areas recognized as environmentally, naturally or historically significant areas frequented by public use view or otherwise as is generally known, noted in the Town Comprehensive Plan or other credible documentation. All structures and devices used as or to support solar collectors shall be as non-reflective and colored with such subdued earth-tone colors as existing technology, manufacturer or contractor standard or custom specifications permit, even if at increased cost.

- (g) It is further acknowledged and a specific finding and determination of the Town Board that certain proposed sites may be situated, relative to nearby significant or more significant socially, recreationally, environmentally, aesthetically, culturally or historically sensitive properties and areas, such as public parks, recreational and/or nature preserves, scenic trails, roads, drives, bicycling and pedestrian ways, hillside/cliff and elevated areas, natural resource locations, residentially developed and community centered areas and other and similarly significant and sensitive locations and as such may not be practically, or otherwise permissible regardless of any such screening/buffering proposed due to the relative cost of same and/or to such improvements not fully effecting such objectives or itself resulting in adverse effects.
- (h) The Solar Energy System shall be enclosed by a security fence at a minimum height of eight (8) feet and not exceeding ten (10) feet in height and having a lockbox with key or code, one such key or current code provided to the Town Supervisor and one to local fire and emergency ambulance services, in order to permit access by emergency responders. The location of any such fencing in relation to (i.e., outside or within such) required buffering/screening shall be as determined by the Planning Board.
- (i) The foregoing are nonetheless considered minimum requirements for buffering, screening, fencing, and however it may be required that certain circumstances and physical conditions if and effecting surrounding parcels and areas, as determined during the review process (such as without limitation nearby topographical elevations, natural resource, public parks, trails, recreational, historical, culturally or environmentally significant, residentially developed and subjective adverse affects otherwise contiguous and affecting such populated areas as villages, subdivisions, hamlets and corridors) may require that more costly and substantial screening and buffering features be incorporated into the project in order to effect features that are more aesthetically pleasing, protective of and characteristically consistent or compatible with adjacent and surrounding parcels, neighboring areas, zoning district and community generally, and as such, may warrant that enhanced features be imposed by the Planning Board.

(4) Transmission Lines, Wires, and Pipes. Transmission lines, wires and pipes for Building and Ground-Mounted Solar Energy Systems including those connecting to or powering a principal or accessory structure, Mechanical Equipment and utility grid connectors shall be wherever possible located underground, include required conduit or encasements, be per all interconnection requirements of the public utility to be supplied solar energy power and be otherwise in accordance with all legal, regulatory and codes requirements and best practices, or if and to the extent any such requirements can be and are waived by the Planning Board, the same shall otherwise be constructed or installed per specified design and in designated locations and shall be at minimum appropriately covered, camouflaged or screened

and secured.

- (5) Signage. Signage located on the Solar Energy System and parcel site shall be in general accordance with the applicable zoning districts signage regulations, however the same, notwithstanding, the following shall supersede and control: Signage or text on Solar Energy Systems and the site shall be expressly permitted, however limited such that same shall be only the minimum necessary to identify the manufacturer, equipment information, provide adequate warning(s) and indicate ownership, maintenance and emergency contact information. The foregoing notwithstanding for a time period consisting of during the period of initial development/construction continuing through the first six (6) months of operation following initial construction, temporary signage shall be permitted and may include such specific commercial advertising messages relative to the project and participants in the development thereof as approved in the permitting issued hereunder, but which shall not in any event include lighted or illuminated animated or moving messages or designs, or streamers, balloons, flags, banners, ribbons, tinsel or similar materials.
- (6) Lighting. Artificial lighting of solar energy systems shall be limited to the minimum adequate lighting required for regulatory (e.g., FAA), security, safety and operational purposes, and shall be adequately downturned, buffered or screened so as to meet the intent of the foregoing screening and buffering requirements under this 280-11.1 and as well, the objectives under Section 280-9(E) of the Town Code governing and regulating outdoor lighting and its effects generally. While, it is acknowledged and specifically found that certain lighting is reasonably necessary, as a component of overall security measures, any such lighting proposed shall be reviewed and with due consideration to the foregoing requirements. Otherwise, and to the extent not addressed specifically or by reference to the objectives stated at this Local Law One (1) of 2016 or respectively Sections 280-11.1D(3)(a)-(c) and 280-9(E), it is required that any onsite lighting be downturned, as fully shielded and hooded as possible, and at minimal heights while still providing the safety and security features intended, shall only light those areas that require lighting, only be on when needed, shall be no brighter than necessary, minimize blue light emissions and otherwise as “dark sky” compliant (per International Dark-Sky Association (darksky.org) as directed by the Planning Board.
- (7) Dust, Erosion Control and Stormwater Discharge Control. During and following the development of any site Solar Energy System not otherwise subject to NYS SPDES permitting regulation imposing specific stricter standards on dust, erosion control and stormwater discharge, it shall be required that the approved plan for control of same be implemented and that all disturbed areas shall be reseeded with grass and/or planted with low-level vegetation capable of preventing soil erosion and airborne dust and otherwise comply with all Town Code requirements relative to site excavation and development.
- (8) Lot Coverage Percentage. Subject to satisfaction of all fencing, buffering and screening requirements imposed in connection with Planning Board Authorization and Approval, and which fencing, buffering and screening may be located within that portion of the front yard and other required setback areas, as determined by the Planning Board, the Total Footprint Area for any Solar Energy System may be permitted to occupy up to 95% of the total remaining area of the site, and no zoning district maximum lot coverage or similar requirement under the Town Code (other than under this Section 280-11.1) shall apply, and is hereby superseded to such effect.
- (9) Industry Standards Compliance. The design of the Solar Energy System shall conform to applicable

industry standards, including without limitation those of the American National Standards Institute.

- (10) Uniform and Other Codes Compliance. The Solar Energy System shall be constructed to and comply with all other applicable provisions of the NYS Uniform Code, as amended, including compliance with the amended (NYS) Uniform Code and Energy Code mandating the International Building and Energy Code revisions effective October 1, 2016, and any regulations adopted by the NYS Department of Labor as they relate to same except where a differing standard has been duly approved by the NYS Department of Labor under its regulatory authority.
- (11) Fire Protection. All Solar Energy Systems shall have adequate spaces for fire protection in accordance with the NYS Uniform Code and other applicable requirements and standards. The Applicant shall ensure that the Tully Fire District, Fire Company Chief has reviewed and indicated approval of same by specific reference to the plans and specifications submitted for review in a signed correspondence written by or to the Chief (and as to the latter counter-signed as confirmed).
- (12) Noise. No operating Solar Energy System shall produce noise that violates Chapter 190 of the Town Code however the applicable limit shall be Fifty-five (55) dB, as measured at each nearest property line of the site to the property line of contiguous or nearby properties used or zoned for uses that may include single or multi-family residential. Required screening/buffering shall include such noise mitigation/attenuation features as shall ensure compliance with this provision.
- (13) Local, County, State and Federal Permits. Other applicable local, county, state and federal permits in connection with review of any application for a Solar Energy System shall be issued as should any other necessary ministerial or substantially ministerial permits from those New York State, Onondaga County, and Federal agencies and authorities having jurisdiction. Likewise, all required SEQRA review and GML §239 referral (and consideration of any resolution conditions received) shall have been completed.
- (14) Agreements/Easements. If the land on which the project is proposed is to be licensed or leased, rather than owned, by the Solar Energy System developer/applicant, all property within the project boundary must be included in a recorded easement(s), lease(s), license agreement or power purchase, consent or other appropriate agreement(s) specifying the relevant parties legal relationship for the duration of project development and operations. All such agreements between the Solar Energy System developer/applicant and the affected parties shall make specific mention of the financial security and decommissioning, codes violations and abandonment provisions under Section 280-11.1D(15) following, and must be executed, recorded and with certified copy to the Town Clerk and Town Attorney showing filing/recording information therein prior to commencing construction, unless specified otherwise by the Planning Board approval resolution.
- (15) Abandonment; Decommissioning; Violations of Town Code. Any Ground-Mounted Solar Energy System which has not produced any electricity for a period of eighteen (18) months or more or which has otherwise been determined as unsafe or in material violation of the Town Code by the Town Board or Code Enforcement Officer of Town Code, the New York Property Maintenance Code, or other applicable laws rules and /or regulations, shall be considered abandoned and, as such shall, not later than thirty (30) days from written notice of same be repaired or decommissioned and wholly removed by the property owner and/or other legally responsible party(ies) each of whom shall be together and

individually responsible (i.e., joint and several liability) for the full costs thereof. The foregoing time periods however shall not preclude the Town from taking appropriate action under emergency or other urgent conditions from which death, bodily injury or serious property damage may occur or where financial security in place may expire prior to such action taking place. Decommissioning shall include, however without limitation, implementing an approved demolition plan and specifications reviewed by the Town Codes Enforcement officer, and as necessary, at the applicants expense, the Town Engineer for the removal and proper disposal of the Solar Energy System and all Mechanical Equipment, other equipment, electrical components, support structures, cabling, and any other part of the system that is at below or above ground level, removal and proper disposal of all remnants, construction and demolition refuse, any appurtenances, such as fencing, paved, curbed or otherwise improved access/egress openings to public roads, and regrading, reseeding, revegetating and otherwise restoring same as close as possible to substantially pre-development conditions, and however in particular ensuring that on site drainage comply with then applicable federal and SPDES permitting requirements, and that no new or increased volume or intensity of storm or surface water drainage or from different or new point or concentrated sources than as pre-existing development of the Solar Energy System thereon. The property owner shall be responsible for completing all decommissioning within ninety (90) days of the foregoing notice and commencing any such efforts in a substantial way prior to expiration of the thirty (30) day repair period, subject to extension by the Town Board only in the event of severe weather circumstances restricting work generally or imminent weather delaying completion of successful final seeding and revegetation.

- (16)Financial Security. Applicants of Medium, Large and Utility Scale Solar Energy Systems shall enter into a security agreement with the Town and provide financial security either through cash escrow account, bond, letter of credit, or other financial security to ensure the cost of any cure or address of code violations, cure, taking possession of or title to the project pursuant to applicable law(s), decommissioning and removal in the event the Town must so address any violative conditions after due notice as required under Town Code and including without limitation, to remove any violative conditions, Solar Energy System deemed abandoned or unsafe and to decommission the system. Such financial security shall be in amount and form satisfactory to the Attorney for the Town and approved by the Town Board upon review and advisory recommendation of the Planning Board, but in no event to exceed more than one hundred twenty-five percent (125%) of the approved estimated cost of the complete demolition, removal and compliance with the additional requirements set forth herein, including to the Town's estimated professional fees and any internal administrative costs, and shall include provisions for any incremental increases reflective of inflation and similar economic factors potentially affecting such costs throughout the expected life of the Solar Energy System. Such security agreement and form of financial security shall include provisions for the renewal of same on an annual basis with firm and irrevocable notice of renewal not less than ninety (90) days prior to expiration of existing financial security such that the Town may react to any abandonment or violations within such period of time as the existing financial security is still effective. The provisions of Section 280-11.1D(15) foregoing and the required time periods thereunder may be shortened by the Town, acting unilaterally, in the event of an abandonment and/or Town Code violation warranting demolition and removal, or material repairs or replacements within such ninety (90) day period and where there is a reasonable likelihood that financial security in place may expire prior to the persons responsible or liable taking appropriate action. Such requirements may be reduced and/or partially or wholly waived by the Town Board, upon Planning Board recommendation, if and to the extent the project is part of or related to any local, state or similar governmental-owned, leased or local

benefiting community facilities, including those for which any such governmental unit or Tully Town residents and property owners are the beneficiaries thereof, any such reduction or waiver to be in the Town Board's sole discretion.

(17)No Rights Created; Future Consideration.

- (a) Approval of a Solar Energy System as provided herein shall not in and of itself create an actual or inferred Solar Energy System easement or similar right in favor of the property or system owner, developer, project or property mortgagee, security interest holder, lessee, sub lessee party to PPA, similarly benefiting party, or anyone acting under them (each and all of the foregoing, a "SES Party") as against contiguous/adjacent or other nearby property and/or structures which may as existing or in the future, as of right or via Site Plan and/or Special Authorization approval, potentially interfere with the effective operation of the Solar Energy System. No such SES Party shall have, claim or assert any such rights including the right to prohibit or restrict any cast, shade or shadows adversely affecting the SES Party and its Solar Energy System's effectiveness due to any pre-existing or subsequent development of contiguous/adjacent or nearby premises developed within the pre- or then existing as of right including Specially permitted or Authorized zoning district requirements.
- (b) The foregoing notwithstanding, upon any consideration of zoning change or amendment, or use or area variance relative to such future development, or of site or subdivision plan design which as proposed may have such an adverse affect on a pre-existing Solar Energy Systems effectiveness, upon written request of any SES Party including documentation supporting its position, the appropriate Town body, board or official shall take same into account and affirmatively act to balance the parties respective interests as reasonably warranted in order to protect as may be reasonably possible and equitable any such SES Party from degradation or loss in the Solar Energy Systems effectiveness by appropriately approving, denying or conditioning any approval accordingly. In such event, provided such consideration has been given and noted in the record of proceedings, approval of a Solar Energy System by the Town of Tully with or without conditions shall not create any future liability or infer any vested rights to any SES Party as against the Town including for any claims, actions or suits arising out of or relating to review, approvals and or related permitting of the Solar Energy System and/or reliance on this Section or any Planning Board or administrative decision lawfully made hereunder, but may however provide the property owner a cause of action and may be of sufficient community interest to warrant Town action. Any such SES Party shall be solely responsible for negotiating with other adjacent/contiguous and nearby property owners for any required or necessary easements, releases from restrictive covenants or similar rights and shall present any such instruments, where required for the project, as proposed or as recorded at or prior final review and decision by the Planning Board. Where so proposed, as disclosed in he minutes or the record of proceedings, and unless specifically otherwise noted as not required as a condition of approval, same shall be deemed as a requirement and condition of any such approval and shall be obligated as a condition precedent to any entitlement to or issuance of building or site work permitting and/or of any certificate of completion, occupancy or the like to have submitted same to counsel for the Towns in proper legal form for review and approval, and as approved having had duly executed and recorded such instrument as presented and approved, with the Onondaga County Clerk and with a certified or stamped (with time, date,

Liber or Book of Deeds and page number) a certified copy of same to the Town Clerk and with copy thereof showing such certification or recording information to the Attorney for the Town.

E. PERMITTED ZONING DISTRICTS AND REQUIRED MINIMUM ACREAGE FOR MEDIUM, LARGE, AND UTILITY SCALE SOLAR ENERGY SYSTEMS. Medium, Large and Utility Scale Solar Energy Systems shall be permitted only in such zoning districts and in locations determined as appropriate by the Planning Board's review and application of criteria at Section 280-11.1H hereof, in light of the purpose of intent and findings herein, and the application materials required, and in any event subject to such minimum acreage requirements as follows:

- (1) Medium Solar Energy Systems may be located only on certain lots within the A-1, A-2, B-1, IND and R-1, 2 and 3 zoning districts having a minimum lot area of one and one-quarter (1.25) acres for A-1, A-2, B-1 and IND and of two and one half (2.50) acres for R-1, 2 and 3 zoning districts, plus an additional sixty hundredths (.60) acres (or proportionate part thereof) for each additional one hundred (100) kilowatt hours (or proportionate part thereof) of proposed system rated capacity in excess of one hundred (100) kilowatts; if however the entire Solar Energy System proposed is a Building Mounted Solar Energy System having collection infrastructure located entirely upon the roof of principal and/or accessory structures, and however subject and pursuant to the provisions of Section 280-11.1C(2) and (3) and subparagraphs thereof, such Medium Building Mounted Solar Energy Systems atop the roof of such structures shall be permitted in such zoning districts regardless of the foregoing acreage requirements, and however subject to a total minimum lot area of not less than two and one-half (2.50) acres.
- (2) Large Solar Energy Systems may be located only on certain lots within the A-1 and/or A-2 zoning districts and having a minimum lot area of four (4.00) acres and in B-1, IND and R-1, 2 and 3 zoning districts having a minimum lot area of six (6.00) acres plus an additional sixty hundredths (.60) acre (or proportionate part thereof) for each proposed one hundred (100) kilowatt/hrs. of rated capacity (or proportionate share thereof) in excess of seven hundred fifty(750) kilowatts; if however the entire Solar Energy System proposed is a Building Mounted Solar Energy System having collection infrastructure located entirely upon the roof of principal and/or accessory structures, and however also subject and pursuant to the provisions of Section 280-11.1C(2) and (3) and subparagraphs thereof, such Large Building Mounted Solar Energy Systems atop the roof of such structures shall be permitted in such zoning districts however subject to a total minimum lot area of not less than four (4.00) acres plus the additional sixty hundredths (.60) acre for each additional 100 kilowatts of rated capacity, but such Building Mounted Solar Energy System shall not exceed a one and one-half (1.5) MW (1,500 kw) rated capacity.
- (3) Utility Scale Solar Energy Systems may be located only on certain lots within A-1 and A-2 zoning districts having a minimum lot area of the greater of twenty (20) acres plus an additional sixty hundredths (.60) acres or proportionate share thereof for each proposed one hundred (100) kilowatt/hrs. (or proportionate share thereof) of rated capacity in excess of four (4) megawatts.

F. APPLICATION OF OTHER LAWS – PRE-EMPTION/SUPERSESSON. The provisions hereof, except as expressly otherwise provided are intended to and shall pre-exempt and supersede those

provisions of Chapters 190, 245, 280 and Schedules I (Chapter 280 Attachment 2) and II (Chapter 280 Attachment 3) of the Town Code to the extent providing otherwise herein, and respecting the procedural, height, area, dimensional, lot coverage, setback, and in certain cases the permitted uses and related requirements of Chapter 280 and replacing same with the provisions hereof, and as with the procedures set forth and described at Town Law Sections 274-a and 274-b and 276-80, however only to the extent expressly provided herein, and otherwise supplemented by its provisions. In the event of conflict between the provisions of this 280-11.1 and Chapters 190, 280 and 245 of the Code, it is intended that the provisions of this Section 280-11.1, with respect to the subject matter hereof, are the provisions most favorable and protective of the Town of Tully, its residents and those properties and owners affected thereby, and as such the provisions hereof shall control and prevail. The foregoing and other requirements of this Section 280-11.1 notwithstanding, it is acknowledged that where any requirements or other provisions or parts hereof are in whole or in part pre-empted or superseded by applicable Federal, State, statutes, laws, regulations and/or the like, all remaining provisions, requirements or parts hereof shall be and remain in full force and effect and shall be on the application hereof subject to the Illegality/Severability Supersession provisions of Section 3 of this Local Law No. 1 of 2016 which provisions are specifically incorporated herein by reference as if fully and expressly set forth in this Section 280-11.1, and which shall require the modification of any such pre-empted and superseded provision(s) or part hereof by a substitute provision intended to effect the intent of the Town Board as incorporated in the Findings, Purposes and Determinations and Intent of the Town Board in adoption of such superseded or pre-empted provisions, or part thereof, wherever possible.

G. **APPLICATION REQUIREMENTS.** The following shall be submitted, unless waived by the Planning Board pursuant to the authority granted herein and otherwise under Section 274-a(5) and 274-b(5) of the Town Law, Chapters 245 and/or 280 of the Town Code, and this Section 280-11.1 for all Medium, Large and Utility Scale Solar Energy Systems. All plans, surveys, maps and the like hereinafter referenced shall be created and certified to by the appropriate professionally licensed, registered and/or authorized in New York architect, landscape architect, engineer or surveyor. The Planning Board, its chairman and/ or its attorney may request or agree to meet with the applicant prior to the filing of a complete application in order to review a sketch or concept plan and discuss what, if any, such application/procedural or substantive waivers may be required and appropriate conditions to same, if any, subject to later formal Planning Board consideration formally approving (confirming) same: approval or modification.

(1) Plans, Specifications, Design and Related Plans and Drawings. Plans, specifications and design drawings of all components of the Solar Energy System and project site signed as certified to by a professional engineer registered or authorized respecting the project in New York State and based upon a certified location/instrument survey prepared by a duly licensed land surveyor, that is registered or authorized to perform land surveys in New York State, and showing the proposed layout of the entire Solar Energy System and project along with a description of all components, whether on site or off site, proposed clearing, excavating and grading of all lands involved, dust, erosion and sedimentation control, permanent and temporary access and egress to the project site, including location of all roads, fencing, gates, parking areas, incidental and appurtenant improvements, etc. A description of the proposed type, size, amount, height and area(s) to be occupied by the various components of the proposed Solar Energy System and detailed, colored elevation drawings of all such proposed components, structures and Mechanical Equipment. A demolition and disposal plan for any existing improvements and/or excavation spoils to be

removed from the site shall be included as shall, if and to the extent applicable, such detail of existing conditions as as-built or updated markups showing current/as-built conditions upon original or as-built plans and specifications for any structures upon which Building Mounted Solar Energy Systems are proposed. The detail and specificity of such plans and specifications shall be otherwise and in addition, as required for site plan review under Section 280-9B (and subparagraphs and subsections thereof) of the Town Code and with building/improvement plans and specifications as required for construction/development permitting issuance.

- (2) Structural Opinion-Certification. Certification from a professional engineer or architect registered in New York State and otherwise qualified to render an opinion certifying that any building or structure to which any Building Mounted Solar Energy System is to be affixed is capable of handling the loading requirements of the Solar Energy System and various components.
- (3) Electrical/Technical Design and Utility Construction Documents. One- or three-line electrical diagram detailing the Solar Energy System installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan. The applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories (UL), IEEE, Solar Rating and Certification Corporation (SRCC), BTL, or other similar certifying organizations. Documentation of utility notification and/or any required conditions or approvals, including an electric service order number shall be provided.
- (4) Existing Conditions Plans/Maps. A certified boundary, location, instrument and topographical survey map based upon a survey from a duly licensed or authorized land surveyor and stamped accordingly with such license or authorization, of the site and entire property within which same is located drawn to scale and showing all existing conditions, structures, improvements, all topography and contours and of adequate scale and detail to show all site features, including all existing drainage patterns and features, the location of all lakes, ponds, streams and wetlands, existing conditions, including all grass, vegetation and similar physical conditions, grassed, farmed, forested and other natural resources or, man-made features, existing zoning, a vicinity map, flood zone/way designations and proposed boundary lines, if in connection with an Incidental Subdivision. An enlarged location section or separate map shall include general elevations and contours from USGS or similar credible data in not less than 300 ft. increments of all surrounding areas within a 4,500 linear feet straight-line radius from the Outer Perimeter of the Total Area Footprint, any screening, buffering, and/or berming and security fencing, in each direction.
- (5) Wildlife, Fish, Endangered Species Existence, Habitat Areas and Migration Patterns. A report authored by a duly licensed or authorized professional noting and analyzing specifically any and all information on flora/fauna generally and including any existence or use of the site for or by wildlife, fish, endangered or threatened species including as temporary, seasonal or permanent habitats, within migratory patterns, and whether the project is otherwise in a biologically

significant area, any such nearby areas are so affected, and the probable requirements of construction and operation of the project on same within the same distances from the Outer Perimeter as described in the foregoing 280-11.1G(4). Where appropriate the report shall include map of locations.

- (6) Environmental, Cultural, Historical, Recreational (etc.) and Related Sensitive Areas. A general report with description and analysis of the site and surroundings and supplemented with maps and photograph(s) with overlay references of all other potentially environmentally, culturally and historically significant and/or sensitive areas, including but not limited to a preliminary or proposed delineation of any wetlands, flood plane or way, designated Critical Environmental Areas, and other significant environmental or natural conditions and forest stand and or other vegetation and farmed or agriculturally utilized lands, (including for animal farming) delineations showing any existing significant findings or determinations.. Analysis of impacts to historic, cultural and archaeological resources, soil erosion (water and wind), flora, and water quality and water supply in the area if and to the extent there is reason to believe that adverse impacts to such may occur. All of the foregoing however shall be addressed, if at minimum, only to state that same do not exist on or within such stated radius of the site and /or shall not be affected by the project as proposed and explanation of the rationale or reasons for same including any proposed mitigation measures.
- (7) Aerial Photographs With Detail. Aerial photographs of the general area of the site under consideration including all areas from within 4500 and also from within 1500 feet from the Outer Perimeter as described in the foregoing 280-11.1G(4).
- (8) Project Local Benefits Narrative. A detailed written narrative outlining the need for and benefits of the proposed facility, and anticipated life of the facility and any (if any) specific, special or unique benefits to or for the Town of Tully, Village of Tully and/or the Tully area community generally versus that of the general public, including without limitation any proposed local governmental and/or community solar energy component(s) proposed in connection with the project.
- (9) Security, Operations and Maintenance Plan. A detailed written security, operations and facilities maintenance plan(s) which include measures to limit unauthorized access to the facility and minimize environmental impacts by and from cleaning and maintaining the facility, general operational parameters, and emergency operations and shutdown procedures. Times, frequency and types of motor vehicle traffic incidental to such plan(s) should be included.
- (10) Public Services, Utility, Stormwater and Similar Needs. If potable water supply and/or wastewater treatment including sanitary, and/or surface/storm water will be required, a feasibility analysis of such stormwater and sanitary wastewater treated and/or disposal and potable water needs and proposed means of addressing same. Any other public services, including energy services, and the necessity therefore, frequency of necessity and the like should be described and analyzed, including for fire protection, ambulance/EMS and the like. If required by law either a SWPPP or in the alternative, a report shall be submitted.
- (11) Required Notices, Posting and Publications.

- (a) Generally. All uses that are subject to Planning Board Special Authorization, Site Plan and any Incidental Subdivision Approval herein shall be subject to the Notice and related requirements for publication and posting of public hearings as required under Town Law Sections 274-a, 274-b, and 276-80, and to the following additional notice provisions: prior written notice of not less than fifteen (15) days mailed to each owner of property within 1,500 feet of the Outer Perimeter at the property address, if improved, and in any event in addition, the addresses for such property owners as shown on the real property tax records of Onondaga County, and if such addressee is a mortgagee or servicing agent, a good faith attempt shall be made to ensure that in some additional way the Property Owner shall timely receive a copy of such notice.
- (b) Notice Content. All such notices shall include the public hearing notice and specific approvals and relief applied for (e.g., Special Authorization, Site Plan, Incidental Subdivision and/or Waiver(s)) notify the addressee of an internet website/page whereat the complete application can be reviewed and an email address to which any questions, comments or concerns may be addressed in writing to be included in the public hearing record.
- (c) Notice Re: Written Comments. All such notices shall also include a statement that any written comments requested to be considered by the Planning Board be hand delivered, or by express (overnight or two-day) delivery or first class U.S. Postal Service mail to the “Town of Tully; Attention Planning Board Chair” at the Municipal Building, Meetinghouse Rd. Tully, New York 13159 and such written comments shall include at minimum the writers name, location of and interest in real property affected thereby, or other general interest, mailing address, telephone number and email address.
- (d) Envelope Notation. An inside enclosure envelope of the notice mailed, express mailed or otherwise delivered to the property owner shall be marked prominently at the front bottom (underneath the addressee name and address) with the following: “PUBLIC HEARING NOTICE RE: Proposed Solar Energy System at (site address, nearest road intersect and approximate distance/direction site is therefrom) on _____, 20__,” and both the notice and website shall include that any written comments requested for consideration by the Planning Board mailed or delivered to the Town shall likewise be marked accordingly on the bottom front of envelope.
- (e) Signage Notice. In addition, not later than ten (10) days prior to the date of public hearing, a sign or signs shall be posted on the site and at each property boundary line of the parcel within which the site is situate fronting a public (or private, if subject to the common use by residents or property owners situate along same) street, road or highway and which sign shall include the foregoing language in typeset clearly visible and readable from the public right-of-way and otherwise of not less than five inches in height and three inches in width. Same shall be posted as nearly as possible to the edge of each public right of way or paved road front the project site, however in any event not closer than fifty (50) feet from any intersection and shall remain posted through the date such public hearing has been opened and if directed by the Planning Board,

continued and modified to reflect any public hearing continuation dates.

- (f) Planning Board Waiver re: Publication, Notice and Posting. The foregoing notwithstanding, the Planning Board may waive or modify any of the foregoing notice requirements that are not required by applicable provisions of the (New York State) Town Law and General Municipal Law in the case of a Small Solar Energy System waiver or Medium Scale Solar Energy System application, and may in addition and otherwise modify same (including by waiver granted after the fact) as may be reasonably warranted and required due to particular circumstances or difficulties with strict compliance in the context of any Medium, Large or Utility Scale application, provided such modification is not intended to purposely circumvent the intent of general notification to nearby potentially affected property owners. Provided the Planning Board has determined that a good faith attempt to publish, post and mail or deliver the required notices has been made, and substantially effected, any failure to effect full compliance shall not be grounds for invalidating any approval hereunder. Applicant shall provide, a sworn, affirmed or certified statement attested to by a notary public under penalty of perjury, advising as to the detail of and evidencing satisfaction of all of the foregoing notice requirements including the names and addresses of all persons and premises delivered and or mailed to, posting of the property in accordance with this Section 280-11.1G(11), including photographs of required signage in location, and attesting that in all respects a good faith effort was made to fully comply with all requirements hereof and that as of the date of submission of such certification, affidavit, affirmation or statement to the best of the project applicant's knowledge, no errors or failures to comply with the notice, posting and publication requirements hereof, or otherwise under Town Law Sections 274-A, 276-77 or 274-B are known, or have been otherwise brought to such person, or the applicants, their agents and/or consultants charged with responsibility for the application process attention and that except as follows all such persons believe no such failure(s) to comply with the foregoing have been made: (complete as/if applicable) (describe any such failure(s) in detail or insert "None").
- (12) Solar Exposure/Collection Analysis. Where an applicant requests a waiver of any required setbacks from those required at Sections 280-11.1D(1)(2), or such as different buffering/screening, or site location than that desired or designated by the Planning Board within the same owned or controlled parcel as being of less or different potential adverse impact to surrounding properties, the neighborhood or other premises from which the site proposed may be viewed, or for any similar or other documented reason as the Planning Board may deem relevant, the Planning Board may require the applicant to submit a sun chart or similar technical study for the proposed site indicating the sun angle at the southern boundary of the site for a minimum four-hour continuous period during the estimated annual time and date of the highest sun angle, and to provide analysis of potential for existing buildings, structures, and/or vegetation existing on the site or adjacent/contiguous sites to obstruct the solar sky space of the proposed Solar Energy System. Such study shall also provide analysis, where relevant, of the potential for obstructions to the solar sky space of the proposed Solar Energy System under a scenario where an adjacent/contiguous or similar nearby site is developed as otherwise permitted by applicable provisions of the Town of Tully Zoning Code

with such building/structure or adjacent or contiguous premises built to the applicable zoning districts (as of right, by Site Plan or Special Authorization) maximum bulk, height and minimum setbacks. The Planning Board analysis of same, and any determination based thereon, the failure to require the same, and any Planning Board determinations based thereon, however shall in no way place responsibility or liability on the Town as representing any specific availability of solar sky space for a particular Solar Energy System and same shall in any event be subject to the provisions of Section 280-11.1(D)(17) hereof.

- (13) Public Safety. Documentation identifying and addressing any known or suspected potential hazards to adjacent or nearby properties, public roadways, communities, aviation, etc., that may be created by the project. As applicable, the application must include plans for the spill prevention, cleanup, and disposal of fuels, oils, and hazardous wastes, as well as collection methods for solid waste generated by the project. Compliance with any applicable airport overlay zoning requirements and the ability to comply with FAA regulations pertaining to hazards to air navigation must be demonstrated.
- (14) Noise Limitations. Submit sufficient information regarding noise, so as to demonstrate compliance with Section 280-11.1D(12) hereof.
- (15) Decommissioning Plan and Financial Security. A detailed plan describing the decommissioning and final land reclamation plan to be followed after the anticipated useful life, and/any response plan for address cure, including in the event of a Town Code violation, abandonment, or termination of the project, and including evidence of proposed commitments with affected parties (county, any lessor or property owner, etc.) that ensure proper final reclamation of the Solar Energy System. Among other things, construction/demolition refuse and removal, re-vegetation, road repair and other decommissioning and reclamation measures shall be addressed in the plan. Description of financial security that satisfies Section 280-11.1D() shall likewise be included.
- (16) View Shed Perspective Analysis. A view shed perspective analysis study and report including any electronic or media simulation shall be provided, including visual simulations of the planned structures and analysis of potential glare impacts. The number of visual simulations shall be sufficient to provide adequate analysis of the visual impacts of the proposal, which shall be from no less than eight (8) vantage points that together provide a view from all directions of the project site. Proposals deemed or perceived as potentially especially visually aesthetically sensitive in nature, in the Planning Board's sole, but reasonably based discretion, and may require analysis from additional vantage points, including a ZVI Analysis (hereinafter described) of viewshed of the site from up to a three hundred sixty (360) degree perspective at or from different distances, elevations and/or at or from parks, recreational or nature preserves, scenic drives, bicycling and pedestrian ways, or other socially, culturally, historically, environmentally and similarly significant or sensitive locations. The Planning Board may also require a Zone of Theoretical Visibility/Zone of Visual Impact (ZVI) Analysis, i.e. from height and directional vantage points from and along a three hundred sixty (360) degree computer analysis to map all lands at all such elevations and within a defined radius of a location that would likely be able to see an any components of the project as proposed and/or alternative layouts. The view shed perspective analysis may be required from distances from the Project Site (and locate within

same) of up to 4,500 square feet radius.

- (17) Transportation Plan for Construction and Full Operation Phases. A report indicating by description and map which public and or private roads, highways and/or streets the project intends to utilize during the construction and full (future) operation/maintenance phases of the project throughout its useful life, along with their existing surfacing and condition. Specify any new roads and proposed upgrades or improvements needed to the existing road system to serve the project (both the construction operations and maintenance) to identify all needed bridges, culverts, gate or fence crossings, etc. Also identify all areas where modification of the topography is anticipated (cutting/filling) to construct or improve the roadways. Address types, weights and any specific effects of such types and weights of vehicles or the roads intended to be utilized, road improvement, restoration or maintenance needs associated with the construction, ongoing maintenance/repair, and potential decommissioning of the project. Provide projected traffic counts for the construction period and thereafter at full operation, and broken down by the general type/size of vehicles, and identify approximately how many trips will have oversized or overweight loads. If significant impacts to the local transportation system are anticipated, the Town may require financial guarantees to ensure proper repair/restoration of roadways or other infrastructure damaged or degraded during construction or decommissioning of the project. In such case, the “before” conditions of the roadways and other infrastructure must be documented through appropriate methods such as videos, photos, and written records, to provide a proper reference for restoration.
- (18) SEQRA Long Environmental Assessment Form. This shall be submitted, complete as to Part I, together with any supporting documentation and relevant addendums (including visual/aesthetics) and including or together with separate listing as to all Involved Agency names and addresses, permits/approvals required and statutory or regulatory requirements cites or references for same, together with any visual, aesthetic, view shed or similar impacts addendums as prescribed by the NYSDEC under its grant of regulatory jurisdiction under SEQRA. The applicant may, but is not required to, submit a proposed Parts 2 & 3, however with any commentary as reasonably required in support of its recommended Parts 2 and 3 responses.
- (19) Agricultural Data Statement. If required pursuant to Agricultural Markets Law Section 305-a, this shall be completed and submitted.
- (20) Other Information, Etc. Any such other information, evidence and documentation as may be required to evidence satisfaction and/or compliance with the requirements and criteria for approvals and required waivers under this Section 280-11.1, Sections 274-a, 274-b, 276 of the Town Law and Sections 280-9 and 245 as applicable, of the Town Code and or as the Planning Board may otherwise reasonably require to fully and fairly evaluate the proposal.

H. **PLANNING BOARD SPECIAL AUTHORIZATION AND SITE PLAN (INCLUDING INCIDENTAL SUBDIVISION) PROCEDURE AND CRITERIA FOR SOLAR ENERGY SYSTEMS.** The Planning Board shall conduct its review of the application subject and pursuant to those provisions of the Town Zoning Code and New York State statutes described at Section 280-11.1B hereof, however due to the

nature of the type of proposal, its complexity and detailed application requirements, such Special Authorization, Site Plan and any Incidental Subdivision review may proceed concurrently, including with any required SEQRA review. As such, all statutorily required and discretionary public hearings may likewise be for all such purposes combined and held concurrently. The general criteria to be applied by the Planning Board in reviewing all such application(s) shall be:

- (1) The proposed Solar Energy System is consistent with, and will not impede an appropriate goal or objective of the Town's Comprehensive Plan and addresses the applicable requirements, objectives and concerns as described at Section 280-11.1D and this 280-11.1H hereof.
- (2) The proposed Solar Energy System is consistent with, and will not impede, the lawful use and development of contiguous, nearby, other properties and the community and zoning district the project is within the view shed of and will not unreasonably affect their enjoyment or value. Included within this criteria shall be the evaluation of the respective benefits and detriments of the use of sizeable, and/or quality tracts of open, agricultural, agri-business, vacant, environmentally, socially, recreationally, historically, culturally and natural resource, and the community in genera, lands for such use(s) as proposed and the effect of the proposal, if granted and project developed, on all such adjacent, contiguous, nearby, within view from, and/or similarly situate or otherwise affected properties in the community and district, the balancing of the allocation of remaining suitable lands in the Town for such proposed use in light of the zoning and of nearby lands within the Town of Tully versus such other uses and also reserves, other renewable energy projects using the same or different source technologies, and likely changes in solar energy and/or other renewable energy technologies.
- (3) The proposed Solar Energy System operations will not create unreasonable sunlight or glare, including reflection or concentration thereof, or motor vehicle traffic, health, noise, odors or other public hazard, safety, security or quality of life issues, or unreasonably burden, or create an excessive demand for public services.
- (4) The general appearance, aesthetic, and view shed from various surrounding properties as a result of installed illumination and lighting sources and/or reflection therefrom due to the proposed Solar Energy System shall not unreasonably interfere with the lawful use and enjoyment of contiguous, adjacent, nearby properties nor those the site is within the view shed of, including at some distances and based on relative elevations, shall not unreasonably affect their enjoyment and value, nor significantly adversely affect any of the concerns expressed in the intent, findings, purposes, and objectives stated at Section One (1) of this Local Law No. One (1) of 2016, at Section 280-11.1D(3)(a)-(c), and at Section 280-11.1H(1) or (2) above as a result of such lighting proposed.
- (5) Impacts from development, construction and operation of the proposed Solar Energy System shall be within those determined reasonable and predictable as determined by the appropriate SEQRA review, including that development and operation of the proposed Solar Energy System shall not have a significant adverse impact on "flora/fauna," fish, wildlife, or plant species, their habitats, migration patterns habitats, significant social, recreational natural, cultural or historic resources, as identified by the Town of Tully, the Planning Board in their review, and/or by the applicant's investigations and inspections and/or other federal or state regulatory agencies.

- (6) The Solar Energy System design and proposed construction will adhere to all applicable Town of Tully Code requirements, and to all New York State and federal building, plumbing, electrical, energy and fire codes.

I. WAIVER AUTHORITY. In connection with review and issuance of a Special Authorization, Site Plan and Incidental Subdivision approval for a Solar Energy System, and except as expressly otherwise provided in this Section 280-11.1, the Planning Board shall have the authority to waive the strict application of any of the use, area, height, location, lot coverage, density, dimensional or other requirements under this §280-11.1. Such waiver shall not be subject to the general balancing test or unnecessary hardship requirements in the review of area variances and use variances are subject to but shall be granted only after consideration of the following :

- (1) Whether the granting of such waiver(s) will result in an undesirable change in neighborhood or community, local area character or to adjacent, contiguous, nearby and/or other area properties the project site is or will be within the view shed of.
- (2) Whether the granting of any such waiver(s) will result in any adverse physical or environmental effects including representing any interests described in the foregoing subparagraph one (1).
- (3) Whether there are any feasible alternatives to the granting of the requested waiver(s) in order for the applicant to realize the same or substantially similar benefit(s);
- (4) Whether the requested waiver(s) is/are substantial in nature, i.e., is such request the minimal necessary to achieve the desired benefit;
- (5) Whether and to the extent: (i) any other findings, objectives or purposes as described in the Findings, Purposes and Intent statement at Section One (1) of this Local Law One (1) of 2016 and in the Special Determinations and Findings of Town Board at Sections 280-11D(3)(a)-(f) inclusive hereof cannot be achieved solely or substantially as a result of (the) (a) requested waiver(s) being granted; and (ii) any of the criteria addressed at Section 280-11.1H subparagraphs thereof that are materially adversely changed or affected if (the) (a) requested waiver(s) being sought is/are granted.
- (6) Are there any conditions that can or should be imposed in connection with the grant of (a) waiver(s) to minimize or nullify any such adverse impacts or effects;
- (7) In connection with consideration of a waiver, and as part of any Special Authorization issued, the Planning Board may impose such conditions, as they deem reasonable and/or necessary to address the foregoing.
- (8) Application of the foregoing criteria shall be limited to consideration of the waiver requested as compared to the requirements set forth under this §280-11.1(I). The criteria may be considered singularly and/or collectively and subjectively, such that (a) failure to satisfy or otherwise

favorably address any specific or number of criteria, shall not necessarily warrant denial or approval of a requested waiver; and

- (9) The Planning Board shall make specific findings within the resolution authorizing or denying (a) waiver(s) addressing each of the foregoing criteria.
- (10) The denial or grant of a waiver shall not prohibit the appeal from such Planning Board grant or denial to the Town Zoning Board of Appeals, provided however any grant of relief from the Zoning Board of Appeals shall be subject to Section 280-11.1J following. Alternatively, the applicant or Planning Board may request a stay of proceedings at any time in order to seek such appeal based upon an informal advisement from the Planning Board to the applicant on the issue of a proposed waiver or need for assistance in this regard. In such event the applicant shall execute and deliver to the Planning Board a request for such referral, stay and waiver of any claim from delay in proceedings resulting therefrom.

J. SEQRA REVIEW – ACTION IS TYPE I. All applications for Medium, Large and Utility Scale Solar Energy Systems shall be a Type One (1) Action pursuant to the State Environmental Quality Review Act.

K. PILOT AGREEMENT RPTL SECTION 487. At the time of adoption hereof, the Town Board has determined not to enact a local law opting out of the real property tax exemption mandated under RPTL Section 487, and however mandating that in connection with any application hereunder, except respecting a one (1) to four (4) family residential Solar Energy System required to be exempted under RPTL Section 489, a payment in lieu of taxes agreement shall be entered into with the Town of Tully providing for fifteen (15) consecutive annual payments in lieu of taxes to the Town of Tully in the same manner and time, and subject to the same penalties and related provisions as the payment of annual State, Town and County Taxes to the Town, and including, such of the Special or other District, Library, Ambulance District, Trash and Refuse and other taxes and charges as allocated by the Town and as may be subject to exemption under RPTL Section 487 if not addressed by the appropriate legislation or resolution. Same shall be based upon a 100% full value assessment taking into account the appropriate equalization rate and with annual increases in the assessment of the improvements not to be less than 1%, nor to exceed 3% over that of the prior year as determined by Town Board in its sole discretion. The project owner and applicant shall enter into such agreement as a condition precedent to any grant of a final decision of approval or conditional approval hereunder. The applicant, and property owner(s) shall as a condition precedent to scheduling of any public hearing(s) under this Section 280-11.1 state in a signed writing a firm intent to enter into and not contest the validity or enforcement of same. The agreement shall also provide that such PILOT terms shall be likewise extended by applicant, upon request of and to taxing authorities the Town is not in control of, such as School Districts, Library, and special improvement or other districts that might or would be otherwise subject to exemption under RPTL Section 487. The foregoing notwithstanding, if and to the extent the Town and its residents, directly or indirectly may derive a benefit through local governmental or community reserve of solar energy for the benefit of the Town and residents, by effecting lower operating costs for Town facilities, and/or via a community solar program making a part or all of such reserve available to Town Village or general community residents, the Town Board may determine to impose a reduced payment in lieu of

taxes based upon a project including a tangible and calculable local governmental and/or community solar benefit or reserve of same component upon terms and conditions satisfactory to the Town Board of Tully.

- L. **ZONING BOARD OF APPEALS VARIANCE GRANT.** Any decision by the Zoning Board of Appeals to grant a variance shall not in any other way be deemed to affect the applicability of any provision of the Zoning Code, Planning Board authorization and approval issued hereunder, nor any other Town Code provision applicable to the applicant's plan or project. If the application or provisions of any variance significantly changes the plan or application submitted to the Planning Board and upon which the Special Authorization and Approval was granted, the same shall be deemed inoperative until reviewed by the Planning Board to determine what if any changes to the previously approved authorization and/or site plan may be required as a result of the variance grant. This provision shall not be operative if the applicant has sought review by the Zoning Board of Appeals and has received a decision granting a requested variance such that same can be considered in any Planning Board review and approvals hereunder, then the Planning Board has no authority to, and accordingly shall not attempt or purport to modify any variance granted by the Zoning Board of Appeals, including via grant of waiver.

Section Three (3). Section 280-4B of the Code of the Town of Tully is hereby amended to repeal and replace the definition of the term "UTILITY STRUCTURE" with a new definition as follows:

UTILITY STRUCTURE – Structures used to provide utility services, and as power substations, transmission towers, pumping stations, underground and overhead installations and related facilities. Utility Structures however shall not include renewable energy facilities, including without limitation, Wind or Solar Energy facilities such as are or as shall be provided for under separate Sections of Chapter 280 (including Section 280-11.1 (Solar Energy Systems) or reserved Section 280-11.2 (for Wind Energy System).

Section Four (4). Schedule I (Attachment 2) under Chapter 280 is hereby amended to state a new use classification under " Land Use or Activity" at "E. Miscellaneous Uses" entitled:

"10. Renewable Energy Facilities" and in each district column " see Reference Note". The Reference Note shall state "Per Local Law #1 2016 amending Chapter 280, such facilities shall include without limitation Solar Energy Systems – Section 280-11.1 and Wind Energy Systems proposed to be under Section 280-11.2

Section Five (5). Illegality/Severability/Supercession.

If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstances is adjudged or determined to be illegal, invalid, unconstitutional, or superceded/pre-empted by other laws, rules or regulations, by any court or other governmental agency of competent jurisdiction, such determination, order or judgment shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application directly involved in the controversy in which such determination, order or judgment shall have been rendered and shall not affect nor impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances. Further, in adjudging or determining such illegal, invalid, unconstitutional or

superceded/pre-empted provisions, or part thereof, the determining party, court or governmental agency shall modify same to a provision which is legally binding and enforceable, and accordingly, not illegal, invalid, unconstitutional or so superceded or pre-empted, and which best achieves the intent of the illegal, invalid or unconstitutional provision, or part thereof, as expressed or inferred herein. The foregoing shall apply specifically, but without limitation, to and to the extent of any provisions or part hereof superceded or pre-empted as described at Section 280-11.1F hereof.

Section Six (6). This Local Law shall take effect immediately upon its filing in the office of the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as Local Law No. One (1) of 2016 of the ~~(County)~~(City)(Town)(Village) of Tully was duly passed by the Town Board of the Town of Tully on July 13, 2016 in accordance with the applicable provisions of law.

~~2.(Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective —Chief Executive Officer*.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 19__, and was (approved)(not approved)(repassed~~

~~_____ (Name of legislative Body) disapproval) by the _____ and was deemed duly adopted on _____, 199_ (Elective Chief Executive Officer*)~~

~~in accordance with the applicable provisions of law.~~

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No _____ of 199_ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 19__, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 19__. Such local law was to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 19__, in accordance with the applicable provisions of law.

4. ~~(Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)~~

I hereby certify that the local law annexed hereto, designated as local law No _____ of 19__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19__, and was (approved)(not approved)(repassed after *(Name of Legislative Body)*

disapproval) by the _____ on _____ 19__ Such local law was subject to *(Elective Chief Executive Officer*)*

~~permissive referendum and no valid petition requesting such referendum was filed as of _____ 19__, in accordance with the applicable provisions of law.~~

~~5. (City local law concerning Charter revision proposed by petition.)~~

I hereby certify that the local law annexed hereto, designated as local law No _____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 19__, became operative.

~~6. (County local law concerning adoption of Charter.)~~

I hereby certify that the local law annexed hereto, designated as local law No _____ of 19__ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 19__, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph one (1) above.

Susan Vaccaro, Town Clerk

(Seal)

Date:

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF ONONDAGA

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature

Steven J. Primo

Attorney for the Town

Title

County

City of Tully

Town ~~Village~~

Date:

*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a countywide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.