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County City Town Village

(Select one.)

of Minden

Local Law No. 1 of the year 2021

A local law Zoning and Regulating the use of Land in Minden for Solar Facilities Generating Energy
(Insert Title)

Be it enacted by the Town Board of the
(Name of Legislative Body)

County City Town Village

(Select one.)

of Minden as follows:

See Attached Law.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Town of Minden
Local Law A of the year 2021

A Local Law amending Chapter 90 of the Town of Minden Town Code entitled "Zoning," and regulating the use of land in Minden for solar facilities generating energy.

Be it enacted by the Town Board of the Town of Minden, Montgomery County, New York, as follows:

Section I. Title and Scope.

A. Title.

This Local Law shall be known as A Local Law amending Chapter 90 of the Town of Minden Town Code entitled "Zoning," and regulating the use of land in Minden for solar facilities generating energy, and adopted as Local Law No. A of 2021.

B. Enactment and Authority.

This Local Law is enacted pursuant to the authority and power granted by Articles 2 and 3 of the New York State Municipal Home Rule Law, and by Article 2 of the New York State Statute of Local Governments.

C. Scope.

This Local Law amends the Town of Minden Zoning Law which appears as Chapter 90 of the Town of Minden Town Code. This Local Law regulates the use of land within the Town of Minder for solar facilities generating energy and the location, construction, and development of those facilities.

D. Supersession of Inconsistent Laws.

This Town Board hereby declares its legislative intent to supersede any provision of any local law, rule or regulation, or provision of the New York State Town Law inconsistent with this Zoning Law. The New York State Town Law provisions intended to be superseded include all of Article 16 of the Town Law and any other provision of the law that the Town may supersede pursuant to the New York State Municipal Home Rule Law and the New York State Constitution. The courts are directed to take notice of this legislative intent and apply it in the event the Town has failed to specify any provision of law that may require supersession. The Town Board hereby declares that it would have enacted this Zoning

Law and superseded such inconsistent provision had it been apparent.

E. Legislative Intent.

In their interpretation and application, the provisions of this Local Law shall be held to be minimum requirements adopted for the promotion of the public health, safety and general welfare.

Non-Interference and Precedence. This Local Law shall not interfere with, abrogate, or annul any ordinance or any rule, regulation, or permit previously or here-after enacted or adopted, or issued pursuant to law, provided that, unless specifically excepted, whenever the requirements of this law are inconsistent with the requirements of any other lawfully adopted rule, regulation, ordinance or local law, the more restrictive provisions that impose higher standards shall govern.

F. Applicability.

The requirements of the amendments herein shall apply to all solar energy system and equipment installations modified or installed after the effective date of this Local Law, subject to the exception set forth immediately below.

At the time of the effective date of this law there is one approved large-scale solar facility (Mohawk Solar) for generating energy for off-site consumption in the Town of Minden Planning Board. This large-scale project shall be exempt from the amendments in this Local Law even after its effective date.

G. Separate Validity.

If any Article, subsection, paragraph, clause, or other provision of this Local Law shall be held invalid, the invalidity of such section, subsection, paragraph, clause or other provision shall not affect any of the other provisions of this Local Law.

H. Effective Date.

This law shall become effective upon filing with the New York State Department of State.

Section II. Zoning Law Amendments.

Chapter 90 of the Town Code of the Town of Minden entitled "Zoning," shall be amended as follows. References to particular "Articles" and "Sections" below are to numbered Articles and Sections within Chapter 90, which shall also be referred to hereafter as the "Zoning Law".

A. Amendment of Zoning Law Article II.

1. In Zoning Law Article II entitled "Definitions," the following definitions shall be repealed and deleted from Section 90-5:

REFLECTOR, SOLAR - A device for which the sole purpose is to

increase the solar radiation received by a solar collector.

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

SOLAR ENERGY SYSTEM, SMALL-SCALE - Any solar energy system that cumulatively on a lot meets all of the following provisions:

A. Is an accessory use or structure, designed and intended to generate energy primarily for a principal use located on site.

B. Produce up to 10 kilowatts (kW) per hour of energy or solar-thermal systems which serve the building to which they are attached, and do not provide energy for any other buildings beyond the lot. Small-scale solar energy systems located on a farm operation (as per Agriculture and Markets Law § 301(11) definition of that term) and located in a New York State Agricultural District can produce up to 110% of the farm's needs as per the Department of Agriculture and Markets guidance document.

SOLAR SKYSPACE – The space between a solar collector and the sun through which solar radiation passes.

2. In Zoning Law Article II entitled "Definitions," the following definitions shall be added to Section 90-5:

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

BUILDING-MOUNTED SOLAR COLLECTORS - an array of solar collectors mounted securely to racks attached to roof mounts, or integrated into building materials such as roof tiles, siding, or windows of any legally permitted and/ or constructed building or structure for the purpose of producing electricity.

FLUSH-MOUNTED SOLAR ENERGY SYSTEM - A rooftop-mounted solar energy system with solar panels which are installed flush to the surface of a roof and which cannot be angled or raised.

MAJOR RENEWABLE ENERGY FACILITY - This facility shall be defined as this term is defined and used in New York State Executive Law § 94-c.

ON-SITE CONSUMPTION - Energy generated primarily for the purpose of providing power to the owners, lessees, tenants, residents, or other occupants of the parcel on which the solar energy systems are erected.

OFF-SITE CONSUMPTION - Energy generated primarily for the purpose of supplying energy primarily into a utility grid for sale to the general public or to supply multiple users located off-site on which the energy system is located

PRIMARILY - For purposes of this solar energy on-site consumption, description of an amount of projected on-site energy demand not less than 90% of projected energy generation.

ROOFTOP OR BUILDING-MOUNTED SOLAR SYSTEM - A solar energy system in which solar panels are mounted on top of the structure of a roof of any legally permitted building either as a flush-mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle.

SOLAR ENERGY EQUIPMENT - Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity.

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

3. In Zoning Law Article II entitled "Definitions," in Section 90-5 therein, the following definitions shall be modified to provide as follows:

SOLAR ENERGY SYSTEM - A system of components and subcomponents intended for the collection, inversion, storage and/or distribution of solar energy and that directly or indirectly generates thermal, chemical, electrical or other usable energy. This term includes Solar Panels and Solar Energy Equipment.

SOLAR PANEL - a photovoltaic device capable of collecting and converting solar energy into electricity.

LARGE-SCALE SOLAR ENERGY SYSTEM - A solar energy generation facility, whether a ground-mounted and/or rooftop installation, principally used to convert solar energy to electricity, whether by photovoltaics, concentrating solar thermal devices or various experimental solar technologies, designed and intended to supply energy primarily into a utility grid for sale to the general public or to supply multiple users located off-site on which the energy system is located. For this purpose of this chapter, the purpose of large-scale solar energy systems is to principally benefit members and residents of

the Town of Minden community.

B. Amendment of Zoning Law Article IV, Section 90-9(A).

In Zoning Law Article IV entitled "Use Regulations," and in Section 90-9 therein entitled "R-1 Residential District," Section 90-9(A) entitled "Principal permitted uses" shall be amended to add new Section 90-9(A)(7) "Solar Facilities Generating Energy for On-Site Consumption."

C. Amendment of Zoning Law Article IV, Section 90-10(A).

In Zoning Law Article IV entitled "Use Regulations," and in Section 90-10 therein entitled "Agricultural District," Section 90-10(A) entitled "Principal permitted uses" shall be amended to add new Section 90-10(A)(14) "Solar Facilities Generating Energy for On-Site Consumption."

D. Amendment of Zoning Law Article IV, Section 90-10(B).

In Zoning Law Article IV entitled "Use Regulations," and in Section 90-10 therein entitled "Agricultural District," Section 90-10(B) entitled "Uses permitted as a special use permit and site plan review by the Planning Board" shall be amended to delete Section 90-10(B)(24) "Solar Farm" and the following Item Section 90-10(B)(25) "Wind Energy System" shall be renumbered as Section 90-10(B)(24).

E. Amendment of Zoning Law Article IV, Section 90-11(A).

In Zoning Law Article IV entitled "Use Regulations," and in Section 90-11 therein entitled "C-1 Commercial District," Section 90-11(A) entitled "Principal permitted uses" shall be amended to add new Section 90-11(A)(7) "Solar Facilities Generating Energy for On-Site Consumption."

F. Amendment of Zoning Law Article VIIIA, Section 90-52.25.

In Zoning Law Article VIIIA, entitled "Supplementary Requirements for Specific Uses," Section 90-52.25 therein shall be repealed and deleted and replaced with a new Section 90-52.25, the provisions of which shall regulate solar energy generation facilities of various scales within the Town of Minden.

The name of new Section 90-52.25 shall be "Solar Facilities Generating Energy." The numbering system in the replacement provisions set forth below is designed to fit the existing numbering system in the Zoning Law.

In Zoning Law Article VIIIA, entitled "Supplementary Requirements for Specific Uses," Section 90-52.25 therein shall be repealed and deleted, and the following new Section 90-52.25 shall be added to the Zoning Law and inserted in its place:

§ 90-52.25. Solar Facilities Generating Energy.

A. Purpose and intent.

- (1) The Town of Minden recognizes that solar energy is a clean, readily available, and renewable energy source. It further recognizes that energy generated from solar energy systems can be used to offset energy demand on the grid where excess solar power is generated.
- (2) This section aims to permit certain solar energy systems in the Town of Minden, while balancing the potential impacts on neighbors, preserving community character, and encouraging the rights of property owners to install and sensibly site solar energy systems.
- (3) The Town of Minden has determined that comprehensive regulations regarding the development of solar energy systems are necessary to protect the interests of the Town, its residents, and its businesses. This section is intended to promote the effective and efficient use of solar energy resources; to encourage sensible siting for solar energy systems such that community character, environmentally sensitive areas and prime farmlands are preserved and protected; set provisions for the sensible placement, design, construction, and operation of such systems to be consistent with the Town of Minden Comprehensive Plan; to uphold the public health, safety, and welfare; and to ensure that such systems will not have a significant adverse impact on the environment, and on aesthetic qualities and character of the Town.
- (4) Intent; greater restrictions to prevail. It is not intended by this section to repeal, except as herein stated, abrogate or impair existing conditions previously made or permits previously issued relating to the use of buildings or premises or to impair or interfere with any easements, covenants or agreements existing between parties. Except as otherwise provided herein, whenever this section imposes a greater restriction upon the use of buildings or premises than is required by existing provisions of law, ordinance, regulations or permits or by such easements, covenants or agreements, the provisions of this section shall control.

B. Applicability.

- (1) The requirements of this section shall apply to all solar energy system and equipment installations modified or installed after the effective date of this section.
- (2) In addition to meeting all the requirements of the Town of Minden Zoning Law, all solar energy systems shall be designed, erected and installed in accordance with all applicable codes, regulations and industry standards as referenced in the New York State Building Code and the New York State Energy Conservation Code.

C. Solar facilities generating energy for on-site consumption.

The following requirements shall pertain to solar facilities generating energy for on-site consumption as applicable.

(1) General design and siting requirements.

The following general design and siting requirements shall apply to all types of solar facilities generating energy for on-site consumption.

- (a) All solar collectors and related equipment shall be placed and arranged such that reflected solar radiation or glare shall not be directed onto adjacent properties or public roadways.
- (b) All solar collectors and their associated support elements shall, at the time of installation, be designed according to generally accepted engineering practice to withstand heavy snow loads and wind pressures applied to exposed areas by wind from any direction, to minimize the migration of light or sound from the installation and to minimize the development of sight obstructions for adjacent structures or land parcels.
- (c) All solar collectors and their associated support elements shall have a non-reflective finish and neutral paint colors, materials and textures to achieve visual harmony with the surrounding area.
- (d) Any on-site power lines shall be underground installations. In the event that such requirement is impossible or impracticable, the Planning Board shall have the discretionary authority to modify this requirement.
- (e) The location, size and intensity of the proposed project shall be in harmony with the orderly development of the district.
- (f) The character and appearance of the proposed project shall be in general harmony with the character and appearance of the surrounding neighborhood.
- (g) All areas of the proposed project shall be readily accessible for fire, emergency services and police protection.

(2) Rooftop and flush-mounted systems for solar facilities generating energy.

The following general design and siting requirements shall apply to rooftop and flush-mounted solar facilities generating energy for on-site consumption.

- (a) Rooftop and flush-mounted solar energy systems that generate electricity primarily for on-site consumption are permitted as an accessory structure.

- (b) Rooftop and flush-mounted solar energy systems shall require a building permit.
- (c) In addition to the General Design and Siting Requirements, Rooftop and flush-mounted solar energy systems shall incorporate the following design requirements:
 - [1] Solar panels on pitched roofs shall be mounted with a maximum distance of eight (8) inches between the roof surface and the highest edge of the system;
 - [2] Solar panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached;
 - [3] Solar panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached;
 - [4] Solar panels on flat roofs shall not extend above the top of the surrounding parapet, or more than twenty-four (24) inches above the flat surface of the roof, whichever is higher.
 - [5] In no event shall solar collectors mounted on buildings be higher than five feet above the level of the permitted building height.
- (d) Rooftop and flush-mounted solar energy systems shall be designed according to New York State Building Code to withstand wind and heavy snow loads. Appropriate access points required to maintain the solar panels and solar equipment in proper working order shall be incorporated in all plans for installations of rooftop and flush-mounted solar energy systems.
- (e) Rooftop and flush-mounted solar energy systems must be properly engineered so they can be adequately and safely be supported by the roofs and structures upon which they are to be affixed. The roof structure shall be strong enough to support the additional weight of the solar units as per applicable residential, building, electrical, and fire codes
- (f) Rooftop and flush-mounted solar energy systems shall be designed at the scale required to generate power for the reasonably projected on-site consumption by owners, lessees, tenants, residents, or other occupants of the parcel on which they are erected.
- (g) In order to ensure the safety of firefighters and other emergency responders, except in the case when solar panels are installed on an accessory structure less than 1,000 square feet in area, there shall be a minimum perimeter area around the edge of the roof and pathways

to provide space on the roof for walking around all solar collectors and panels.

- (3) Ground-mounted and freestanding systems for solar facilities generating energy.

The following general design and siting requirements shall apply to ground-mounted and freestanding systems for solar facilities generating energy for on-site consumption.

- (a) Ground-mounted and freestanding solar energy systems that generate electricity primarily for on-site consumption shall be permitted as accessory structures within the Town subject to site plan approval by the Planning Board and the issuance of a Building Permit.
- (b) Ground-mounted or freestanding solar energy system shall not be located in the following areas:
 - [1] Areas of potential environmental sensitivity, such as floodplains, historic sites, airports, state-owned lands, conservation easements, trails, parkland, and wetlands as identified by the New York State Department of Environmental Conservation, United States Army Corps of Engineers, or other Town, County, State and/ or Federal Agency;
 - [2] Slopes greater than fifteen percent (15%).
- (c) Ground-mounted and freestanding solar energy systems shall be set back a minimum of twenty-five (25) feet on any side and rear lot.
- (d) No Ground-mounted and freestanding solar collector is allowed in the required front yard setback except in the following circumstance.
- (e) In the case where a lot's width and road frontage is greater than the depth, and where it is not feasible to meet all setbacks to place ground-mounted solar panels in the rear, ground-mounted solar panels may be placed in the front yard setback placed to the side of the principal structure. No ground-mounted solar panels may be placed directly in front of the home or principal structure.
- (f) The height of ground-mounted or freestanding solar collectors shall not exceed 20 feet when oriented at maximum tilt.
- (g) In the Agricultural and Residential districts, a lot must have a minimum size of two acres in order for a ground-mounted or freestanding solar system to be permitted.

- (h) Screening shall be provided to the maximum extent practicable from adjoining lots through the use of architectural features, earth berms, landscaping, fencing, or other screening which will harmonize with the character of the property and surrounding area. The proposed screening shall not interfere with normal operation of the solar collectors.
 - (i) The total surface areas of all ground-mounted and freestanding solar collectors shall not exceed the area of the ground covered by the building structure of the largest building on the lot measured from the exterior walls, not including patios and decks.
- (4) Building-integrated systems for solar facilities generating energy.

The following general design and siting requirements shall apply to building-integrated systems for solar facilities generating energy for on-site consumption.

- (a) Photovoltaic systems that are integrated directly into building materials such as roof shingles, and that are a permanent and integral part of and not mounted on the building or structure are exempt from the requirements of this section. However, all applicable building codes shall be met and necessary permits obtained.
- (b) Building-integrated solar energy systems must be properly engineered to support Building-Mounted Solar Collectors.
- (c) The applicant for a building-integrated solar energy system must provide a signed and sealed certification from a New York State licensed professional engineer containing, but not limited to, the following information:
 - [1] The roof structure is strong enough to support the additional weight of the solar units as per applicable residential, building, electrical, and fire codes;
 - [2] All building-mounted solar collectors are in compliance with applicable residential, building, electrical, and fire codes; and
 - [3] The system is constructed and installed in compliance with applicable residential, building, electrical, and fire codes.

D. Reserved.

E. Storage batteries.

- (1) Storage batteries shall be permitted only as accessory uses for the on-site

solar energy systems used for generating electricity primarily for on-site consumption.

(2) Storage batteries shall be no larger than fifty (50) cubic feet.

F. Solar facilities generating energy for off-site consumption and having a nameplate capacity of less than twenty (20) megawatts.

(1) Prohibition. Renewable energy facilities having a nameplate capacity of less than 20 megawatts (MW), the function of which is to generate energy for transfer, sale, storage or other transmission or consumption beyond the parcel or parcels upon which the facility is located, are prohibited in all Zoning Districts in the Town of Minden.

(2) Rationale. The reasons for this prohibition are based upon a comprehensive evaluation of the environment and natural resources within the Town. This evaluation identified significant environmental sensitivities and resources within the Town as follows:

(a) Pursuant to the Town of Minden Comprehensive Plan (2012) (Plan), Minden has established a policy stating they do not desire intense, large, or industrial scale development that will introduce pollutants to water and land, reduce open spaces, pollute dark night skies, or adversely impact critical habitats and sensitive environmental locations. Their Plan establishes policies oriented to avoiding loss of farms and farmland, and avoiding industrialization of the town from large-scale activities. In 2018, the Town of Minden implemented regulatory policies as established in the Comprehensive Plan with a zoning update.

[1] Protecting the environment has been a critical part of Minden's plans going back to their first comprehensive plan adopted in 2000. The current plan specifically says that "They do not desire intense, large, or industrial scale development that will introduce pollutants to water and land, reduce open spaces, pollute dark night skies, and adversely impact critical habitats and sensitive environmental locations (Plan, Page 22)." Similarly, they want to promote additional light-industrial development in appropriate, but limited locations and specify that they want to preserve a clean environment including streams and rivers (Otsquago Creek, Mohawk River and its tributaries), wetlands, floodplains, and stream corridors.

(b) The resources identified through a natural resource inventory and having policies established, including creation of a Critical Environmental Areas Map to protect them, are described as follows:

[1] Flood Hazard Areas are identified in the Town of Minden Flood Insurance Rating Maps (FIRM) and the Town of Minden Flood

Damage Prevention Law (Chapter 54) as adopted by the Town of Minden, and are included as a mapped environmental resource in their Comprehensive Plan (Plan Part IV, Town Profile and Inventory Maps, Page 43). The Town of Minden explicitly seeks to preserve floodplains (Plan, page 13). Minden's zoning law protects floodplains through establishment of restriction on certain land uses and through a floodplain overlay district (Article VI Section 90-18). Within this overlay district, the Town of Minden prohibits any development within the floodway. In addition, the Town has identified flood hazard areas as a critical environmental area in their Comprehensive Plan (Part IV, Town Profile and Inventory Maps, Page 43).

Most of the streams in Minden have mapped floodplains (Plan Part IV, Town Profile and Inventory Maps, Page 43). This is especially prevalent from Fort Plain west along Route 80. The Town Comprehensive Plan explicitly seeks to preserve floodplains and details how these lands hold important ecological and hydrological functions including providing habitats, wildlife travel corridors, enhancing water quality, maintaining biodiversity, and moderating climate change. Floodplains feed the stream ecosystem, help prevent erosion along stream banks, soak up water to recharge groundwater, slow water flow during floods, and reduce downstream flooding. They also tend to be very productive biological areas, are ecologically diverse and, along with other stream-side (riparian areas), serve as important wildlife habitat and travel corridors.

Increased frequency and intensity of extreme weather events are being keenly felt throughout New York State (NYS). Such events lead to more frequent and more powerful floods. Floodplains serve as the first line of defense in moderating these effects and need to remain unfettered with development that may serve to change water flow or create more debris during a flood.

Installation of components such as inverters and battery storage systems in places which are vulnerable to flooding events can cause not only damage to the facility but wider electrical outages and impacts. Removal of natural vegetation found in floodplains, especially within the riparian zone and with large-scale fencing, will disrupt important wildlife travel corridors, remove vegetation necessary to moderate climate change, and reduce biodiversity. Large scale solar facilities placed in floodplains will adversely affect these resources

[2] Streams and Stream Buffers. Streams are valuable environmental resources also related to floodplain and riparian zone features. The Town Comprehensive Plan explicitly seeks

to preserve streams and their buffers and details the role these resources are as water sources, important plant and animal habitats, travel corridors, and ecological functioning within the Mohawk River watershed. The Plan specifies the need to protect streams and stream corridors (Plan Page 13, Page 22-24, Page 26). The Mohawk River, a major tributary to the Hudson River, forms the northern border of the Town. The Otsauago Creek is the largest stream in the Town, along with Sprout Brook Creek and Bowman's Creek. All are New York State Department of Environmental Conservation (NYS DEC) regulated streams: The Mohawk River is a surface water classified by New York State as 'Class B' (its best usage is for swimming, recreation, and fishing; and the other creeks are 'Class C' (its best use is for fishing) (NYS DEC Environmental Mapper).

The Town has created a Stream Overlay District covering streams, stream banks and a 200' buffer specifically to protect the environmental functioning of this resource (Article VI, §§ 90-16 and 90-17). The Stream Corridor Overlay District regulates activities within the delineated corridors. Within this district, a special use permit shall be required for any construction, filling, excavation, clear-cutting of more than 10,000 square feet of vegetation over a five (5) year period, grading or other alteration of the natural landscape, application of fertilizers or pesticides or dumping or disposal of any materials. In addition, the Town has identified streams and their buffers as a critical environmental area in their Comprehensive Plan.

Like floodplains, streams and their corridors provide for many critical environmental services as described above. Increased frequency and intensity of extreme weather events also affect streams, their banks and adjacent riparian areas even if those areas do not flood. Disruption of natural systems within the stream corridors would be a large environmental impact, especially in Minden where natural wooded vegetation found along streams create a critical green infrastructure link to many other locations in the Town and beyond. Flood damage to solar facilities may result in release of potentially toxic heavy metals and silicone by-products that are used in the panels. Damaged units or time may release these contaminants into the environment.

Large-scale solar development even beyond these locations could also affect streams and water quality indirectly even when placed outside stream boundaries due to changed water drainage regimes, and increased erosion and sedimentation from development upgrade from the stream. Minden is committed, as evidenced by its Plan and its Zoning to protect

the full integrity of hydrologic systems in the Town.

- [3] Wetlands. Wetlands provide critical habitats for plants and animals, but also benefit the broader environment and human communities by controlling flooding, filtering water to remove pollutants, sequestering carbon, providing wildlife habitat, and providing a host of other services. There are State-regulated wetlands delineated throughout Minden (Part IV, Town Profile and Inventory Maps, Page 43 and the NYS DEC Environmental Mapper), including a large wetland complex found along the Mohawk River. The Nature Conservancy has mapped multiple Laurentian-Acadian Freshwater Marshes and North-Central Appalachian Acidic Swamps occurring throughout the Town. Throughout the Town, the North-Central Appalachian Acidic Swamp (Northern Swamp) is an important habitat found.

In addition, the Town has identified many areas having hydric soils, that although are currently farmed, have wetland soils (Part IV, Town Profile and Inventory Maps, Page 43). These may often be wet meadows and not a typical emergent swamp. Wetlands including wet meadows contribute to the rich biodiversity in an ecosystem. New York State has adopted wetlands laws to protect the essential services wetlands play in the ecosystem from degradation.

Minden has created a wetland overlay district to protect these important natural resources from over-development and they include all NYS DEC regulated wetlands and their 100' buffers (Zoning Law Article VI, §§ 90-16 and 90-19). In addition, the Town has identified NYS DEC regulated wetlands and their buffers as a critical environmental area in their Comprehensive Plan (Part IV, Town Profile and Inventory Maps, Page 43).

The installation, maintenance and decommissioning solar facilities in a wetland has implications . Construction involves heavy equipment that not only compacts hydric soils which leads to shifts in plant communities, but will produce noises and vibrations that disrupt both use of the area by both resident and migrating wildlife species. Compaction of soils restrict nutrient and water flow, increase runoff and flooding, and reduce groundwater recharge. Post construction, solar panels will decrease the amount of light reaching the soil surface, which will reduce plant productivity and reduce carbon sequestration. Mechanical and chemical treatments used to control vegetation under and around panels create potential for contamination due to pesticides.

- [4] Steep slopes. Significant areas of steep slopes (> 15%) are mapped (Part IV, Town Profile and Inventory Maps, Page 43)

and found primarily along the northern boundary of the Town along the Mohawk River, to the south of the Otsauago Creek and in the higher elevations in the southern portions of the Town. There are other scattered ridges and steep slopes throughout the town.

One area along the Otsauago Creek has an acidic cliff and talus slope which is a unique habitat in the area. Overall, Minden's terrain is hilly and rolling, and where steep slopes do occur, they are significant features. Changes in elevation influence ecological systems by determining different microclimates, vegetation and habitats.

The Town's Comprehensive Plan establishes that large commercial and industrial structures should be discouraged from building on lands with a moderate or steep slope (Plan Pages 13, 22 - 24, 26). In addition, the Town has identified slopes > 15% as a critical environmental area in their Comprehensive Plan (Part IV, Town Profile and Inventory Maps, Page 43).

Disturbances to topographic features, especially on steep slope areas can impact water quality of nearby streams, wildlife use of an area, and increases in erosion and sedimentation risk. Adverse impacts when steep slopes are developed could also include loss of topsoil, silting of wetlands, alteration of drainage patterns, obstruction of drainage structures, intensification of flooding, and loss of habitats and biodiversity over a much larger area.

- [5] Grassland and Open Habitat-Listed Species. As per NYS DEC Environmental Resource Mapper and other mapped data, large areas of the Town are included as having habitats for endangered and threatened species. The Nature Conservancy has identified multiple areas of the Ruderal Shrubland and Grassland throughout Minden. These are typically areas that have been cleared and plowed and then abandoned, and are important habitats for grassland-dependent birds. Listed species that inhabit open grasslands and meadow habitats in Minden include the northern harrier, short eared owl, upland sandpiper, horned lark, grasshopper sparrow, sedge wren, vesper sparrow, Henslow's sparrow, Peregrine falcon, and bald eagle. Other listed species requiring woodlands include the red-headed woodpecker, cooper's hawk, and northern goshawk. More broadly, Montgomery County contains several listed as 'special concern species' that may occur in Minden include the Eastern small-footed myotis, wood turtle, Jefferson salamander. Minden's comprehensive plan establishes that areas with rare vegetation, significant habitats, or habitats of endangered,

threatened or special concern species should be part of any environmental analysis conducted.

Grassland and open habitats are abundant in Minden. Reduction of these habitats due to large scale solar facilities may diminish the quality of those habitats and thus diminish numbers and diversity of both common and listed wildlife species locally and regionally. The Town has identified that Minden's wildlife are among its community strengths (Plan, pages 8, 34, 78, 80, 136) that it intends to protect.

- [6] Woodland Patches. Wooded areas are relatively uncommon in Minden (Part IV, Town Profile and Inventory Maps, Page 43). The Nature Conservancy has identified the Appalachian (Hemlock) - Northern Hardwood Forest as a forested habitat in Minden. Woodland patches are found along the Otsauago Creek, in the riparian areas along smaller creeks, along the steeper terrain in the southern part of Town and both north and south of Route 5S. These woodland patches are connected to each other via hedgerows between farm fields. Given the scarcity of woodlands in Minden, the existing forest patches and hedgerows form a critical green infrastructure that support plant and animal species and maintains connectivity between larger forested blocks found elsewhere in the region.

The Comprehensive Plan establishes a goal to preserve woodlands to preserve the largest unfragmented expanse of woodlands possible (Plan, pages 13, 24, 135). Any reduction of these limited habitats in Minden would disrupt the green infrastructure links, diminish connectivity of habitats, alter drainage and erosion (since many are associated with streams and wetland), limit resiliency to climate change, and limit habitats for woodland wildlife.

- [7] Prime Farmland Soils and Soils of Statewide Importance. Almost the entire town is covered with prime farmland soils, soils of statewide significance, and prime farmland soils when drained as established in the Town of Minden Comprehensive Plan. Since Minden is primarily an agricultural community, extensive field drainage exists and many of the areas identified as 'prime farmland if drained' would be considered 'prime farmland soils'. The majority of the Town is included in a New York State Certified Agricultural District.

Prime farmland soils are recognized by both New York State and the USDA as crucial to continued agricultural activity and sustainability of our farms and are the best land for producing food, feed, fiber forage and oilseed crops. New York State Agriculture and Markets Law (AML) § 25-AA establishes that "It

is the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products." Further, the constitution of the State of New York directs the legislature to provide for the protection of agricultural lands and 25-AA was established to 'provide a locally-initiated mechanism for the protection and enhancement of New York State's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance."

The Town of Minden's Comprehensive Plan was established, in part, to be consistent with those goals (Plan, page 14). Minden considers prime and soils of statewide importance to be a critical environmental resource and not appropriate for conversion to other uses (Part IV, Town Profile and Inventory Maps, page 43). Adverse environmental impacts to these soils, or the loss of significant uses of these soils for food production will adversely affect the viability of Minden's agricultural community and economy.

Since the majority of lands in Minden are agricultural lands, solar development will remove land from agricultural production for the duration of the life of the facility, typically decades. Loss of farmland has many implications for local and regional food production, the economy, and even the economic health of the farmer . Loss of important soils for food production not only affects food safety and thus human health, but has off-site impacts to agriculture as well.

Farmers that rely on rented farmland for their operations will have loss of access to those fields which have been converted to solar use. This loss can disrupt farm viability even if the actual farm is not adjacent to a proposed solar site. When farmers rent land slated for solar development, they lose their ability to implement whole-farm nutrient management plans. Loss of leased farmlands will decrease farm density, which will also affect farm suppliers, services, and the regional economy.

Although solar panels are frequently cited as being a temporary land use and that farming could continue after decommissioning, Minden recognizes that due to the recent nature of the development of large-scale solar facilities in New York, there is no experience or previous knowledge as to the long-term soil preservation implications. Nor have the long-term impact of removal of the supports and buried electrical conduits and other soil disturbances been evaluated. At best, it is unclear whether agriculture can be maintained coincident to large scale solar facilities.

Further, without maintenance of a critical mass of farmland and the farm economy in which farmers are able to successfully farm with intact infrastructure to support it, there may be no farmers in the future that could return the land to agriculture. Thus, Minden acknowledges that there is a high probability that a site will never return to farming, and they seek to prevent this.

Montgomery County 2017 Agricultural and Farmland Protection Plan. This County adopted, and New York State Department of Agriculture and Markets approved plan, meets the statutory requirements of § 324-a of Article 25-AA of the NYS Agriculture and Markets Law. This Plan was funded and formally approved of by the New York State Department of Agriculture and Markets as part of their farmland protection program. This Plan establishes the importance of prime farmland soils and priority farmlands needing to be preserved in order to maintain the critical mass of farmland and farm activities in the County. It also identifies that solar farm development is a land use that has potential implications for accelerating the loss of prime farmland. In particular, it recommends to "[m]aintain the viability and affordability of prime farmland for agricultural purposes by directing non-farm development and public infrastructure such as sewer, water, and roadways to appropriate areas that can support development without adversely impacting farmlands, unless the infrastructure is needed for agricultural purposes."

The County plan also identifies priority lands for protection. In Minden, large areas of farmland are identified as being of high viability for agriculture. Others are identified as being of moderate viability, and only a few parcels are identified as having low viability. The plan further presents those areas identified as highly viable farmlands are ones that may need some level of protection.

- [8] Western Montgomery Local Waterfront Revitalization Plan (LWRP). The entire length of the Mohawk River within Minden is included in the New York State Approved Local Waterfront Revitalization Plan. The 2012 Minden Comprehensive Plan references and incorporates policies as established in the LWRP. Among other policies, the LWRP establishes a policy to preserve open space, minimize adverse impacts of development in the waterfront area, restrict land uses along the shorelines to uses that are water-dependent, protect and restore ecological resources, including fish and wildlife habitats, wetlands, and rare ecological communities, ensure development in the area does not significantly harm wetlands or wooded areas, protect and improve water resources, and minimize indirect or non-point pollution of water resources. The

LWRP also establishes policies related to the environmental impact of the siting of major energy generating facilities.

- (c) The Town of Minden has identified and comprehensively described its natural resources and environmental conditions. The Town recognizes that the individual natural resources identified in Minden are part of a broader ecological system that supports human life. In its planning, the Town has described how land use changes can degrade the environment and understands that degradation of one environmental component impacts the others. As a result, Minden has put in place significant land use regulations designed to protect core environmental features here. Preservation of natural resources, and especially protection of farmlands and maintenance of local farms in the age of pandemics and global climate change is recognized as essential to local health security, food safety, and food availability. Minden has established local policies and regulations in furtherance of, and consistent with significant and long-standing NYS policies related to protection of farmland soils, wetlands, and floodplains, and protection of threatened and endangered species, preservation of waterfront areas, protection of water quality, and improving food accessibility and food security. As such, the Town has established that large-scale development, including that from large-scale solar facilities that generate electricity primarily for off-site consumption are not consistent with either the goals and needs of the Town or with the environmental conditions of Minden.

In recognition that New York's natural resources are at risk from climate change, The New York State Department of Environmental Conservation identified that the NYS DEC must incorporate climate change considerations into all aspects of its activities." As such, the NYS DEC Commissioner formulated a Policy on Climate Change and DEC Action. This establishes the framework for how DEC will address climate change.

The State policy establishes that "DEC staff, within their areas of responsibility, are directed to maximize the use of their existing authorities to: reduce GHG emissions and promote energy efficiency; encourage "low-carbon" design including smart growth and other sustainable development; encourage resilience of human and natural communities to climate change; elevate climate change awareness and research; foster carbon sequestration in our forests, soils and wetlands; conserve and restore habitats, landscape connections and hydrological functions that facilitate ecosystem resiliency; and engage other state agencies, local governments and stakeholders in the State's collective effort to reduce emissions and minimize the effects of climate change on public health, communities and the environment." (Emphasis added.) The Town of Minden has used its local authority to inventory and evaluate its natural resources and established goals to conserve and protect sensitive environmental features in its adopted

Comprehensive Plan. This Local Law is based upon that town plan and is fully consistent with the NYS DEC policy to minimize the effects of climate change on public health, its community and its environment by prohibiting large scale solar facilities that risk creating adverse impacts to those very resources that serve to make Minden more climate resilient (forests, soils, wetlands, habitats, landscape connections, hydrologic functions).

The State policy further establishes that as a mitigation objective to: "Maintain and enhance carbon sinks, such as forested and agricultural lands, wetlands and green infrastructure." This Local Law is fully consistent with the NYS DEC mitigation objective to maintain and enhance carbon sinks by prohibiting large scale solar facilities that risk creating adverse impacts to those very resources that serve to make Minden more climate resilient (forests, soils, wetlands, habitats, landscape connections, hydrologic functions).

The State policy further establishes that DEC further addresses climate adaptation objectives including to "Incorporate measures that enhance the capacity of ecosystems and communities to absorb and/or accommodate the impacts of climate change (e.g. management measures that allow for species adaptation, maintain native biodiversity, provide migration corridors, protect hydrologic function, employ green infrastructure practices, and protect communities and public infrastructure);" and "Protect and restore the habitat and hydrologic functions of natural systems, such as forests, streams, wetlands and riparian buffers." This Local Law is fully consistent with this NYS DEC policy to incorporate management measures designed to enhance capacity to address impacts of climate change. It does this by prohibiting large solar facilities in order to preserve Minden's biodiversity, protect migration corridors along its streams and forest links, and protect hydrologic function dependent on wetlands, streams, soils and forests.

- (d) For the above reasons, the Town of Minden has determined that renewable energy facilities with a nameplate capacity of less than 20 MW for off-site consumption are intensive land uses incompatible with the environmental health of the Town and that they will cause significant adverse environmental impacts to important natural resources and the ecosystem in which they exist as identified within the Town of Minden.
- (e) The Town further finds that adverse impacts associated with large-scale renewable energy facilities are not capable of effective mitigation, or of mitigation to a scale which will achieve mitigation to the maximum extent practicable. This is especially so since: (a) NYS Executive Law § 94-c(6) does not allow local municipalities to establish a local review and permitting process for major renewable energy facilities; and (b) §

94-c(3)(e) provides that the New York State Office of Renewable Energy ("Siting Office") may collect a fee from facility applicants as a means of achieving off-site mitigation of site-specific impacts. Neither of those directives serve to protect the environment in Minden.

- (3) The reference to nameplate capacity is part of the description of the land use and is not a dimensional requirement. Since the use is prohibited, there is no basis for the application for, or approval of, any area variances in connection with this use.

G. Major renewable energy facilities for off-site consumption and having a nameplate capacity of 20 megawatts or more.

- (1) Prohibition of Major Renewable Energy Facilities in all Zoning Districts.

Major renewable energy facilities for off-site consumption and having a nameplate capacity of 20 megawatts or more, the function of which is to generate energy for transfer, sale, storage or other transmission or consumption beyond the parcel or parcels upon which the facility is located, are prohibited in all Zoning Districts in the Town of Minden.

- (2) Rationale.

- (a) Local laws which apply to major renewable energy facilities are considered to be important by NYS Executive Law § 94-c. Section 94-c(5)(e) expressly states that:

A final siting permit may only be issued if the office makes a finding that the proposed project, together with any applicable uniform and site-specific standards and conditions would comply with applicable laws and regulations [emphasis added].

The importance of local laws is manifest from this statement. In choosing to make this statement in the law, the State Legislature explicitly expresses the intent that the content of local laws shall be a very important consideration for the Siting Office in deciding whether to grant or deny permits for major renewable energy facilities. In crafting NYS Executive Law § 94-c, the State Legislature would have been within its authority to supersede all local laws and regulations without making reference or statement them. So the existence of this language in the statute represents a conscious choice by the State Legislature to make this statement that the Siting Office must find that the project, together with applicable uniform and site-specific standards, would comply with local laws and regulations.

- (b) The Town of Minden has made a careful evaluation of the environment and natural resources within the Town through a comprehensive planning process consistent with Town Law § 272-a and with the

assistance of a professional planning consultant as detailed in § 90-52.25(F)(2), above. This evaluation has identified significant environmental sensitivities and resources within the Town. Based on that evaluation, and for all the reasons which are set forth in § 90-52.25(F)(2), which reasons are expressly incorporated by reference herein, the Town of Minden has determined that renewable energy facilities with a nameplate capacity of 20 MW or greater will cause significant adverse environmental impacts to important environmental resources within the Town of Minden. NYS Executive Law § 94-c(6) does not allow local municipalities to establish a local review and permitting process for major renewable energy facilities; and §94-c(3)(e) provides that the Siting Office may collect a fee from facility applicants as a means of achieving off-site mitigation of site-specific impacts. The Town has determined that these provisions will not allow adverse impacts associated with renewable energy facilities with a nameplate capacity of 20 MW or greater to allow for effective mitigation or mitigation implemented on a scale that will achieve mitigation to the maximum extent practicable. Specific rationale is noted at § 90-52.25(F)(2), of this Local Law.

- (c) Consequently, renewable energy facilities having a nameplate capacity of 20 MW or greater, and specifically including all major renewable energy facilities as they are defined in NYS Executive Law § 94-c(2)(h) are prohibited in all zoning districts in the Town of Minden.
- (d) The Town of Minden specifically requests that, with regard to any major renewable energy facilities proposed within the Town of Minden, that the Siting Office honor and enforce this prohibition. Based upon the comprehensive environmental analysis completed for Minden, the Town specifically requests that, with regard to any proposed renewable energy facility having a nameplate capacity of 20 MW or greater or others being reviewed under NYS Executive Law § 94-c(2)(h), that the NYS Office of Renewable Energy Siting honor and enforce this prohibition.

This prohibition will not be unreasonably burdensome in achieving the renewable energy targets established in the Climate Leadership and Community Protection Act ("CLCPA") due to the availability of more suitable alternative sites found throughout the entire State of New York.

In fact, this local law and its prohibition actually serves to promote New York State's resiliency against climate change by promoting and protecting Minden's natural and environmental resources.

Since 2009, New York State has been engaged in an interagency initiative to combat climate change. The Climate Smart Communities (CSC) program is jointly sponsored by six State agencies including the Department of Environmental Conservation, NYSERDA, Department of Public Service, Department of State, Department of Transportation,

Department of Health, and the Power Authority. The CSC program promotes a suite of actions that local governments can take to mitigate and adapt to climate change at the local level. In 2014, the Governor's Office directed NYS DEC "to develop and implement strategies to address the cause and effects of climate change, including strengthening our resiliency against storms and flooding." The CSC program is the result of that directive.

Section 90-52.25(F)(2) above identifies the significant environmental sensitivities in Minden. That section establishes that Minden has carefully evaluated and identified its natural and environmental resources and has determined that they are vital to the continued environmental health of the Town and region. These are the same natural resources as those identified in the CSC program as needing protection because they enhance climate resiliency.

The CSC establishes a variety of actions designed specifically to address climate change. These actions are organized into 12 major goals.

Among those goals, two specifically address the connection between land uses and climate resiliency and are relevant to the purposes of this Local Law. Minden recognizes the strong nexus between protection of the Town's farmlands, forests, wetlands, streams, floodplains, natural habitats, and riparian buffers and New York State's own policies and programs (the CSC) designed to address climate change at the local level.

Specifically, the CSC program seeks local governments to implement the following:

CSC Action 6: Implement Climate-Smart Land Use.

6.7: Adopt Land Use Policies That Support or Incentivize Farmers' Markets, Community Gardens and Urban and Rural Agriculture. "Local governments have begun to take an interest in agriculture as a way to address food security, promote public health, support economic and community development, and to improve the urban environment.

Increasing the availability of local foods is also an important strategy being used to reduce greenhouse gas emissions from the long distance transport of food into a region. Rural communities can also promote and preserve agricultural areas through agriculture plans or districts or land preservation."

6.19: Preserve Natural Areas Through Zoning or Other Regulations.

"Natural areas (including forests, wetlands, rivers, lakes, floodplains, and coastal shorelines) play an essential role in communities. They provide clean air and water, stormwater regulation, food and forestry products, scenic areas, outdoor recreation opportunities, and protect important ecological functions. In addition, natural areas often represent a chunk of stored carbon that, if developed, would enter the atmosphere and contribute to greenhouse gas emissions. Functioning ecosystems also sequester carbon and can help to mitigate a community's greenhouse gas emissions. For these reasons, the Climate Smart Communities (CSC) program encourages local governments to use their land-use authority to preserve natural areas."

CSC Action 7: Enhance Community Resilience to Climate Change.

Restoration of Floodplains and Riparian Buffers.

"Healthy vegetated riparian buffers can intercept rainfall, filter runoff, capture sediment, absorb excess floodwaters, provide shade and reduce stream temperatures, reduce erosion, and slow down the flow of the water. They also offer benefits to habitat and contribute to ecosystem resiliency. Riparian buffers can help reduce the effects of heavy precipitation events and store water through droughts. Restoring vegetated buffers is important in flood-prone areas, but also in areas upstream of those places to reduce the speed and potentially the volume of floodwaters.

In general, the wider the buffer, the more effective it can be in providing all of the benefits described above. To address flooding, the most effective buffers should include the entire width of the floodplain."

Conservation of Natural Habitats. "Large, natural areas with diverse physical conditions and little fragmentation by roads or development are most likely to maintain diverse ecosystems and ecological processes important for resiliency. Habitat fragmentation can result in species endangerment and loss of ecosystem services, including carbon sequestration. Sustaining resilient ecosystems in a changing climate requires conserving a sufficient

variety and amount of connected habitat through a network of natural areas, corridors, and habitat islands that allow plants and animals to move northward and up in elevation as temperatures increase." The CSC promotes protection of areas that provide natural habitat connectivity and support ecosystem resilience through tools like zoning and conservation easements.

Conserve Wetlands and Forests to Manage Stormwater, Recharge Groundwater and Mitigate Flooding. "It is far more cost-effective to protect natural areas than to restore them, or the streams they are protecting, after they have been degraded. Conserving wetlands and forests in floodplain areas is particularly important, but conserving these areas throughout the watershed can contribute numerous benefits. These benefits include providing clean water, improving air quality, moderating extreme heat and serving as critical wildlife habitat." And "Local governments can play an important role in filling the gap in wetland and forest protection through comprehensive planning, zoning, regulations and land acquisition in fee or conservation easements."

(3) Election by New York State Office of Renewable Energy Siting not to apply local prohibition on major renewable energy facilities.

(a) Introduction and purpose statement.

Despite the stated importance of local municipal regulation in NYS Executive Law § 94-c (as described above), the Town of Minden recognizes that § 94-c(5)(e) gives the Siting Office the authority to elect not to apply, in whole or in part, any local law or ordinance which would otherwise be applicable if it makes a finding that, as applied to the proposed major renewable energy facility, it is unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the proposed major renewable energy facility.

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

(b) Consideration of Environmental Impacts Under NYS Executive Law § 94-c.

While Section 94-c establishes a consolidated approach to the review and approval of major renewable energy facilities, it simultaneously

mandates protection from adverse environmental impacts. This is particularly important since the provisions of the State Environmental Quality Review Act (SEQRA) do not apply to these facilities.

Section 94-c(1) says:

Purpose. It is the purpose of this section to consolidate the environmental review and permitting of major renewable energy facilities in this state and to provide a single forum in which the office of renewable energy siting created by this section may undertake a coordinated and timely review of proposed major renewable energy facilities to meet the state's renewable energy goals while ensuring the protection of the environment and consideration of all pertinent social, economic and environmental factors in the decision to permit such facilities as more specifically provided in this section [emphasis added]

Later in § 94-c(3)(c), in discussing the uniform standards and conditions to be developed and promulgated by the Siting Office, it states that those standards and conditions:

shall be designed to avoid or minimize, to the maximum extent practicable, any potential significant adverse environmental impacts related to the siting, design, construction and operation of a major renewable energy facility [emphasis added].

Section 94-c(3)(d) addresses the issue of site-specific environmental impacts that may be caused or contributed to by a specific proposed major renewable energy facility, and are unable to be addressed by the uniform standards and conditions. Section 94-c(3)(d) further requires the Siting Office, in the event that a particular major renewable energy facility is to be approved, to draft in consultation with the NYS DEC, site-specific permit terms and conditions for site-specific significant adverse environmental impacts, including provisions for the avoidance and mitigation thereof.

- (c) Consideration of Specific Environmental Resources in Minden. With the foregoing in mind, the Town of Minden has made a careful evaluation of the environment and natural resources within the Town through a comprehensive planning process consistent with Town Law § 272-a and with the assistance of a professional planning consultant. This evaluation has identified significant environmental sensitivities and numerous resources within the Town as detailed in § 90-52.25(F)(2) of this Local Law.

In the event that the Siting Office elects not to require compliance with the Minden Zoning Law prohibition against major renewable energy facilities for a particular proposed project, this law shall mandate that the Siting Office shall expressly consider in its review of the proposed project, the site-specific potential adverse impacts of the project to the sensitive environmental resources set forth in § 90-52.25(F)(2) and summarized below. Further, in making its determination, the Siting Office shall require that potential significant impacts to these sensitive environmental resources shall be avoided completely or mitigated to the maximum extent practicable. As per § 90-52.25(F)(2), these resources are:

- [1] Flood Hazard Areas as shown on the adopted FIRM maps;
- [2] Streams and Stream Buffers as shown on the Town of Minden Overlay Zone Map and in the Town of Minden Comprehensive Plan;
- [3] Wetlands as shown on the NYS DEC Wetlands maps and those regulated by the US Army Corps of Engineers;
- [4] Steep Slopes > 15% as shown in the Town of Minden Comprehensive Plan;
- [5] Grassland and Open Habitats required by species that are state or federally listed;
- [6] Woodland Patches as shown in the Town of Minden Comprehensive Plan (Aerial Photograph Map);
- [7] Prime Farmland Soils and Soils of Statewide Importance as mapped by the Montgomery County Soil Survey and the Town of Minden Comprehensive Plan;
- [8] Priority Farmlands as identified in the Montgomery County Agricultural and Farmland Protection Plan;
- [9] Locations included within the designated Waterfront Area established in the Western Montgomery Local Waterfront Revitalization Plan.

- (d) In the event that the Siting Office elects not to require compliance with the Minden Zoning Law prohibition against major renewable energy facilities for a particular proposed project, this law further mandates that the Siting Office shall expressly require full compliance with the NYS Department of Agriculture and Markets Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands (Revision 10/18/19) (Guidelines). This shall include designating an

environmental monitor, implementing the specific construction requirements, establishing post-construction restoration requirements, provide monitoring and remediation, and implementation of decommissioning requirement pursuant to the Guidelines.

(e) In the event that a 20 MW or greater renewable energy facility proceeds under Section 94-c, and the Siting Office continues its review, the following shall constitute the Town's general comments to be applied in any proposed conditions. The Town reserves the right to provide further comments during the review process and comment period.

[1] All renewable energy facilities with a nameplate capacity of 20 MW or greater, and specifically including all major renewable energy facilities as they are defined in NYS Executive Law § 94-c(2)(h), shall adhere to all applicable Town of Minden building, plumbing, electrical, and fire codes.

[2] A minimum parcel size of 20 acres is required.

[3] Development and operation of the renewable energy facility shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Minden or other federal or state regulatory agencies. Applicants shall use the adopted Town of Minden Comprehensive Plan, showing sensitive environmental features along with other site information to identify and describe how the proposed renewable energy facility shall avoid or mitigate adverse impacts to these resources. Lands which have the highest ecological values as evidenced by large, contiguous areas of forest, undisturbed drainage areas, wetlands, or NYS DEC- identified critical habitats or rare plant and animal populations shall be avoided.

[4] There shall be a minimum 100-foot buffer between any component of the renewable energy facility and the parcel boundary line. The Town may comment to increase the width of this buffer after analysis of site conditions and adjacent land uses.

[5] Any site containing such a renewable energy facility shall be enclosed by perimeter fencing at a height of eight and a half (8 ½) feet to restrict unauthorized access.

[6] Roadways within the site shall not be constructed of impervious materials and shall be designed to minimize the extent of roadways constructed and soil compaction.

[7] Solar panel arrays shall be located on previously cleared or

disturbed areas. No clearcutting of woodlands or removal of hedgerows shall be permitted. Only incidental tree cutting of individual trees shall be allowed to site solar facilities. All trees to be removed from the site shall be inventoried and replaced, either elsewhere on-site or at another location within the Town of Minden with native deciduous or evergreen tree species that are a minimum of four (4) feet in height at the time of planting. Any planted tree that dies within two (2) years of planting shall be replaced with a similarly sized tree.

- [8] In accordance with the Comprehensive Plan, the Town of Minden does not support conversion of prime farmland to support grid-supply facilities. When proposed on an active farm located within the NYS certified agricultural district in Minden, a renewable energy facility shall occupy no more than twenty percent (20%) of any farmed parcel but in no case shall it exceed 10 acres. Arrays shall be located on a parcel in such a manner as to avoid, to the maximum extent feasible, soils classified as prime farmland by the USDA, NYS or NRCS.
- [9] Native grasses and vegetation shall be maintained below the arrays.
- [10] The renewable energy facility, including any proposed off-site infrastructure, shall be located and screened in such a way as to avoid or minimize visual impacts as viewed from:
 - [a] Publicly dedicated roads and highways, including Route 5S, 163, 80 and 1-90;
 - [b] Existing residential dwellings located on contiguous parcels.
- [11] A berm, landscape screen, or other opaque enclosure, or any combination thereof acceptable to the Town capable of fully screening the site, shall be provided (see example illustration, below).



Figure 1: Example of a landscaped berm designed to fully screen a renewable energy facility with nameplate capacity of 20 MW or greater.

- [12] The design, construction, operation, and maintenance of any renewable energy facility with a nameplate capacity of 20 MW or greater shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.
- [13] All structures and devices used to support solar collectors shall be nonreflective and/or painted a subtle or earth-tone color to aid in blending the facility into the existing environment.
- [14] All transmission lines and wiring associated with the renewable energy facility shall be buried and include necessary encasements in accordance with the National Electric Code and Town requirements. 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. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.
- [15] Artificial lighting of solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
- [16] Any signage used to advertise the renewable energy facility shall be in accordance with the Town's signage regulations. The manufacturers or installer's identification, contact information, and appropriate warning signage shall be posted at the site and clearly visible.

- [17] The average height of the solar panel arrays shall not exceed 15 feet.
- [18] Following construction of the renewable energy facility, all disturbed areas where soil has been exposed shall be reseeded with grass and/or planted with low-level vegetation capable of preventing soil erosion and airborne dust.
- [19] Any post-construction changes or alterations to the solar energy system shall be noticed to the Town.
- [20] After completion of the renewable energy facility, the Applicant shall provide a post-construction certification from a professional engineer registered in New York State to the Town that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans. The Applicant shall further provide certification to the Town from the utility that the facility has been inspected and connected.
- [21] Abandonment or decommissioning.
- [a] All applications to the Siting Office for a renewable energy facility with a nameplate capacity of 20 MW or greater shall be accompanied by a decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of the renewable energy facility. Prior to issuance of a Certificate of Environmental Compliance, the Applicant of the renewable energy facility shall post a performance bond or other suitable guarantee to the Town in a face amount of not less than 150% of the estimated cost, as determined by the engineer retained by the Town, to ensure removal of the facility in accordance with the decommissioning plan described below. The form of the guarantee must be reviewed and approved by the consulting engineer and Town Attorney, and the guarantee must remain in effect until the system is removed.
- [b] If the Applicant ceases operation of the renewable energy facility for a period of 18 months, or begins but does not complete construction of the project within 18 months after receiving Certificate of Environmental Compliance, the Applicant will submit a decommissioning plan that ensures that the site will be restored to a useful, nonhazardous condition without delay, including but not limited to the following:

- [i] Removal of all aboveground and below-ground equipment, structures and foundations including but not limited to ground anchors, cables, wiring, concrete foundations, switchyards, control houses, fencing, and inverters.
 - [ii] Restoration of the surface grade and topsoil after removal of equipment. Compacted portions shall be decompacted and excavations shall be backfilled to restore the site.
 - [iii] Revegetation of restored topsoil areas with native seed mixes, excluding any invasive species.
 - [iv] The plan shall include a time frame for the completion of site restoration work.
- [c] In the event that construction of the renewable energy facility has been started but is not completed and functioning within eighteen (18) months of the issuance of the final site plan, the Town may notify the operator and/or the owner to complete construction and installation of the facility within 180 days. If the owner and/or operator fails to perform, the Town may notify the owner and/or operator to implement the decommissioning plan. The decommissioning plan must be completed within 180 days of notification by the Town.
- [d] Upon cessation of activity of a fully constructed renewable energy facility for a period of one year, the Town may notify the owner and/or operator of the facility to implement the decommissioning plan. Within 180 days of notice being served, the owner and/or operator shall either restore operation equal to at least eighty percent (80%) of approved capacity, or implement the decommissioning plan.
- [e] If the owner and/or operator fails to fully implement the decommissioning plan within the 180-day time period and restore the site as required, the Town may, at its own expense, provide for the restoration of the site in accordance with the decommissioning plan and may, in accordance with the law, recover all expenses incurred for such activities from the defaulted owner and/or operator. The cost incurred by the Town shall be assessed against the property, shall become a lien and

tax upon said property, shall be added to and become a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the same officer and in the same manner as other taxes.

End of amendment.

(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. 1 of 2021 of the (County)(City)(Town)(Village) of Minden was duly passed by the Town Board on June 17, 2021, in accordance with the applicable provisions of law.
(Name of Legislative Body)

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 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ and was deemed duly adopted *(Elective Chief Executive Officer*)* on 20 , 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 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. *(Elective Chief Executive Officer*)*

Such local law was submitted 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 _____ 20____, 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 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide 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.

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 20____ 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 _____ 20____, 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 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, 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 1 above.

Janet L. Lumbuel

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date: June 17, 2021

(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 Montgomery

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]

Signature
Town Attorney
Title

County
City of Minden
Town
Village

Date: June 17, 2021

STATE OF NEW YORK
DEPARTMENT OF STATE

ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001
WWW.DOS.NY.GOV

ANDREW M. CUOMO
GOVERNOR

ROSSANA ROSADO
SECRETARY OF STATE

June 23, 2021

Janet Trumbull
Town Clerk
Municipal Building
134 State Highway 80
Fort Plain NY 13339

RE: Town of Minden, Local Law 1 2021, filed on June 21, 2021

Dear Sir/Madam:

The above referenced material was filed by this office as indicated. Additional local law filing forms can be obtained from our website, www.dos.ny.gov.

Sincerely,
State Records and Law Bureau
(518) 473-2492

