

**LOCAL LAW NUMBER #X OF 2021**

**A LOCAL LAW OF THE TOWN OF CAROLINE  
RELATING TO BATTERY ENERGY STORAGE SYSTEMS  
PROPOSED TO BE SITED IN THE TOWN OF CAROLINE, NEW YORK**

The Town Board of The Town of Caroline, New York, pursuant to Resolution dated \_\_\_\_\_, 2021, does hereby adopt and pass this Local Law Number #X of 2021, and therefore, be it so enacted as follows:

**SHORT TITLE:** – This local law shall be known as the “Battery Energy Storage System Siting Law” or, herein, as “this local law.”

**SECTION 1 – AUTHORITY:** (To be written by town attorney)

**SECTION 2 – PURPOSE:** This Battery Energy Storage System Law is adopted to facilitate and regulate the development and operation of certain battery energy storage systems; to increase employment and business development in the Town of Caroline, to the extent reasonably Practicable, by furthering the installation of Battery Energy Storage Systems; to mitigate the impacts of such systems upon environmental resources, such as important agricultural lands, forests, wildlife and other protected resources; and to provide a regulatory scheme for the designation of properties most suitable for the location, construction and operation of such systems. It is in the public interest to allow for and encourage Battery Energy Storage Systems because of the important role they play in supporting energy generation from renewable sources. Renewable energy generation is strongly supported in the Town of Caroline Comprehensive Plan.

**SECTION 3 – APPLICABILITY:** The requirements of this Local Law apply to all Battery Energy Storage Systems proposed, installed, or modified in the Town of Caroline after the effective date of this Local Law, excluding general maintenance and repair as specified in Section 5. Battery energy storage systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law. Modifications to, retrofits or replacements of an existing battery energy storage system that increase the total battery energy storage system designed discharge duration or power rating shall be subject to this Local Law. Any use which would otherwise be subject to this law, which has been discontinued for a period of one (1) year or more, shall be subject to review pursuant to the terms of this law before such use is resumed. Any use or structure shall be considered to be in existence provided the same has been substantially commenced as of the effective date of this local law and fully constructed and completed within one (1) year from the effective date of this local law. This local law does not invalidate or override provisions or requirements of any other federal, state, or local law or regulations applicable to the subject matter hereof, and where this local law is in conflict with any other such law or regulation, the more restrictive requirements shall apply unless preempted or doing so would invalidate or make a part of this Chapter void or unenforceable.

## **SECTION 4 – DEFINITIONS:**

**AGRICULTURAL LAND**—Land area under perennial crops, under permanent pastures, under annual crops, meadows for mowing or for pasture, and land temporarily fallow.

**AGRICULTURALLY IMPORTANT AREA**—Agricultural Land, Prime Farmland, Prime Farmland if Drained, or Farmland of Statewide Importance.

**APPLICANT**—A property owner, an entity or individual holding an option or contract to purchase a property, or any other affiliate or operator authorized in writing to act for such persons, who submits an application under the provisions of this Code.

**ANSI:** American National Standards Institute

**BATTERY(IES):** A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this law, batteries utilized in consumer products are excluded from these requirements.

**BATTERY ENERGY STORAGE MANAGEMENT SYSTEM:** An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.

**BATTERY ENERGY STORAGE SYSTEM:** One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A Battery Energy Storage System is classified as a Tier 1 or Tier 2 Battery Energy Storage System as follows:

- A. Tier 1 Battery Energy Storage Systems have an aggregate Nameplate Capacity less than or equal to 600kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.
- B. Tier 2 Battery Energy Storage Systems have an aggregate Nameplate Capacity greater than 600kWh or are comprised of more than one storage battery technology in a room or enclosed area.

**CELL:** The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.

**CHAPTER**—This Local Law.

**CODE**—The general and specific regulations and policies of the Town of Caroline embodied in its local laws, ordinances, policies, Comprehensive Plan, and the requirements of processes, rules, and procedures attending each of the same.

**CODE OFFICER**—The Town of Caroline Code Enforcement Officer, as well as any hereafter appointed zoning officer, or other person appointed for this purpose by resolution of the Town Board.

**COMMISSIONING:** A systematic process that provides documented confirmation that a battery energy storage system functions according to the intended design criteria and complies with applicable code requirements.

**CRITICAL ENVIRONMENTAL AREA**—Area which has been designated by the Town or by a state agency to recognize a specific geographical area and to alert Applicants that special resources or dangers in the area require careful attention.

**DECOMMISSIONING**—A systematic process for removing a Battery Energy Storage System and restoring the land.

**DECOMMISSIONING AND SITE RESTORATION PLAN**—A written plan that specifies how a Solar Energy System will be withdrawn from service and disposed of and how the site occupied by the system will be restored.

**DEDICATED-USE BUILDING:** A building that is built for the primary intention of housing battery energy storage system equipment, is classified as Group F-1 occupancy as defined in the International Building Code, and complies with the following:

- 1) The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.
- 2) No other occupancy types are permitted in the building.
- 3) Occupants in the rooms and areas containing battery energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.
- 4) Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, provided the following:
  - a. The areas do not occupy more than 10 percent of the building area of the story in which they are located.
  - b. A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy system equipment. The Fire Chief from the appropriate fire protection district must approve the means of egress as being safe and sufficient.

**ENERGY CODE:** The New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law, as currently in effect and as hereafter amended from time to time.

**ENVIRONMENTALLY SENSITIVE AREA**—Critical Environmental Area, Unique Natural Area, federally-designated wetland, or NYS-regulated wetland, water body or stream.

**FIRE CODE:** The fire code section of the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

**IMPORTANT VIEWS**—Distinctive Views and Noteworthy Views as enumerated in the Tompkins County Scenic Resources Inventory and Town of Caroline Scenic Resources Inventory.

**NAMEPLATE CAPACITY**—Manufacturer’s rating of the system under industry standard test conditions, typically given in kWh or MWh.

**NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL):** A U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

**NEC:** National Electric Code.

**NFPA:** National Fire Protection Association.

**NON-DEDICATED-USE BUILDING:** All buildings that contain a battery energy storage system and do not comply with the dedicated-use building requirements.

**NON-PARTICIPATING PROPERTY:** Any property that is not a participating property.

**NON-PARTICIPATING RESIDENCE:** Any residence located on non-participating property.

**OCCUPIED COMMUNITY BUILDING:** Any building in Occupancy Group A, B, E, I, R, as defined in the International Building Code, including but not limited to schools, colleges, daycare facilities, hospitals, correctional facilities, public libraries, theaters, stadiums, apartments, hotels, and houses of worship.

**PARTICIPATING PROPERTY:** A battery energy storage system host property or any real property that is the subject of an agreement that provides for the payment of monetary compensation to the landowner from the battery energy storage system owner (or affiliate) regardless of whether any part of a battery energy storage system is constructed on the property.

**PERMIT**—Specifically, this term means any building permit approval, any Unified Solar Permit Approval, and any site planning approval for solar facilities or improvements. Generally, this term includes the above matters, along and together with all other approvals and permits issued in relation to the same, including but not limited to land or subdivision approvals, land disturbance permits or approvals, aquifer or wellhead permits and approvals, road use construction and maintenance permits and approvals (including any road use agreements), flood plain permits, and local and state stormwater approvals and permits, including SPDES general permits.

**PERMITTEE**—An Applicant who has been granted a uniform solar permit under the provisions of this law, or a site planning approval under this law.

**PERMIT FEE**—The building permit fees, the unified solar permit fees, site plan review fees (including as based upon the size and classification of the project), which fees may include other review fees and related chargeable costs as set forth in this law.

**PRACTICABLE**—Capable of satisfying the overall project purposes, after taking into consideration cost, time, technology and logistics.

**REVIEW BOARD**—The Town of Caroline Review Board.

**SITE PLAN REVIEW LAW**—The Town of Caroline Site Plan Review Local Law of 2018 or successors to that law, as appropriate.

**TEQR**—the Town of Caroline “mini-SEQRA”, also known as the “Town Environmental Quality Review” local law and procedures, intended to augment the NYS SEQRA Act and implementing regulations relative to specific issues in and affecting the Town of Caroline, ranging from classifying actions to local procedures complimentary to SEQRA, as may now or hereafter exist, including as amended or recodified in the future.

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

**UNIQUE NATURAL AREA**—Area so designated by the Tompkins County Environmental Management Council. Unique Natural Areas have outstanding geological or environmental qualities.

## **SECTION 5 – GENERAL REQUIREMENTS**

- 5.1** The Town Board shall by resolution periodically set a fee schedule for a Permit Fee for the review and processing of Site Plan applications for Battery Energy Storage Systems and a Monitoring Fee for the inspection of such systems during construction and until Commissioning of the system.
- 5.2** The requirements of this law apply to all Battery Energy Storage Systems proposed, modified, or installed upon any lands or structures, excluding routine or minor general maintenance and repair. However, “routine or minor general maintenance and repair” shall not in any one situation or case involve the replacement or repair of 50% or more of the area or square footage of land occupancy of the use, or 50% of the value of the facility. The determination as to whether a given action or application qualifies as “routine or minor general maintenance and repair” shall be determined in each case and for all lands, parcels, and uses, by the Code Officer by written opinion, duly filed.

- 5.3** If a modification or expansion of an existing Battery Energy Storage System is such that it would cause a change in class from a Tier 1 to a Tier 2 facility as defined in Section 4, the modification or expansion requires Site Plan review and approval by the Review Board as set forth below for Tier 2 facilities.
- 5.4** If a modification or expansion of an existing Tier 2 facility is such that the originally-approved area occupied by the Facility is increased by 15% or more, the modification or expansion requires Site Plan review and approval by the Review Board.
- 5.5** In no case may a project be divided up or segmented for the purpose of avoiding review of the project as a whole. Separate simultaneous applications from the same applicant will only be allowed if the applications are for significantly discontinuous regions of the Town. The Review Board shall use its discretion in determining “significantly discontinuous.”
- 5.6** A building permit and an electrical permit shall be required for installation of all battery energy storage systems.
- 5.7** All Battery Energy Storage Systems, all Dedicated Use Buildings, and all other buildings or structures that (1) contain or are otherwise associated with a Battery Energy Storage System and (2) are subject to the Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, all applicable provisions of the Energy Code, and all applicable provisions of the codes, regulations, and industry standards as referenced in the Uniform Code, the Energy Code, and Town of Caroline Codes.
- 5.8** Issuance of permits and approvals by the Review Board shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 (“SEQRA”).
- 5.9** The Code Officer is authorized to issue Stop Work orders during the construction of Solar Energy Systems.

#### **SECTION 6 – Tier 1 Battery Energy Storage Systems**

Tier 1 Battery Energy Storage Systems shall submit a “Tier 1 Battery Energy Storage System Permit Application” to the Code Officer and are exempt from Site Plan review.

#### **SECTION 7 – Tier 2 Battery Energy Storage Systems**

**7.1 Site Plan Review.** All Tier 2 Battery Energy Storage Systems require Site Plan review and approval by the Review Board. Site Plan review will follow the procedures and requirements of the Site Plan Review Law, augmented as described in this section.

**7.2 Application Requirements.**

- (a) **Sketch Plan.** The Sketch Plan shall include the requirements set forth in the Site Plan Review Law plus any additional materials deemed necessary by the Review Board.

- (b) **Preliminary Site Plan Review.** The Permit Fee is due at the time materials are submitted for a preliminary Site Plan Review. Materials for the preliminary Site Plan Review shall include those set forth in the Site Plan Review Law, any additional materials deemed necessary by the Review Board, and the following:
- (i) A State Environmental Quality Review Act (“SEQRA”) environmental assessment form (Short form or Full form, as appropriate), with supplemental information as may be required under TEQR, with accompanying data, schedules and mappings, each as reasonably requested by the Town.
  - (ii) If the property of the proposed project is to be leased, copies of the legal consent between all parties, including easements and other agreements, specifying the use(s) of the land for the life of the project. The life of the project herein means from the beginning of construction until the end of decommissioning and site restoration.
  - (iii) Emergency Operations Plan. The emergency operations plan shall include the following information:
    - a. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.
    - b. Procedures for inspection and testing of associated alarms, interlocks, and controls.
    - c. Procedures to be followed in response to notifications from the Battery Energy Storage Management System, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.
    - d. Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire.
    - e. Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
    - f. Procedures for dealing with Battery Energy Storage System equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility.
    - g. Other procedures as determined necessary by the Town of Caroline to provide for the safety of occupants, neighboring properties, and emergency responders.
    - h. Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.

- (iv) Fire Safety Compliance Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code.
  - (v) A preliminary equipment specification sheet that documents the proposed Battery Energy Storage System components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
  - (vi) A [one- or three-line] electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
  - (vii) In addition to features specified in the Site Plan Review Law, maps of Environmentally Sensitive Areas and Important Views as defined in this local law.
  - (viii) If construction will occur in an Environmentally Sensitive Area, a document explaining why construction in that area could not be avoided. The document should reference the best practices that will be followed and the mitigation measures that will be implemented.
  - (ix) Commissioning Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where commissioning is required by the Uniform Code, Battery Energy Storage system commissioning shall be conducted by a New York State (NYS) Licensed Professional Engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to the Code Officer prior to final inspection and approval and maintained at an approved on-site location.
  - (x) Operation and Maintenance Manual. Such plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code
  - (xi) A Decommissioning and Site Restoration Plan, as set forth in Section 8.
- (c) **Final Site Plan Review.** Any Monitoring Fee and securitization for the Decommissioning and Site Restoration Plan (as further set forth in Section 7.6 and Section 9) are due at the time materials are submitted for the final Site Plan Review. Prior to the issuance of the building permit or final approval by the Review Board but not required as part of the application, engineering documents must be signed and sealed by a NYS Licensed Professional Engineer.

### 7.3 Design Guidelines for Tier 2 Battery Energy Storage Systems

- (a) **Fencing.** Fences not exceeding eight (8) feet in height, including open-weave and solid fences, shall be permitted for the purpose of screening or enclosing the Tier 2 Battery Energy Storage System. If utilized, fences should draw on the agricultural aesthetic of the Town, for example by using livestock-type fencing and wooden posts. Chain link,



barbed, razor, and concertina wires, electrically charged wire, railroad ties, concrete masonry units, scrap metal, tarped, and cloth fences and accessory parts are strongly discouraged. Temporary interior electric fences for the purpose of managing grazing animals are acceptable. Any gates or other locked or secured or publicly inaccessible areas require a key box for emergency and fire access as required by the Uniform Code.

- (b) **Signage.** Signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of suppression system installed in the area of battery energy storage systems, and 24-hour emergency contact information, including a reach-back phone number. As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
- (c) **Fire Extinguishing Materials.** For systems for which water is an appropriate agent, an adequate water supply for extinguishing a system fire shall be stored on site. Such storage shall have appropriate hook ups for fire company equipment. For systems for which water is not an appropriate agent, adequate supplies of the appropriate fire-fighting chemicals shall be maintained on-site.
- (d) **Secondary Containment.** Appropriate containment shall be constructed so that water or chemicals used in extinguishing a fire do not leave the site.
- (e) **Lighting.** Motion-activated or staff-activated security lighting may be installed as part of the Tier 2 Battery Energy Storage System, provided that such lighting conforms to the “Five Principles for Responsible Outdoor Lighting” developed by the International Dark-Sky Association (IDA) and Illuminating Engineering Society of North America (IES), 2020 version or an updated version. Lighting must use IDA-approved fixtures or equivalent and fixtures should have a backlight, upright and glare rating calculated based on the Joint IDA-IES TM-15-11 (“Luminaire Classification System for Outdoor Luminaires”). Lighting levels should be in keeping with the rural character and small residential communities of Caroline; examples include the LZ0 (no ambient lighting) and LZ1 (low ambient lighting) levels as described in the IDA Model Lighting Ordinance. If the system is fenced, such lighting should only be activated when the area within the fenced perimeter has been entered; if not fenced, when the area that might reasonably have been fenced has been entered.
- (f) **Noise.** The Tier 2 Battery Energy Storage System shall be designed to meet the following maximum noise limits:
  - (i) Forty-five (45) dBA Leq (8-hour) at the outside of any existing Non-Participating Residence
  - (ii) Fifty-five (55) dBA Leq (8-hour) at the outside of any existing Participating Residence
  - (iii) Fifty-five (55) dBA Leq (8-hour) across any portion of a Non-Participating Property
- (g) **Utilities.** All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way. When aboveground cables and transmission lines must cross agricultural fields, utility poles

that provide longer spanning distances should be located on field edges to the greatest extent Practicable to avoid poles being situated in agricultural lands. Electrical transformers for utility interconnections may be aboveground if required by the utility provider.

- (h) **Vegetation and tree-cutting.** Areas within [10] feet on each side of Tier 2 Battery Energy Storage Systems shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted to be exempt provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.
- (i) **Screening and Visibility.** Tier 2 Battery Energy Storage Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfering with ventilation or exhaust ports.
- (j) **Site Access.** All Tier 2 Battery Energy Storage System sites shall have two separate means of access suitable for Town of Caroline fire safety equipment unless this condition has been specifically waived by the Fire Chief of the appropriate fire district.
- (k) **System Certification.** Tier 2 Battery Energy Storage Systems and equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 9540 (Standard for battery energy storage systems and Equipment) or approved equivalent, with subcomponents meeting each of the following standards as applicable:
  - 1) UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail Applications),
  - 2) UL 1642 (Standard for Lithium Batteries),
  - 3) UL 1741 or UL 62109 (Inverters and Power Converters),
  - 4) Certified under the applicable electrical, building, and fire prevention codes as required.
  - 5) Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 (or approved equivalent) and applicable codes, regulations and safety standards may be used to meet system certification requirements.
- (l) Battery energy storage systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.

#### **7.4 Construction Requirements for Tier 2 Battery Energy Storage Systems**

- (a) Prior to the Permittee's commencement of construction, the Permittee shall stake or flag the boundaries of any Environmentally Sensitive Areas in or close to the construction area.
- (b) The Permittee will handle and store all hazardous materials in accordance with industry best practices.

#### **7.5 Operation Requirements for Tier 2 Battery Energy Storage Systems**

- (a) The Permittee will inform the Code Officer when the Battery Energy Storage System is completed and submit a signed commissioning report to the town.

- (b) A copy of the approved Emergency Operations Plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders.
- (c) Permittee shall notify the Code Officer if for any reason there has been a lack of production for six (6) months. Notification shall occur within two (2) weeks of passing the six-month mark.
- (d) Upon Commissioning and periodically thereafter, noise and light levels should be measured to ensure compliance with the limits listed in Sections 7.3(c) and 7.3(d) or the Site Plan Review Law, whichever applies. Remedial action shall be taken to attain compliance if the measured levels exceed the allowed levels.
- (e) Equipment and vehicles not used in direct support, renovations, additions or repair of the Battery Energy Storage System must not be stored or parked on the Battery Energy Storage System site.

**7.6 Abandonment and Decommissioning.** A Decommissioning and Site Restoration Plan shall be submitted with each application in accordance with Section 8. The Decommissioning and Site Restoration Plan must meet the approval of the Review Board.

## **SECTION 8 – ABANDONMENT AND DECOMMISSIONING OF TIER 2 BATTERY ENERGY STORAGE SYSTEMS**

- 8.1** A Decommissioning and Site Restoration Plan is for Battery Energy Storage System decommissioning and site restoration in the event the system cannot be completed, is considered abandoned, is no longer operating, or after the end of the useful life of the system.
- 8.2** A Decommissioning and Site Restoration Plan shall, at a minimum, contain the following elements and should describe how the following requirements will be met:
- (a) State the anticipated life of the Battery Energy Storage System.
  - (b) Specify when and what constitutes an event requiring decommissioning, including abandonment of the facility. In all cases the violation of any Permit or site plan conditions, the lack of a current Permit or site plan approval, a violation or lack of maintenance of any required decommissioning bond or security, shall be an event requiring decommissioning. In the absence of a maintenance plan approved by the Review Board allowing for an extended outage, the lack of production for one year shall be an event requiring decommissioning.
  - (c) Specify the form and type of notice required to the Town in the event of any abandonment, decommissioning, sale, transfer, partial transfer, assignment, or occurrence of any event which may result in an act or partial order requiring partial or complete decommissioning of the site.
  - (d) All components of the Facility are to be removed (to a depth of four (4) feet below grade in agricultural land and three (3) feet below grade in non-agricultural land) and the site restored, as near as Practicable, to a state the average person would consider at least as good as pre-construction conditions. Access roads shall be removed and the road area restored, unless a separate agreement is reached with the Town and/or

landowner, as appropriate. The Review Board may allow the owner or operator to leave landscaping, designated below-grade foundations, enclosures other than container structures, or concrete pads in place to minimize erosion and disruption to vegetation on a case-by-case basis.

- (e) The Town of Caroline strongly encourages that all reusable and recyclable components be sold for reuse or recycled to the greatest extent Practicable. The Decommissioning and Site Restoration Plan should discuss recycling and reuse opportunities; if something is reusable or recyclable but the Applicant decides not to reuse or recycle it, the Decommissioning and Site Restoration Plan should provide a valid rationale for that choice. It is understood that reuse and recycling options will change over time and hence it is expected that the reuse and recycling plan will need to be updated at the time of decommissioning.
- (f) All non-reusable and non-recyclable solid and hazardous waste shall be disposed of in accordance with local, state, and federal waste disposal regulations, including the removal of any damaged or contaminated soils. No designation of any facilities by a 'beneficial use declaration' shall be permitted to vary this clean-up and remediation/disposal rule unless approved by the Review Board at the time of the application.
- (g) Soil and vegetation shall be remediated to return the parcel to its original condition prior to construction, including an adequate layer of topsoil where existing topsoil has been removed or eroded. Restoration may require decompacting and regrading soil, repair of drainage structures, and mitigation of any topsoil deficiency, as necessary to restore the site after decommissioning.
- (h) An expected timeline for execution of the Decommissioning and Site Restoration Plan shall be described, together with a cost estimate detailing the projected cost of executing the plan, duly prepared and sealed by a Professional Engineer. Cost estimations must take inflation into account over the expected life of the project, and have a mechanism to ensure the periodic updating and securitization of decommissioning and restoration costs.
- (i) A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.

**8.3** Removal of a Tier 2 Battery Energy Storage System must be completed in accordance with the Decommissioning and Site Restoration Plan to the satisfaction of the Code Officer. If the Facility is not fully decommissioned after being considered abandoned, the municipality may remove the Facility and restore the property using the security required by Section 8.4 and impose a lien on the property to cover any remaining costs to the municipality to complete the Decommissioning and Site Restoration Plan.

**8.4** An Applicant required to submit a Decommissioning and Site Restoration Plan shall provide a form of surety, either through escrow agreement, bond, letter or credit, or like form approved by the Review Board, to cover all costs of decommissioning and removal calculated at a minimum of 125% of the approved estimated cost of decommissioning and restoration. The estimate of costs shall be prepared by a licensed engineer and be sealed accordingly, and the annual cost shall take into account New York State prevailing wage

rules and any inflationary rise in surety amounts covered, contain an evergreen clause, or otherwise account for increases in the cost of decommissioning and restoration in a manner as approved by the Review Board. At a minimum, at least once every 3 years after any approval or Permit is issued by the Town, the Applicant or then future or successor owner or operator of the facility shall provide an updated certified cost estimate for decommissioning, removal, and restoration, and if the resulting 125% cost requirement shows that the existing security or bond is monetarily insufficient, then the owner shall update such bond or undertaking, or see to its replacement or supplementation in an amount to equal such updated minimum 125% of cost number.

## **SECTION 9—TRANSFERS OF PERMITS AND APPROVALS, OR CHANGES IN FACILITY OWNERSHIP:**

- 9.1** Approvals and Permits are issued to specific users for specific operations, and approvals and Permits shall not be assigned, transferred or sold to a new owner, new user, different premises, or to a new or changed operation or operator, except in accordance with the provisions of this section. A Permit Fee may apply to the review of any assignment or transfer by the Code Officer or Review Board. In the sole discretion of the Code Officer, any review may be transferred to the Review Board when unique issues or concerns are presented.
- 9.2** General building and Tier 1 Battery Energy Storage System Permits may be transferred to new owners, along with any certificates of occupancy or compliance, at the time of transfer of land titles when recorded in the Tompkins County Clerk's Office. No special language is required and the transfer of title to the battery fixtures and improvements shall be deemed merged with the transfer of fee title.
- 9.3** A Tier 2 Battery Energy Storage System Permit or approval may only be transferred if there is no material violation of, or non-compliance with, all Permit and approval conditions, and the new owner applies for approval of the transfer of such Permit(s) or approval(s) by the Review Board, specifying, in each case, how compliance with the Permit or approvals will be maintained, including but not limited to how the new owner or operator, including as a proposed new Permittee, plans to document or verify: (i) the lawful assumption of all liabilities and all obligations for the site, including its operation and maintenance, general site management, and compliance with industry, utility, and Town Permit and approval conditions; (ii) assumption or replacement of the Operation and Maintenance Plan for each site; (iii) assumption or replacement of Decommissioning and Site Restoration Plan; and (iv) replacement of any required deposits or sureties for the Decommissioning and Site Restoration Plan.
- 9.4** When undertaking any review, the Code Officer and Review Board shall act in their discretion relative to any reviews or approvals of assignments or transfers of Permits or approvals and, in all cases, such officers may request additional relevant materials, verify that the proposed transfer, assignment, or other conveyance is to a fiscally solvent individual or organization that has the personnel or capability to operate and manage the site in accordance with legal requirements and all Permit or approval requirements. The

Code Officer or Review Board may require the transferor or transferee to certify that transferee meets this requirement, together with documentation as to why such certification is accurate and not speculative.

- 9.5** Any transfer, conveyance, or assignment of any System or any Permit or approval that is not undertaken and approved (when so required) by these provisions shall be a violation of this law, and no such transfer, conveyance or assignment shall relieve the Permittee from its liabilities or obligations under this law. Despite such violation, acceptance of any transfer, conveyance, or assignment of any System or any Permit or approval constitutes for all purposes the acceptance by such new owner of all of the obligations, terms, limitations and conditions agreed to by the original owner, as fully and effectually as if such transferee-new owner were a Permittee or the original Permittee.
- 9.6** Any transfer, conveyance or assignment of any System, Permit, or approval that has been revoked or has expired shall require a review of such Permit renewal and transfer, conveyance, and assignment as if the same were a new application.

**SECTION 10—ENFORCEMENT:** Any violation of this local law shall be enforced in accordance with this Chapter, the Code, or applicable law. All provisions of New York State law generally applicable to misdemeanors shall apply to any criminal proceeding brought under this Chapter, and any misdemeanor shall be deemed an unclassified misdemeanor. For purposes of this Chapter, the Town's Justice Court is hereby vested and imbued with jurisdiction to issue administrative and other warrants in compliance with the New York Criminal Procedure Law and administrative codes of the State of New York, as well as to hear and adjudicate claims and allegations relating to the criminal or civil violation of this Chapter and thereafter, if appropriate, impose any fine, penalty, or sanction.

- 10.1** Any person or entity that violates any of the provisions of this Chapter shall be guilty of a criminal violation and subject to a fine of not more than \$2,500, or subject to a civil penalty of not more than \$5,000 to be recovered by the Town in a civil action. Each week that any noncompliance or violation continues is and may be charged as a separate violation.
- 10.2** The application or pursuit of any civil or criminal fine, sanction, or penalty shall not preclude the pursuit of any other remedy by the Town, or be deemed an election of remedies, including but not limited to the right to seek equitable relief. The rights and remedies provided by this Chapter shall not be in lieu of, and shall be in addition to, any other right or remedy available to the Town, whether sounding in enforcement or otherwise.
- 10.3** Whenever the Town shall believe from evidence satisfactory to it that there is a violation of this Chapter, the Town may bring an action to enjoin and restrain the continuation of such violation, or to compel compliance with this Chapter and with law. In such action preliminary and final relief may be granted under Article 63 of the Civil Practice Law and Rules and, in connection therewith, the Town shall not be required to: (i) post any bond or undertaking; (ii) prove that there is, or will likely be, irreparable harm; or (iii) demonstrate that the Town has no adequate remedy at law. In such action, the court may also award any

damages or other relief requested, including declaring the rights and interests of any parties and imposing any civil penalties.

**SECTION 11—SEVERABILITY:** The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional must not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which must remain in full force and effect.

**SECTION 12—EFFECTIVE DATE:** This local law shall take effect immediately.