Town of Elba, Genesee County, New York

Local Law No. 1 of 2021

Local Law to Repeal the Town of Elba Solar Energy Law
and Amend the Town of Elba Zoning Law to
Add Regulations for Solar Energy Systems

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

The Town Board of the Town of Elba adopts this Local Law pursuant to sections 261-263 of the Town Law and section 20 of the Municipal Home Rule Law of the State of New York, which authorize the Town of Elba to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with section 263 of the Town Law of New York State, "to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor."

I. The Town of Elba Solar Energy Law, Local Law No. 1 of 2020, is hereby repealed.

II. Section 805 of the Town of Elba Zoning Law, titled "Fees for Permits, Amendments, Variances, and Special Use Permits," is amended and restated as follows:

Section 805 Fees and Costs for Permits, Amendments, Variances, and Special Use Permits

A. Fees may be charged for permits issued, and processing of applications for amendments, variances, and special use permits. The fee shall be set by resolution of the Town Board and may be changed from time to time in the same manner.

B. The Town may require any such applicant to enter into an escrow agreement to pay the engineering and legal costs which are reasonably necessary in the review and processing of any application made under this law, including the review required by SEQRA. Payment of said escrow and all application fees shall be made at the time of application submission.

III. Section 202 of the Town of Elba Zoning Law, titled "Definitions," is hereby amended to add the following definitions:

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 SYSTEM: A rechargeable energy storage system consisting of one or more devices, including batteries, battery chargers, controls, power conditioning systems

and associated electrical equipment, assembled together, capable of storing energy in order to provide 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 Small or Large battery energy storage system.

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM: A Solar Energy System where the Solar Energy Equipment is integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for onsite consumption.

FARMLAND OF STATEWIDE IMPORTANCE: Land, designated as "Farmland of Statewide Importance" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that is of state wide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of Statewide Importance may include tracts of land that have been designated for agriculture by state law.

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

GROUND-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System where the Solar Energy Equipment is anchored to the ground via a pole or other mounting system, detached from any other structure.

KILOWATT (kW): A unit of electrical power equal to 1,000 watts, which constitutes the basic unit of electrical demand. A watt is a measurement of power (not energy) and is the rate at which electricity is used.

MEGAWATT (MW): A unit of electrical power equal to 1,000,000 watts or 1,000 kilowatts (kW).

NAMEPLATE CAPACITY: Starting from the initial installation of the Solar Energy System, the maximum electrical generating output that the Solar Energy System is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other de-ratings) as specified by the manufacturer of the Solar Energy System.

NATIVE PERENNIAL VEGETATION: native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for pollinators and shall not include any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation.

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

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

NYS AG AND MARKETS SOLAR ENERGY PROJECT GUIDANCE: The Guidelines for Solar Energy Projects-Construction Mitigation for Agricultural Lands, revised October 18, 2019, published by the New York State Department of Agriculture and Markets, as may be subsequently amended.

PARTICIPATING PROPERTY: A 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 a Solar Energy System or Battery Energy Storage System owner (or affiliate) regardless of whether any part of a Solar Energy System or Battery Energy Storage System is constructed on the property.

POLLINATOR: Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, including both wild and managed insects.

PRIME FARMLAND: Land, designated as "Prime Farmland" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.

ROOF-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or offsite consumption.

SOLAR ACCESS: Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive Solar Energy Systems on individual properties.

SOLAR ENERGY EQUIPMENT: Electrical material, hardware, or other electrical and photovoltaic equipment associated with the production of electricity including solar panels, associated wiring, conduit, mounting brackets, framing and foundations, accessory structures and buildings, Battery Energy Storage Systems, light reflectors, concentrators, and heat exchangers, inverters and other power conditioning equipment, substations, electrical infrastructure, distribution lines and other appurtenant structures and facilities used for or intended to be used for Solar Energy Systems.

SOLAR ENERGY SYSTEM: The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, solar panels and Solar Energy Equipment. The area of a Solar Energy System includes all the land inside the perimeter of the Solar Energy System, which extends to any interconnection equipment. A Solar Energy System is classified as a Tier 1, Tier 2, Tier 3, or On-Farm Solar Energy System as follows.

A. Tier 1 Solar Energy Systems include the following:

   a. Roof-Mounted Solar Energy Systems

   b. Building-Integrated Solar Energy Systems

B. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems with system capacity up to 25 kW AC and that generate no more than 110 % of the average monthly electricity consumption on the site averaged over the previous 12 months.

C. Tier 3 Solar Energy Systems are systems that are not included in the list for Tier 1 and Tier 2 Solar Energy Systems.

D. On-Farm Solar Energy Systems are systems located on a farm that is a farm operation, as defined by Article 25-AA of the Agriculture and Markets Law, in an agricultural district, where the Solar Farm is designed, installed, and operated so that the anticipated annual total amounts of electrical energy generated do not exceed more than 110 percent of the anticipated annual total electrical energy consumed on the farm.

SOLAR PANEL: A photovoltaic device capable of collecting and converting solar energy into electricity.

IV. The Town of Elba Zoning Law is Amended to add Section 413 entitled "Solar Energy Systems," as follows:

SECTION 413 SOLAR ENERGY SYSTEMS

A. Statement of Purpose

These Solar Energy System regulations are adopted to advance and protect the public health, safety, and welfare of Town of Elba by creating regulations for the installation and use of solar energy generating systems and equipment, with the following objectives:

1. To take advantage of a safe, abundant, renewable and non-polluting energy resource;
2. To decrease the cost of electricity to the owners of residential and commercial properties, including single-family houses;
3. To increase employment and business development in the Town of Elba, to the extent reasonably practical, by furthering the installation of Solar Energy Systems, and;
4. To mitigate the impacts of Solar Energy Systems on adjacent uses and environmental resources such as important agricultural lands, forests, wildlife and other protected resources.

B. Applicability

1. The requirements of this Section shall apply to all Solar Energy Systems permitted, installed, or modified in Town of Elba after the effective date of this Local Law, excluding general maintenance and repair.
2. Solar Energy Systems constructed or installed prior to the effective date of this Section shall not be required to meet the requirements of this Section.

3. Modifications to an existing Solar Energy System that increase the Solar Energy System area by more than 5 % of the original area of the existing Solar Energy System (exclusive of moving any fencing) shall be subject to this Section.

C. General Requirements

1. A Building permit shall be required for the installation of all Solar Energy Systems.

2. Local land use boards are encouraged to condition their approval of proposed developments on sites adjacent to Solar Energy Systems so as to protect their access to sufficient sunlight to remain economically feasible over time.

3. All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code ("Building Code"), the NYS Energy Conservation Code ("Energy Code"), and the laws, ordinances, and regulations of the Town of Elba.

4. Solar Energy Systems shall be maintained in good working order and in accordance with applicable codes and industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire departments and, if the Solar Energy System is located in an ambulance district, the local ambulance corps.

D. Permitting Requirements for Tier 1 and Roof-Mounted or Building Integrated On-Farm Solar Energy Systems

1. Tier 1 Solar Energy Systems shall be permitted in all zoning districts. Tier 1 and Roof-Mounted or Building Integrated On-Farm Solar Energy Systems shall be permitted in Agricultural-Residential (A-R) Districts. Tier 1 and Roof-Mounted or Building Integrated On-Farm Solar Energy Systems shall be exempt from site plan review, subject to the conditions for each type of Solar Energy Systems set forth in this Sub-Section.

2. Roof-Mounted Solar Energy Systems

    a. Roof-Mounted Solar Energy Systems shall incorporate, when feasible, the following design requirements:

        i. Solar Panels on pitched roofs shall be mounted with a maximum distance of 8 inches between the roof surface the highest edge of the system.

        ii. Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.

        iii. Solar Panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.

iv. Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 24 inches above the flat surface of the roof, whichever is higher.

3. Glare: All Solar Panels shall have anti-reflective coating(s).

4. Height: All Roof-Mounted Solar Energy Systems shall comply with the height limitations in Appendix 2.

5. Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system.

E. Permitting Requirements for Tier 2 and Ground-Mounted On-Farm Solar Energy Systems

1. Tier 2 Solar Energy Systems shall be permitted in all zoning districts as accessory structures. Ground-Mounted On-Farm Solar Energy Systems shall be permitted in Agricultural-Residential (A-R) Districts. Tier 2 and Ground-Mounted On-Farm Solar Energy Systems shall be exempt from site plan review under the local zoning code or other land use regulations, subject to the requirements set forth in this Sub-Section.

2. Glare: All Solar Panels shall have anti-reflective coating(s).

3. Setbacks: Tier 2 and Ground-Mounted On-Farm Solar Energy Systems shall be subject to the setback regulations specified for accessory structures within the underlying zoning district. All Ground-Mounted Solar Energy Systems shall only be installed in the side or rear yards in residential districts.

4. Height: Tier 2 and Ground-Mounted On-Farm Solar Energy Systems shall comply with the height limitations in Appendix 2.

5. Screening and Visibility.

   a. All Tier 2 and Ground-Mounted On-Farm Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable.

   b. Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.

6. Lot Size: Tier 2 and Ground-Mounted On-Farm Solar Energy Systems shall comply with the existing lot size requirement specified for accessory structures within the underlying zoning district.

F. Permitting requirements for Tier 3 Solar Energy Systems

1. Tier 3 Solar Energy Systems are permitted only in Agricultural-Residential (AR) and Business (B) Districts and only following the issuance of a Tier 3 Solar Special Use Permit and the approval of a site plan pursuant to the site plan application requirements set forth in Section 808 and in this Sub-Section.

2. Applications for the installation of Tier 3 Solar Energy Systems shall include the following information:

    a. The information requirements for site plan review applications of Section 808.C.2 and the special use permit application requirements of Section 808.D.1

    b. Property lines and physical features, including roads, for the project site.

    c. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.

    d. For Solar Energy Systems with an area exceeding ten (10) acres, a visual impact assessment and screening and landscaping plan meeting the standards of Section 413(F)(4)(o)(ii) below.

    e. A one- or three-line electrical diagram detailing the Solar Energy System layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.

    f. A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.

    g. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.

    h. Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.

    i. Zoning district designation for the parcel(s) of land comprising the project site.

    j. Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.

k. Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.

l. Vegetation Management Plan: The applicant shall submit a vegetation management plan consistent with the requirements of Section 413(F)(4)(p)(ii).

m. A decommissioning plan to be implemented upon abandonment or cessation of activity, or in conjunction with removal of the facility, prior to issuance of a building permit. The decommissioning plan must ensure the site will be restored to a useful, nonhazardous condition without delay, including, but not limited to, the following:

    i. For Solar Energy Systems constructed on Prime Farmland or Farmland of Statewide Importance, the restoration of such Farmland pursuant to the decommissioning and restoration guidelines of the NYS Ag and Markets Solar Energy Project Guidance.

    ii. Removal of all operator-owned equipment, concrete, conduits, structures, fencing, and foundations to a depth of at least 48 inches below the soil surface.

    iii. Removal and planned disposal methods of any solid and hazardous waste generated from the decommissioning of the Solar Energy System in accordance with local, state and federal waste disposal regulations.

    iv. Removal of all graveled areas and access roads unless the landowner requests in writing for it to remain. For graveled areas and access roads constructed on Prime Farmland or Farmland of State Importance, decompaction of the access road footprint will be performed to a minimum of 24-inches beneath the bottom of the former stone layer, and 12-inches of native topsoil are to be placed to match surrounding grade. Additional topsoil will be added, as necessary, to account for settlement.

    v. Restoration of the surface grade and soil after removal of equipment.

    vi. Disturbed soils must be have subsoils buried and covered by at least 6 inches of native topsoil that is free of large rocks typical of subsoil.

    vii. All soil disturbed during decommissioning will be stabilized within two weeks with a perennial grass stabilization mix applied using standard NYSDEC erosion and sediment control methods and seeding rates applicable for the season, soil type, and slope.

    viii. The plan shall include a time frame for the completion of site restoration work.

ix. The plan shall include photo documentation of pre-development conditions and/or a detailed description of pre-development land uses/conditions at the project site.

x. The estimated cost of implementing the decommissioning plan.

xi. The plan shall be updated as new site restoration strategies or technology are developed/utilized or new regulations or agency guidelines are put in place over the lifespan of the array.

n. The method for ensuring that funds will be available for decommissioning and restoration as set forth in the decommissioning security requirements of 413(F)(5)(b).

o. The appropriate complete SEQRA Environmental Assessment Form ("EAF").

p. Prior to the issuance of the building permit or final approval by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a New York State (NYS) Licensed Professional Engineer or NYS Registered Architect.

3. Application Review Process.

a. The application shall be reviewed by the Zoning Enforcement Officer for completeness. Applicants shall be advised within 15 business days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.

b. The application shall be referred to the Genesee County Planning Department pursuant to General Municipal Law § 239-m.

c. The application shall require a public hearing pursuant to the public hearing requirements for special use permits contained in Section 808(D)(3).

d. Upon closing of the public hearing, the Planning Board shall take action on the application as provided in the decision requirements for special use permits of Section 808(D)(6).

4. Special Use Permit Standards

The Planning Board may issue a special use permit for a Tier 3 Solar Energy System only after it has found that all the following standards and conditions have been satisfied:

a. The site plan review criteria contained in Section 808(C)(3).

b. The standards applicable to all special use permits contained in Section 808(D)(8).

c. Undergrounding Requirements. 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.

d. Vehicular Paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.

e. Signage.

    i. No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted within an area no more than 8 square feet.

    ii. As required by National Electric Code (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.

f. Glare. All Solar Panels shall have anti-reflective coating(s).

g. Lighting. Lighting of the Solar Energy Systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.

h. Tree-cutting. Removal of existing trees larger than 6 inches in diameter at the based of the tree trunk should be minimized to the extent possible.

i. Lot size. The property on which the Tier 3 Solar Energy System is placed shall meet the lot size requirements in Appendix 1.

j. Setbacks.

    i. The Tier 3 Solar Energy Systems shall meet the following setback requirements:

        1) Setbacks from adjacent non-participating residences shall be a minimum of 250 feet.

        2) Setbacks from adjacent non-participating residential property lines shall be a minimum of 100 feet.

        3) Setbacks from a state roads or highways shall be a minimum of 100 feet from the edge of the right of way.

4) Setbacks from County or Town roads shall be a minimum of 70 feet from the edge of the right of way.

5) Setbacks from adjacent non-participating non-residential property lines shall be a minimum of 50 feet.

ii. Property line and residence setback requirements do not apply to contiguous participating parcels.

iii. Fencing, access roads and landscaping may occur within the setback.

k. Height. The Tier 3 Solar Energy Systems shall comply with the height limitations provided in Appendix 2 for the underlying zoning district.

l. Lot Coverage.

i. Lot coverage of the Solar Energy System, as defined below, shall not exceed the maximum lot coverage requirement of the underlying zoning district.

ii. Lot coverage calculation. The following components of a Tier 3 Solar Energy System shall be considered included in the calculations for lot coverage requirements. For clarity, only portions of the Solar Energy System that touch the ground are included in the calculation for lot coverage requirements:

1) Foundation systems, typically consisting of driven piles or monopoles or helical screws with or without small concrete collars.

2) All mechanical equipment of the Solar Energy System, including any pad mounted structure for batteries, switchboard, transformers, or storage cells.

3) Paved access roads servicing the Solar Energy System.

m. Fencing Requirements. All mechanical equipment, including but not limited to any structure for Battery Energy Storage Systems, shall be enclosed by a minimum 7-foot high fence with a self-locking gate to prevent unauthorized access.

n. Noise levels from the Solar Energy System will comply with the noise limits for solar energy facilities contained in the New York Office of Renewable Energy Siting regulations, as may be subsequently amended, at 19 N.Y.C.R.R. §900-6.5(b) by implementing the design required by 19 N.Y.C.R.R. §900-2.8, except that the standards applicable to existing non-participating residences shall also be met for existing participating residences.

o. Screening and Visibility.

i. Solar Energy Systems smaller than 10 acres 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.

ii. Solar Energy Systems larger than 10 acres shall be required to:

1) Conduct a visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent non-participating properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including, for example, a digital viewshed report, shall be submitted by the applicant.

2) Submit a screening & landscaping plan to show adequate screening measures through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized as reasonably practicable from public roadways and adjacent non-participating properties.

3) The screening and landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. The landscaped screening shall be comprised of a minimum of 2 evergreen tree species native to New York or naturalized and non-invasive, at least 6 feet tall at time of planning, plus 4 supplemental native or naturalized and non-invasive shrub species at the reasonable discretion of the Town of Elba Planning Board, all planted within 10 linear feet of the Solar Energy System, or distance deemed practicable by the mature diameter of tree species selected. Existing vegetation may be used to satisfy all or a portion of the required landscaped screening. Planted tree and shrub survivorship of less than 75% after two growing seasons or visual screening of less than 75% after five growing seasons as viewed from adjacent non-participating residences will require additional plantings at the expense of the owner/operator.

p. Agricultural Resources.

i. To the maximum extent practicable, Tier 3 Solar Energy Systems located on Prime Farmland for Farmland of Statewide Importance shall be

constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets.

ii. Tier 3 Solar Energy System owners, in consultation with the Genesee County Soil and Water Conservation District, shall develop and implement a vegetation management plan to maintain the landscape screening and native perennial vegetation plantings for the life of the Solar Energy System. Planting plans must seed 80 % of the total surface area of all solar panels on the lot with native perennial vegetation. Performance standards and adaptive management guidelines must be included in the planting plan to ensure continued success.

5. Decommissioning.

a. Solar Energy Systems that have been abandoned and/or not producing electricity for a period of 1 year shall be removed pursuant to the approved decommissioning plan at the Owner and/or Operators expense, which at the Owner's option may come from any security made with the Town of Elba as set forth in 413(F)(5)(c) herein.

b. Project stakeholders will be notified by the Owner and/or Operator a minimum of six months prior to initiating decommissioning activities. Local, county and state authorities will be notified, as needed, to discuss potential approvals required to complete decommissioning activities.

c. Security.

i. The deposit, executions, or filing with the Town of Elba Clerk of cash, a bond issued from a surety listed as acceptable sureties on Federal surety bonds in Circular 570 of the U.S. Department of the Treasury, letter of credit, or other form of security reasonably acceptable to the Town of Elba attorney and/or engineer, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal pursuant to the approved decommissioning plan. The amount of the bond or security shall be 125% of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of 2% annually for the life of the Solar Energy System. The salvage value of the solar energy equipment shall not be accounted for in the estimated cost of implementing the decommissioning plan. The financial security shall be updated every fifth year thereafter specifying changes to the estimated cost of implementing the decommissioning plan.

ii. In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town of Elba, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.

d. In the event of default or abandonment of the Solar Energy System, the system shall be decommissioned as set forth in the approved decommissioning plan.

6. Ownership Changes. If the owner or operator of the Solar Energy System changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the Solar Energy System shall notify the Zoning Enforcement Officer of such change in ownership or operator within 30 days of the ownership change. The special use permit and all other local approvals for the Tier 3 Solar Energy System shall be void if a new owner or operator fails to provide written notification to the Zoning Enforcement Officer in the required timeframe. Reinstatement of a void special use permit will be subject to the same review and approval processes for new applications under this Section.

7. Solar Development in Agricultural Districts

Real property that is the site of a Tier 3 Solar Energy System that are not On-Farm Solar Energy Systems located in an Agricultural Districts may be assessed a conversion penalty pursuant to Article 25-aa of New York Agriculture and Markets Law.

8. Permit Time Frame and Abandonment

a. The Special Use Permit and site plan approval for a Solar Energy System shall be valid for a period of 18 months, provided that a building permit is issued for construction or construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Planning Board, within 18 months after approval, the applicant or the Town of Elba may extend the time to complete construction for 6 months. If the owner and/or operator fails to perform substantial construction after 24 months, the approvals shall expire.

b. Upon termination of the lease for the Solar Energy System or cessation of electricity generation for sale of a Solar Energy System on a continuous basis for 12 months, the Town of Elba may notify and instruct the owner and/or operator of the Solar Energy System to implement the decommissioning plan. The decommissioning plan must be completed within 12 months of notification.

c. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town of Elba may, at its discretion, utilize the security established in Section 413(F)(5)(b) for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan.

V. 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, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

VI. Real Property Tax Opt-Out

The Town of Elba hereby expressly rescinds that portion of Local Law No. 1 of 2020 that disallowed the tax exemptions provided for in Real Property Tax Law ("RPTL") § 487 and reinstates the real property tax exemptions provided for in RPTL § 487.

APPENDIX 1: LOT SIZE REQUIREMENTS

The following table displays the size requirements of the lot for Ground-Mounted Solar Energy Systems to be permitted.

Table 1: Lot Size Requirements

Zoning District	Tier 3 Solar Energy Systems
Residential	--
Business	≥ 5 acres*
Agricultural / Residential	≥ 5 acres*

Key:

--: Not Allowed

N/A: Not Applicable

* Where a Solar Energy System is proposed to be constructed on more than one contiguous participating property, the minimum lot size requirement may be satisfied by aggregating the lot sizes of all participating properties.

APPENDIX 2: HEIGHT REQUIREMENTS

The following table displays height requirements for each type of Solar Energy Systems. The height of systems will be measured from the highest natural grade below each solar panel.

Table 2: Height Requirements

	Tier 1 Roof-Mounted	**Tier 2**	**Tier 3**
Zoning District			
Residential	2’ above roof	10’	--
Business	4’ above roof	15’	20’
Agricultural / Residential	2’ above roof	15’	20’

Key:

--: Not Allowed