NEW YORK STATE
DEPARTMENT OF AGRICULTURE AND MARKETS

Guidelines for Agricultural Mitigation for Solar Energy Projects

The following guidelines apply to the construction, restoration, and follow-up monitoring of solar energy projects impacting agricultural land. Depending on the size of the project, the project sponsor should hire an Environmental Monitor to oversee the construction, restoration and follow-up monitoring in agricultural fields. The Environmental Monitor should be on site whenever construction or restoration work is occurring on agricultural land and should coordinate with the New York State Department of Agriculture and Markets (Ag. and Markets) to develop an appropriate schedule for inspections to assure that the goals of these guidelines are being met. The Environmental Monitor should maintain regular contact with the affected farmers and Ag. and Markets concerning farm resources and management matters pertinent to the agricultural operations and the site-specific implementation of these guidelines.

Siting Goals

Project sponsors should avoid the installation of solar arrays on the most valuable or productive farmland. The following is the order of importance for solar array avoidance:

Active Rotational Farmland (most important):
- comprised of Prime Farmland Soils
- comprised of Prime Farmland Soils (if drained)
- comprised of Soils of Statewide Importance

Permanent Hayland:
- comprised of Prime Farmland Soils
- comprised of Prime Farmland Soils (if drained)
- comprised of Soils of Statewide Importance

Improved Pasture:
- comprised of Prime Farmland Soils
- comprised of Prime Farmland Soils (if drained)
- comprised of Soils of Statewide Importance

Unimproved Pasture:
- comprised of Prime Farmland Soils
- comprised of Prime Farmland Soils (if drained)
- comprised of Soils of Statewide Importance

Other Support Lands:

- comprised of Prime Farmland Soils
- comprised of Prime Farmland Soils (if drained)
- comprised of Soils of Statewide Importance

Fallow/Inactive Farmland (least important):

- comprised of Prime Farmland Soils
- comprised of Prime Farmland Soils (if drained)
- comprised of Soils of Statewide Importance

Other considerations include impacts to fencing and watering systems associated with rotational grazing systems and reduction in farmland viability due to the reduction in remaining productive farmland.

Minimize impacts to normal farming operations by locating structures for overhead collection lines in nonagricultural areas and along field edges where possible. If structures must be located in active agricultural fields, they should be aligned with crop rows.

Avoid dividing larger fields into smaller fields, which are more difficult to farm. Locate access roads along the edge of agricultural fields (hedgerows and field boundaries) and in nonagricultural areas where possible.

Eliminate the need for cut and fill and reduce the risk of creating drainage problems by locating access roads, which cross agricultural fields, along ridge tops and by following field contours, where possible.

The permanent width of access roads in agricultural fields should be no more than 16 feet to minimize the loss of agricultural land.

Avoid all existing drainage and erosion control structures such as diversions, ditches, and tile lines or take appropriate measures to maintain the design and effectiveness of the existing structures. Repair any structures disturbed during construction to as close to original condition as possible, as soon as possible, unless such structures are to be eliminated based on a new design.

Construction Requirements

The surface of access roads constructed through agricultural fields should be level with the adjacent field surface.

Install culverts and waterbars to maintain natural drainage patterns.

Strip all topsoil from agricultural areas used for vehicle and equipment traffic, parking, and equipment laydown and storage areas. Limit all vehicle and equipment traffic and parking to the access road and/or designated work areas such as laydown areas. Do not allow

vehicles or equipment outside the work area without prior approval from the landowner and, when applicable, the Environmental Monitor.

The area of impact from the installation of electric cables can vary depending on the installation method and amount of disturbance. When an open trench is required for cable installation, topsoil stripping from the entire work area may be necessary. As a result, additional work space may be required.

Stockpile topsoil stripped from work areas (parking areas, electric cable trenches, along access roads) separate from other excavated material (rock and/or subsoil). At least 50 feet of temporary workspace is needed along "open-cut" electric cable trenches for proper topsoil segregation. All topsoil will be stockpiled immediately adjacent to the area where stripped/removed and shall be used for restoration on that particular site. Clearly designate topsoil stockpile areas in the field and on construction drawings.

Electric interconnect cables and transmission lines installed above ground can create long term interference with mechanized farming on agricultural land. As a result, interconnect cables should be buried in agricultural fields wherever practicable. Interconnect cables and transmission lines installed above ground should be located outside field boundaries wherever possible. When above ground cables and transmission lines must cross farmland, minimize agricultural impacts by using taller structures that provide longer spanning distances and locate poles on field edges to the greatest extent practicable.

All buried electric cables in cropland, hayland and improved pasture should have a minimum depth of forty-eight inches of cover. In unimproved grazing areas and land permanently devoted to pasture, the minimum depth of cover should be thirty-six inches. In areas where the depth of soil over bedrock ranges from zero to forty-eight inches, the electric cables should be buried entirely below the top of the bedrock or at the depth specified for the particular land use whichever is less. At no time should the depth of cover be less than twenty-four inches below the soil surface.

When buried electric cables alter the natural stratification of soil horizons and natural soil drainage patterns, rectify the effects with measures such as subsurface intercept drain lines. Consult the local Soil and Water Conservation District concerning the type of intercept drain lines to install to prevent surface seeps and the seasonally prolonged saturation of the cable installation zone and adjacent areas. Install all drain lines according to Natural Resource Conservation Service standards and specifications. Drain tile should meet or exceed the AASHTO M252 specifications.

Remove all excess subsoil and rock from the site. On-site disposal of such material should only be allowed if approved by the landowner, with appropriate consideration given to any possible agricultural or environmental impacts.*

In pasture areas, it may be necessary to construct temporary or permanent fences around work areas to prevent livestock access, consistent with landowner agreements.

Pick up all pieces of wire, bolts, and other unused metal objects and properly disposed of as soon as practical to prevent mixing with any topsoil.*

Excess concrete will not be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas.*

(*Any permits necessary for disposal under local, State and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.)

Restoration Requirements

All agricultural areas temporarily disturbed by construction should be decompacted to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. Soil compaction results should be no more than 250 pounds per square inch (PSI) as measured with a soil penetrometer. In areas where the topsoil was stripped, soil decompaction should be conducted prior to topsoil replacement. Following decompaction, remove all rocks 4 inches and larger in size from the surface of the subsoil prior to replacement of the topsoil. Replace the topsoil to original depth and reestablish original contours where possible. Remove all rocks 4 inches and larger from the surface of the topsoil. Subsoil decompaction and topsoil replacement should be avoided after October 1. All parties involved should be cognizant that areas restored after October 1st may not obtain sufficient growth to prevent erosion over the winter months. If areas are to be restored after October 1st, necessary provision should be made to restore and/or reseed any eroded or poorly germinated areas in the springtime, to establish proper growth.

Regrade all access roads to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the design.

Seed all restored agricultural areas with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.

Repair all surface or subsurface drainage structures damaged during construction to as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design. Correct any surface or subsurface drainage problems resulting from construction of the solar energy project with the appropriate mitigation as determined by the Environmental Monitor, Soil and Water Conservation District and the Landowner.

On affected farmland, postpone any restoration practices until favorable (workable, relatively dry) topsoil/subsoil conditions exist. Restoration should not be conducted while soils are in a wet or plastic state of consistency. Stockpiled topsoil should not be regraded and subsoil should not be decompacted until plasticity, as determined by the Atterberg field test is adequately reduced. No Project restoration activities should occur in agricultural fields between the months of October through May unless favorable soil moisture conditions exist.

Following restoration, remove all construction debris from the site.

Two Year Monitoring and Remediation

The Project Sponsor should provide a monitoring and remediation period of no less than two years immediately following the completion of initial restoration. The two year period allows for the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring determinations can be made. The monitoring and remediation phase is used to identify any remaining agricultural impacts associated with construction that are in need of mitigation and to implement the follow-up restoration.

General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed subsurface drain lines, fences, etc.

Topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the affected site. Determine~~d~~ excessive amounts of rock and oversized stone material by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. Remove and dispose of all excess rocks and large stones.

When the subsequent crop productivity within affected areas is less than that of the adjacent unaffected agricultural land, the Project Sponsor as well as other appropriate parties, should help to determine the appropriate rehabilitation measures to be implemented.

Decommissioning

If the use of the solar arrays is discontinued, remove all above ground structures and restore all areas previously used for agricultural production, according to recommendations by the landowner, the Soil and Water Conservation district, and Ag. and Markets . All concrete piers, footers, or other supports should be remove to a depth of 48 inches below the soil surface. Underground electric lines should be abandoned in place. Access roads in agricultural areas should be removed, unless otherwise specified by the landowner.

NEW YORK STATE | Department of Taxation and Finance

OFFICE OF COUNSEL

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RECENTLY ASKED QUESTIONS ABOUT THE REAL PROPERTY TAX LAW on the topic of SOLAR ENERGY SYSTEMS

This is the second in a series of Recently Asked Questions (RAQs) from local officials about the Real Property Tax Law. In this edition, we will focus on the taxability of ***solar energy systems*** *(i.e., solar panels and associated equipment), since we have received more questions on that general topic than any other over the last several months. We must emphasize, however, that the observations offered on the following pages are purely advisory, should not be equated to formal Opinions of Counsel, and should not be construed as binding in any way. Assessors and other local officials seeking definitive legal advice, or seeking guidance on how the law applies to a specific set of facts, are advised to consult their municipal attorneys.*

Introduction

A solar energy system is "real property" once it has been permanently affixed to land or a structure (Real Property Tax Law § 102(12)(b); *see also,* Metromedia, Inc. v. Tax Commission of the City of New York, 60 N.Y.2d 85, 468 N.Y.S.2d 457 (1983); 8 Op. Counsel SBEA No. 3). As such, it is taxable unless it qualifies for an exemption (Real Property Tax Law § 300).

There is an exemption statute that applies specifically to solar energy systems: Section 487 of the Real Property Tax Law (RPTL). Section 487, which also covers wind power systems and farm waste energy systems, generally provides a 15-year exemption from real property taxation for the increase in value resulting from the installation of a qualifying system. A number of questions have recently arisen concerning the application of this exemption statute.

Local Option

1. Must every municipality offer the § 487 exemption?

   A: No. Each municipality may decide for itself whether to offer the exemption. Unlike most other local option exemptions, however, this exemption applies within a municipality unless the municipality has taken action to disallow it.

2. How does the local option feature work?

   A: The local option that's attached to the § 487 exemption is structured as an opt-*out*, not an opt-in. That means that the exemption is automatically in effect within a municipality unless it has adopted a local law, ordinance or resolution providing that the exemption shall *not* be available therein. In municipalities that have taken no action one way or the other, the exemption is in effect. If a local law, ordinance or resolution opting out of the exemption is adopted, a copy must be filed with the New York State Department of Taxation and Finance and the New York State Energy Research and Development Authority (NYSERDA).

3. May an opt-out be made retroactive?

   A: No. If a municipality opts out, it is effectively disallowing the exemption to solar energy systems where construction had *not* begun by the effective date of the applicable local law, ordinance or resolution (or by 1/1/1991, if later). See § 487(8)(a). Where a system's construction *had* begun by that date, it is not impacted by the opt-out and is entitled to the exemption if otherwise qualified (though it may be obligated to make PILOTs under certain circumstances; see Q. 6-10, below).

   Note that for purposes of the § 487 exemption, the construction of a solar energy system is deemed to have begun upon the execution of a contract or interconnection agreement with a utility or, if applicable, upon the payment of a deposit thereunder. The owner or developer must give written notice to the appropriate municipalities when such a contract or agreement is executed. See § 487(8)(b).

4. If a municipality has opted out, may it restore the exemption later?

   A: Yes. If a municipality that had opted out wishes to begin offering the exemption later, we believe it may do so by repealing the local law, ordinance or resolution that opted out. This is not stated explicitly in the law, but we believe such authority is implicit in statutes of this nature, absent language to the contrary. A copy of any local law, ordinance or resolution restoring the exemption should be filed with both the Department of Taxation and Finance and NYSERDA.

5. May a municipal opt out of the exemption for commercial property while leaving it in place for residential property?

   A: No. If a municipality *does* opt out – i.e., if it adopts a local law disallowing the exemption – it must do so for *all* properties. It cannot allow the exemption for one type of property while disallowing it for another, because § 487(8) states that once a municipality has opted out, "*no* exemption under this section shall be applicable within its jurisdiction" (emphasis added). If a municipality does *not* opt out, however, the law *may* allow it to treat commercial and residential properties differently when deciding what their PILOT obligations should be; see Q. 8, below.

PILOTs

If a municipality does *not* opt out – *i.e.*, if it leaves the exemption in place – then qualifying solar energy systems constructed in the municipality will be exempt from taxation for a period of 15 years. However, the municipality then has the option to require the owners of such systems to enter into contracts to make payments in lieu of taxes, which are generally referred to as "PILOTs."

6. If a municipality leaves the exemption in place and requires owners to pay PILOTs, how much should those payments be?

   A: That is largely a local decision, except that the statute sets limits on how large these PILOTs may be, and on how long they may last. Specifically, it provides that the PILOTs may not exceed the taxes that would have been payable if the property were not exempt under § 487. It also provides that the period over which the PILOTs are to be paid may not exceed 15 years. See § 487(9)(a). In effect, then, if a municipality leaves the exemption in place and imposes the maximum allowable PILOT obligation, the owner will be making payments to the municipality in the same amount as if the property were fully taxable. The primary difference is that those payments will have the legal status of PILOTs rather than property taxes.

7. What is the maximum PILOT for a solar farm built on vacant land?

   A: We have heard it suggested that if a solar farm is built on vacant land, the PILOT may not exceed the amount of taxes that were payable on the vacant land immediately before the solar farm was built. In our view, that is not correct. The limit on the PILOTs in such an instance is the amount of taxes that would have been levied on the parcel as it now exists – that is, the land *with* the panels – if the municipality had opted out of the exemption.

8. May different PILOT requirements be imposed upon commercial and residential systems?

   A: While it is clear that a municipality may not opt out of the § 487 exemption for one type of property while leaving the exemption in place for another type (see Q. 5, above), it is less clear whether it may impose different PILOT requirements on different property types. RPTL § 487(9)(a) states simply that the municipality may require "*the* owner of *a* property" that qualifies for the exemption "to enter into *a* contract" to make PILOTs (emphasis added). This wording, which arguably frames the PILOT question as an individualized determination rather than a collective one, provides no guidance as to how owners should be treated relative to one another. While principles of equal protection would clearly preclude a municipality from drawing arbitrary distinctions between similarly-situated owners when setting their PILOT requirements, we believe the law may reasonably be read as leaving open the possibility of treating owners of different types of property differently, as long as there is a rational basis for doing so. Accordingly, if differential treatment is desired, we suggest that the issue be directed to the municipal attorney, who would have to be satisfied that any such differentiation could successfully be defended in the event of litigation.

9. May a municipality enter into a PILOT agreement that requires the owner of a solar energy system to provide the municipality with energy at a discounted rate, or that bases the PILOT payments upon the amount of energy produced by the system or the value of the system?

   A: Nothing in § 487 prohibits a municipality from structuring a PILOT as described above. However, as noted above (see Q. 6-7), § 487(9)(a) states that PILOT agreements may require annual payments in an amount *not to exceed* the amounts that would have been payable if not for the exemption. Therefore, no matter how the arrangement is structured, the PILOT obligation imposed upon the owner must comply with this limitation.

10. Our municipality received a notice stating that the sender of the notice intends to construct a solar energy system within our municipality. What is the significance of this notice?

    A: In some cases, a municipality that has not opted out of the § 487 exemption may need to take action to preserve its rights to collect PILOTs on exempt property. The law now provides that the owner or developer of a solar energy system may notify a municipality in writing that it intends to construct such a system. If an owner or developer does so, and the municipality wishes to collect PILOTs on that system, then within 60 days of receiving the notice of intent, the municipality must notify that owner or developer that it intends to require it to enter into a PILOT contract. See § 487(9)(a). Note that the law does not require an owner or developer to use a specific form or include specific language when giving a municipality notice of its intent to construct a solar energy system.

Ownership

11. May solar panels receive the § 487 exemption if they are not owned by the owner of the underlying land or building?

    A: Yes. There is no ownership requirement in § 487, so solar panels that otherwise qualify are entitled to the § 487 exemption even if they are owned by a third party.

12. Solar panels will be installed on property that is owned either by a municipality or by a public or private college. The panels themselves will be owned by a private entity, which will sell the electricity to the municipality or college at a discounted rate. Due to the 15-year limit on the § 487 exemption, it has been suggested that the panels may be granted a permanent exemption under the exemption statutes that apply to municipal corporations or non-profit educational organizations, rather than under § 487. Is this permissible?

    A: No. The real property tax exemptions that apply to municipalities and non-profit educational organizations are embodied in RPTL §§ 406 and 420-a, respectively. Each statute provides that in order to qualify for the exemption real property must be both (1) "owned by" the eligible owner (i.e., the municipality or educational organization) and (2) used for qualifying purposes. Since these panels will be used to generate low-cost electricity for the municipality or college, it may reasonably be argued that these panels will be used for qualifying purposes.

    However, the use requirement is just *one* of the requirements that must be satisfied to qualify for exemption under § 406 and § 420-a. In each case, the property must *also* be *owned by* the exempt entity in order to qualify for exemption. Where the panels are owned by a third party, they may not properly be granted a § 406 or § 420-a exemption. We understand there are policy arguments in favor of extending those exemptions to panels in these cases, but doing so would require a change in the wording of the statutes. Under current law, only the § 487 exemption is potentially applicable to such systems.

    Note that this analysis does not require the removal of the § 406 or § 420-a exemption from the land or buildings to which the panels will be attached. If that land or those buildings will remain under the ownership of the municipality or college, we see no reason why the § 406 or § 420-a exemption should be removed from the land or buildings in these cases.

Residential conservation improvements

13. There is a separate exemption statute for "residential conservation improvements," namely, RPTL § 487-a. Do solar energy systems qualify for this exemption?

    A: No. RPTL § 487-a states in its entirety:

    > Insulation and other energy conservation measures hereafter added to one, two, three or four family homes, which qualify for (a) financing under a home conservation plan pursuant to article VII-A of the public service law, or (b) any conservation related state or federal tax credit or deduction heretofore or hereafter enacted, shall be exempt from real property taxation and special ad valorem levies to the extent of any increase in value of such homes by reason of such addition.

    It is undeniable that solar systems offer many benefits, but energy "conservation" is not among them. A conservation measure leads to the use of *less* energy. Examples include installing better insulation or upgraded thermostats, replacing leaky windows or inefficient furnaces, etc. Those are the types of improvements that § 487-a was enacted to exempt, as the legislative history indicates (see, e.g., L.1977, c.858, § 1, "Legislative Findings").

    Solar systems are in a different category: They lead to the use of clean, renewable energy in place of energy generated from fossil fuels, but they do not necessarily lead to the use of less energy overall. In fact, solar systems may actually lead to the use of *more* energy, since beyond the fixed cost of installation, the electricity they produce is essentially free.

    Moreover, it is a broadly-accepted principle of statutory construction that specific legislative language takes precedence over general language. While § 487-a generally applies to

"insulation and energy conservation measures," § 487 specifically applies to solar energy systems (as well as wind and farm waste energy systems). In fact, both statutes were enacted in the same year, just a few weeks apart (L.1977, c.322 and c.858). It only stands to reason that § 487-a must have been intended to apply to improvements *other than* solar energy systems.

We are aware that in 1980, three years after § 487-a was enacted, solar energy systems were added to the list of improvements that could qualify for financing under a home conservation plan pursuant to Article VII-A of the Public Service Law (L.1980, c.557). An indirect effect of that amendment was to render solar energy systems eligible for the § 487-a exemption for as long as that financing was available. However, the Article VII-A home conservation financing program was terminated on June 1, 1986 by § 135-c(1) of the Public Service Law. That being so, we believe the 1980 amendment that briefly extended this financing program to solar energy systems has no legal significance today.

Accordingly, we do not believe that the § 487-a exemption may properly be extended to solar energy systems.

Real Property Tax Law § 487

§ 487. Exemption from taxation for certain solar or wind energy systems or farm waste energy systems. 1. As used in this section:

(a) "Solar or wind energy equipment" means collectors, controls, energy storage devices, heat pumps and pumps, heat exchangers, windmills, and other materials, hardware or equipment necessary to the process by which solar radiation or wind is (i) collected, (ii) converted into another form of energy such as thermal, electrical, mechanical or chemical, (iii) stored, (iv) protected from unnecessary dissipation and (v) distributed. It does not include pipes, controls, insulation or other equipment which are part of the normal heating, cooling, or insulation system of a building. It does include insulated glazing or insulation to the extent that such materials exceed the energy efficiency standards required by law.

(b) "Solar or wind energy system" means an arrangement or combination of solar or wind energy equipment designed to provide heating, cooling, hot water, or mechanical, chemical, or electrical energy by the collection of solar or wind energy and its conversion, storage, protection and distribution.

(c) "Authority" means the New York state energy research and development authority.

(d) "Incremental cost" means the increased cost of a solar or wind energy system or farm waste energy system or component thereof which also serves as part of the building structure, above that for similar conventional construction, which enables its use as a solar or wind energy or farm waste energy system or component.

(e) "Farm waste electric generating equipment" means equipment that generates electric energy from biogas produced by the anaerobic digestion of agricultural waste, such as livestock manure, farming waste and food processing wastes with a rated capacity of not more than one thousand kilowatts that is (i) manufactured, installed and operated in accordance with applicable government and industry standards, (ii) connected to the electric system and operated in conjunction with an electric corporation's transmission and distribution facilities, (iii) operated in compliance with the provisions of section sixty-six-j of the public service law, (iv) fueled at a minimum of ninety percent on an annual basis by biogas produced from the anaerobic digestion of agricultural waste such as livestock manure materials, crop residues and food processing wastes, and (v) fueled by biogas generated by anaerobic digestion with at least fifty percent by weight of its feedstock being livestock manure materials on an annual basis.

(f) "Farm waste energy system" means an arrangement or combination of farm waste electric generating equipment or other materials, hardware or equipment necessary to the process by which agricultural waste biogas is produced, collected, stored, cleaned, and converted into forms of energy such as thermal, electrical, mechanical or chemical and by which the biogas and converted energy are distributed on-site. It does not include pipes, controls, insulation or other equipment which are part of the normal heating, cooling or insulation system of a building.

2. Real property which includes a solar or wind energy system or farm waste energy system approved in accordance with the provisions of this section shall be exempt from taxation to the extent of any increase in the value thereof by reason of the inclusion of such solar or wind energy system or farm waste energy system for a period of fifteen years. When a solar or wind energy system or components thereof or farm waste energy system also serve as part of the building structure, the increase in value which shall be exempt from taxation shall be equal to the assessed value attributable to such system or components multiplied by the ratio of the incremental cost of such system or components to the total cost of such system or components.

3. The president of the authority shall provide definitions and guidelines for the eligibility for exemption of the solar and wind energy equipment and systems and farm waste energy equipment and systems described in paragraphs (a) and (b) of subdivision one of this section.

4. No solar or wind energy system or farm waste energy system shall be entitled to any exemption from taxation under this section unless such system meets the guidelines set by the president of the authority and all other applicable provisions of law.

5. The exemption granted pursuant to this section shall only be applicable to solar or wind energy systems or farm waste energy systems which are (a) existing or constructed prior to July first, nineteen hundred eighty-eight or (b) constructed subsequent to January first, nineteen hundred ninety-one and prior to January first, two thousand twenty-five.

6. Such exemption shall be granted only upon application by the owner of the real property on a form prescribed and made available by the commissioner in cooperation with the authority. The applicant shall furnish such information as the commissioner shall require. The application shall be filed with the assessor of the appropriate county, city, town or village on or before the taxable status date of such county, city, town or village. A copy of such application shall be filed with the authority.

7. If the assessor is satisfied that the applicant is entitled to an exemption pursuant to this section, he or she shall approve the application and enter the taxable assessed value of the parcel for which an exemption has been granted pursuant to this section on the assessment roll with the taxable property, with the amount of the exemption as computed pursuant to subdivision two of this section in a separate column. In the event that real property granted an exemption pursuant to this section ceases to be used primarily for eligible purposes, the exemption granted pursuant to this section shall cease.

8. (a) Notwithstanding the provisions of subdivision two of this section, a county, city, town or village may by local law or a school district, other than a school district to which article fifty-two of the education law applies, may by resolution provide that no exemption under this section shall be applicable within its jurisdiction with respect to any solar or wind energy system or farm waste energy system which began construction subsequent to January first, nineteen hundred ninety-one or the effective date of such local law, ordinance or resolution, whichever is later. A copy of any such local law or resolution shall be filed with the commissioner and with the president of the authority.

(b) Construction of a solar or wind energy system or a farm waste energy system shall be deemed to have begun upon the full execution of a contract or interconnection agreement with a utility; provided however, that if such contract or interconnection agreement requires a deposit to be made, then construction shall be deemed to have begun when the contract or interconnection agreement is fully executed and the deposit is made. The owner or developer of such a system shall provide written notification to the appropriate local jurisdiction or jurisdictions upon execution of the contract or the interconnection agreement.

9. (a) A county, city, town, village or school district, except a school district under article fifty-two of the education law, that has not acted to remove the exemption under this section may require the owner of a property which includes a solar or wind energy system which meets the requirements of subdivision four of this section, to enter into a contract for payments in lieu of taxes. Such contract may require annual payments in an amount not to exceed the amounts which would otherwise be payable but for the exemption under this section. If the owner or developer of such a system provides written notification to a taxing jurisdiction of its intent to construct such a system, then in order to require the owner or developer of such system to enter into a contract for payments in lieu of taxes, such taxing jurisdiction must notify such owner or developer of its intent to require a contract for payments in lieu of taxes within sixty days of receiving the written notification.

(b) The payment in lieu of a tax agreement shall not operate for a period of more than fifteen years, commencing in each instance from the date on which the benefits of such exemption first become available and effective.

FACT SHEET

UNDERSTANDING SOLAR INSTALLATIONS IN AGRICULTURAL DISTRICTS

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Navigate the development of solar projects, also known as photovoltaic or PV, in accordance with local and New York State agricultural policies.

Many local governments are implementing strategies to review solar installations within their community by updating their comprehensive plan and adopting zoning requirements for the siting, installation, and decommissioning of large-scale solar arrays. To protect productive farmland, municipalities should consider siting the non-farm solar energy projects on less productive land. There is a distinction between farm-related solar systems, and solar systems built on agricultural land that primarily serve off-site uses.

What is an agricultural district?

New York State's Agriculture and Markets Law provides a bottoms-up approach for the protection of viable farmland by including land within an Agricultural District. Landowners petition the County Legislature to include their land into an Agricultural District, affected municipalities are notified, a public hearing is held, and the County Legislature creates or modifies an Agricultural District by adding or removing land from the District. Farm operations located within an Agricultural District are provided certain protections, such as limited protection from eminent domain and condemnation; unreasonably restrictive local rules, regulations, laws, and ordinances; agricultural assessment; protection from private nuisance lawsuits; and other benefits.

What is an agricultural assessment?

An agricultural assessment is an assessed value placed on eligible land that is used for agricultural production, based on the land's ability to produce a crop. The taxes paid on the property by the owner are based on the agricultural assessment.

Land inside and outside of an agricultural district is eligible for an agricultural assessment. To qualify, farmers must produce crops, livestock, or livestock products on seven plus acres of land and have an average gross sales of $10,000 in the prior two years. Land that is used in agricultural production that has less than seven acres in production must have an average gross sales of $50,000 in the prior two years.

Additionally, a land owner receiving an agricultural assessment inside an agricultural district annually commits the land to an agricultural use for the next five years, or eight years if located outside of an agricultural district. Farmland outside agricultural districts are generally not eligible for other agricultural district benefits and protections.

What protections do agricultural districts offer farm-related solar?

The Department of Agriculture and Markets considers solar panel systems to be "on-farm" equipment when they are designed, installed, and operated so that the anticipated annual total amounts of electrical energy generated do not exceed the anticipated annual total electrical needs of the farm by more than 110 percent. If a local government classifies solar equipment as structures or buildings, they are deemed on-farm buildings. As on-farm equipment or buildings, the installation of solar panel systems are protected under the Agricultural Districts Law.

To ensure that the electrical output of solar equipment does not exceed the 110-percent threshold, an initial energy assessment may be required to separate farm-related energy consumption from other uses.

Further, if the solar equipment is connected by remote net metering, multiple meters must be combined to determine the electrical needs of on-farm equipment.

What laws are generally considered reasonable for on-farm solar?

Reasonable regulations for solar development include:

- A streamlined site plan review process that involves a shorter review period and fewer submission requirements.
- A building/zoning permit and compliance with the State's Fire Prevention and Building Code requirements.

What laws are generally considered "overly restrictive" for on-farm solar?

"Overly restrictive" regulations for solar development include:

- Extensive site plan regulations.
- Special use permit regulations.
- Nonconforming use requirements.
- Height restrictions and excessive setbacks from buildings and property lines.
- A Full Environmental Assessment Form (on-farm solar development is considered a Type II action in the State Environmental Quality Review (SEQR) process, which does not require EAF preparation).
- Visual impact assessments.
- Prohibiting the construction of on-farm, solar generated electricity to offset the energy demands of the farm.

Are there penalties for converting farmland to solar if that development primarily serves off-site uses?

A conversion penalty is imposed if farmland that is subject to an agricultural assessment is located in an agricultural district and is converted to a nonagricultural use within five years of the last agricultural assessment (or eight years if the farmland is located outside an agricultural district). No conversion penalty is imposed if agricultural land is converted for oil, gas, or wind energy development that does not support agricultural production. Because solar energy is not included in this exemption, the conversion penalty could apply if electrical output of solar equipment substantially exceeds (e.g., is more than 110 percent of) a farm's anticipated electrical needs.

The assessor determines whether a conversion has occurred on the basis of the facts of each case:

- Conversion is defined as "an outward or affirmative act changing the use of agricultural land" to a nonagricultural use, in New York State's Agriculture and Markets Law.
- A conversion penalty involves a payment to capture the tax savings a property owner received while the land was under an agricultural assessment. This is limited to a five year roll-back as specified in New York State's Agriculture and Markets Law.
- Conversion payments are equal to five times the taxes saved in the most recent year that the land received an agricultural assessment, plus interest.

When only a portion of a parcel is converted, the assessor apportions the real property tax assessment and the agricultural assessment, determines the tax savings attributable to the converted portion, and computes the conversion payment based on that portion. If the remaining land within a parcel is used for agricultural purposes and the eligibility criteria are met, that land may still receive an agricultural assessment.

Payments for the conversion of agricultural land to nonagricultural use are added to the taxes of the converted land. Properties may be subject to a tax sale if conversion penalty payments are not made. These payments generally become the landowner's responsibility at the time of conversion. Failure to notify may result in a penalty of two times the payments owed, to a maximum of $1,000.

Questions?

Email info@training.ny-sun.ny.gov for more information about your municipality's individual situation.

Resources

NYS Department of Agriculture and Markets Agricultural Districts
www.agriculture.ny.gov/ap/agservices/agdistricts.html

NYS Department of Agriculture and Markets Guidelines for Review of Local Zoning and Planning Laws
www.agriculture.ny.gov/ap/agservices/guidancedocuments/305-aZoningGuidelines.pdf

NYS Department of Agriculture and Markets Guidelines for Review of Local Laws Affecting Small Wind Energy Production Facilities and Solar Devices
www.agriculture.ny.gov/ap/agservices/guidancedocuments/Guidelines_for_Solar_and_Small_Wind_Energy_Facilities.pdf

NYS Department of Taxation and Finance Agricultural Assessment Information
www.tax.ny.gov/research/property/assess/valuation/agindex.htm

NYS Department of Taxation and Finance Agricultural Assessment Overview and Conversion Penalties
www.tax.ny.gov/research/property/assess/valuation/ag_overview.htm

NY-Sun, a dynamic public-private partnership, will drive growth in the solar industry and make solar technology more affordable for all New Yorkers. NY-Sun brings together and expands existing programs administered by the New York State Energy Research and Development Authority (NYSERDA), Long Island Power Authority (LIPA), PSEG Long Island, and the New York Power Authority (NYPA), to ensure a coordinated, well-supported solar energy expansion plan and a transition to a sustainable, self-sufficient solar industry.

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FACT SHEET

LANDOWNER CONSIDERATIONS FOR SOLAR LAND LEASES

New York's solar market is growing fast–575% in the last four years alone–so demand for sites to install large-scale solar electric systems is high. Across New York State, solar developers are contacting farmers and landowners to secure long-term land leases for siting solar arrays. The amount of land desirable for a lease generally ranges from 10 to 30 acres, depending upon the size of the solar array.

Before considering such a lease or contract, you should know installing solar panels on farmland may trigger a "conversion penalty" and may increase the taxable value of the overall property. To fully understand the impact of these factors, landowners are urged to consult with an attorney and their municipal assessor before signing any documents.

What is shared solar?

NY-Sun, Governor Andrew M. Cuomo's initiative to add more than 3GW of installed solar capacity in New York State by 2023, encourages and supports the installation of solar arrays to generate clean and renewable energy statewide. Tens of thousands of New Yorkers have already put solar panels on their homes. Many buildings, however, are not suited for solar panels due to shading, roof condition, or other factors. New Yorkers now have the opportunity to subscribe to larger "shared solar" systems. Shared Solar provides opportunities for renters, homeowners, businesses, and municipalities to subscribe to a portion of shared solar energy projects. The siting of these systems is creating an even greater interest in the leasing of farmland.

Is solar right for your land?

The size of a solar installation is measured by its capacity to produce energy. A 1-megawatt (MW) installation will generate approximately 1,174,000 kilowatt hours (kWh is how electricity usage is measured on your utility bill) each year. A 1-MW system will generally require about six acres of land for 3,000 to 4,000 individual solar panels, and will cost $2 million to $3 million to build. Systems built on open land will connect directly to the electric grid and will have their own utility meter. Solar panels are typically warrantied for 25 years, but a system can last longer than that if panels are replaced over time.

What are the per acre lease rates?

Rates can vary. If you are approached by a developer or have interest in leasing your land, research the going rate for land leases in your area. Contact multiple solar developers to gauge interest in your land. Certain site characteristics are especially attractive for solar development, such as cleared land that is south-facing with road access and in close proximity to the substation. Do research online about solar lease rates in other areas and consider working with a real estate professional.

Prior to signing a lease with a solar developer, landowners should examine possible tax consequences and issues associated with the construction of roads, fencing, and electrical poles. Landowners should consider asking an attorney to carefully examine the land lease terms.

Do you receive an agricultural assessment on your property?

Under the Agriculture and Markets Law, if a landowner receives an agricultural assessment and converts the land to a nonagricultural use, the landowner may be subject to a monetary payment for converting the land. A conversion of land is "an outward or affirmative act changing the use of agricultural lands" (AML §301(8)).

Municipal assessors are responsible for tracking conversions when they occur. Landowners are also required to notify the assessor within 90 days whenever a parcel receiving an agricultural assessment is converted to a nonagricultural use. A fine of up to $1,000 can be levied against a landowner who fails to report the conversion.

Who is responsible for paying a conversion penalty?

The landowner on record is responsible for paying the conversion penalty. Your assessor can work with you to determine what the conversion penalty may cost. Make sure you know where the solar array will be placed on your property so that a comparative analysis of benefited acres versus total converted acres, by mineral, organic, and farm woodland soil groups can be determined.

Are solar panels considered real property and taxable?

Yes. A solar energy system is "real property" once it has been permanently affixed to land or a structure [Real Property Tax Law (RPTL) § 102(12)(b); 8 Op. Counsel SBEA No. 3]. The definition of "real property" also includes a "power generating apparatus" [RPTL §102(12)(f)]. As such, it is taxable unless it qualifies for an exemption (RPTL § 300).

Will the siting and construction of a solar array on my property affect other taxes?

Possibly. The assessor must determine the contributory value of the solar array to the value of your property. If the value of the converted acreage devoted to the solar array increases, it may affect your taxes. An increase in taxable value may affect your county, town, village, and school taxes as well as other taxes that may be levied, such as highway, fire, ambulance, library, lighting district, drainage district, and other taxes and levies. It may also affect special district taxes for municipal water and sewer districts if the land is no longer predominantly used for agricultural purposes.

Isn't there an exemption from the payment of school, county, town, and village taxes for solar arrays?

Possibly. There is an exemption statute in State Law that applies specifically to solar energy systems: Section 487 of the RPTL. Section 487, which also covers wind power systems and farm waste energy systems, provides a 15-year exemption from real property taxation for the increase in value resulting from the installation of a qualifying system. However, the statute allows municipalities and school districts to opt-out of this exemption. To find out if your county, town, village, and/or school district has opted out, talk to your local tax assessor.

Further information may be found on the following web sites:

tax.ny.gov/research/property/legal/localop/487opt.htm to read Frequently Asked Questions concerning the solar energy system exemption and statute.

New York State Taxation and Finance web page: **tax.ny.gov/pdf/publications/orpts/legal/raq2.pdf?_ga=1.190577835.1031257166.1423842465** (Note: to obtain updated information talk to your assessor.)

If my lease exceeds the 15-year exemption, what happens to my tax bill?

Leases beyond 15 years will likely have an effect on your tax liabilities going forward. Absent the exemption, the local government may seek to value the solar array at full value.

This assessment would again depend upon the contributory value of the solar array on your property at year 16. This question should be discussed with your local tax assessor.

What are other potential impacts that I should be aware of?

Solar arrays must be connected to the electrical grid, which may require the installation of power poles. Landowners should make sure that pole placement and the height of the wire will not interfere with their ability to farm the land. The same can be said concerning the siting of access roads. Make sure the access road is constructed so that it does not shed water onto your fields and that the finished grade does not interfere with normal drainage patterns. Also, ask about the material used to finish the surface of the access road. Will the size of the stone interfere with the operation of your equipment if some of it ends up in your field? See if the access road can be used by you and your farm equipment to access your property. Design the road so that it also serves both your needs and that of the solar company. Be sure to discuss these aspects of the construction of the solar project with the developer before you sign the lease.

Who is responsible for dismantling the solar array once the lease expires or is not renewed?

In the contract, make sure that there are provisions that determine who is responsible for dismantling the facility if the company is no longer in business or if the solar array ages out and is no longer viable, ensuring the property is returned to its pre-leased condiition.

What if I do not like the area of my property that the solar company has selected for their lease?

If you are interested in the possibility of a lease to a solar company, talk to them about the siting of the solar arrays on your property. Does it have to be placed on your best farmland (such as on Soil Groups 1-4)? Can the solar arrays be placed on land that is not suited for agricultural production, such as support land, sloping pasture, or underutilized areas of the farm? Can the land beneath the solar arrays be planted with crops or grazed by non-climbing animals? There are a number of possibilities that should be explored. Think about how the siting of a solar array on your property can benefit your farm operation and ask questions.

Does the town where I live have local laws that regulate the siting of solar facilities?

Possibly. Some municipalities have provisions in their zoning code to address the siting of solar arrays within the community. Other municipalities have placed a temporary freeze on the siting and installation of such facilities until they have decided on the best method to review and/or regulate the use within the town or village. Some municipalities are also in the process of drafting amendments to their zoning code to address this issue. Resources for local governments can be found at the NY-Sun PV Trainers Network website: **training.ny-sun.ny.gov**.

What can I do and how can I influence the local process?

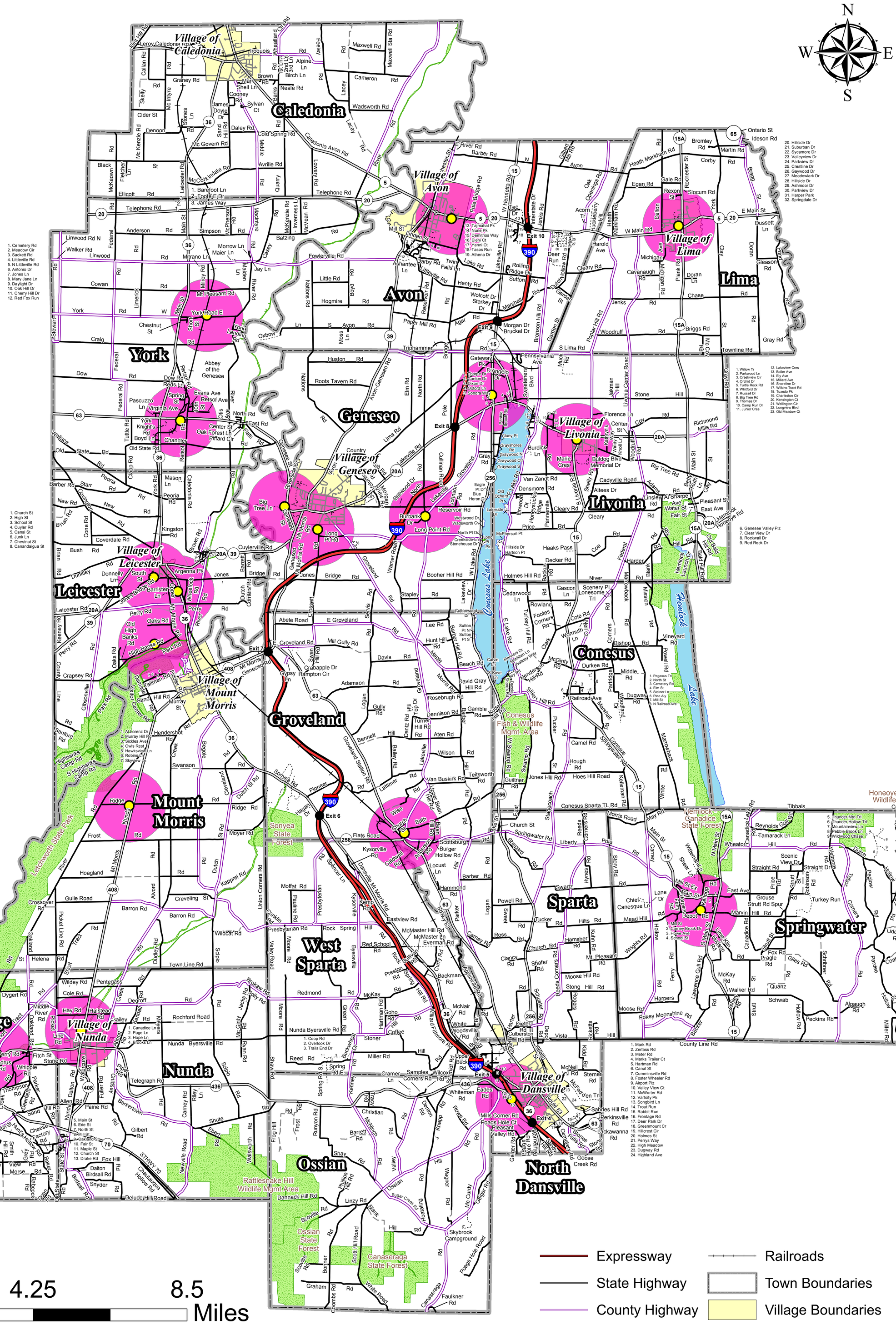
Become or stay involved. If you do not participate in the local process, your point of view cannot be heard. Also, speak with your assessor to determine what impact the siting of a solar array may have on your farm or property and the bottom line (taxes versus lease payments).

NYSERDA

Agriculture and Markets

Visit NY-SUN.NY.GOV or call 1-866-NYSERDA to learn more about NY-Sun.

Electric Substations with 1 Mile Buffer



Map prepared by the Livingston County Planning Department: February 2016
Source: Livingston County Real Property Tax, 2015
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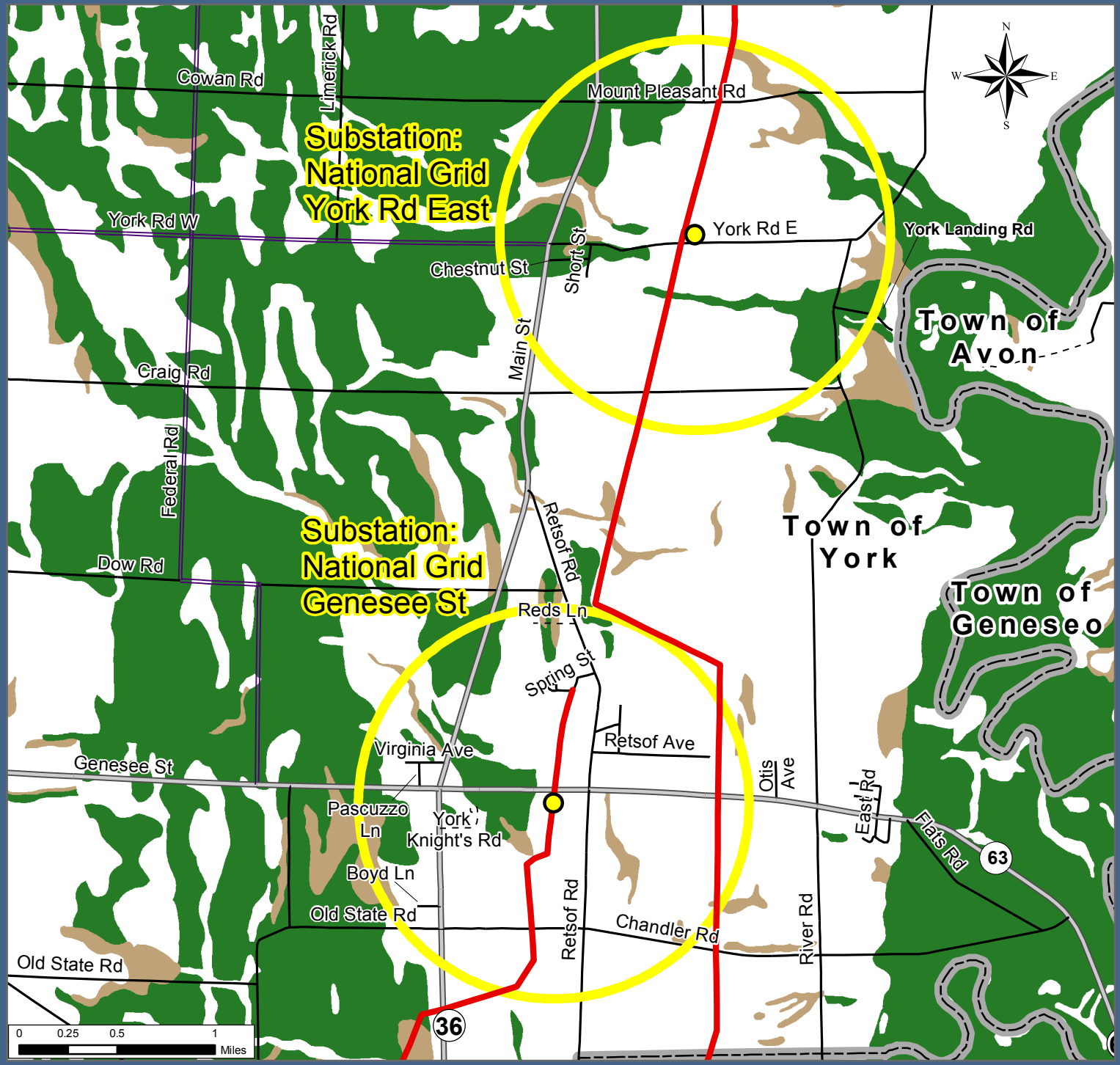
Town of York

Electric Substations and Power Lines

- Electric Substation
- Power Lines
- State Highway
- County Highway
- Town Road
- Private Road
- Seasonal Road
- 1 mile
- Town Boundary
- Prime Farmland
- Farmland of statewide importance



Map prepared by the Livingston County Planning Department: December 2017

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