

Model Policy 1

Draft Legislative Language

Responsibilities and Conditions for Local Governments

Related to Large Scale Solar Siting & Permitting

The appropriate local governments law is amended as follows:

Sec. 1. Commercial solar energy facilities.

(a) As used in this Section:

(1) "Commercial solar energy facility" means any device or assembly of devices that (i) is ground installed and (ii) uses solar energy from the sun for generating electricity for the primary purpose of wholesale or retail sale and not primarily for consumption on the property on which the device or devices reside.

(2) "Facility owner" means (i) a person with a direct ownership interest in a commercial solar energy facility, or both, regardless of whether the person is involved in acquiring the necessary rights, permits, and approvals or otherwise planning for the construction and operation of the facility, and (ii) at the time the facility is being developed, a person who is acting as a developer of the facility by acquiring the necessary rights, permits, and approvals or by planning for the construction and operation of the facility, regardless of whether the person will own or operate the facility.

(3) "Nonparticipating property" means real property that is not a participating property.

(4) "Nonparticipating residence" means a residence that is located on nonparticipating property and that is existing and occupied on the date that an application for a permit to develop the commercial solar energy facility is filed with the authority having jurisdiction.

(5) "Occupied community building" means any one or more of the following buildings that is existing and occupied on the date that the application for a permit to develop the commercial solar energy facility is filed with the authority having jurisdiction: a school, place of worship, day care facility, public library, or community center.

(6) "Participating property" means real property that is the subject of a written agreement between a facility owner and the owner of the real property that provides the facility owner an easement, option, lease, or license to use the real property for the purpose of constructing a commercial solar energy facility, or supporting facilities. "Participating property" also includes real property that is owned by a facility owner for the purpose of constructing a commercial solar energy facility, or supporting facilities.

(7) "Participating residence" means a residence that is located on participating property and that is existing and occupied on the date that an application for a permit to develop the commercial solar energy facility is filed with the authority having jurisdiction.

(8) "Protected lands" means real property that is:

(1) subject to a permanent conservation right;

or

(2) registered or designated as a nature preserve, buffer, or land and water reserve.

(9) "Supporting facilities" means the transmission lines, substations, access roads, meteorological towers, storage containers, and equipment associated with the generation and storage of electricity by the commercial solar energy facility.

(b) Notwithstanding any other provision of law or whether the authority having jurisdiction has formed a zoning commission and adopted formal zoning, an authority having jurisdiction may establish standards for commercial solar energy facilities. The standards may include all of the requirements specified in this Section but may not include requirements for commercial solar energy facilities that are more restrictive than specified in this Section. An authority having jurisdiction may also regulate the siting of commercial solar energy facilities with standards that are not more restrictive than the requirements specified in this Section in unincorporated areas of the authority having jurisdiction that are outside the zoning jurisdiction of a municipality and that are outside the 1.5-mile radius surrounding the zoning jurisdiction of a municipality.

(c) If an authority having jurisdiction has elected to establish standards under subsection (b), before the authority

having jurisdiction grants siting approval or a special use permit for a commercial solar energy facility, or modification of an approved siting or special use permit, the authority having jurisdiction in which the facility is to be sited or the zoning board of appeals for the authority having jurisdiction shall hold at least one public hearing. The public hearing shall be conducted in accordance with the (Relevant State Open Meetings Law) and shall be held not more than 45 days after the filing of the application for the facility. The authority having jurisdiction shall allow interested parties to a special use permit an opportunity to present evidence, but the authority having jurisdiction may impose reasonable restrictions on the public hearing, including reasonable time limitations on the presentation of evidence. The authority having jurisdiction shall also allow public comment at the public hearing in accordance with the Relevant Open Meetings Law. The authority having jurisdiction shall make its siting and permitting decisions not more than 30 days after the conclusion of the public hearing. Notice of the hearing shall be published in a newspaper of general circulation in the authority having jurisdiction.

(d) An authority having jurisdiction with an existing zoning ordinance in conflict with this Section shall amend that zoning ordinance to be in compliance with this Section within 120 days after the effective date of this Act.

(e) An authority having jurisdiction may require:

(1) a commercial solar energy facility to be sited as follows, with setback distances measured from the nearest edge of any component of the facility:

Setback Description	Setback Distance
Occupied Community Buildings and Dwellings on Nonparticipating Properties	150 feet from the nearest point on the outside wall of the structure
Boundary Lines of Participating Property	None
Public Road Rights-of-Way	50 feet from the nearest edge
Boundary Lines of	50 feet to the nearest

Nonparticipating Property

point on the property
line of the nonparticipating
property

(2) a commercial solar energy facility to be sited so that the facility's perimeter is enclosed by fencing having a height of at least 6 feet and no more than 25 feet; and

(3) a commercial solar energy facility to be sited so that no component of a solar panel has a height of more than 20 feet above ground when the solar energy facility's arrays are at full tilt.

The requirements set forth in this subsection (e) may be waived subject to the written consent of the owner of each affected nonparticipating property.

(f) An authority having jurisdiction may not set a sound limitation for any components in commercial solar energy facility that is more restrictive than the sound limitations established by the (Relevant State Environmental Agency).

(g) An authority having jurisdiction may not place any restriction on the installation or use of a commercial solar energy facility unless it adopts an ordinance that complies with this Section. An authority having jurisdiction may not establish siting standards for supporting facilities that preclude development of commercial solar energy facilities. A request for siting approval or a special use permit for a commercial solar energy facility, or modification of an approved siting or special use permit, may be approved if the request is in compliance with the standards and conditions imposed in this Act, the zoning ordinance adopted consistent with this Code, and the conditions imposed under State and federal statutes and regulations.

(h) An authority having jurisdiction may not adopt zoning regulations that disallow, permanently or temporarily, commercial solar energy facilities from being developed or operated in any district zoned to allow agricultural or industrial uses.

(i) An authority having jurisdiction may not adopt zoning regulations that limit, permanently or temporarily, the number of, or density of, commercial solar energy facilities from being

developed or operated in any district zoned to allow agricultural or industrial uses.

(j) An authority having jurisdiction may not require permit application fees for a commercial solar energy facility that are unreasonable. All application fees imposed by the authority having jurisdiction shall be consistent with fees for projects in the authority having jurisdiction with similar capital value and cost.

(k) Except as otherwise provided in this Section, an authority having jurisdiction shall not require standards for construction, decommissioning, or deconstruction of a commercial solar energy facility or related financial assurances that are unreasonable or preclude development of commercial solar energy facilities. The amount of any decommissioning payment shall be limited to the cost identified in the decommissioning or deconstruction plan minus the salvage value of the project.

(l) An authority having jurisdiction may not condition approval of a commercial solar energy facility on a property value guarantee and may not require a facility owner to pay into a neighboring property devaluation escrow account.

(m) An authority having jurisdiction may require certain vegetative screening surrounding a commercial solar energy facility but may not require earthen berms or similar structures.

(n) An authority having jurisdiction may require that a commercial solar energy facility owner provide the results of the United States Fish and Wildlife Service's Information for Planning and Consulting environmental review or a comparable successor tool that is consistent with any applicable United States Fish and Wildlife Service solar wildlife guidelines that have been subject to public review.

(o) An authority having jurisdiction may require a commercial solar energy facility to adhere to the recommendations provided by the (Relevant State Environmental Agency) regarding the protection of endangered or threatened flora or fauna.

(p) An authority having jurisdiction may require a facility owner to:

(1) demonstrate avoidance of protected lands as identified by the (Relevant State Agency); or

(2) consider the recommendations of the (Relevant State Agency) for setbacks from protected lands.

(q) An authority having jurisdiction may require that a facility owner provide evidence of consultation with the (Relevant State Historic Preservation Agency) to assess potential impacts on State-registered historic sites.

(r) To maximize community benefits, including, but not limited to, reduced stormwater runoff, flooding, and erosion at the ground mounted solar energy system, improved soil health, and increased foraging habitat for game birds, songbirds, and pollinators, an authority having jurisdiction may (1) require a commercial solar energy facility owner to plant, establish, and maintain for the life of the facility vegetative ground cover and (2) require the submittal of a vegetation management plan in the application to construct and operate a commercial solar energy facility in the authority having jurisdiction.

No later than 90 days after the effective date of this Act the (Relevant State Environmental Agency) shall develop guidelines for vegetation management plans that may be required under this subsection for commercial solar energy facilities. The guidelines must include guidance for short-term and long-term property management practices that provide and maintain native and non-invasive naturalized perennial vegetation to protect the health and well-being of pollinators.

(s) If a facility owner enters into a road use agreement with the (Relevant State Transportation Agency), a road district, or other unit of local government relating to a commercial solar energy facility, the road use agreement shall require the facility owner to be responsible for (i) the reasonable cost of improving roads used by the facility owner to construct the commercial solar energy facility and (ii) the reasonable cost of repairing roads used by the facility owner during construction of the commercial solar energy facility so that those roads are in a condition that is safe for the driving public after the completion of the facility's construction. Roadways improved in preparation for and during the construction of the commercial solar energy facility shall be repaired and restored to the improved condition at the reasonable cost of the

developer if the roadways have degraded or were damaged as a result of construction-related activities.

The road use agreement shall not require the facility owner to pay costs, fees, or charges for road work that is not specifically and uniquely attributable to the construction of the commercial solar energy facility. Road-related fees, permit fees, or other charges imposed by the (Relevant State Transportation Agency), a road district, or other unit of local government under a road use agreement with the facility owner shall be reasonably related to the cost of administration of the road use agreement.

(t) The amendments to this Section adopted in this Act do not apply to (1) an application for siting approval or for a special use permit for a commercial solar energy facility if the application was submitted to a unit of local government before the effective date of this Act.

This Act shall take effect immediately.