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Town of Fremont

Local Law No. _____ of the year 2019

A LOCAL LAW CONCERNING SOLAR PHOTOVOLTAIC INSTALLATIONS

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1 PURPOSE

The purpose of this local law is to address new Tier 1 (small scale) and Tier 2 or Tier 3 (large scale) solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.

The provisions set forth in this section shall apply to the construction, operation, and/or repair of Tier 1, Tier 2 and Tier 3 ground-mounted solar photovoltaic installations.

2 AUTHORITY

This Solar Energy Local Law is adopted pursuant to Town of Fremont Land Use Law #1 of 2005, adopted May 10, 2005, Road Use Law and Section 20 of the Municipal Home Rule Law of the State of New York, which authorizes the Town of Fremont to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the 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 therefore.”

3 APPLICABILITY

This section applies to Tier 2 or Tier 3 ground-mounted and Tier 1 roof or ground mounted solar photovoltaic installations.

- A. The requirements of this Local Law shall apply to all Solar Energy Systems permitted, installed, or modified in Town of Fremont after the effective date of this Local Law, excluding general maintenance and repair.
- B. Solar Energy Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.
- C. Modifications to an existing Solar Energy System that increase the Solar Energy System area by more than five percent [5%] of the original area of the Solar Energy System (exclusive of moving any fencing) shall be subject to this Local Law.
- D. 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 Town of Fremont Code.

4 DEFINITIONS

BUILDING-INTEGRATED SOLAR ENERGY (BIPV) SYSTEM: A combination of Solar Panels and Solar Energy Equipment 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.

BUILDING PERMIT: A construction permit shall be issued by an authorized building inspector. The building permit evidences that the project is consistent with the state and federal building codes as well as local zoning laws.

DAY(S): Day or Days are calendar days unless specifically noted.

COMMUNITY SOLAR ARRAYS: Centralized solar facilities owned by a group of individuals who receive credits on their electricity bills for the power produced. Members of an array are residential and commercial customers of the utility partner offering the program.

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 that is anchored to the ground via a pole or other mounting system, detached from any other structure that generates electricity for onsite or offsite consumption.

HEIGHT: The height of a solar collector is calculated as perpendicular from the ground to the highest point.

NET-METERING: A billing arrangement that allows solar customers to get credit for excess electricity that they generate and deliver back to the grid so that they only pay for their net electricity usage at the end of each billing cycle.

ON-SITE SOLAR PHOTOVOLTAIC INSTALLATION: A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur.

PHOTOVOLTAIC (PV) SYSTEMS: A solar energy system that produces electricity by use of semiconductor devices, called photovoltaic cells that generate electricity whenever light strikes them.

POWER PURCHASING AGREEMENT (PPA): An electricity power agreement is a contract between two or more parties, one of which agrees to generate electricity (the seller) and the other(s) who is looking to purchase electricity (the buyer). The PPA defines all the commercial terms for the sale of electricity between the two parties, including when the project will begin commercial operation, schedule for delivery of electricity, payment terms, and termination.

RATED NAMEPLATE CAPACITY: The maximum rated output of electric power production of the Photovoltaic system in Direct Current (DC).

ROOFTOP OR BUILDING MOUNTED SOLAR PHOTOVOLTAIC SYSTEM: A solar collector mounted on top of the structure of a roof either as a flush mount system or as modules fixed to frames.

SITE PLAN REVIEW: review by the Site Plan Review Authority to determine conformance with local zoning laws.

SITE PLAN REVIEW AUTHORITY: For purposes of this local law, Site Plan Review Authority refers to the Fremont Zoning Board of Appeal (ZBA) or body of local government designated as such by the municipality.

SOLAR ACCESS: Space open to the sun and clear of overhangs or shade including the orientation of street and lots to the sun to permit the use of active and / or passive solar energy systems on individual properties.

SOLAR COLLECTOR: A solar photovoltaic cell, panel, or array, or solar hot air or water collector device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.

SOLAR EASEMENT: An easement recorded pursuant to New York Consolidated Law Real Property Law 335-b, the purpose of which is to secure the right to receive sunlight across real property of another for continued access to sunlight necessary to operate a solar collector.

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, or Tier 3 Solar Energy System as follows:

- A. Tier 1 Solar Energy Systems include the following: a. Roof-Mounted Solar Energy Systems and b. Building-Integrated Solar Energy Systems with name plate capacity of less than 25 kWAC,
- B. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems with a total surface area of all solar panels on the lot of up to [4,000] square feet and that generate up to [110]% of the electricity consumed on the site 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.

FREMONT TOWN BOARD : The board charged with enforcing the zoning laws.

5 GENERAL REQUIREMENTS FOR ALL SOLAR POWER GENERATION INSTALLATIONS

5.1 Compliance with Laws, Ordinances and Regulations

The construction and operation of solar photovoltaic installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code.

A Building Permit shall be required for installation of all Solar Energy Systems. Issuance of permits and approvals by the Reviewing Board for Tier 2 and Tier 3 solar photovoltaic installation shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 (“SEQRA”)].

Town of Fremont Local laws including but not limited to the following:

- Land Use Law No. 1 2005
- Current Road Use Agreement

5.2 Tier 1 Scale Solar Power Generation Installations

Rooftop Mounted systems are permitted outright in all zoning districts and require building and electrical permits.

Permits for Roof-Mounted Solar Energy Systems shall include equipment specifications and/or product sheets for all photovoltaic panels, electrical components, mounting systems, and inverters that are to be installed on a rooftop.

Rooftop mounted solar collector installations must be accompanied with a letter or drawing from the Fremont Code Enforcement Officer verifying the structural integrity of the structure on which the collector is being mounted.

5.2.1 Solar Panels on Pitched Roofs

For aesthetic purposes, solar panels on pitched roofs shall not exceed eight [8] inches between the roof surface the highest edge of the system and shall be installed parallel to the roof surface on which they are mounted or attached.

5.2.2 Solar Panels on Flat Roofs

For aesthetic purposes solar panels on flat roofs shall not extend above the top of the surrounding parapet, more than two [2] feet above the flat surface of the roof, whichever is higher.

For the avoidance of doubt Roof-Mounted Solar Energy Systems height limitations are provided in Appendix A - Table 1: Height Requirements.

5.2.3 Glare

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

5.3 Tier 2 and Tier 3 Scale Solar Power Generation Installations

5.3.1 Site Plan Review and Application

Ground-mounted Tier 2 and Tier 3 large scale solar photovoltaic installations with 25 kW or larger of rated nameplate capacity shall undergo Site Plan Review by the Site Plan Review Authority prior to construction, installation or modification as provided in this section.

No Tier 2 or Tier 3 -scale ground mounted large solar photovoltaic array shall be installed on a designated wetland as defined by the New York State Department of Environmental Conservation, U.S. Army Corps of Engineers, or other governing body.

No Tier 2 or Tier 3 large scale ground mounted solar photovoltaic array shall be installed on Critical Environmental Areas (CEAs) as defined by the New York State Department of Environmental Conservation, U.S. Army Corps of Engineers, or other governing body.

Ground-Mounted solar collector installations are to be mounted to an appropriate weather resistant accessory structure designed or manufactured for this specific application.

5.3.2 Required Site Plan Documentation

Pursuant to the Site Plan Review Process, the project applicant shall provide a site plan that includes the following documents:

- A. Name, address, phone number and signature of the applicant, and all co-applicant or property owners, if any,
- B. The name, contact information and signature of any agents representing the project applicant,
- C. Property lines and physical features, including roads, for the project site,
- D. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures,
- E. Property Operation and Maintenance Plan that describes continuing photovoltaic maintenance and property upkeep, such as mowing and trimming,
- F. 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 Site Plan Review Authority,
- G. 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,

- H. 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,
- I. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the State of New York showing the proposed layout of the system and any potential shading from nearby structures,
- J. A one-line or three-line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices,
- K. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter,
- L. Documentation of actual or prospective access and control of the project site,
- M. An operation and maintenance plan,
- N. Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose,
- O. Proof of liability insurance,
- P. A public outreach plan, including a project development timeline, which indicates how the project proponent will meet the required site plan review notification procedures and otherwise inform abutters to the site and the community,
- Q. A decommissioning plan signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant, addressing the following:
 1. The cost of removing the Solar Energy System.
 2. The time required to decommission and remove the Solar Energy System any ancillary structures.
 3. The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.

The Site Plan Review Authority may waive documentary requirements as it deems appropriate.

5.3.3 Site Approval Process

The site approval process is subject to a public hearing to hear all comments for and against the application. The Site Plan Review Authority of the Town of Fremont shall have a notice printed in a newspaper of general circulation in the Town of Fremont at least five [5] days in advance of such hearing. Applicants shall have delivered the notice by first class mail to adjoining landowners or landowners within two hundred [200] feet of the property at

least ten [10] days prior to such a hearing. Proof of mailing shall be provided to the Site Plan Review Authority at the public hearing

Upon closing of the public hearing, the Site Plan Review Authority shall take action on the application within sixty two [62] days of the public hearing, which can include approval, approval with conditions, or denial. The 62-day period may be extended upon consent by both the Site Plan Review Authority and applicant.

5.4 Site Control

The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation. B. Underground 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 poles, with new easements and right-of-way.

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

Signage: 1) 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. 2) 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.

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

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.

Removal of existing trees larger than six [6] inches in diameter should be minimized to the extent possible.

5.5 Operation and Maintenance Plan

The project proponent shall submit a plan for the operation and maintenance of the large-scale ground-mounted solar photovoltaic installation, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.

5.6 Utility Notification

No Tier 2 or Tier 3 scale ground mounted solar photovoltaic installation shall be constructed until evidence has been given to the Site Plan Review Authority that the utility company that

operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

5.7 Dimension and Density Requirements

5.7.1 Setbacks

For Tier 2 or Tier 3 scale ground-mounted solar photovoltaic installations, front, side and rear setbacks are defined in Table 2: Tier 2 and 3 Parcel Line Setback Requirements in Appendix A.

5.7.2 Height Restrictions

The maximum height of photovoltaic installations shall not exceed 20 feet when oriented at maximum tilt.

5.7.3 Lot Coverage

The total coverage of all buildings, and structures on a lot, including photovoltaic mounted installations, shall not exceed fifty percent [50%] of the lot coverage. The lot size is further defined in Table 3 - Tier 2 and 3 Lot Size Requirements in Appendix A.

5.7.4 Appurtenant Structures

All appurtenant structures to Tier 2 or Tier 3 large scale ground-mounted solar photovoltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking, solar access, and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

5.8 Design Codes and Standards

5.8.1 Codes

All scale solar photovoltaic systems must be constructed to comply with the New York State Building, Fire, and Electric Code, as amended.

All wiring must comply with the National Electric Code, most recent edition, as amended and adopted by New York State.

5.8.2 Installer Qualifications

All systems must be installed by a qualified commercial solar installer as defined by this ordinance.

5.8.3 Lighting

Lighting of solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic

installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

5.8.4 Signage

Signs on large- scale ground-mounted solar photovoltaic installations shall comply with a municipality's sign law. A sign consistent with a municipality's sign law shall be required to identify the owner and provide a 24-hour emergency contact phone number.

Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

5.8.5 Utility Connections

Reasonable efforts, as determined by the Site Plan Review Authority, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

5.8.6 Buffering

Buffering may be required and shall be designed and located in order to prevent obstruction to solar access and reflective glare toward any inhabited buildings on adjacent properties and roads.

6 SAFETY AND ENVIRONMENTAL STANDARDS

6.1 Emergency Services

The Tier 2 and Tier 3 scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

6.2 Land Clearing, Soil Erosion and Habitat Impacts

Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large scale ground-mounted solar photovoltaic installation or otherwise prescribed by applicable laws, rules, and regulations.

6.3 Security Access

All large scale solar photovoltaic installations are to have a complete six (6) foot high perimeter fence suitable to withstand environmental conditions. The access gate shall remain locked with a fireman's lockbox coordinated with all local fire chief(s). All buildings and equipment shall be non-accessible to the public.

6.4 Monitoring and Maintenance

6.4.1 Solar Photovoltaic Installation Conditions

The Tier 2 and Tier 3 scale ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way. The fencing shall be cleared of vegetation that could compromise its long-term integrity.

6.4.2 Annual Inspections

An annual inspection by the Code Enforcement Officer per the New York State Building Code will be required.

6.4.3 Modifications

All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Site Plan Review Authority.

7 TRANSFER OF OWNERSHIP

If there is a transfer of ownership of the solar array or its lease to the new owners will advise the Town of Fremont. In addition, the new owners shall comply with all original conditions and be responsible to bring the solar array current with regulations in place at the time of the same or lease transfer.

8 SEVERABILITY

The provisions of this local law are declared to be severable, and if any section, subsection, sentence or clause or part thereof is, for any reason, held to be invalid or unconstitutional in a court of competent jurisdiction, such decision shall not affect the validity of any remaining sections, subsections, sentences, clauses or part of this local law.

9 VIOLATIONS

- A. The owner or general agent of a building or premises of land where violation of any provision of this Local Law has been committed or shall exist, or the lessee or tenant of an entire building, or entire premises or land where such violation has been committed or shall exist, or the owner, general agent, lessee or tenant of any part of the building or premises or land in which such violation has been committed or shall exist, or the general agent, architect, builder, contractor or any other person who commits, takes part or assists in any such violation or who maintains any building or premises or land or any part thereof in which any violation shall exist, shall be guilty of a violation/offense and subject to a minimum fine of Three Hundred Fifty Dollars (\$350.00) or imprisonment for a period of not more than 10 days or both and in addition may be ordered to pay all costs and expenses including fees and expenses of attorneys and engineers and other experts involved in the enforcement hereof.

- B. Every such person, firm, company, corporation, partnership, Limited Liability Company or other entity shall be deemed guilty of a separate offense for each week such violation, disobedience, omission, neglect or refusal shall continue from the expiration of the period stated in the Notice to Remedy. Each week's continued violation shall constitute a separate additional violation.
- C. In addition, the Town authorities shall have such other remedies as are provided by law to restrain corrects or abates any violation of this Local Law, and the violator shall be liable to the Town of Fremont for a civil penalty of Five Hundred Dollars (\$500.00) for each violation.

10 REAL PROPERTY TAX LAW (RPTL) 487

The Town of Fremont is opting out of the RPTL 487 for all Solar Energy Systems.

11 DECOMMISSIONING & REMOVAL REQUIREMENTS

Any Tier 2 or Tier 3 scale ground-mounted solar photovoltaic installation which has reached the end of its useful life or has been abandoned consistent with this Section of this local law shall be removed. The owner or operator shall physically remove the installation no more than one hundred and fifty [150] days after the date of discontinued operations. The owner or operator shall notify the Site Plan Review Authority by certified mail of the proposed date of discontinued operations and plans for removal.

Decommissioning of the Tier 2 or Tier 3 scale ground-mounted solar photovoltaic installation will include the disconnection of the Solar Facility from the electrical grid and the removal of all Solar Facility components, including:

- A. Photovoltaic (PV) modules, panel racking and supports,
- B. Inverter units, substation, transformers, and other electrical equipment,
- C. Access roads, wiring cables, communication tower, perimeter fence; and,
- D. Concrete foundations. This decommissioning plan is based on current best management practices and procedures.

Decommissioning Plan Requirements are found in Section 10 Appendix C.

Decommissioning shall consist of:

- A. Physical removal of all large- scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.

- B. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- C. Stabilization or re-vegetation of the site as necessary to minimize erosion.
- D. The Site Plan Review Authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
- E. Final inspection of the site by the Town of Fremont Code Enforcement Officer upon completion of the Decommissioning.

Letter of Credit for the decommissioning / removal:

The operator of an installation and the owner of the real property on which such installation is located shall be jointly and separately liable for all costs and expenses to the Town incurred during and relating to the removal of an installation

Notwithstanding the foregoing, the Town may require a Letter of Credit for all Tier 2 and Tier 3 ground-mounted solar photovoltaic installation in the case that the landowner and/or the project developer fail to remove the system, in specified amount to cover decommissioning costs, payable in one hundred and fifty one [151] days after the date of discontinued operations.

The Letter of Credit amount will be based cost of removing the on Section 5.3.3.G.a of the ground-mounted solar photovoltaic installation and must be continuously renewed or replaced to remain effective until obligations under the decommissioning plan are met.

12 EFFECTIVE DATE

This Local Law shall become effective upon filing with the New York State Secretary of State.

13 APPENDIX A: TABLES FOR HEIGHT, SETBACK AND PARCEL SIZE

The height of systems will be measured from the highest natural grade below each solar panel.

	Tier 1 Roof-Mounted	Tier 2	Tier 3
Zoning District			
Low Density Residential (LDR)	2' above roof	10'	15'
Land Conservation (LC)	--	--	--
Agricultural / Residential (AG-R)	2' above roof	15'	15'

Table 1: Height Requirements

Key:
 --: Not Allowed

Zoning District	Ground-Mounted		
	Front	Side	Rear
Low Density Residential (LDR)	100'	100'	100'
Land Conservation (LC)	--	--	--
Agricultural / Residential (AG-R)	100'	100'	100'

Table 2: Tier 2 and 3 Parcel Line Setback Requirements

Key:
 --: Not Allowed

Zoning District	Solar Energy Systems
Low Density Residential (LGR)	≥ 5 acres
Land Conservation (LC)	--
Agricultural / Residential (AG-R)	≥ 5 acres

Table 3: Tier 2 and 3 Lot Size Requirements

Key:
 --: Not Allowed

14 APPENDIX B: DECOMMISSIONING PLANS REQUIREMENTS

A minimum the following items must be addressed in decommissioning plans requirements that are presented to the Site Plan Review Authority prior to the issuing of a Special Permit and shall be included in any third-party agreements.

- Defined conditions upon which decommissioning will be initiated (i.e., end of land lease, no operation for 12 months, prior written notice to facility owner, etc.).
- Removal of all nonutility owned equipment, conduit, structures, fencing, roads, and foundations.
- Restoration of property to condition prior to solar development.
- The timeframe for completion of decommissioning activities.
- Description of any agreement (e.g., lease) with landowner regarding decommissioning.
- The party responsible for decommissioning.
- Plans for updating the decommissioning plan.
- Before final electrical inspection, provide evidence that the decommissioning plan was recorded with the Register of Deeds.