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FARMING THE FUTURE IN NEW YORK: SWEET CORN, APPLES, MILK, FLORICULTURE, & ELECTRICITY?

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INTRODUCTION

Zoning law plays a primary role in the preservation and economic success of farmers' overall well-being. The relationship between federal, state, and local governments must be defined and organized in a way that allows farmers to decrease debt and increase their market capital. One way to accomplish this is by exploring the opportunity of incorporating renewable energy onto farmland in a way that has minimal to no effect on the farmland itself.

Farming is considered one of the biggest turning points in human history.¹ It allowed civilizations to form and people no longer had to worry about their next meal.² Farmers' role in society remains unchanged; however, farmers' economic stability is at risk. Farm sector income peaked nationwide around 2012, while the farm debt has continued to rise and interest rates continue to increase.³ This is leading to farmland real estate rapidly decreasing in value.⁴ In 2020, the Coronavirus ("COVID-19") put a great deal of stress on supply chains,⁵ leading to consumers paying more for food and goods while farms livestock prices fell by 17%.⁶ In 2023, problems such as climate change, insufficient agricultural land, a growing population, and low agricultural investment continue to put immense pressure on farmers and their farmland.⁷

While New York's farming industry has lost 253,500 acres to residential, commercial, and industrial use⁸—renewable energy continues to prosper and generate revenue; driving many into the industry.⁹ Solar and wind may have the potential to energize New York's farming industry by providing economic security, government incentives, and increased land value, all while farmland stays zoned as farmland.

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As of February 2023, renewable energy has only made up 21.5% of United States electricity,¹⁰ and as of November 17, 2023, renewable energy has only made up 28% of New York's electricity.¹¹ This leaves New York's renewable energy industry ripe and ready for market players to meet New York's goal to be 100% greenhouse gas emission-free by 2040.¹²

If renewable energy is compatible with New York's traditional crops and livestock—farmers can be one of these market players. This article will delve into this possibility by exploring how New York classifies different types of soil, how local governments have incorporated these soil types, why this will allow farmers to safely incorporate renewable energy, current zoning laws surrounding solar and wind energy, the effect New York's new Executive Law § 94-c will have on renewable energy facilities, and potential nuisance claims. First, it is important to understand where farmers currently stand financially, how renewable energy is being produced through solar and wind turbines, and how farms could co-locate safely.

I. ECONOMIC CHALLENGES FACING THE FARMING INDUSTRY IN NEW YORK AND THE UNITED STATES

Economic challenges facing farmers did not originate

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with the pandemic. In 2019, the USDA conducted a review to evaluate where farmers currently stand in the economy.¹³ Its research reported a downward trend in farmers' financial security.¹⁴ Several statistics lead them to this conclusion.¹⁵ For example, a farmer's "term debt coverage ratio" ("TDCR") is used to measure a farmer's loan repayment capacity.¹⁶ If a farm's TDCR is less than 1%, it's considered to be in the "red zone," meaning it lacks insufficient income to meet its loan payments.¹⁷ Although the number of large and medium-sized farms within the red zone has increased since 2012 (2012 equating to farmers' peak net cash income), large farms in particular saw the largest increase from 8.1% in 2012 to 12.4% in 2017.¹⁸ Small farms did not experience such a large increase because they require less capital to operate.¹⁹

A farm's "liquidity" and "solvency" are also factors that should be considered when evaluating the farming industry's financial position.²⁰ Liquidity refers to a business's ability to meet its short-term obligations (usually 1 year).²¹ Working capital is commonly used as a measure of liquidity.²² Liquidity is calculated by using the current farm assets minus current farm liabilities.²³ Although large and medium sized farms have seen large declines in working capital since 2012, they still remain close to the working capital average during the period of 1996-2017.²⁴ Solvency refers to a business's capacity to meet its long-term financial obligations.²⁵ Farms that have a debt-to-asset ratio of 55% are considered to be in the red zone.²⁶ The amount of large farms in the red zone increased from 7.5% in 2012 to 13.5% in 2017.²⁷

Although the 2019 USDA report showed economic challenges in the farming industry that needed to be addressed—the pandemic then put the already struggling industry into crisis.²⁸ From 2012 to 2020, inflation in the consumer price index ("CPI") hovered at a healthy 2%.²⁹ COVID-19 then shocked the industry and interest rates began to increase rapidly.³⁰ In 2021 and 2022, interest rates hovered at a high 5.6%.³¹ This had a direct effect on agricultural inputs like fertilizer, fuel, land, machinery, labor, and financing.³² Since 2020, the total cost of agricultural inputs has increased by more than \$100 billion, or 28% in 2023.³³

Of the nine million acres of farmland in New York,³⁴ more than one million acres planted annually is corn.³⁵ This is significant because corn (one of the major field crops) is a crop that has been dramatically affected by the pandemic due to its high cost-of-production.³⁶ While the cost-of-

production for many of the major field crops continues to grow, its sale price has dropped.³⁷ Corn has decreased in price by 27.3%.³⁸ Additionally, milk production has experienced a price drop of 24.2%,³⁹ which is taking a large economic toll on New York's more than 3,500 dairy farms.⁴⁰ This is particularly concerning since the dairy industry is New York's single largest agricultural produce and includes both large dairy operations and small family-run farms.⁴¹

New York's farming industry's job report has remained resilient during COVID-19.⁴² Reporting a 1% job loss in 2020 while other industry's annual employment loss hovered around at 8.7%.⁴³ However, this is not representative of a farm's economic stability since "farm work is highly seasonal and is frequently family business-oriented or informal work[] . . ." ⁴⁴ As a result, the "US government relies on administrative records from the Office of Unemployment Insurance to determine payroll data for its monthly job reports. That means workers not covered under the government's unemployment insurance system[] . . . won't be counted."⁴⁵ This makes it difficult to obtain an accurate job report.⁴⁶

The aforementioned economic crisis facing the farming sector will likely force New York farmers out of the industry. Between 2001 and 2016, New York's 253,507 acres of irreplaceable agricultural land was lost or fragmented.⁴⁷ This made it one of the top 20 states at risk of losing prime farmland.⁴⁸ One explanation provides farmland being sold at a higher price if the land is to be used for another purpose other than agriculture.⁴⁹ In 2020, New York's farmland was worth approximately \$3,150 an acre—down 3.1% from the prior year.⁵⁰ When sold for commercial or redevelopment use, the land can sell for \$30,000 an acre, or more.⁵¹ This essentially encourages farmers to sell their land to developers when zoning law allows it.⁵²

Recognizing the "substantial impact on the overall economic health and well-being" farmland has on the state, New York State Legislators have passed N.Y. Agriculture and Markets Law § 327-330 to "ensure the continued economic viability of the agricultural industry, and to preserve the environmental benefits of agricultural land use, the department shall [also] create a farmland viability program."⁵³ However, this program has been in effect since January 23, 2005,⁵⁴ and farmer's financial situation has continued to worsen since 2012.⁵⁵

If farmland is to be saved, it seems clear that New York State, farmers, and local governments need to think differ-

ently about possible complementary uses for the land to offset the economic hardships. First enacted in 1981 and amended in its entirety in 2013, Suffolk County's Farmland Development Rights program has attempted to protect farmland by restricting the land to agricultural use only.⁵⁶ However, this has not stopped the economic crises that farmers are experiencing.⁵⁷

II. RENEWABLE ENERGY AS AN ANSWER TO HELPING THE FARMING INDUSTRY IN NEW YORK

The ever-growing concern surrounding climate change,⁵⁸ in turn, makes renewable energy the fastest-growing energy source in the United States.⁵⁹ The United Nations has described renewable energy as "energy derived from natural sources that are replenished at a higher rate than they are consumed. Sunlight and wind, for example, are such sources that are constantly being replenished."⁶⁰

Solar is "the most abundant of all energy and can even be harnessed in cloudy weather."⁶¹ The price of solar panels has decreased dramatically within the last decade, making it one of the most affordable forms of electricity.⁶² Its lifespan is roughly 30 years and it can easily be shaped to fit a variety of different locations.⁶³ Wind energy is another common source of renewable energy which "harnesses the kinetic energy of moving air by using large wind turbines."⁶⁴ Although traditional wind turbines require a lot of land because they have to be spaced far apart, "surface activities like farming can still take place on much of the land."⁶⁵ New technology has reduced the cost, size, and shape of turbines with increasing productivity.⁶⁶

While renewable energy may be beneficial to our climate, farmers may be in a position to benefit economically by providing an additional source of income and tax credits incentivized by the government.⁶⁷ For example, solar can be installed on marginal agricultural lands and provide an additional source of revenue for farms. This revenue stream can offset a farm's operating expenses and provide economic resilience during years with low crop production."⁶⁸ New York farmers have stated that leasing land to solar companies can provide a revenue stream of \$1,000 to \$1,500 an acre per year.⁶⁹ This is an excellent form of long-term revenue because most of these solar companies require a 30-year lease.⁷⁰

The relationship between farmland and solar can be dangerous if they do not co-exist correctly. Agrivoltaics is

“the co-location of solar energy installations and agriculture beneath or between rows of photovoltaic panels.”⁷¹ Agrivoltaics allows more sunlight to reach the ground, which gives space for crops and farm animals.⁷² The relationship between solar panels and farmland is becoming popular within the United States and could be the driving force in providing these economic benefits to New York farmers.⁷³

Both New York State and the federal government have started to provide financial incentives for renewable energy—including tax breaks, rebates, and other monetary enticements—to support the growing industry.⁷⁴ The federal government provides tax credits through The Inflation Reduction Act (“IRA”). Inflation Reduction Act of 2022 Pub. L. No. 117-169, 136 Stat. 1818 (2022). Through this Act, “Investment Tax Credit” (“ITC”) and “Production Tax Credit” (“PTC”) will “allow taxpayers to deduct a percentage of the cost of renewable energy systems from their federal taxes. These credits are available to taxable businesses. . .” which would include farming businesses.⁷⁵ “Solar systems that are placed in service in 2022 and begin construction before 2033 are eligible for an ITC of 30% or a PTC of 2.75 cents per kilowatt-hour.”⁷⁶ The IRA is not just limited to Solar—similar tax benefits are also being offered for the production and investment in wind energy.⁷⁷ There is a PTC of 2.6 cents per kilowatt-hour for the first 10 years of electricity generation and an ITC up to 30% of the cost to install the equipment.

Currently, New York State provides incentives to add solar through the “Claim for Solar Energy System Equipment Credit.” However, the farm must serve as the farmer’s primary residence.⁷⁸ Farmers are eligible for a credit equal to 25% of the “solar energy system equipment expenditures and is limited to \$5,000.”⁷⁹ To be eligible for these benefits, farmers must meet one of the following requirements: purchase solar energy system equipment; enter into a written agreement for the lease of solar energy system equipment; or, have entered into a written agreement that spans at least 10 years for the purchase of power generated by solar energy system equipment not owned by the farmer.⁸⁰ Although New York provides tax credits for solar, these same benefits do not transfer to the installation of wind turbines. Most to all tax credits provided by New York for renewable energy are through NY-Sun.⁸¹

Even with the increased profit potential and government tax credits—farmers are concerned about the potential loss of more prime farmland in favor of renewable energy.⁸² The flat land associated with prime farmland makes it highly

valuable among developers.⁸³ With this concern, great care must be taken by New York and local municipalities to ensure the safety and security of farmland.⁸⁴

III. USING ZONING AND LAND USE REGULATIONS TO ENABLE THE INCORPORATION OF RENEWABLE ENERGY ON FARMLAND

A. DEFINING AGRICULTURAL LAND

Farmland is often associated with large fields for planting and corrals for cattle to graze. However, farms can consist of a variety of different soil types.⁸⁵ New York recognizes three types of farmland: Prime Farmland, Prime Farmland if drained, and Farmland of Statewide Importance.⁸⁶ When municipalities adopt zoning law, these definitions may be incorporated to help distinguish classifications of farmland from one another.⁸⁷ These soil types come from the Natural Resources Conservation Service (“NRCS”) and they have provided the following information to help understand each classification,

Soil map units with components of prime farmland are classified as *prime* where 50 percent or more of the components in the map unit composition are prime; *of statewide importance* where less than 50 percent of the components in the map unit are prime but a combination of lands of prime or statewide importance is 50 percent or more of the map unit composition . . . *Prime farmland* . . . is defined as land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and that is available for these uses.⁸⁸

New York State has also enacted N.Y. Agriculture & Markets Law § 301 (McKinney) which extensively defines different agricultural crops, livestock, commodities, etc.

Defining farmland by its potential to produce agricultural products should be of high priority to preserve valuable farmland. Proper zoning laws will help farmers understand where they can and can’t build renewable energy equipment.⁸⁹ However, not all towns use the three types of farmlands as defined by New York,⁹⁰ and often “information and guidance on solar siting farmland is fragmented and doesn’t provide local officials what they need to develop policies and understand implications of approving siting permits.”⁹¹ Without a proper way to define farmland at the local level, it’s unlikely these benefits will reach farmers.

New York State provides additional resources to guide municipalities when adopting local laws for renewable energy. For example, the New York State Energy Research

and Development Authority (“NYSERDA”) has provided a Wind Energy Guidebook containing “information and resources to [help] local governments [manage] wind energy development[s] in their communities. The Guidebook’s chapters address important aspects of wind energy project siting, including environmental confederations, community impacts, permitting information, and other key topics.”⁹² Siting wind energy in rural areas will be highly beneficial since they require lots of open space and few obstructions.⁹³ These local communities can also experience the added benefit turbines bring to the soil and crops below.⁹⁴

NYSERDA also provides a Solar Guidebook to provide step-by-step instructions for local governments. The Solar Guidebook provides additional topics the Wind Energy Guidebook does not provide, including property taxes and a model solar energy law.⁹⁵

B. EXAMPLE OF ZONING LAWS DEFINING PRIME FARMLAND AND REGULATING RENEWABLE ENERGY

The Town of Livonia, New York has incorporated the meaning of prime farmland and farmland of statewide importance into its local zoning code.⁹⁶ The zoning law’s definition additionally states that prime farmland has “soil quality, growing season[s], and moisture supply needed to produce economically sustained high yields of crops when treated and managed according to acceptable farming methods. . .”⁹⁷ Farmland of statewide importance has a much simpler definition, “statewide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies.”⁹⁸

Livonia’s zoning law also addresses the use of solar energy systems.⁹⁹ The intent behind the Town’s law is to “permit the construction of solar energy systems in the [Town] in a manner that advances and protects the public health, safety and welfare of the [Town] while facilitating the production of renewable energy.”¹⁰⁰ The Town also seeks to preserve “and protect the natural resources and prime farmland/farmland of statewide importance. . .”¹⁰¹ However, in an effort to preserve the Towns farmland and its overall character,¹⁰² the town only permits property owners to generate 110% of the power consumed by the property.¹⁰³ This limits farmers’ ability to profit.¹⁰⁴

The Town of Cato, New York has not extensively incorporated these soil classifications into its zoning law; however, a great deal of effort was dedicated to preserving “Prime

Agricultural Soils and Soils of Statewide Significance. . .”¹⁰⁵ Under Wind Energy Systems of Article Eleven of its zoning law, the Town has provided a well-defined comprehensive process to promote the effective siting of wind energy systems.¹⁰⁶ To wit, agricultural land is extensively defined.¹⁰⁷ Siting and installations of small wind energy systems must be. . .” located towards the edge of fields and tillage acreage to the fullest extent practical. Prime Agricultural Soils and Soils of Statewide Significance shall also be avoided.”¹⁰⁸ Unfortunately, the Town does not allow large wind energy systems that consist of more than one wind turbine, a wind turbine generating more than 150 kilowatts, or some portion of its produced electrical power for sale to a power grid.¹⁰⁹ This only allows farms to reduce agricultural production costs and does not allow them to receive additional profit.¹¹⁰ Under Solar Energy Systems of Article Ten of its zoning law, the Town has not provided any definition of agricultural land.¹¹¹ The law is seemingly vague and describes solar being used for the primary use of the property itself. It’s unknown if farmers would be able to profit from excess electricity or not.¹¹² It’s clear that Agrivoltaics is not permitted in Cato because solar is only allowed to be mounted on roof-tops or at the side/rear of the property.¹¹³

C. NEW YORK EXECUTIVE LAW § 94-C

While zoning is traditionally left to local government, in cases where there are matters of statewide concern, state statutes may be enacted that preempt local control. New York State has expressed its goal to be emission-free by 2040.¹¹⁴ With this in mind, New York State Legislatures passed N.Y. Pub. Serv. Law § 66-p(2) (McKinney), which “amended the Environmental Conservation Law, . . . Public Authorities Law, Labor Law and the Community Risk and Resilience Act in an effort to address the imminent risk of climate change. . .”¹¹⁵ Most notably, the legislatures enacted in 2020 N.Y. Exec. Law § 94-c (McKinney),¹¹⁶ with the purpose of

“consolidate the environmental review and permitting of major renewable energy facilities in the state and to provide a single forum in which the office of renewable energy siting [(ORES)] created by this section may undertake a coordinated and timely review of proposed major renewable energy facilities to meet the state’s renewable energy goals while ensuring the protection of the environment and consideration of all pertinent social, economic and environmental factors in the decision to permit such facilities. . .”¹¹⁷

This statute places many responsibilities onto ORES which will affect local municipalities, farmers, as well as many

other industries.¹¹⁸ It's important to note that the statute defines a "major renewable energy facility" as one that generates 25,000 kilowatts or more.¹¹⁹ Considering that the average farm size in New York is 205 acres¹²⁰ and 5 acres of solar is equivalent to roughly 1 Megawatt (1 Megawatt being equivalent to 1000 Kilowatts),¹²¹ the potential wide reach this law has on the farming industry becomes abundantly clear.

ORES can exercise its authority in several ways. First, it requires all major renewable energy facilities to apply for a permit and get it approved before the facility can be built.¹²² It is unclear what requirements will need to be satisfied as of now because the law gives ORES one year to adopt uniform standards and conditions.¹²³ However, as of now, major renewable energy facilities will need to "identify those site-specific environmental impacts, if any, that may be caused or contributed to by a specific proposed major renewable energy facility and are unable to be addressed by the uniform standards and conditions."¹²⁴

In connection with a site approval, ORES, through its executive director, is authorized to conduct hearings and dispute resolution proceedings to address, *inter alia*, questions, concerns, and oppositions brought forward by municipalities or another party.¹²⁵ And, the office must make a final decision on a siting permit—notwithstanding any other deadline made by § 94-c—within one year from the date the application was deemed complete.¹²⁶ If a final permit decision has not been made by the office within the one-year time period, the permit will be deemed to have been automatically granted and fully enforceable.¹²⁷ Finally, and the portion of the law that is highly debated,¹²⁸ § 94-c states that ORES:

"may elect not to apply[] . . . any local law or ordinance which would otherwise be applicable if it makes a finding that, as applied to the proposed major renewable energy facility, it is unreasonable burdensome in view of the [New York Climate Leadership and Community Protection Act (CLCPA)] targets and the environmental benefits of the proposed major renewable energy facility."¹²⁹

Essentially this allows ORES to overrule or preempt any municipality's law if they determine it to be "unreasonable burdensome." Essentially it takes local land use control away from municipalities when it comes to the siting of renewable energy.

Almost immediately a lawsuit was brought against ORES. In *Matter of Town of Copake v. New York State Office of Renewable Energy Siting*, Appellants-Petitioners,

who include numerous municipalities, municipal corporations, and private entities, brought an action alleging ORES, *inter alia*, failed to conduct a hard look at the environmental consequences of the regulations.¹³⁰ This environmental concern is, aforementioned, one that farmers have stressed their concern over.¹³¹ Farmers have stated that there "is a big push to use renewable energy[] . . . but it's just not the best use of prime agricultural land[] . . ."¹³² In determining whether ORES failed to consider any subsequent negative environmental impacts, the court used its judicial review of an agency under the State Environmental Quality Review Act ("SEQRA").¹³³ Specifically, the court stated that a "judicial review of an agency determination under SEQRA is limited to whether the lead agency identified the relevant areas of environmental concern, took a hard look at them, and made a reasonable . . . determination. The court's role is not to second-guess the agency's determination."¹³⁴ The court reasoned that a lead agency need not investigate every potential environmental impact during a SEQRA review.¹³⁵ All this being considered, the court held that ORES did take a hard look at any potential impacts the proposed regulations could have.¹³⁶ It "identified permitting conditions that were necessary to ensure adverse environmental impacts were avoided or minimized, which made the ORES review similar to that under SEQRA."¹³⁷ "ORES's regulations require potential applications to proactively identify significant natural resources and 'work closely with local municipalities' to 'avoid and minimize, to the maximum extent practicable, any potential significant adverse impacts.'" ¹³⁸ Additionally, after a short environmental assessment form, drift regulations, and USC's were issued, ORES held seven public hearings where it extensively responded to numerous public comments.¹³⁹

Appellants also argued that § 94-c violated the home rule provision of the New York Constitution by allowing ORES to preempt and waive local laws in certain circumstances if it determines them to be unreasonably burdensome.¹⁴⁰ Home Rule, as defined in N.Y. Const. Art. IX, § 2(b)(2), allows the state legislature to pass "general laws" in relation to property, affairs, or government of any local government.¹⁴¹ "General laws" equally affect and apply to all counties other than those wholly included within a city, all cities, all towns, or all villages.¹⁴² Although local "government are authorized to regulate the use of land through enacting zoning laws[,] "¹⁴³ the doctrine of preemption is a fundamental limitation to the home rule powers and the legislature may expressly state its intent to preempt or by implication.¹⁴⁴ The implication behind this is to allow the

legislature to act on matters of state concern while local municipalities address local concerns.¹⁴⁵ Therefore, the court held that ORES's ability to preempt and waive local laws is applied "uniformly to all municipalities" in addressing the state concern of renewable energy.¹⁴⁶

The third department's ruling upholds § 94-c and future regulations ORES creates in accordance with this law.¹⁴⁷ However, the third department only represents one portion of New York's total farmland; while the fourth department comprises more than 40% of the state's total farmland.¹⁴⁸ The preemptive and waiver provision within the law is still highly debated.¹⁴⁹ It wouldn't be far off to assume that this law will be challenged again in the Second or Fourth department.

D. PRIVATE NUISANCE

Where local zoning law allows it or a permit has been granted pursuant to § 94-c, farmers can still at risk of potential nuisance claims.

One is liable for a private nuisance if their conduct is a legal cause of the invasion of the interest in the private use and enjoyment of land, and such invasion is intentional and unreasonable, negligent or reckless, or actionable under the rules governing liability for abnormally dangerous conditions or activities.¹⁵⁰

Private nuisances are associated with the amount of people affected by the supposed nuisance; public nuisances affect the public at large.¹⁵¹ Even if zoning law allows farmers to build renewable energy facilities, farmers may still be enjoined from its implementation due to a nuisance claim.¹⁵²

In *Falzon v. Ford*, Orange County, the owners of an 85-acre property leased seven acres to a solar company and allowed it to construct solar panels on its land.¹⁵³ The neighbors of the property owners started a nuisance claim to enjoin the construction of the solar panels.¹⁵⁴ However, seemingly due to a potentially lengthy legal battle, the application had been terminated while the lawsuit was proceeding, and no other plan had been proposed.¹⁵⁵ The potential for a nuisance claim can act, *per se*, as a deterrence to farmers and renewable energy providers.¹⁵⁶

In nuisance action brought against the construction/constructed solar panels, a *prima facie* case could be brought by alleging factual material of, *inter alia*, blinding glare, and the farmers and/or solar companies must prove that "at certain times of the day, the panels [do not] emit a blinding glare that [could pose] a danger."¹⁵⁷ The Court in *Faler v.*

Haines held were "plaintiffs' responsive papers, including an affidavit of a neighbor and photographic evidence alleging that, at certain times of the day, the panels emit a blinding glare that poses a danger to motorists exiting [plaintiffs'] driveway, would be sufficient to raise a triable issue of fact on the issue."¹⁵⁸

Wind turbines are at heightened risk of nuisance claims by the mere fact of their size and mechanical movement. Nedpower Mount Storm LLC was faced with the wide range of nuisance claims available in *Burch v. Nedpower Mount Storm, LLC*.¹⁵⁹ Appellants in the case argued the wind power facility would create noise, a flickering or strobe effect when the sun is near the horizon, an increased danger from broken blades, ice throws, collapsing towers, and a potential reduction in adjacent property values.¹⁶⁰ Although this case did not take place in New York, it is representative of the potential nuisance claims that can arise when dealing with wind turbines.¹⁶¹ Lawsuits involving wind turbines in New York have been limited to challenging a zoning board decision whether an approval or denial in the matter.¹⁶²

CONCLUSION

Local governments have an interest in the preservation of their local community. The idea of large-scale solar and wind energy technologies on prime farmland can be concerning, however, farmers continue to be susceptible to rising interest rates and increasing debt. Keeping farmland zoned as farmland does not mitigate the high operating cost. Renewable energy can decrease operating expenses and provide additional revenue. Given the recent decision in *Matter of Town of Copake v. New York State Office of Renewable Energy Siting*, it's likely § 94-c will continue to be in effect. Therefore, even if local governments attempt to zone out large-scale renewable energy, it's likely that ORES will preempt local laws and allow farmland to host solar and wind turbines. In light of § 94-c, local governments will still have the regulatory power in the zoning of all other renewable energy projects producing less than 20-25 kilowatts; encompass the majority of renewable projects.

ENDNOTES:

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¹*History of Agriculture*, Johns Hopkins Ctr. for A Livable Future, <https://foodsystemprimer.org/production/history-of-agriculture> (last visited Nov. 23, 2023).

²*History of Agriculture*, Johns Hopkins Ctr. for A Livable Future, <https://foodsystemprimer.org/production/history-of-agriculture> (last visited Nov. 23, 2023).

³Nigel Key, *Larger Farms and Younger Farmers Are More Vulnerable to Fin. Stress*, U.S. Dep't of Agriculture (Oct. 22, 2019), <https://www.ers.usda.gov/amber-waves/2019/october/larger-farms-and-younger-farmers-are-more-vulnerable-to-financial-stress/>.

⁴Nigel Key, *Larger Farms and Younger Farmers Are More Vulnerable to Fin. Stress*, U.S. Dep't of Agriculture (Oct. 22, 2019), <https://www.ers.usda.gov/amber-waves/2019/october/larger-farms-and-younger-farmers-are-more-vulnerable-to-financial-stress/>.

⁵Susan Helper & Evan Soltas, *Why the Pandemic Has Disrupted Supply Chains*, White House (June 17, 2021), <https://www.whitehouse.gov/cea/written-materials/2021/06/17/why-the-pandemic-has-disrupted-supply-chains/>.

⁶*Understanding the Econ. Crisis Family Farms are Facing*, Farm Aid (Sep. 14, 2020), <https://www.farmaid.org/blog/fact-sheet/understanding-economic-crisis-family-farms-are-facing/>.

⁷Denisa Ogoyi, *5 Challenges the Agric. Sector Faces in 2023*, Earth.org (Feb. 13, 2023), <https://earth.org/challenge-s-farmers/>.

⁸Erica Goodman, *Farms Under Threat: N.Y. leads the nation in helping a new generation of farmers, yet its best farmland is a stake*, Am. Farmland Trust (May 20, 2020), <https://farmland.org/fut-new-york-pr/>.

⁹*See Renewable Energy*, Ctr. For Climate & Energy Sols., <https://www.c2es.org/content/renewable-energy/> (last visited Nov. 23, 2023).

¹⁰*Renewable Energy*, Off. Of Energy Efficiency & Renewable Energy, <https://www.energy.gov/eere/renewable-energy> (last visited Nov. 23, 2023) (citing *Frequently Asked Questions (FAQs) What is U.S. electricity generation by energy source?*, Energy Info. Admin., <https://www.eia.gov/tools/faqs/faq.php?id=427&t=3> (last updated Oct. 2023)).

¹¹Cullen Howe, *N.Y. Gives Big Boost to Renewable Energy*, NRED, <https://www.nrdc.org/bio/cullen-howe/new-york-gives-big-boost-renewable-energy> (Oct. 15, 2023) (citing *N.Y. State Profile & Energy Estimates, Profile Analysis*, Energy Info. Admin., <https://www.eia.gov/state/analysis.php?sid=NY> (November 17, 2022)).

¹²N.Y. Pub. Serv. L. § 66-p(2) (McKinney).

¹³Nigel Key, *Larger Farms and Younger Farmers Are More Vulnerable to Fin. Stress*, U.S. Dep't of Agriculture (Oct. 22, 2019), <https://www.ers.usda.gov/amber-waves/2019/october/larger-farms-and-younger-farmers-are-more-vulnerable-to-financial-stress/>.

¹⁴Nigel Key, *Larger Farms and Younger Farmers Are*

More Vulnerable to Fin. Stress, U.S. Dep't of Agriculture (Oct. 22, 2019), <https://www.ers.usda.gov/amber-waves/2019/october/larger-farms-and-younger-farmers-are-more-vulnerable-to-financial-stress/>.

¹⁵Nigel Key, *Larger Farms and Younger Farmers Are More Vulnerable to Fin. Stress*, U.S. Dep't of Agriculture (Oct. 22, 2019), <https://www.ers.usda.gov/amber-waves/2019/october/larger-farms-and-younger-farmers-are-more-vulnerable-to-financial-stress/>.

¹⁶“Repayment capacity” provides insight into a farmer’s ability to generate enough funds to make debt payments and replace capital assets. Nigel Key, *Larger Farms and Younger Farmers Are More Vulnerable to Fin. Stress*, U.S. Dep't of Agriculture (Oct. 22, 2019), <https://www.ers.usda.gov/amber-waves/2019/october/larger-farms-and-younger-farmers-are-more-vulnerable-to-financial-stress/>.

¹⁷Nigel Key, *Larger Farms and Younger Farmers Are More Vulnerable to Fin. Stress*, U.S. Dep't of Agriculture (Oct. 22, 2019), <https://www.ers.usda.gov/amber-waves/2019/october/larger-farms-and-younger-farmers-are-more-vulnerable-to-financial-stress/>.

¹⁸Nigel Key, *Larger Farms and Younger Farmers Are More Vulnerable to Fin. Stress*, U.S. Dep't of Agriculture (Oct. 22, 2019), <https://www.ers.usda.gov/amber-waves/2019/october/larger-farms-and-younger-farmers-are-more-vulnerable-to-financial-stress/>.

¹⁹Nigel Key, *Larger Farms and Younger Farmers Are More Vulnerable to Fin. Stress*, U.S. Dep't of Agriculture (Oct. 22, 2019), <https://www.ers.usda.gov/amber-waves/2019/october/larger-farms-and-younger-farmers-are-more-vulnerable-to-financial-stress/>; However, a farm’s repayment capacity does not show its entire current financial situation and shouldn’t be taken on its own. Entrepreneurship, *What is meant by the term “repayment capacity”?*, Entrepreneurship.Extension (July 15, 2019), <https://entrepreneurship.extension.org/what-is-meant-by-the-term-repayment-capacity/>; “If used alone, these measures only provide a snapshot of the business’s ability to perform. It is better when they are used along with a cash flow analysis to be certain that the business is able to meet its financial obligations over a longer time period of time. Entrepreneurship, *What is meant by the term “repayment capacity”?*, Entrepreneurship.Extension (July 15, 2019), <https://entrepreneurship.extension.org/what-is-meant-by-the-term-repayment-capacity/>.

²⁰Nigel Key, *Larger Farms and Younger Farmers Are More Vulnerable to Fin. Stress*, U.S. Dep't of Agriculture (Oct. 22, 2019), <https://www.ers.usda.gov/amber-waves/2019/october/larger-farms-and-younger-farmers-are-more-vulnerable-to-financial-stress/> (without disrupting its normal operations).

²¹Nigel Key, *Larger Farms and Younger Farmers Are More Vulnerable to Fin. Stress*, U.S. Dep't of Agriculture (Oct. 22, 2019), <https://www.ers.usda.gov/amber-waves/2019/october/larger-farms-and-younger-farmers-are-more-vulnerable-to-financial-stress/> (without disrupting its normal operations).

²²Nigel Key, *Larger Farms and Younger Farmers Are More Vulnerable to Fin. Stress*, U.S. Dep't of Agriculture

(Oct. 22, 2019), <https://www.ers.usda.gov/amber-waves/2019/october/larger-farms-and-younger-farmers-are-more-vulnerable-to-financial-stress/>.

²³Nigel Key, *Larger Farms and Younger Farmers Are More Vulnerable to Fin. Stress*, U.S. Dep't of Agriculture (Oct. 22, 2019), <https://www.ers.usda.gov/amber-waves/2019/october/larger-farms-and-younger-farmers-are-more-vulnerable-to-financial-stress/>.

²⁴Nigel Key, *Larger Farms and Younger Farmers Are More Vulnerable to Fin. Stress*, U.S. Dep't of Agriculture (Oct. 22, 2019), <https://www.ers.usda.gov/amber-waves/2019/october/larger-farms-and-younger-farmers-are-more-vulnerable-to-financial-stress/>.

²⁵Nigel Key, *Larger Farms and Younger Farmers Are More Vulnerable to Fin. Stress*, U.S. Dep't of Agriculture (Oct. 22, 2019), <https://www.ers.usda.gov/amber-waves/2019/october/larger-farms-and-younger-farmers-are-more-vulnerable-to-financial-stress/>.

²⁶Nigel Key, *Larger Farms and Younger Farmers Are More Vulnerable to Fin. Stress*, U.S. Dep't of Agriculture (Oct. 22, 2019), <https://www.ers.usda.gov/amber-waves/2019/october/larger-farms-and-younger-farmers-are-more-vulnerable-to-financial-stress/>.

²⁷Nigel Key, *Larger Farms and Younger Farmers Are More Vulnerable to Fin. Stress*, U.S. Dep't of Agriculture (Oct. 22, 2019), <https://www.ers.usda.gov/amber-waves/2019/october/larger-farms-and-younger-farmers-are-more-vulnerable-to-financial-stress/>.

²⁸See Adithya Sridhar, Akash Balakrishnan, Meenu Mariam Jacob, Mika Sillanpää & Nanditha Dayanandan, *Global impact of COVID-19 on agriculture: role of sustainable agriculture and digital farming*, *Env't Sci. & Pollution Rsch. Int'l* 30, 15 (Mar. 8, 2022) (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8902491/>).

²⁹*Consumer Price Index*, AVA, <https://www.avatrade.com/education/economic-indicators/fundamental-indicators/consumer-price-index> (last visited Nov. 23, 2023); *See Databases, Tables & Calculators by Subject*, U.S. Bureau of Lab. Statistics, <https://www.bls.gov/> (search "CUUR000SA0L1E" on the top right; then click the first link "inflation rate"; change output options to 2012 and select "include annual averages"; then click "go") (last visited Sep. 27, 2023).

³⁰See *Consumer Price Index*, AVA, <https://www.avatrade.com/education/economic-indicators/fundamental-indicators/consumer-price-index> (last visited Nov. 23, 2023).

³¹See *Consumer Price Index*, AVA, <https://www.avatrade.com/education/economic-indicators/fundamental-indicators/consumer-price-index> (last visited Nov. 23, 2023).

³²*USDA Says High Farm Prod. Costs Not Easing In 2024*, U.S. Senate Comm. on Agric., Nutrition, & Forestry (July 13, 2023), <https://www.agriculture.senate.gov/newsroom/minority-blog/usda-says-high-farm-production-costs-not-easing-in-2024>.

³³*USDA Says High Farm Prod. Costs Not Easing In 2024*, U.S. Senate Comm. on Agric., Nutrition, & Forestry (July 13, 2023), <https://www.agriculture.senate.gov/newsroom/minority-blog/usda-says-high-farm-production-costs-not-easing-in-2024>.

[om/minority-blog/usda-says-high-farm-production-costs-not-easing-in-2024](https://www.agriculture.senate.gov/newsroom/minority-blog/usda-says-high-farm-production-costs-not-easing-in-2024).

³⁴See Erica Goodman, *Farms Under Threat: N.Y. leads the nation in helping a new generation of farmers, yet its best farmland is a stake*, Am. Farmland Trust (May 20, 2020), <https://farmland.org/fut-new-york-pr/>.

³⁵*Corn*, Cornell Univ., <https://cals.cornell.edu/field-crop/s/corn> (last visited Nov. 23, 2023).

³⁶See *USDA Says High Farm Prod. Costs Not Easing In 2024*, U.S. Senate Comm. on Agric., Nutrition, & Forestry (July 13, 2023), <https://www.agriculture.senate.gov/newsroom/minority-blog/usda-says-high-farm-production-costs-not-easing-in-2024>.

³⁷*USDA Says High Farm Prod. Costs Not Easing In 2024*, U.S. Senate Comm. on Agric., Nutrition, & Forestry (July 13, 2023), <https://www.agriculture.senate.gov/newsroom/minority-blog/usda-says-high-farm-production-costs-not-easing-in-2024>.

³⁸*USDA Says High Farm Prod. Costs Not Easing In 2024*, U.S. Senate Comm. on Agric., Nutrition, & Forestry (July 13, 2023), <https://www.agriculture.senate.gov/newsroom/minority-blog/usda-says-high-farm-production-costs-not-easing-in-2024>.

³⁹*USDA Says High Farm Prod. Costs Not Easing In 2024*, U.S. Senate Comm. on Agric., Nutrition, & Forestry (July 13, 2023), <https://www.agriculture.senate.gov/newsroom/minority-blog/usda-says-high-farm-production-costs-not-easing-in-2024>.

⁴⁰See *Milk & Dairy*, Dep't of Agriculture and Mkts., <https://agriculture.ny.gov/milk-dairy> (last visited Nov. 23, 2023).

⁴¹See *Milk & Dairy*, Dep't of Agriculture and Mkts., <https://agriculture.ny.gov/milk-dairy> (last visited Nov. 23, 2023).

⁴²New York State obtains its labor statistics from the U.S. Bureau of Labor Statistics. *N.Y.'s Agriculture Indus.: A Resilient Part of State and Loc. Economies*, Off. of the N.Y. State Comptroller (Aug., 2022), <https://www.osc.state.ny.us/reports/new-yorks-agriculture-industry-resilient-part-state-and-local-economies>.

⁴³*N.Y.'s Agriculture Indus.: A Resilient Part of State and Loc. Economies*, Off. of the N.Y. State Comptroller (Aug., 2022), <https://www.osc.state.ny.us/reports/new-yorks-agriculture-industry-resilient-part-state-and-local-economies>.

⁴⁴"Historically, the job of counting farm workers falls to the US Department of Agriculture due to its relationship with farms across the country. Twice a year, in May and November, the USDA conducts a farm labor survey that counts field workers, livestock workers, supervisors and other people who work on farms." Samantha Delouya, *Here's Why Farmers Aren't Included in the US Monthly Jobs Report*, CNN Business (12:34 p.m., Sep. 2, 2023), <https://www.cnn.com/2023/09/02/economy/farmers-us-monthly-job-s-report/index.html> (citing *Farm Labor*, U.S. Dep't of Agriculture, <https://www.ers.usda.gov/topics/farm-economy/farm-labor/> (last visited Nov. 14, 2023) (many hired farm workers are immigrants that come from central and south

America; roughly half of hired crop farmworkers lack legal immigration status)).

⁴⁵See Samantha Delouya, *Here's Why Farmers Aren't Included in the US Monthly Jobs Report*, CNN Business (12:34 p.m., Sep. 2, 2023), <https://www.cnn.com/2023/09/02/economy/farmers-us-monthly-jobs-report/index.html>.

⁴⁶“Over 50% of the farmworkers—in upstate and elsewhere—are undocumented[] . . . Since there is no visa program for year-round workers on dairy farms, the precarious status of these workers poses serious concerns for the economic viability of the dairy industry.” *Rural Humanities Undocumented Farmworkers in NYS*, Cornell Univ., <https://rural.as.cornell.edu/undocumented-farmworkers-nys> (last visited Nov. 14, 2023) (emphasis added).

⁴⁷Erica Goodman, *Farms Under Threat: N.Y. leads the nation in helping a new generation of farmers, yet its best farmland is a stake*, Am. Farmland Trust (May 20, 2020), <https://farmland.org/fut-new-york-pr/>.

⁴⁸Erica Goodman, *Farms Under Threat: N.Y. leads the nation in helping a new generation of farmers, yet its best farmland is a stake*, Am. Farmland Trust (May 20, 2020), <https://farmland.org/fut-new-york-pr/>.

⁴⁹See Chris Torres, *Land values steady in Northeast but down in N.Y., Vt.*, FarmProgress (Aug. 21, 2020), <https://www.farmprogress.com/management/land-values-steady-in-northeast-but-down-in-new-york-vermont>; See Patricia Salkin, *Agriculture in N.Y. State*, 2 N.Y. Zoning L. & Prac. § 14:01 (2023) (data reveals New York is losing farmland to non-farm development) (citing *see also* John R. Nolon, “The Stable Door is Open: New York’s Statutes to Protect Farmland,” 67 N.Y. St. B.J. 36 (Feb. 1995)).

⁵⁰See Chris Torres, *Land values steady in Northeast but down in N.Y., Vt.*, FarmProgress (Aug. 21, 2020), <https://www.farmprogress.com/management/land-values-steady-in-northeast-but-down-in-new-york-vermont>.

⁵¹See Emily Kenny, *State Continues to lose farmland to residential, solar development, reports show*, Spectrum News 1 (Aug. 18, 2023, 3:30 PM), <https://spectrumlocalnews.com/nys/central-ny/news/2023/08/18/state-continues-to-lose-farmland-to-residential-solar-developments-reports-show->

⁵²See Emily Kenny, *State Continues to lose farmland to residential, solar development, reports show*, Spectrum News 1 (Aug. 18, 2023, 3:30 PM), <https://spectrumlocalnews.com/nys/central-ny/news/2023/08/18/state-continues-to-lose-farmland-to-residential-solar-developments-reports-show->

⁵³N.Y. Agric. & Mkts. L. § 327 (McKinney); *See also* Michele Hughes, *Farmland viability and growth programs*, 3 N.Y. Jur. 2d Agriculture and Crops § 29 (2023).

⁵⁴N.Y. Agric. & Mkts. L. § 320 (McKinney).

⁵⁵E.g. Nigel Key, *Larger Farms and Younger Farmers Are More Vulnerable to Fin. Stress*, U.S. Dep’t of Agriculture (Oct. 22, 2019), <https://www.ers.usda.gov/amber-wave/2019/october/larger-farms-and-younger-farmers-are-more-vulnerable-to-financial-stress/>; e.g. *USDA Says High Farm Prod. Costs Not Easing In 2024*, U.S. Senate Comm.

on Agric., Nutrition, & Forestry (July 13, 2023), <https://www.agriculture.senate.gov/newsroom/minority-blog/usda-say-s-high-farm-production-costs-not-easing-in-2024>; e.g. Erica Goodman, *Farms Under Threat: N.Y. leads the nation in helping a new generation of farmers, yet its best farmland is a stake*, Am. Farmland Trust (May 20, 2020), <https://farmland.org/fut-new-york-pr/>.

⁵⁶“When a farmer agrees to sell the development rights to his/her land to Suffolk County, the farmer retains ownership of the land, but the use of that land is restricted to agricultural uses only.” *See Farmland Preservation*, Suffolk Cnty. Gov’t, <https://www.suffolkcountyny.gov/Department/s/Economic-Development-and-Planning/Planning-and-Environment/Open-Space-Preservation/Farmland-Preservation> (last visited Nov. 14, 2023) (citing Suffolk County, N.Y., *Agricultural Land, Development of*, ch. 8 (1981 Supp. 2013)).

⁵⁷See generally Nigel Key, *Larger Farms and Younger Farmers Are More Vulnerable to Fin. Stress*, U.S. Dep’t of Agriculture (Oct. 22, 2019), <https://www.ers.usda.gov/amber-wave/2019/october/larger-farms-and-younger-farmers-are-more-vulnerable-to-financial-stress/>.

⁵⁸See *What is Climate Change?*, United Nations, <https://www.un.org/en/climatechange/what-is-climate-change> (last visited Nov. 23, 2023).

⁵⁹*Renewable Energy*, Off. Of Energy Efficiency & Renewable Energy, <https://www.energy.gov/eere/renewable-energy> (last visited Nov. 23, 2023).

⁶⁰*What is renewable energy?*, United Nations, <https://www.un.org/en/climatechange/what-is-renewable-energy> (last visited Nov. 23, 2023).

⁶¹*What is renewable energy?*, United Nations, <https://www.un.org/en/climatechange/what-is-renewable-energy> (last visited Nov. 23, 2023).

⁶²*What is renewable energy?*, United Nations, <https://www.un.org/en/climatechange/what-is-renewable-energy> (last visited Nov. 23, 2023).

⁶³*What is renewable energy?*, United Nations, <https://www.un.org/en/climatechange/what-is-renewable-energy> (last visited Nov. 23, 2023).

⁶⁴See *What is renewable energy?*, United Nations, <https://www.un.org/en/climatechange/what-is-renewable-energy> (last visited Nov. 23, 2023).

⁶⁵*Does My Land Qualify for a Wind Farm Lease?*, LandGate, <https://www.landgate.com/news/does-my-land-qualify-for-a-wind-farm-lease> (last updated Nov. 3, 2023); *See* Madelyn Smerillo, *Permitting and Prime Farmland: An Outdated Rule Stands in the Way of Minn.’s Clean Energy Transition*, Clean Grid All. (Sep. 20, 2023), <https://cleangridalliance.org/blog/207/permitting-and-prime-farmland-an-outdated-rule-stands-in-the-way-of-minnesotas-clean-energy-transition>; *See Am. needs renewable energy, but solar should not be sited on our most productive, resilient farmland*, Am. Farmland Trust, <https://farmland.org/encourage-solar-energy-that-doesnt-sacrifice-agricultural-land/> (last visited Nov. 23, 2023).

⁶⁶Wind “turbine blade innovations made wind power a

higher performing, more cost-effective, and reliable source of electricity[] . . .” Wind Energy Tech. Off., *Bends, Twists, and Flat Edges Change the Game for Wind Energy*, Off. of Energy Efficiency & Renewable Energy (Aug. 23, 2023), <https://www.energy.gov/eere/wind/articles/bends-twists-and-flat-edges-change-game-wind-energy>.

⁶⁷Solar Energy Techs. Off., *Farmer’s Guide to Going Solar*, Off. of Energy Efficiency & Renewable Energy, <https://www.energy.gov/eere/solar/farmers-guide-going-solar> (last visited Oct. 1, 2023); *See Initiatives for Action*, United Nations, <https://www.un.org/en/climatechange/climate-action-coalitions> (last visited Nov. 25, 2023).

⁶⁸Solar Energy Techs. Off., *Farmer’s Guide to Going Solar*, Off. of Energy Efficiency & Renewable Energy, <https://www.energy.gov/eere/solar/farmers-guide-going-solar> (last visited Oct. 1, 2023).

⁶⁹Emily Kenny, *State Continues to lose farmland to residential, solar development, reports show*, Spectrum News 1 (Aug. 18, 2023, 3:30 PM), <https://spectrumlocalnews.com/nys/central-ny/news/2023/08/18/state-continues-to-lose-farmland-to-residential—solar-developments—reports-show->.

⁷⁰*See* Emily Kenny, *State Continues to lose farmland to residential, solar development, reports show*, Spectrum News 1 (Aug. 18, 2023, 3:30 PM), <https://spectrumlocalnews.com/nys/central-ny/news/2023/08/18/state-continues-to-lose-farmland-to-residential—solar-developments—reports-show->.

⁷¹Michele Boyd, *The Potential of Agrivoltaics for the U.S. Solar Indus., Farmers, and Communities*, Off. of Energy Efficiency & Renewable Energy (Apr. 17, 2023), <https://www.energy.gov/eere/solar/articles/potential-agrivoltaics-us-solar-industry-farmers-and-communities>.

⁷²Ethan Winter, *For Solar Energy to Succeed, it Needs to Co-Exist with Agriculture*, Am. Farmland Trust (Nov. 12, 2021), <https://farmland.org/for-solar-energy-to-succeed-it-needs-to-co-exist-with-agriculture/>.

⁷³Michele Boyd, *The Potential of Agrivoltaics for the U.S. Solar Indus., Farmers, and Communities*, Off. of Energy Efficiency & Renewable Energy (Apr. 17, 2023), <https://www.energy.gov/eere/solar/articles/potential-agrivoltaics-us-solar-industry-farmers-and-communities>.

⁷⁴*See Fin. Benefits of an Eco-friendly Bus.*, Green Bus. Bureau (June 17, 2019), <https://greenbusinessbureau.com/blog/financial-benefits-of-an-eco-friendly-business/>.

⁷⁵*See Summary of Inflation Reduction Act provisions related to renewable energy*, U.S. Env’t Prot. Agency, <https://www.epa.gov/green-power-markets/summary-inflation-reduction-act-provisions-related-renewable-energy> (last visited Nov. 24, 2023).

⁷⁶Solar Energy Techs. Off., *Fed. Solar Tax Credits for Buss.*, Off. of Energy Efficiency & Renewable Energy, <https://www.energy.gov/eere/solar/federal-solar-tax-credits-businesses> (last updated Aug., 2023).

⁷⁷*Prod. Tax Credit and Investment Tax Credit for Wind Energy*, WindExchange, <https://windexchange.energy.gov/projects/tax-credits> (last visited Nov. 24, 2023).

⁷⁸*See Tax Basics: Farmers*, Dep’t of Taxation and Fin.,

<https://www.tax.ny.gov/help/taxpayer-education/tax-basics-farmers.htm> (last visited Oct 2, 2023).

⁷⁹*Solar Energy System Equipment Credit*, Dep’t of Taxation and Fin., https://www.tax.ny.gov/pit/credits/solar_energy_system_equipment_credit.htm (last visited Nov. 24, 2023).

⁸⁰*Solar Energy System Equipment Credit*, Dep’t of Taxation and Fin., https://www.tax.ny.gov/pit/credits/solar_energy_system_equipment_credit.htm (last visited Nov. 24, 2023).

⁸¹*NY-Sun*, N.Y. State Energy Rsch. & Dev. Auth., <https://www.nysesda.ny.gov/All-Programs/NY-Sun> (last visited Nov. 24, 2023); New York State’s offshore wind projects seem to be gaining attraction. *Offshore Wind Projects*, N.Y. State Energy Rsch. & Dev. Auth., <https://www.nyserd.a.ny.gov/All-Programs/Offshore-Wind/Focus-Areas/NY-Ofshore-Wind-Projects> (last visited Nov. 24, 2023).

⁸²Emily Kenny, *State Continues to lose farmland to residential, solar development, reports show*, Spectrum News 1 (Aug. 18, 2023, 3:30 PM), <https://spectrumlocalnews.com/nys/central-ny/news/2023/08/18/state-continues-to-lose-farmland-to-residential—solar-developments—reports-show-;Solar-factors-into-loss-of-prime-farmland>, FarmProgress (Aug. 15, 2022), <https://www.farmprogress.com/commentary/solar-factors-into-loss-of-prime-farmland>.

⁸³Developers “will choose sites where population density and land prices are low, the ground is level, the soil contains no rocks or roots, and transmission lines are close—typically within two miles. These also happen to be the very places where New York’s prime agricultural soils are located.” Cf. Frederic M. Mauhs, *Preempting Loc. Zoning Codes Fuels Opposition to Renewable Energy in N.Y.*, 94 N.Y. State Bar J., 44, 45 (1964).

⁸⁴*See* Lori Sallet, *Am. Farmland Tr. Releases Smart SolarSM Guiding Principles to Save the Land that Sustains Us*, Am. Farmland Trust (Sep. 22, 2022), <https://farmland.org/american-farmland-trust-releases-smart-solar-guiding-principles-to-save-the-land-that-sustains-us/>.

⁸⁵*Learn about Soil Types*, Nat’l Env’t Satellite, Data, & Info. Serv., <https://www.nesdis.noaa.gov/learn-about-soil-types> (last visited Nov. 24, 2023).

⁸⁶*New York, Field Off. Tech. Guide*, <https://efotg.sc.egov.usda.gov/#/state/NY/documents> (to the left click “Section 2—Natural and Cultural Resources Information”; to the left click “Soil Information”; under “Document Title” click the pdf. link “Prime and Important Farmlands in New York”) (last visited Nov. 24, 2023) (this technical guide is maintained by Nat. Res. Conservation Serv.)

⁸⁷Town of Livonia, N.Y., Zoning L. ch. 150, art. XVI, § 150-163 (2010 & Supp. 2022); Town of Monroe, N.Y., Zoning L. ch. 57, art. VII, § 57-21.7(B)(3)(a) (2017 & Supp. 2020); Town of Monroe, N.Y., Zoning L. ch. 57 art. XXI, § 57-94(B)(2)(f) (2017 & Supp. 2020); Town of Gorham, N.Y. Zoning Local L. art. 4, § 31.4.1(b)(1) (2017).

⁸⁸*Nat’l Soil Surv. Handbook, 622.3 Farmland Classification*, U.S. Dep’t of Agriculture, <https://www.usda.gov/search/NSSH-Part-622>; click “Part 622 Interpretive Groups-USDA” (last visited Oct. 9, 2023).

⁸⁹See *Am. needs renewable energy, but solar should not be sited on our most productive, resilient farmland*, Am. Farmland Trust, <https://farmland.org/encourage-solar-energy-that-doesnt-sacrifice-agricultural-land/> (last visited Nov. 23, 2023).

⁹⁰Town of South Bristol, N.Y., Zoning L. ch. 170, art. II, § 170-9 (2001); Town of Skaneateles, N.Y., Zoning L. ch. 148, art. 2, § 148-4-2 (2023); Town of Riverhead, N.Y., Zoning L. ch. 301, art. I, § 301-3 (1970 & Supp. 2005).

⁹¹See *Am. needs renewable energy, but solar should not be sited on our most productive, resilient farmland*, Am. Farmland Trust, <https://farmland.org/encourage-solar-energy-that-doesnt-sacrifice-agricultural-land/> (last visited Nov. 23, 2023).

⁹²*N.Y. State Wind Energy Guidebook*, N.Y. State Energy Rsch. and Dev. Authority, <https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Siting-Resources/Wind-Guidebook> (last visited Nov. 16, 2023); see generally Patricia Salkin, *Wind farms*, 2 N.Y. Zoning L. & Prac. § 11:26 (2023).

⁹³See Vikram Aggarwal, *Solar vs. wind energy: Which one is better?*, Energysage, <https://www.energysage.com/about-clean-energy/wind/solar-vs-wind-energy-right-home/> (last updated Nov. 6, 2023).

⁹⁴“The movement of air by the turbines pumps air down, and the movement draws carbon dioxide out of the soil so more would be available to the plant for photosynthesis. Gene Takle, *Iowa State Univ. Rsch. Finds Wind Farms Positively Impact Crops*, Iowa State Univ. (Mar. 5, 2018), <https://www.cals.iastate.edu/news/2018/iowa-state-university-research-finds-wind-farms-positively-impact-crops>.

⁹⁵*N.Y. State Solar Guidebook*, N.Y. State Energy Rsch. and Dev. Authority, <https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Siting-Resources/Solar-Guidebook> (last visited Nov. 23, 2023).

⁹⁶Town of Livonia, N.Y., Zoning L. ch. 150, art. XVII, § 150-163 (2010 & Supp. 2022).

⁹⁷Town of Livonia, N.Y., Zoning L. ch. 150, art. XVII, § 150-163 (2010 & Supp. 2022).

⁹⁸Town of Livonia, N.Y., Zoning L. ch. 150, art. XVII, § 150-163 (2010 & Supp. 2022).

⁹⁹Town of Livonia, N.Y., Zoning L. ch. 150, art. XVII (2010 & Supp. 2022).

¹⁰⁰Town of Livonia, N.Y., Zoning L. ch. 150, art. XVII, § 150-161(B) (2010 & Supp. 2022).

¹⁰¹Town of Livonia, N.Y., Zoning L. ch. 150, art. XVII, § 150-161(B)(2) (2010 & Supp. 2022).

¹⁰²Town of Livonia, N.Y., Zoning L. ch. 150, art. XVII, § 150-162(B-C) (2010 & Supp. 2022).

¹⁰³Town of Livonia, N.Y., Zoning L. ch. 150, art. XVII, § 150-163 (2010 & Supp. 2022) (solar energy systems).

¹⁰⁴“ . . . single-user commercial applications in which the solar energy system provides energy for the commercial property, but is not intended to create sufficient excess solar energy to make it resale as a marketable commodity. . . .” Town of Livonia, N.Y., Zoning L. ch. 150, art. XVII, § 150-

162(B) (2010 & Supp. 2022).

¹⁰⁵Town of Cato, N.Y., Zoning L. ch. 114, art. X-XI (2022) (prime agricultural soils and soils of statewide significance only being mentioned in art. XI).

¹⁰⁶Town of Cato, N.Y., Zoning L. ch. 114, art. XI (2022).

¹⁰⁷Town of Cato, N.Y., Zoning L. ch. 114, art. XI, § 114-52 (2022) (citing N.Y. Agric. & Mkts. L. § 301 13-14 (McKinney)).

¹⁰⁸Town of Cato, N.Y., Zoning L. ch. 114, art. XI, § 114-58(B)(4) (2022).

¹⁰⁹Town of Cato, N.Y., Zoning L. ch. 114, art. XI, § 114-52 (2022).

¹¹⁰See Town of Cato, N.Y., Zoning L. ch. 114, art. XI (2022).

¹¹¹Town of Cato, N.Y., Zoning L. ch. 114, art. X (2022).

¹¹²Town of Cato, N.Y., Zoning L. ch. 114, art. XI, § 114-48 (2022).

¹¹³See Town of Cato, N.Y., Zoning L. ch. 114, art. XI, § 114-49 (2022) (“solar collectors” must meet all applicable setback requirements).

¹¹⁴N.Y. Pub. Serv. L. § 66-p(2) (McKinney).

¹¹⁵See *Town of Copake v. New York State Office of Renewable Energy Siting*, 216 A.D.3d 93, 191 N.Y.S.3d 181 (3d Dep’t 2023), appeal dismissed, 41 N.Y.3d 990, 211 N.Y.S.3d 258, 234 N.E.3d 1050 (2024) (citation omitted) (citing N.Y. Pub. Serv. L. § 66-p(2) (McKinney)).

¹¹⁶*Town of Copake v. New York State Office of Renewable Energy Siting*, 216 A.D.3d 93, 191 N.Y.S.3d 181 (3d Dep’t 2023), appeal dismissed, 41 N.Y.3d 990, 211 N.Y.S.3d 258, 234 N.E.3d 1050 (2024) (citation omitted) (citing N.Y. Exec. L. § 94-c (McKinney)); In accordance with SEQRA, agencies “shall use all practicable means to realize the policies and goals set forth in [Article 8], and shall act and choose alternatives . . . [to] minimize or adverse environmental effects, including effects revealed in the environmental impact statement process.” N.Y. Env’t Conserv. L. § 8-0109 (McKinney).

¹¹⁷N.Y. Exec. L. § 94-c (McKinney) (emphasis added).

¹¹⁸See N.Y. Exec. L. § 94-c (McKinney).

¹¹⁹N.Y. Exec. L. § 94-c(2)(h) (McKinney); “Renewable [energy] projects that filed Public Involvement Programs under Article 10 before the effective date of Section 94-c remained in Article 10 unless they opted into Section 94-c In addition, renewable Projects of at least 20 MW but less than 25 MW may apply for a siting permit under Section 94-c.” See Philip Weinberg, *Siting Generating Facilities in the Section 94-c Era*, N.Y. Practice Series, Env’t L. and Regul. in N.Y., § 15:7.50. (2023).

¹²⁰See *N.Y. Agriculture*, Farm Bureau N.Y., <https://nyfb.org/about/about-ny-ag> (last visited Nov. 24, 2023).

¹²¹See *Is Five Acres Enough for a Solar Farm?*, Coldwell Solar, <https://coldwellsolar.com/commercial-solar-blog/is-five-acres-enough-for-a-solar-farm/> (last visited Nov. 24, 2023).

¹²²N.Y. Exec. L. § 94-c(3) (McKinney).

¹²³N.Y. Exec. L. § 94-c(3) (McKinney).

¹²⁴N.Y. Exec. L. § 94-c(3)(d) (McKinney); “Where site-specific environmental impacts cannot be addressed by these uniform standards and conditions, then ORES will draft Site-Specific conditions. Further, if the uniform and site-specific conditions do not completely address the environmental impacts, then ORES is authorized to enter mitigation requirements where payment of fees funding off-site mitigation will satisfy the mitigation requirements.” Patricia E. Salkin, *Executive L. § 94-c*, § 32A:42 (2023).

¹²⁵N.Y. Exec. L. § 94-c(3) (McKinney).

¹²⁶N.Y. Exec. L. § 94-c(3) (McKinney).

¹²⁷N.Y. Exec. L. § 94-c(3)(f) (McKinney).

¹²⁸Frederic Mauhs describes § 94-c as having the effect of denying “towns and villages the land use authority granted [to] them under” N.Y. Town Law § 261 for almost 100 years. Cf. Frederic M. Mauhs, *Preempting Loc. Zoning Codes Fuels Opposition to Renewable Energy in N.Y.*, 94, N.Y. State Bar J., 44, 46 (1964).

¹²⁹N.Y. Exec. L. § 94-c(5)(e) (McKinney).

¹³⁰*Town of Copake v. New York State Office of Renewable Energy Siting*, 216 A.D.3d 93, 191 N.Y.S.3d 181, 187 (3d Dep’t 2023), appeal dismissed, 41 N.Y.3d 990, 211 N.Y.S.3d 258, 234 N.E.3d 1050 (2024).

¹³¹Emily Kenny, *State Continues to lose farmland to residential, solar development, reports show*, Spectrum News 1 (Aug. 18, 2023, 3:30 PM), <https://spectrumlocalnews.com/ny/central-ny/news/2023/08/18/state-continues-to-lose-farm-land-to-residential—solar-developments—reports-show-> (internal quotation marks omitted).

¹³²Emily Kenny, *State Continues to lose farmland to residential, solar development, reports show*, Spectrum News 1 (Aug. 18, 2023, 3:30 PM), <https://spectrumlocalnews.com/ny/central-ny/news/2023/08/18/state-continues-to-lose-farm-land-to-residential—solar-developments—reports-show->.

¹³³*Town of Copake v. New York State Office of Renewable Energy Siting*, 216 A.D.3d 93, 191 N.Y.S.3d 181, 188 (3d Dep’t 2023), appeal dismissed, 41 N.Y.3d 990, 211 N.Y.S.3d 258, 234 N.E.3d 1050 (2024) (citations omitted); For more information about the role SEQRA plays, visit “<https://dos.ny.gov/state-environmental-quality-review-act-seqra-basics>.”

¹³⁴*Town of Copake v. New York State Office of Renewable Energy Siting*, 216 A.D.3d 93, 191 N.Y.S.3d 181, 188 (3d Dep’t 2023), appeal dismissed, 41 N.Y.3d 990, 211 N.Y.S.3d 258, 234 N.E.3d 1050 (2024) (internal quotation marks omitted) (citing *Brunner v. Town of Schodack Planning Board*, 178 A.D.3d 1181, 113 N.Y.S.3d 410, 412 (3d Dep’t 2019); See N.Y. Comp. Codes R. & Regs. tit. 6, § 617.7(b); *Matter of The Heights of Lansing, LLC v. Vill. Of Lansing*, 75 N.Y.3d 607 (App. Div. 3 Dept. 2018)).

¹³⁵*Town of Copake v. New York State Office of Renewable Energy Siting*, 216 A.D.3d 93, 191 N.Y.S.3d 181, 189 (3d Dep’t 2023), appeal dismissed, 41 N.Y.3d 990, 211 N.Y.S.3d 258, 234 N.E.3d 1050 (2024) (citing *Matter of The Heights of Lansing, LLC v. Vill. Of Lansing*, 75 N.Y.3d 607, 609 (App. Div. 3 Dept. 2018)).

¹³⁶*Town of Copake v. New York State Office of Renewable Energy Siting*, 216 A.D.3d 93, 191 N.Y.S.3d 181, 189 (3d Dep’t 2023), appeal dismissed, 41 N.Y.3d 990, 211 N.Y.S.3d 258, 234 N.E.3d 1050 (2024).

¹³⁷*Town of Copake v. New York State Office of Renewable Energy Siting*, 216 A.D.3d 93, 191 N.Y.S.3d 181, 189 (3d Dep’t 2023), appeal dismissed, 41 N.Y.3d 990, 211 N.Y.S.3d 258, 234 N.E.3d 1050 (2024).

¹³⁸Brief for State Respondents at 20, *Town of Copake v. New York State Office of Renewable Energy Siting*, 216 A.D.3d 93, 191 N.Y.S.3d 181 (3d Dep’t 2023), appeal dismissed, 41 N.Y.3d 990, 211 N.Y.S.3d 258, 234 N.E.3d 1050 (2024).

¹³⁹*Town of Copake v. New York State Office of Renewable Energy Siting*, 216 A.D.3d 93, 191 N.Y.S.3d 181, 189 (3d Dep’t 2023), appeal dismissed, 41 N.Y.3d 990, 211 N.Y.S.3d 258, 234 N.E.3d 1050 (2024).

¹⁴⁰*Town of Copake v. New York State Office of Renewable Energy Siting*, 216 A.D.3d 93, 191 N.Y.S.3d 181, 189 (3d Dep’t 2023), appeal dismissed, 41 N.Y.3d 990, 211 N.Y.S.3d 258, 234 N.E.3d 1050 (2024); “ORES is not only given significantly more flexibility on preempting local law, the new standard promotes consideration of progress toward the State’s CLCPA’s goals and the specific environmental benefits (as opposed to all impacts) of the project, over the local values embedded in the local laws.” Patricia Salkin, *Wind farms*, 2 N.Y. Zoning L. & Prac. § 11:26 (2023).

¹⁴¹*Town of Copake v. New York State Office of Renewable Energy Siting*, 216 A.D.3d 93, 191 N.Y.S.3d 181, 192 (3d Dep’t 2023), appeal dismissed, 41 N.Y.3d 990, 211 N.Y.S.3d 258, 234 N.E.3d 1050 (2024).

¹⁴²N.Y. Const. Art. IX, § 3(d)(1) (quotation omitted).

¹⁴³*Town of Copake v. New York State Office of Renewable Energy Siting*, 216 A.D.3d 93, 191 N.Y.S.3d 181, 192 (3d Dep’t 2023), appeal dismissed, 41 N.Y.3d 990, 211 N.Y.S.3d 258, 234 N.E.3d 1050 (2024) (citing N.Y. Mun. Home Rule L. § 10 (4)(a) (McKinney)).

¹⁴⁴*Town of Copake v. New York State Office of Renewable Energy Siting*, 216 A.D.3d 93, 191 N.Y.S.3d 181, 192 (3d Dep’t 2023), appeal dismissed, 41 N.Y.3d 990, 211 N.Y.S.3d 258, 234 N.E.3d 1050 (2024) (citing *Norse Energy Corp. USA v. Town of Dryden*, 108 A.D.3d 25, 964 N.Y.S.2d 714, 718-719, 181 O.G.R. 1143 (3d Dep’t 2013), order aff’d, 23 N.Y.3d 728, 992 N.Y.S.2d 710, 16 N.E.3d 1188, 181 O.G.R. 1166 (2014)).

¹⁴⁵*Town of Copake v. New York State Office of Renewable Energy Siting*, 216 A.D.3d 93, 191 N.Y.S.3d 181, 192 (3d Dep’t 2023), appeal dismissed, 41 N.Y.3d 990, 211 N.Y.S.3d 258, 234 N.E.3d 1050 (2024) (citing *Albany Area Builders Ass’n v. Town of Guilderland*, 74 N.Y.2d 372, 547 N.Y.S.2d 627, 546 N.E.2d 920 (1989) (quoting *Wambat Realty Corp. v. State*, 41 N.Y.2d 490, 393 N.Y.S.2d 949, 362 N.E.2d 581, 7 Env’tl. L. Rep. 20363 (1977))).

¹⁴⁶See *Town of Copake v. New York State Office of Renewable Energy Siting*, 216 A.D.3d 93, 191 N.Y.S.3d 181, 192-193 (3d Dep’t 2023), appeal dismissed, 41 N.Y.3d 990, 211 N.Y.S.3d 258, 234 N.E.3d 1050 (2024) (citations omitted).

¹⁴⁷See *Town of Copake v. New York State Office of Renewable Energy Siting*, 216 A.D.3d 93, 191 N.Y.S.3d 181, 194 (3d Dep't 2023), appeal dismissed, 41 N.Y.3d 990, 211 N.Y.S.3d 258, 234 N.E.3d 1050 (2024).

¹⁴⁸*N.Y.'s Agriculture Indus.: A Resilient Part of State and Loc. Economies*, Off. of the N.Y. State Comptroller (Aug., 2022), <https://www.osc.state.ny.us/reports/new-york-s-agriculture-industry-resilient-part-state-and-local-economies>.

¹⁴⁹Joseph Griffo, *Friffo & Smullen: Accelerated Renewable Energy Growth and Cmty. Benefit Act silences loc. voices*, The N.Y. State Senate (Sep. 6, 2022), <https://www.nysenate.gov/newsroom/press-releases/2022/joseph-griffo/griffo-smullen-accelerated-renewable-energy-growth-and> (N.Y. State Senator of the 53rd District).

¹⁵⁰Rachel Kane & Lisa Zakolski, *Private nuisances*, 81 N.Y. Jur. 2d, § 6 (2023) (citing *Copart Indus., Inc. v. Consol. Edison Co. of N.Y., Inc.*, 362 N.E.2d 968 (1977); *Caldwell v. Two Columbus Ave. Condo.*, 940 N.Y.S.2d 15 (App. Div. 1 Dep't 2012); *Benjamin v. Nelstad Materials Corp.*, 625 N.Y.S.2d 281 (App. Div. 2 Dep't 1995); *Theofilatos v. Koleci*, 481 N.Y.S.2d 782 (App. Div. 3 Dep't 1984); *Nalley v. General Elec. Co.*, 630 N.Y.S.2d 452 (Sup. Ct. 1995)).

¹⁵¹Rachel Kane & Lisa Zakolski, *Classification of nuisances, generally; distinction between public and private nuisances*, 81 N.Y. Jur. 2d, § 4 (2023) (citing *Melker v. City of New York*, 190 N.Y. 481, 83 N.E. 565 (1908)).

¹⁵²See *Little Joseph Realty, Inc. v. Town of Babylon*, 41 N.Y.2d 738, 395 N.Y.S.2d 428, 363 N.E.2d 1163, 1168 (1977) (the plaintiff's will, however, assume a heavy burden of proof) (citing *Sweet v. Campbell*, 282 N.Y. 146, 25 N.E.2d 963 (1940); but see *Bove v. Donner-Hanna Coke Corp.*, 236 A.D. 37, 258 N.Y.S. 229 (4th Dep't 1932)); see also *Falzon v. Ford*, 70 Misc. 3d 1121, 141 N.Y.S.3d 255, 261 (Sup 2021).

¹⁵³*Falzon v. Ford*, 70 Misc. 3d 1121, 141 N.Y.S.3d 255

(Sup 2021).

¹⁵⁴*Falzon v. Ford*, 70 Misc. 3d 1121, 141 N.Y.S.3d 255, 257 (Sup 2021).

¹⁵⁵See Memorandum of L. of Defendants, Brian Ford and Stephanie Ford in Reply to the Plaintiffs' Memorandum of L. Filed Oct. 18, 2020 at 5, *John FALZON, Cindy Falzon, Joseph Voelpel and Daina Voelpel, Plaintiffs, v. Brian FORD, Stephanie Ford, Sunstarter Solar XXXIV LLC, and Solar Provider Group LLC, Defendants.*, 2020 WL 13628175 (N.Y. Sup 2020).

¹⁵⁶See *Falzon v. Ford*, 70 Misc. 3d 1121, 141 N.Y.S.3d 255, 261 (Sup 2021).

¹⁵⁷See *Faler v. Haines*, 104 A.D.3d 1120, 962 N.Y.S.2d 500, 503 (3d Dep't 2013) (citations omitted).

¹⁵⁸*Faler v. Haines*, 104 A.D.3d 1120, 962 N.Y.S.2d 500, 503 (3d Dep't 2013) (citations omitted).

¹⁵⁹*Burch v. Nedpower Mount Storm, LLC*, 220 W. Va. 443, 647 S.E.2d 879 (2007).

¹⁶⁰The court in this case reversed and remanded lower court's ruling dismissing the suite on the basis that appellants have alleged sufficient facts in their complaint to avoid a dismissal. *Burch v. Nedpower Mount Storm, LLC*, 220 W. Va. 443, 647 S.E.2d 879, 895 (2007).

¹⁶¹*Burch v. Nedpower Mount Storm, LLC*, 220 W. Va. 443, 647 S.E.2d 879, 895 (2007).

¹⁶²*E.g. Clear Skies over Orangeville v. Town Bd. of Town of Orangeville*, 32 Misc. 3d 1235(A), 938 N.Y.S.2d 225 (Sup 2010); *e.g. Friedhaber v. Town Bd. of Town of Sheldon*, 16 Misc. 3d 1140(A), 851 N.Y.S.2d 58 (Sup 2007), judgment aff'd, 59 A.D.3d 1006, 872 N.Y.S.2d 361 (4th Dep't 2009); *e.g. Trude v. Town Bd. of Town of Cohocton*, 17 Misc. 3d 1104(A), 851 N.Y.S.2d 61 (Sup 2007).

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