


**Promote Renewable Energy and
Agricultural Uses:
A Perfect Match**

2019 PACE-NRDC Food Law Initiative
Law at The Intersection of Renewable Energy and Agriculture
Elisabeth Haub School of Law at Pace University
November 6, 2019


A presentation by John Cappello, Partner
Jacobowitz and Gubits LLP

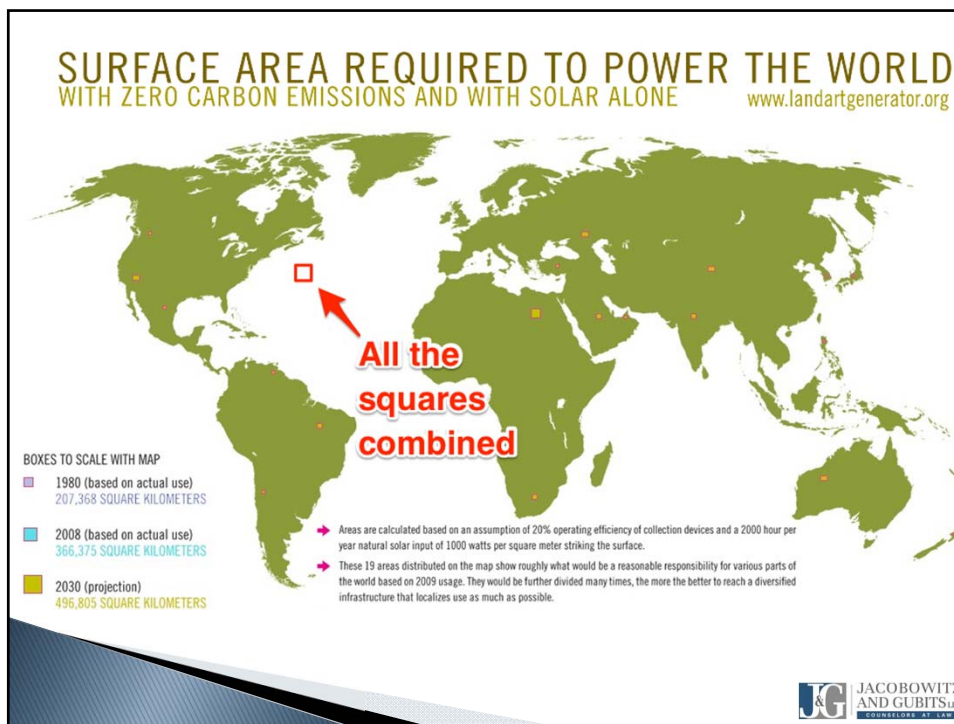
This slide is from a 2009 presentation
on zoning for alternative energy.



**PLAN
PROACTIVELY,
NOT REACTIVELY**

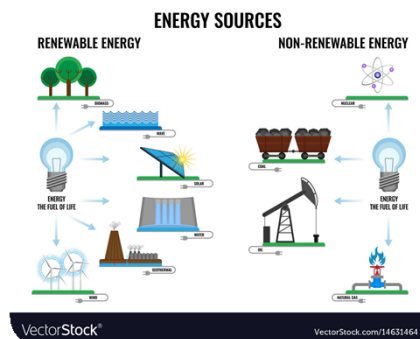
How'd we do?





Potential Alternative Energy Options

- ▶ Solar
- ▶ Battery Energy Storage Systems
- ▶ Wind
- ▶ Infra-structure Upgrades
- ▶ Sustainable Development Opportunities
- ▶ Retro-fitting
 - Weatherization
 - Energy Star
- ▶ Recycling
- ▶ Geothermal
- ▶ Alternative Vehicles



Municipal Toolbox



- ▶ Tools available to municipalities to encourage and support renewable energy and agriculture
 - Comprehensive Planning
 - Zoning Laws
 - SEQRA

Comprehensive Plan Issues

- ▶ Town Law §272-a, Village Law §7-722, General Cities Law §28
- ▶ State Intention to;
 - A – promote renewable energy source
 - B – preserve agricultural land and encourage agricultural activities
 - C – promote sustainable and diverse development and growth
- ▶ Create incentives and programs to educate residents and promote renewable energy and agriculture initiatives
- ▶ Develop a Farmland Protection Policy under NYS Agriculture and Markets Law Article 25-AAA that incorporates promoting and use of alternative energy for farm operations

Zoning for Solar



NYS Model Solar Zoning Law

http://www.cuny.edu/about/resources/sustainability/reports/NYS_Model_Solar_Energy_LawToolkit_FINAL_final.pdf



Zoning for Individual Home Systems

- Roof mounted
- Large commercial roof-mounted
- Ground mounted serving individual home
 - Consider adopting NYS Unified Solar Permit up to 25Kw



Small Scale Solar – Consider Definitions

- Farms
 - Agricultural use if supplying only farm
- Businesses
 - Agricultural businesses
 - Schools and Nonprofits
 - Group of home owners
 - Large industrial/commercial project



Large Utility Scale Solar Farms

- Usually between 1 mw- 5 mw
 - Over 25 mw PSC regulates
- Where should they be permitted
- Proper set backs, screening and mitigation of any visual impacts
- Height of structures
- Fencing and security
- Battery storage and safety
- Removal and decommissioning



Address Legitimate Concerns as well as Fears and Misconceptions



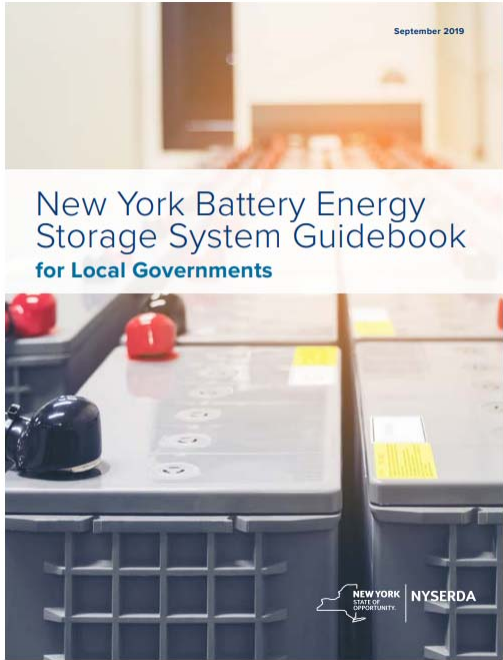
- Limit of clear cutting forested areas
 - Allow some reasonable uses
- Avoid loss of large areas of farmland
 - Accept some loss
- Consider the impact of any zoning law regulating solar and small wind on agricultural activities
- Restrict use of massive amounts of pesticides to control vegetation growth
 - Consider and encourage natural methods
- Disposal of solar panels when no longer used



Plan to Accommodate Solar

- Include solar access as part of all Special Permit and Site Plan Applications
- Require subdivision and residential developments to accommodate solar
- Review and if necessary amend policies regulating conservation easements
- Provide incentives to encourage alternative energy





September 2019

Permit and Regulate Battery Energy Storage Systems

New York Battery Energy Storage System Guidebook
for Local Governments

New York Battery Energy Storage System Guidebook
For Local Governments
www.nyserra.ny.gov/energy-storage-guidebook

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COUNSELORS AT LAW

Battery Energy Storage Systems

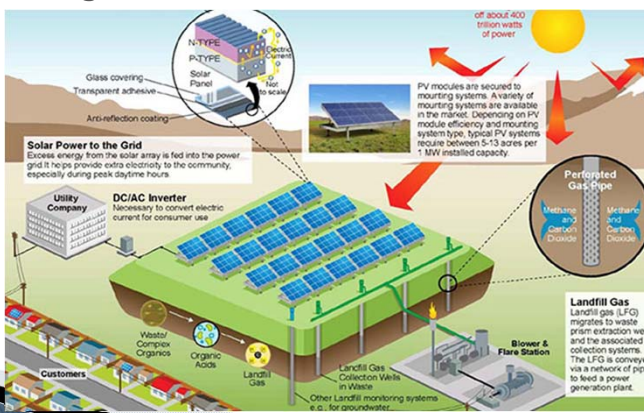
- ▶ 3 tiers of systems
 - 1 – 40-80 Kwh serve 1-2 family residences
 - 2 – lower than 600 Kwh
 - 3 – greater than 600 Kwh
- ▶ Ensure Fire Safety Compliance
- ▶ Locate outside Floodplain/Wetlands
- ▶ Security
- ▶ Land Disturbance
- ▶ Noise
- ▶ Decommissioning Plan



SEQRA

- ▶ Use of GEIS
 - To pre-approve areas to accommodate and support renewable energy sources
 - To plan for micro-grids

<https://www.tetrattech.com/en/blog/solar-energy-generates-revenue-from-closed-landfills>



Conclusion

- ▶ Any NYS municipality can and must do its part to address climate change
 - The tools are available, you just need the will



Additional Resources

- "Planning and Zoning for Solar: Legal tools and techniques used to do solar development in municipalities" – Pace Land Use Leadership Alliance Training Program, November, 2018
- "Shining Light on Solar Development in New York" - Pace Land Use & Sustainable Development Conference, December, 2016
- "Solar Land Leases 101", Presented by John Cappello and Borrego Solar, June 2016
- "Planning and Zoning for Solar", Presented by John Cappello, Orange County Partnership/Alliance for Balanced Growth, May 2016
- "Integrating Green Provisions into Zoning Law in New York State." Presented by John Cappello, New York State Bar Association Municipal and Environmental Section Joint Fall Meeting
- "How Do We Plan for, Compete and Prosper in a Green Economy: Economical and Environmental Benefits of Green Development," Presented by John Cappello, April 2009

Contact Us



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