



## Section 94-c Renewable Energy Siting Regulations How Municipalities Can Influence the Outcome

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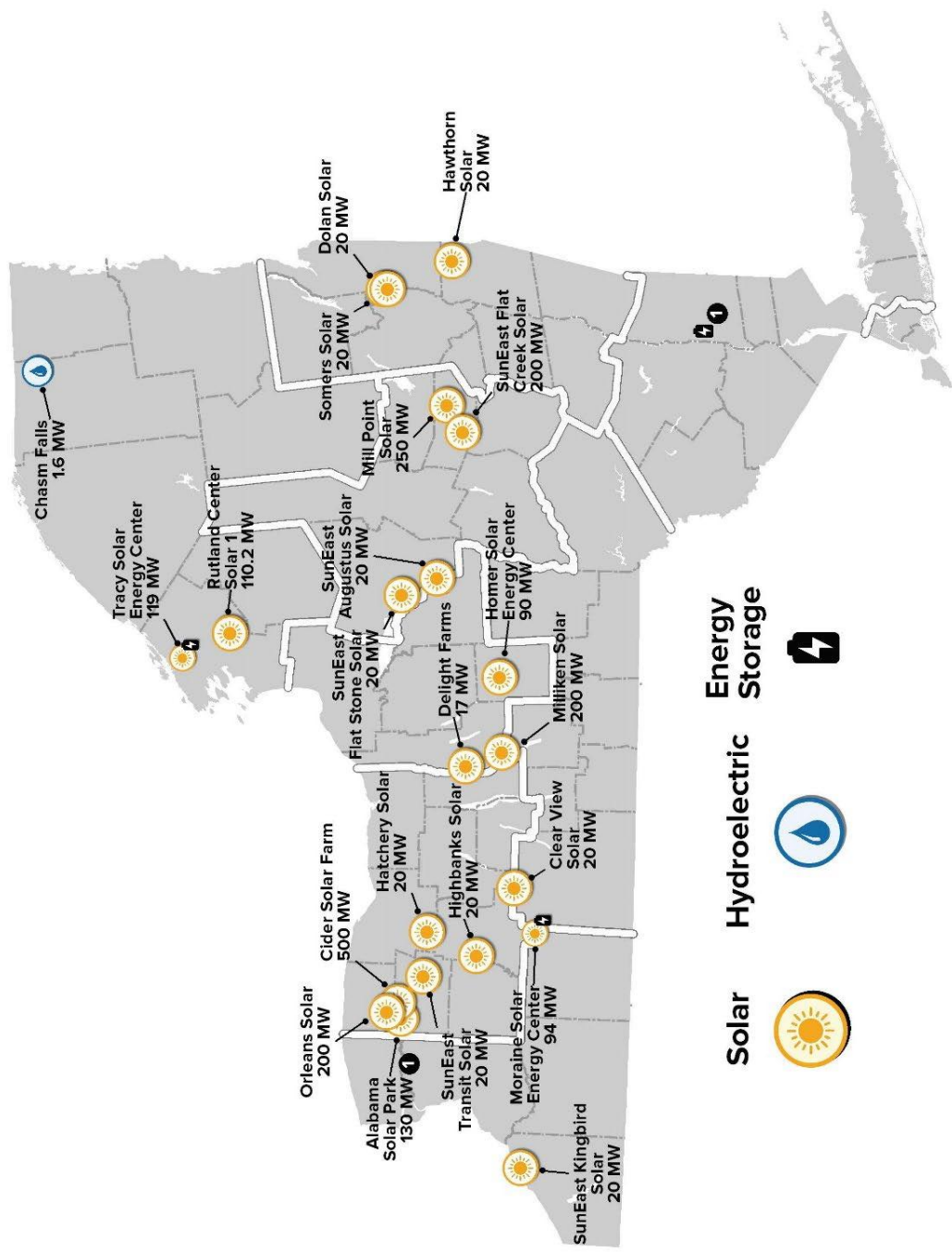
## *Agenda*

- Overview of the Section 94-c Regulations
- Municipal participation in the 94-c process
- Key takeaways

## *2020 Accelerated Renewable Energy Growth and Community Benefit Act*

- Established Executive Law Section 94-c to replace Article 10 for major renewable energy projects
  - Administered by the Office of Renewable Energy Siting (ORES) within Department of State
- Established program for NYSERDA to secure “build ready sites” for renewable energy projects
- “Host community benefit” required that may be:
  - (Now required) participation in a PSC program to provide a 10-year utility bill discount of \$500/MW per year distributed among host community residential customers;
  - A project as determined by ORES; or
  - As agreed to between the applicant and host community.
- Required DPS and PSC to initiate state power grid study and planning to achieve renewable energy targets. Establishes accelerated transmission project siting approvals.

*Future Large-Scale Projects-2020 NYSERDA RES Awards*

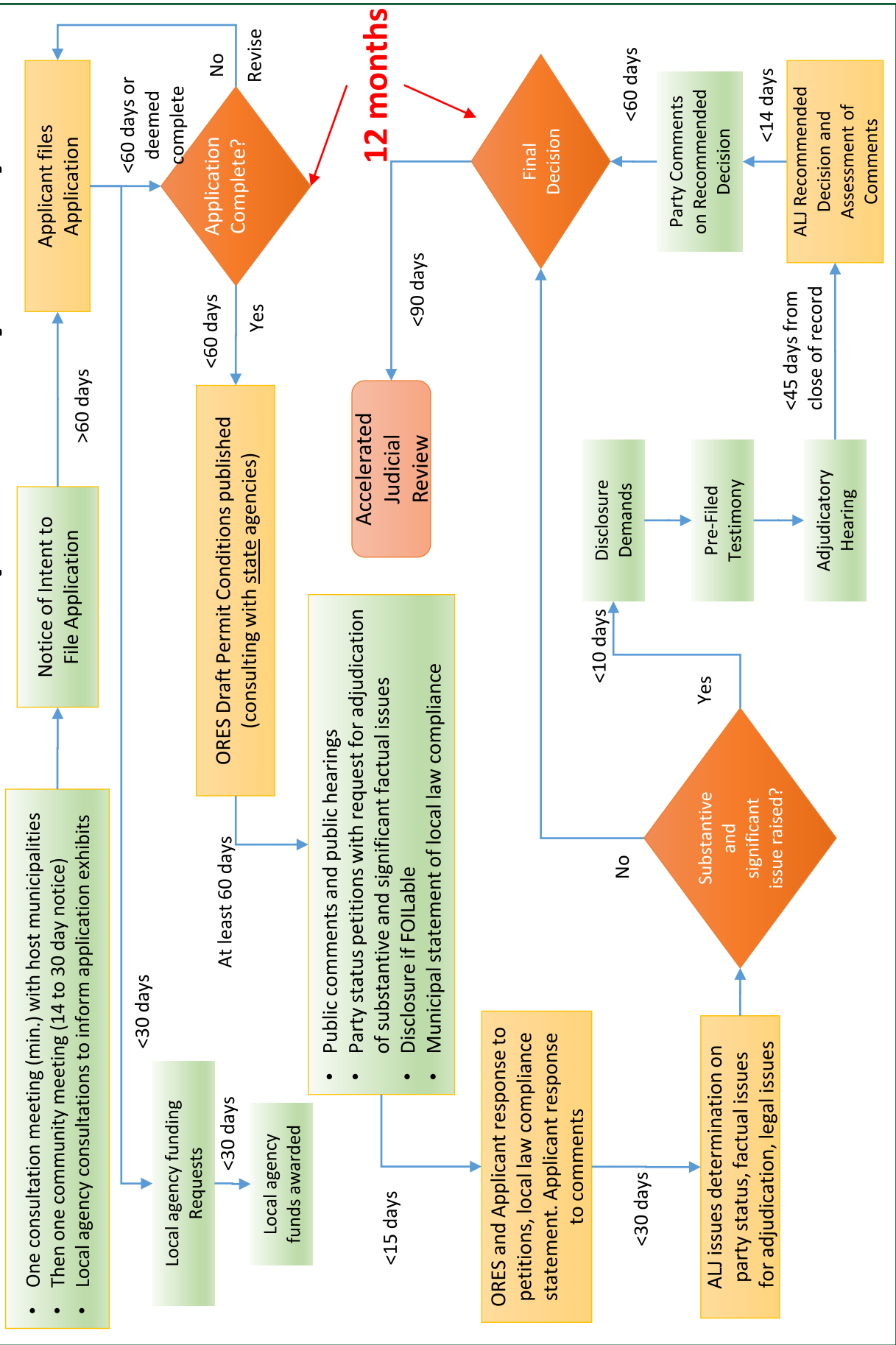


Source: NYSERDA 2020 RES Solicitation Fact Sheet  
 NY-SUN Dashboard, Upstate Commercial

# Siting Process Comparison

Issue	Local Zoning	Section 94-c
Project Capacity	<25 MW	>=25 MW (required), optional for >=20 MW
Approval Authority	Planning/Zoning Boards, Town Boards and other involved agencies	Director of ORES DEC for federally delegated permits
Presiding Authority	Planning/Zoning Boards, Town Boards and other involved agencies	ORES with DEC
Application Process	Municipal Site Plan/Special Use Permit (typ) Review Process Other agency processes	ORES Regulations/SAPA
Environmental Review	SEQRA	<ul style="list-style-type: none"> <li>Supersedes SEQRA.</li> <li>ORES and DEC identify site-specific environmental impacts that may be caused by project not addressed by uniform standards and conditions.</li> <li>ORES and DEC draft site specific permit terms and conditions for such impacts, taking into account the CLCPA targets and the environmental benefits of the project.</li> </ul>
Public Hearings	Public statement hearings (typ)	<ul style="list-style-type: none"> <li>Public statement hearings and comment periods.</li> <li>Adjudicatory hearings only if substantive and significant issues raised.</li> </ul>
Parties to development of scope of application and draft conditions of approval	Approving boards and involved agencies.	ORES and relevant state agencies. Local agency consultations regarding certain exhibits.
Compliance with local laws	Required. Variances available.	<ul style="list-style-type: none"> <li>Local municipalities provide statement of whether project is in compliance with applicable local laws concerning the environment or public health and safety.</li> <li>ORES may disregard a local law if it is unreasonably burdensome “in light of the CLCPA targets and the environmental benefits of the facility.”</li> <li>Municipality will need to demonstrate the impact of the non-compliance is “substantive and significant” if ORES draft permit disregards local law.</li> </ul>

# Section 94-c Process (Muni Perspective)



## *Key Issues for Municipalities*

- Single pre-application meeting is the only required consultation with host municipalities.
  - ORES *strongly encourages* applicants to conduct additional engagement.
- Consultation with other local agencies required to prepare certain exhibits:
  - Local planning officials to inform map of publicly known proposed land uses;
  - Local emergency response providers regarding contingency, site security, and safety response plans;
  - Local input to identify sensitive noise receptors;
  - Local input to identify important local viewpoints for the Visual Impact Assessment;
  - Local historic preservation groups to identify potentially eligible sites or structures for listing;
  - Highway Superintendent to provide input on transportation plan;
  - School districts to estimate incremental school operating and infrastructure costs;
  - Affected municipalities to estimate incremental municipal operating and infrastructure costs;
  - Identification of the agency to certify compliance with the Uniform Code.
- Focus is on compliance with local laws: ensure local laws are current, defensible, and address battery energy storage.
- Issues raised must be “substantive and significant”
  - Burden of persuasion is on the municipality to demonstrate a waived non-compliance with local law is substantive and significant



**More information:**

**Knauf Shaw Blog:** <https://www.nyenvlaw.com/renewable-energy-siting/>

**ORES Regulations:** <https://ores.ny.gov/regulations>