

§ 144-17. Solar energy systems. [Added 3-15-2017 by L.L. No. 1-2017; amended 6-15-2023 by L.L. No. 3-2023]

A. Authority. This solar energy systems section is adopted pursuant to §§ 261 through 263 of the Town Law for the State of New York, which authorizes the Town to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the Town Law of New York State, to make provision for, so far as conditions may permit, the accommodation of certain solar energy systems and equipment and access to sunlight necessary therefor.

B. Findings. The Town Board of the Town of Hartland makes the following findings:

(1) The Town Board finds a growing need to properly site and regulate solar energy systems within the boundaries of the Town of Hartland to protect residential, agricultural, commercial, and other land uses, to preserve the overall beauty, nature, and character of the Town of Hartland, promote the effective and efficient use of certain solar energy resources, protect the health, safety, and general welfare of the citizens of the Town of Hartland, and to conform to the Town's Comprehensive Plan.

(2) That Utility Scale Solar energy systems deplete land available for other uses, introduce industrial type usages into other non-industrial areas, and can pose environmental challenges and compete with other activities.

(3) Solar energy systems need to be regulated for removal when no longer utilized, to prevent environmental problems and abandoned industrial equipment.

C. Definitions. The following definitions shall apply to this section:

APPLICANT — The person or entity filing an application and seeking an approval under this section; the owner of a solar energy system or a proposed solar energy system project; the operator of solar energy system or a proposed solar energy system project; any person acting on behalf of an applicant, solar energy system or proposed solar energy system. Whenever the term "applicant" or "owner" or "operator" is used in this section, said term shall include any person acting as an applicant, owner, or operator.

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM — A combination of solar panels and solar energy equipment integrated into any building envelope system, such as vertical facades, semi-transparent skylight systems, roofing materials, or shading over windows, which produce electricity for on-site consumption.

BUILDING-MOUNTED SOLAR ENERGY SYSTEMS — A solar energy system that is affixed to the side(s) of a building either directly or by means of support structures or other mounting devices, but not including those mounted to the roof or top surface of a building and designed and intended to generate electricity solely for use primarily on said building or connected through a net-metering system.

FARMLAND OF STATEWIDE IMPORTANCE — Land, designated as "farmland of statewide importance" in the U.S. Department of Agriculture Natural Resources Conservation Service's (NRCS's) Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of

statewide importance may include tracts of land that have been designated for agriculture by state law.

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.

GLINT — Giving out or reflecting small flashes of light.

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 on-site or off-site consumption.

HOST COMMUNITY AGREEMENT — A contract between a developer and a local governing body, whereby the developer agrees to provide the community with certain benefits and mitigate specified impacts of the solar project.

LARGE-SCALE SOLAR ENERGY SYSTEM — Any ground-mounted solar energy system that is designed and intended to supply energy primarily into a utility grid for sale and is between 5 and 10 acres in size (defined as the fenced-in area that encloses the panels and other related solar energy equipment, as determined by the Town). No solar energy systems in the Town of Hartland may exceed 10 acres in size (defined as the fenced-in area that encloses the panels and other related solar energy equipment, as determined by the Town).

NATIVE PERENNIAL VEGETATION — Native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for pollinators, and shall not include any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation.

NONPARTICIPATING PROPERTY — A property that is not affiliated with a solar energy system project in any way.

PARCEL(S) — A tract of land owned by an individual or entity leased or otherwise controlled by an applicant upon which a solar energy system is proposed to be constructed.

PARTICIPATING PROPERTY — A property that is being leased for solar usage, or a property that has an agreement or lease but is not having solar-related improvements constructed upon it.

POLLINATOR — Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, including both wild and managed insects.

PRIME FARMLAND — Land, designated as "prime farmland" or "prime farmland where drained" in the U.S. Department of Agriculture Natural Resources Conservation Service's (NRCS's) Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.

ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM — Any solar energy system that is affixed to the roof of a legally permitted building or structure and wholly contained within the limits of the roof surface and is designed and intended to generate electricity primarily for on-site use or connected through a net-metering system.

SMALL GROUND-MOUNTED SOLAR ENERGY SYSTEM — A solar energy system that is affixed to the ground either directly or by support structures or other mounting devices. Said

system is an accessory structure, limited in size to 750 square feet for residential use 1,500 square feet for business use, and designed and intended to generate electricity primarily for use on said lot or through a net-metering system. (It can be sized to generate power of no more than 110% of the site usage, as documented through NYSERDA.)

SOLAR ENERGY SYSTEM — Any system or group of components designed to produce power from the sun and affixed to real property, except self-contained, single-purpose components, such as signage lighting panels. A solar energy system in the Town of Hartland is classified as a rooftop-mounted system, a small building-mounted system, a small ground-mounted system or a large-scale solar energy system.

D. Applicability.

- (1) The requirements of this section shall apply to all solar energy systems permitted, installed, or modified in the Town after the effective date of this section, excluding general maintenance and repair.
- (2) Solar energy systems constructed or installed prior to the effective date of this section shall not be required to meet the requirements of this section.
- (3) Modifications to an existing solar energy system that increase the solar energy system area by more than 5% of the original area of the solar energy system (exclusive of moving any fencing) shall be subject to this section.
- (4) 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 Code.
- (5) This section shall not apply to any lot owned by a municipality.

E. General requirements.

- (1) A building permit shall be required for installation of all solar energy systems.
- (2) Issuance of permits and approvals by the Planning Board shall include review pursuant to the State Environmental Quality Review Act, ECL Article 8, and its implementing regulations at 6 NYCRR Part 617 (SEQRA).
- (3) This section shall take precedence over any inconsistent provision of the Zoning Law of the Town of Hartland.

F. Use districts where allowed. No solar energy systems shall be permitted in the Town of Hartland except in the zoning districts specified in this section:

- (1) Rooftop-mounted, building-integrated, and building-mounted solar energy systems are permitted in all zoning districts in the Town, subject to setback and height restrictions and meeting glare and fire safety requirements.

1,500 square feet for business use, and designed and intended to generate electricity primarily for use on said lot or through a net-metering system. (It can be sized to generate power of no more than 110% of the site usage, as documented through NYSERDA.)

SOLAR ENERGY SYSTEM — Any system or group of components designed to produce power from the sun and affixed to real property, except self-contained, single-purpose components, such as signage lighting panels. A solar energy system in the Town of Hartland is classified as a rooftop-mounted system, a small building-mounted system, a small ground-mounted system or a large-scale solar energy system.

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- (1) The requirements of this section shall apply to all solar energy systems permitted, installed, or modified in the Town after the effective date of this section, excluding general maintenance and repair.
- (2) Solar energy systems constructed or installed prior to the effective date of this section shall not be required to meet the requirements of this section.
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J. Applicability.

- (1) The requirements of this section shall apply to all solar energy systems permitted, installed, or modified in the Town after the effective date of this section, excluding general maintenance and repair.
- (2) Solar energy systems constructed or installed prior to the effective date of this section shall not be required to meet the requirements of this section.
- (3) Modifications to an existing solar energy system that increase the solar energy system area by more than 5% of the original area of the solar energy system (exclusive of moving any fencing) shall be subject to this section.
- (4) 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 Code.
- (5) This section shall not apply to any lot owned by a municipality.

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L. Use districts where allowed. No solar energy systems shall be permitted in the Town of Hartland except in the zoning districts specified in this section:

- (1) Rooftop-mounted, building-integrated, and building-mounted solar energy systems are permitted in all zoning districts in the Town, subject to setback and height restrictions and meeting glare and fire safety requirements.
- (2) Small ground-mounted solar energy systems are permitted as accessory structures in all zoning districts of the Town subject to all setback, height, and area coverage restrictions and meeting glare and fire safety requirements.

- (3) Small ground-mounted solar energy systems are permitted as accessory structures in all zoning districts of the Town subject to all setback, height, and area coverage restrictions and meeting glare and fire safety requirements.
 - (4) Large-scale solar energy systems are permitted (by the process described later in this section) only in an Agricultural-Business Use (AB) or Light Industrial Use (I) District.
- M. Approval requirements. The placement, construction, and major modification of all solar energy systems within the boundaries of the Town of Hartland shall be permitted as follows:
- (1) Rooftop-mounted, building-integrated, and building-mounted solar energy systems shall follow building permit procedures for solar rooftop-mounted systems meeting the requirements of this section.
 - (2) Small ground-mounted solar energy systems shall follow building permit procedures for small ground-mounted systems meeting the requirements of this section and must be accompanied by a to-scale map showing location, setbacks, and lot coverage.
 - (3) Large-scale solar energy systems shall be permitted only by special permit by the Town of Hartland Planning Board in use districts, where allowed, in accordance with the criteria established in this section, after SEQRA review, upon concurrent site plan approval issued by the Town of Hartland Planning Board, and upon issuance of a building permit, and shall be subject to all provisions of this section. In order to ensure that the benefits of the community solar energy resource are available to the entire community, the Town of Hartland requires the applicant to enter into a solar energy system host community agreement with the Town of Hartland.
- N. General criteria and other requirements for rooftop-mounted, building-mounted and small ground-mounted systems.
- A rooftop-mounted solar energy system shall not be more than three feet higher than the finished roof to which it is mounted, and in no instance shall any part of the system extend beyond three feet before the edge of the roof. Solar panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted and shall be mounted with a maximum distance of eight inches between the roof surface and the highest edge of the system. Maintenance access shall be incorporated into the system as determined by the Building Inspector.
- (1) Building-mounted solar energy systems shall not be more than three feet from the building wall, and in no instance shall any part of the system extend beyond the roof line or parapet wall.
 - (2) Small ground-mounted solar energy systems shall be subject to the following requirements:
 - (a) The location of said solar energy system shall be placed in accordance with setback requirements for an accessory structure of the use district in which it is located;
 - (b) The location of said solar energy system shall be only located in the side or rear yard;

of the system. Maintenance access shall be incorporated into the system as determined by the Building Inspector.

- (3) Building-mounted solar energy systems shall not be more than three feet from the building wall, and in no instance shall any part of the system extend beyond the roof line or parapet wall.
- (4) Small ground-mounted solar energy systems shall be subject to the following requirements:
 - (a) The location of said solar energy system shall be placed in accordance with setback requirements for an accessory structure of the use district in which it is located;
 - (b) The location of said solar energy system shall be only located in the side or rear yard;
 - (c) The total surface area of said solar energy system on a lot shall not exceed the allowed accessory structures or combinations of accessory structures where permitted in the district; and
 - (d) Site plans for small ground-mounted systems shall include a professionally prepared survey indicating the location of the proposed system and setbacks from property lines and buildings.
- (5) Solar storage batteries. When solar storage batteries are included as part of any solar energy system, they shall be in accordance with the Town Battery Energy Storage Systems Local Law.¹
- (6) Any solar energy system shall be accessible by all emergency service vehicles and personnel.
- (7) All structures and devices used to support solar collectors shall be nonreflective and/or painted a subtle or earth-tone color. All solar panels shall not glint or glare, and proof to such must be submitted at time of application and when the building permit is applied for.
- (8) The design, construction, operation, and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks.
- (9) Artificial lighting of any solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
- (10) If the use of a solar energy system is discontinued or not maintained, the owner or operator shall notify the Building Inspector within 30 days of such discontinuance and shall remove the system and properly dispose of all materials. (Reference the Niagara County solar panel recycling law.) If a solar energy system is to be retained and reused, the owner or operator shall further inform the Building Inspector of this in writing at

1. Editor's Note: See § 144-20, Battery energy storage systems.

such time and obtain any necessary approvals within one year; otherwise it shall be automatically deemed nonoperating or abandoned.

- I. Special permit requirements for large-scale solar energy systems. Applications under this section shall be made as follows:
 - (1) Applicants for a special permit to place, construct, or make a major modification to a large-scale solar energy system within the boundaries of the Town of Hartland shall submit 12 sets of the following information to the Building Inspector, who shall first present it to a Town-designated professional engineer or consultant for an initial review and then to the Planning Board for its review and recommendation. Once the application is deemed complete and while the Planning Board is completing its review, the project/application shall be referred to the Town Board to begin completion of the host community agreement; this agreement will need to be finalized before the Planning Board acts on the special use permit.
 - (2) The Planning Board may make such additional referrals as it deems appropriate. No such application shall be deemed filed until any required application fee has been paid. After considering such application in accordance with this section, the Planning Board may grant the special use permit, deny the special use permit, or grant the special use permit and impose reasonable conditions and restrictions as authorized by Town Law § 274-b, Subdivision 4. The following information shall be contained in or accompany the application:
 - (a) A completed State Environmental Quality Review Act (SEQRA) form.
 - (b) Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include the name, address, and telephone number of the applicant and a letter or other written permission signed by the property owner authorizing the applicant to represent the property owner.
 - (c) Documentation of access to the project site(s), including location of all access roads, gates, parking areas, etc. Vehicular access/paths/roads within the site must be designed to minimize the extent of impervious materials and compaction and meet requirements to provide emergency vehicle access.
 - (d) Stormwater management and erosion and sediment control plans.
 - (e) Utility interconnection data and a copy of written notification to the utility of the proposed interconnection.
 - (f) One- or three-line electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and overcurrent devices.
 - (g) A property owner who has installed or intends to install a large-scale solar energy system may choose to negotiate with other property owners in the vicinity for any necessary solar skyspace easements. The issuance of a special use permit does not constitute solar skyspace rights, and the Town shall not be responsible for ensuring impermissible obstruction to the solar skyspace as a result of uses or development

performed in accordance with Town Code. In the event that solar easements are negotiated by an applicant or property owner for a large-scale solar energy system, a copy or documentation of any solar skyspace easements shall be provided, properly recorded as such, negotiated with neighboring property owners that shall, at a minimum, include:

- [1] The restrictions placed upon buildings, structures, vegetation, and other objects or uses that would potentially obstruct the solar skyspace of the solar energy system; and
 - [2] A description of the dimensions of the easement expressed in measurable terms, such as the maximum height of buildings and structures, vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector may not be obstructed, or a combination of these descriptions; and
 - [3] The amount, if any, of permissible obstruction of the solar skyspace through the easement, expressed in measurable terms, such as a specific percentage of the solar skyspace that may be obstructed or hours during the day; and
 - [4] Provision for trimming vegetation that would impermissibly obstruct solar skyspace, including any compensation for trimming expenses; and
 - [5] Provisions for compensation of the owner/operator benefiting from the easement in the event of impermissible obstruction of the solar skyspace that would be in violation of the easement; and
 - [6] The terms or conditions, if any, under which the easement may be revised or terminated.
- (3) Information on the groundwater conditions in the area and all public and private wells within 500 feet of the site.
 - (4) A lighting plan. 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 (dark-sky-compliant) from abutting properties.
 - (5) Information on any noise impacts on surrounding homes or other sensitive receptors. The one-hour average noise generated from the solar energy system's components and associated ancillary equipment shall not exceed 45 decibels, as measured from the boundary of any nonparticipating property. Applicants may submit equipment and component manufacturers' noise ratings to demonstrate compliance. The applicant may be required to provide operating sound pressure level measurements from a reasonable number of sampled locations at the perimeter of the solar energy system to demonstrate compliance with this standard.
 - (6) Clearing and grading plan(s). Removal of existing trees larger than six inches in diameter should be minimized to the extent possible. No more than 10% of the existing trees larger than six inches in diameter should be removed.

- (7) Information on planned signage:
 - (a) No signage or graphic content shall be displayed on the solar energy system except the manufacturer's name, equipment specification information, safety information, and twenty-four-hour emergency contact information. Said information shall be depicted within an area no more than eight square feet.
 - (b) As required by National Electrical 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.
- (8) An operation and maintenance plan for all leased and owned lands (including required setbacks/buffers). Maintenance includes equipment, roadways/access drives, plantings under the panels, landscaped areas, and all other areas of the site.
- (9) A safety plan (including communication with emergency service providers).
- (10) An emergency operations plan must be submitted at the time of application. This plan shall address the issues in the Town's guidance document and any additional items that are requested by the Planning Board. The Planning Board will receive input from emergency service providers and others as deemed necessary. If approved, a copy of the approved emergency operations plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders.
- (11) Information on the environmental and cultural resources (as identified through the NYSDEC mapping system and by the Town of Hartland) on the subject property and surrounding properties.
- (12) A site plan in accordance with the Town of Hartland's site plan requirements and drawn in sufficient detail as follows:
 - (a) Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposed layout of the entire solar energy system along with a description of all components, whether on-site or off-site, existing vegetation and proposed clearing and grading of all sites involved, and utility lines, both above and below ground, on the site and adjacent to the site; and
 - (b) A landscape plan signed by a professional landscape architect; and
 - (c) Property lot lines and the location and dimensions of all existing structures and uses on site within 500 feet of the solar panels, and the zoning of the site and surrounding properties; and
 - (d) Proposed fencing and/or screening for said project; and
 - (e) Information on the equipment to be installed, including the requirement that the system components not contain any hazardous substances.

- (13) Any such additional information as may be required by the Town's professional engineer or consultant, Town of Hartland Planning Board, Town Attorney, or Building Inspector.
- J. Special permit criteria; restrictions. Special permits issued for a large-scale solar energy system shall meet the following conditions:
- (1) Minimum lot area. The minimum lot upon which the system is to be constructed shall be 5 contiguous acres. For purposes of this calculation, contiguous participating parcels may be treated as a single lot.
 - (2) Maximum coverage area. The maximum coverage area of the system (within the fenced-in area) shall be 10 contiguous acres. For purposes of this calculation, contiguous participating parcels may be treated as a single lot.
 - (3) Setbacks. Any large-scale solar energy system shall adhere to the following setbacks (from the fenced-in area). Greater setbacks may be needed due to specific property issues and adjoining uses (determined through the SEQR process).
 - (a) From any zoning district boundary: a minimum of 500 feet from all nonparticipating property lot lines bordering any residential use district.
 - (b) From any property lot lines: a minimum of 500 feet from any nonparticipating property lot line, and 10 feet from any participating property line.
 - (c) From buildings or structures on a participating property: a minimum of 100 feet from any building, structure or dwelling.
 - (d) From public roads: a minimum of 750 feet from any public road (measured from the road right-of-way line).
 - (e) From schools and public parks: a minimum of 1,000 feet from all property lot lines bordering a school or public park.
 - (4) Maximum overall height. The height of a large-scale solar energy system shall not exceed 20 feet when oriented at maximum tilt.
 - (5) Number and location limitations of large-scale solar energy systems allowed per lot. There shall only be allowed one large-scale solar energy system per lot and no large-scale energy system will be permitted within a five mile radius of all exterior lot lines of another lot upon which a large-scale energy system is already permitted.
 - (6) A large-scale solar energy system shall adhere to all applicable federal, state, county and Town of Hartland laws, regulations, building, plumbing, electrical, and fire codes, and the applicant shall provide any requested documentation of such correspondence.
 - (7) Development and operation of a large-scale solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Hartland or other federal or state

regulatory agencies.

- (8) All transmission lines and wiring associated with a large-scale solar energy system shall be buried and include necessary encasements in accordance with the National Electrical Code and Town requirements. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan.
- (9) All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.
- (10) A berm and/or screening may be required along property lines abutting a residential lot.
- (11) Prior to issuance of a certificate of occupancy, the applicant shall provide a post-construction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans.
- (12) Compliance with regulatory agencies. The applicant is required to obtain and maintain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of a large-scale solar energy system.
- (13) Decommissioning.
 - (a) Solar energy systems that have been abandoned and/or are not producing electricity (defined as operating below 50% capacity of the system for a period of at least six months over a twelve-month period) shall be removed at the owner's and/or operator's expense, which at the owner's option may come from any security made with the Town as set forth in this section. A yearly operational report will be required to be submitted to the Town documenting the system's performance.
 - (b) 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 (no allowance for recycle/salvage value).
 - [2] The time required to decommission and remove the solar energy system and any ancillary structures, including sight barriers.
 - [3] The time required to repair any damage caused to the property by the installation and removal of the solar energy system.
 - [4] If on agricultural lands, the plan must meet the NYS Department of Agriculture and Markets standards for decommissioning (and will be a condition of the SUP).
 - (c) Security.
 - [1] The deposit, execution, or filing with the Town Clerk of cash, bond, or other

form of security reasonably acceptable to the Town Attorney and/or Engineer and approved by the Town Board, shall be in an amount sufficient to ensure the good-faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be 125% of the cost of removal of the solar energy system and restoration of the property with an escalator of 2% annually for the life of the solar energy system. The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the solar energy system. This security amount shall be reviewed periodically and updated/renewed as necessary (determined at the time of the first security agreement). This "security" shall be in place prior to the start of construction.

[2] In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.

[3] In the event of default or abandonment of the solar energy system, the system shall be decommissioned as set forth in this section.

(14) Clearing, grading, and stormwater and erosion control.

- (a) Before the Town of Hartland shall issue a clearing, grading, stormwater or building permit for a large-scale solar energy system, the applicant shall submit a stormwater and erosion control plan to the Engineering Department for its review and approval; and
- (b) The stormwater plan must identify any existing ditches and drainageways on the subject property and provide any drainage easements required by the Town of Hartland (these easements are typically 100 feet in width, centered on the ditch or drainageway); and
- (c) The plan shall minimize the potential adverse impacts on wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands and minimize erosion or sedimentation.

(15) Screening and visibility.

- (a) Solar energy systems with a coverage area of less than five acres shall have views minimized from adjacent nonparticipating properties to the extent reasonably practicable using architectural features, earthen berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
- (b) Solar energy systems with a coverage area larger than five acres shall be required to:

- [1] Conduct a visual assessment of the visual impacts of the solar energy system on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis must be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including, for example, a digital viewshed report, may be required to be submitted by the applicant.
- [2] Submit a screening and landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of solar panels and solar energy equipment shall be minimized as reasonably practical from public roadways and adjacent properties to the extent feasible at the start of activation. The Planning Board will in good faith determine the adequacy of these measures in its sole and absolute discretion.
 - [a] The screening and landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. The landscaped screening shall be comprised of a minimum of one evergreen tree, at least six feet high at time of planting, plus two supplemental shrubs at the reasonable discretion of the Town Planning Board, all planted every 10 linear feet along the perimeter of the solar energy system. Existing vegetation on the subject property may be used to satisfy all or a portion of the required landscaped screening. A list of suitable evergreen tree and shrub species shall be provided by the applicant for the Town to review. This minimum screening requirement will be reduced if adjoining properties are participating properties. Every effort should be made to plant native trees and shrubs to preserve the character of the area and support local wildlife. The contractor, in conjunction with a local nursery, should recommend shrub screening for Planning Board approval.
- (c) For all large-scale solar energy systems, the recommendations of a landscape professional are required. The Planning Board can require that large-scale systems involving complex or sensitive visual and/or aesthetic concerns be approved by a New-York-State-registered landscape architect. All large-scale solar energy systems landscape plans must be designed/approved by a New-York-State-registered landscape architect.
- (d) For any buildings or structures (not panels) to be placed on the site, the applicant shall be required to submit plans illustrating how these structures will blend into the character of the area. For example, any buildings can be made to look like agricultural structures such as barns.
- (16) Hazardous materials. Proof that the project components shall not contain any hazardous materials that could contaminate soils or the air by their release (Units shall not contain cadmium, lead or other hazardous substances such as PFAS substances used in coatings, etc.) must be provided. MSD sheets for all materials considered hazardous shall be provided to the Barker Fire Department, Code Enforcement Officer, and Town Planning

Board.

(17) Agricultural resources. For projects located on agricultural lands:

- (a) Any large-scale solar energy system shall not be permitted if the coverage area contains 50% or more land classified as prime farmland or farmland of statewide importance. Prime farmland is determined and classified by the US. Department of Agriculture (USDA), and the percentage of prime farmland and farmland of statewide importance is calculated using USDA maps and online data tools, including any amendments made to those maps and data. It is the responsibility of the developer and/or landowner to provide written evaluation, data, and mapping to the Planning Board that the coverage area does not meet this 50% threshold. The evaluation must contain data and maps that are supported, approved and/or published by the USDA, NYS Agriculture and Markets and/or Niagara County Soil and Water Conservation District (NRCS). The Planning Board may require that this evaluation be reviewed by the Town Engineer, consultant, or local agricultural services agent, where the cost of this review will be the responsibility of the developer or landowner.
- (b) Large-scale solar energy systems located on farmland shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets. (See NYS Agriculture and Markets Guidelines.)
- (c) Large-scale solar energy system owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes. Once established, other agriculture uses such as pasturing livestock and apiculture are permissible and encouraged.
- (d) Agricultural restoration requirements. Once the system is decommissioned, the site shall be restored and remediated in accordance with the NYS Agriculture and Markets Guidelines. (This will be a condition of the special use permit.)

K. Maintenance, procedures, and fees.

- (1) Time limit on completion. Upon the granting of a special use permit for a large-scale solar energy system by the Planning Board, the building permit shall be obtained within six months of the granting of the special use permit, and the project shall be completed within 12 months of the issuance of the building permit. If not constructed, the special use permit and site plan approval and building permit shall automatically lapse without notice.
- (2) Inspections. Upon reasonable notice, the Town of Hartland Building Inspector or his or her designee may enter a lot on which a solar energy system has been approved for the purpose of ensuring compliance with any requirements or conditions. 24 hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. The applicant/operator shall authorize and cooperate in such inspection. Furthermore, a large scale solar energy system shall be inspected annually or at any other time deemed necessary by the Town's Building Inspector by

a New-York-State-licensed professional engineer that has been approved by the Town. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.

- (3) Time limit on completion. Upon the granting of a special use permit for a large-scale solar energy system by the Planning Board, the building permit shall be obtained within six months of the granting of the special use permit, and the project shall be completed within 12 months of the issuance of the building permit. If not constructed, the special use permit and site plan approval and building permit shall automatically lapse without notice.
- (4) Inspections. Upon reasonable notice, the Town of Hartland Building Inspector or his or her designee may enter a lot on which a solar energy system has been approved for the purpose of ensuring compliance with any requirements or conditions. 24 hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. The applicant/operator shall authorize and cooperate in such inspection. Furthermore, a large scale solar energy system shall be inspected annually or at any other time deemed necessary by the Town's Building Inspector by a New-York-State-licensed professional engineer that has been approved by the Town. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.
- (5) General complaint process. During construction, the Town Building Inspector can issue a stop order at any time for any violations of the special use permit or building permit. After construction is complete, the permit holder of a large-scale solar energy system shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements.
- (6) Continued operation. A solar energy system shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions. Further, the Building Inspector shall also have the right to request documentation from the owner of a solar energy system regarding the system's usage at any time.
- (7) Annual report. The owner and/or operator of a large-scale] solar energy system must submit to the Town's Code Enforcement Officer a yearly report, due no later than February 15, which is certified as accurate and complete under penalty of perjury and contains the following information:
 - (a) The rated capacity of the system;
 - (b) The amount of electricity generated by the system in the most recent twelve-month period;
 - (c) The amount of electricity transmitted to the power grid in the most recent twelve-month period;
 - (d) Identification of any change of ownership of the large-scale solar energy system or the owner of the land upon which it is sited;
 - (e) Identification of any change in the party responsible for decommissioning and removal of the system upon its abandonment;

- (8) Time limit on completion. Upon the granting of a special use permit for a large-scale solar energy system by the Planning Board, the building permit shall be obtained within six months of the granting of the special use permit, and the project shall be completed within 12 months of the issuance of the building permit. If not constructed, the special use permit and site plan approval and building permit shall automatically lapse without notice.
- (9) Inspections. Upon reasonable notice, the Town of Hartland Building Inspector or his or her designee may enter a lot on which a solar energy system has been approved for the purpose of ensuring compliance with any requirements or conditions. 24 hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. The applicant/operator shall authorize and cooperate in such inspection. Furthermore, a large scale solar energy system shall be inspected annually or at any other time deemed necessary by the Town's Building Inspector by a New-York-State-licensed professional engineer that has been approved by the Town. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.
- (10) General complaint process. During construction, the Town Building Inspector can issue a stop order at any time for any violations of the special use permit or building permit. After construction is complete, the permit holder of a large-scale solar energy system shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements.
- (11) Continued operation. A solar energy system shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions. Further, the Building Inspector shall also have the right to request documentation from the owner of a solar energy system regarding the system's usage at any time.
- (12) Annual report. The owner and/or operator of a large-scale] solar energy system must submit to the Town's Code Enforcement Officer a yearly report, due no later than February 15, which is certified as accurate and complete under penalty of perjury and contains the following information:
 - (a) The rated capacity of the system;
 - (b) The amount of electricity generated by the system in the most recent twelve-month period;
 - (c) The amount of electricity transmitted to the power grid in the most recent twelve-month period;
 - (d) Identification of any change of ownership of the large-scale solar energy system or the owner of the land upon which it is sited;
 - (e) Identification of any change in the party responsible for decommissioning and removal of the system upon its abandonment;
 - (f) Evidence that the surety required for decommissioning remains in effect and is

irrevocable for at least the next two years; and

- (g) A report on any damage or fires that have occurred and testing of groundwater and wells (if any fire or damage has occurred) and the findings of that testing provided to the Town.
- (13) Removal. All solar energy systems shall be dismantled and removed by the owner/operator immediately from a lot when the special use permit or approval has been revoked by the Town of Hartland Planning Board or the solar energy system has been deemed to be nonoperating or abandoned by the Building Inspector for a period of more than 365 days at the cost of the owner. If the owner/operator does not dismantle and remove said solar energy system as required, the Town Board may, after a hearing at which the owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and place the cost of removal as a tax lien on said parcel. Such action shall be in addition to and not in lieu of any other enforcement remedies the Town may have.
- (14) Determination of abandonment or nonoperation. A determination of the abandonment or nonoperation of a solar energy system shall be made by the Town Building Inspector, who shall provide the owner/operator with written notice by personal service or certified mail at the address shown in the records of the Town or the application. Any appeal by the owner of the Building Inspector's determination of abandonment or inoperability shall be filed with the Town of Hartland Zoning Board of Appeals within 30 days of the Building Inspector causing personal service or mailing certified mail of his written determination, and the Board shall hold a hearing on same. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a court of competent jurisdiction grants a stay or reverses said determination. At the earlier of 366 days from the date of determination of abandonment or inoperability without reactivation approved or upon completion of dismantling and removal, any approvals for the solar energy system shall automatically expire.
- (15) Application and annual fees.
- (a) Large-scale solar energy systems. An applicant shall pay an initial application fee of \$2,500, or such other amount as the Town Board may, from time to time, determine by resolution, upon filing its special use permit and site plan application to cover the cost of processing and reviewing the application (including legal and consulting costs). If approved, the owner shall pay an annual fee of \$1,000, or such other amount as the Town Board may, from time to time, determine by resolution, to cover the cost of processing and reviewing the annual inspection report and for administration, inspections, and enforcement.
 - (b) Said fees are in addition to fees for building permits. Fees are as follows:
 - [1] Per square foot of the project area: \$0.025, or such other amount as the Town Board may, from time to time, determine by resolution.
- (16) Prior to the issuance of a building permit, the applicant shall document that all applicable federal, state, county, and local permits have been obtained.

- (17) Prior to the issuance of any building permit for a large-scale solar energy system and as a condition to any special use permit being issued, the applicant and its general contractor shall enter into a written road use agreement benefiting the Town, and in a format acceptable to the Town at its sole discretion. Such road use agreement will require the applicant and the general contractor to indemnify and hold the Town harmless from any and all damage to the roadways within the Town that may result from the development of the applicant's large-scale solar energy system. As a part of such road use agreement, the applicant shall provide an irrevocable financial security bond (or other form of surety acceptable to the Town at its sole discretion), benefiting the Town that shall ensure the indemnification and hold-harmless provisions above.
- (a) In the event that any damage is done to any Town road as a result of the development of the applicant's large-scale solar energy system, said applicant and/or general contractor shall be responsible to perform repairs to such road that are acceptable to the Town Highway Superintendent in his/her reasonable discretion.
- (b) Such repairs shall be completed within 60 days of when written notice of a demand to repair was personally served or sent via certified mail to the applicant or its general contractor. Should the applicant or its general contractor fail to effectuate such repairs within 60 days, or within a different timeline at the discretion of the Highway Superintendent, the Town shall be permitted to execute on the irrevocable financial security bond (or other form of surety) with written notice to the applicant or its general contractor.
- (c) The provisions of the road use agreement required hereby and the requisite financial security bond (or other form of surety) shall remain in full force and effect for no less than one year after all construction has been completed and the project has been certified as complete by a professional engineer.
- (d) No building permit may be issued for any approved large-scale solar energy system until such time as a road use agreement has been executed by all parties.
- (18) Special use permits for a large-scale solar energy system granted under this section shall be issued only following a public hearing held as required for special use permits under the New York State Town Law.
- (19) The Planning Board may:
- (a) For large-scale solar energy systems, grant a special use permit, deny a special use permit, or grant a special use permit with written stated conditions. Upon issuance of a special use permit, the applicant shall obtain a building permit for the large-scale solar energy system.
- (20) Any changes or alterations post-construction to a large-scale solar energy system shall be allowed only by amendment to the special use permit and/or site plan (if required), subject to all requirements of this Code.

- (21) Special use permits for large-scale solar energy systems shall be assignable or transferable so long as they are in full compliance with this section and all the conditions, and the Building Inspector is notified in writing at least 15 days prior thereto.
- (22) In addition to the requirements of this section, the special use permit application shall be subject to any other site plan approval requirements set forth in the Zoning Law.

L. Solar energy system liability insurance.

- (1) The holder of a special use permit for a solar energy system shall agree to secure, and maintain for the duration of the permit, public liability insurance as follows:
 - (a) Commercial general liability covering personal injuries, death, and property damage: \$5,000,000 per occurrence (\$10,000,000 aggregate), which shall specifically include the Town of Hartland and its officers, councils, employees, attorneys, agents, and consultants as additional named insureds.
 - (b) Umbrella coverage: \$10,000,000.
- (2) Insurance company. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in New York State and with at least a Best's rating of "A."
- (3) Insurance policy cancellation. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town of Hartland with at least 30 days' prior written notice in advance of cancellation.
- (4) Insurance policy renewal. Renewal or replacement policies shall be delivered to the Town of Hartland at least 15 days before the expiration of the insurance that such policies are to renew or replace.
- (5) Copies of insurance policy. No more than 15 days after the grant of the permit before construction is initiated, the permit holder shall deliver to the Town of Hartland a copy of each of the policies or certificates representing the insurance in the required amounts.
- (6) Certificate of insurance. A certificate of insurance states that it is for informational purposes only and does not confer sufficient rights upon the Town of Hartland; therefore, a certificate of insurance shall not be deemed to comply with this section.
- (7) Indemnification. Any application for a solar energy system within the Town of Hartland shall contain an indemnification provision. The provision shall require the applicant/ owner/operator to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town of Hartland and its officers, councils, employees, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom either at law or in equity which might arise out of or are caused by the placement, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said solar energy system; excepting, however,

any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town of Hartland or its employees or agents. With respect to the penalties, damages, or changes referenced herein, reasonable attorneys' fees, consultant fees, and expert witness fees are included in those costs that are recoverable by the Town of Hartland.

M. Violation/revocation.

- (1) Any violation of this section or of the terms of a special use permit constitutes a violation pursuant to the Zoning Code.
- (2) The Town may enforce this section by obtaining an injunction, temporary restraining order, temporary injunction, or any other remedy available in law or equity.
- (3) If the applicant violates any of the conditions of its special use permit or site plan approval or violates any other local, state, or federal laws, rules, or regulations, this shall be grounds for revocation of the special use permit or site plan approval. Revocation may occur after the applicant/owner/operator is notified in writing of the violations and the Town of Hartland Planning Board holds a hearing on same.

N. Severability. If any section, subsection, phrase, sentence, or other portion of this section is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

§ 144-20. Battery energy storage systems. [Added 6-15-2023 by L.L. No. 4-2023]

- A. Authority. This battery energy storage systems section is adopted pursuant to Article IX of the New York State Constitution, § 2(c)(6) and (10), New York Statute of Local Governments, § 10(1) and (7); §§ 261 through 263 of the Town Law; and § 10 of the Municipal Home Rule Law of the State of New York, which authorize the Town to adopt zoning provisions that advance and protect the health, safety and welfare of the community.
- B. Statement of purpose. This battery energy storage systems section is adopted to advance and protect the public health, safety, welfare, and quality of life of the Town of Hartland by creating regulations for the installation and use of battery energy storage systems, with the following objectives:
 - (1) To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of battery energy storage systems.
 - (2) To ensure compatible land uses in the vicinity of the areas affected by battery energy storage systems.
 - (3) To mitigate the impacts of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources.
 - (4) To protect the public health and safety of the residents of the Town of Hartland.
 - (5) To regulate the development of battery energy storage systems in accordance with the Town's Comprehensive Plan.
- C. Definitions. As used in this section, the following terms shall have the meanings indicated:

ANSI — American National Standards Institute.

BATTERY ENERGY STORAGE MANAGEMENT SYSTEM — An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.

BATTERY ENERGY STORAGE SYSTEM — One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a standalone twelve-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1 or Tier 2 (Tier 2A and 2B) battery energy storage system as follows:

D. Definitions. As used in this section, the following terms shall have the meanings indicated:

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BATTERY ENERGY STORAGE SYSTEM — One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a standalone twelve-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1 or Tier 2 (Tier 2A and 2B) battery energy storage system as follows:

- (1) Tier 1 battery energy storage systems have an aggregate energy capacity less than or equal to 600kWh and, if in a room or enclosed area, consist of only a single energy storage system technology. These are accessory uses to a principal use and are intended for energy use by the principal use and do not exceed storage of 110% of two days of energy for the user (as determined by the Town Building Department).

F. Definitions. As used in this section, the following terms shall have the meanings indicated:

ANSI — American National Standards Institute.

BATTERY ENERGY STORAGE MANAGEMENT SYSTEM — An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.

BATTERY ENERGY STORAGE SYSTEM — One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a standalone twelve-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1 or Tier 2 (Tier 2A and 2B) battery energy storage system as follows:

- (1) Tier 1 battery energy storage systems have an aggregate energy capacity less than or equal to 600kWh and, if in a room or enclosed area, consist of only a single energy storage system technology. These are accessory uses to a principal use and are intended for energy use by the principal use and do not exceed storage of 110% of two days of energy for the user (as determined by the Town Building Department).
- (2) Tier 2 battery energy storage systems have an aggregate energy capacity greater than 600kWh or are comprised of more than one storage battery technology in a room or enclosed area (a Tier 2A system) or in an outdoor area (a Tier 2B system). These are accessory uses to a principal use and are intended for energy use by the principal use and do not exceed storage of 110% of two days of energy for the user (as determined by the Town Building Department).
- (3) No Battery Energy Storage Systems are permitted to operate in the Town of Hartland which are not an accessory use to the principal use of a property as permitted by the Town of Hartland Zoning Ordinance.

BATTERY(IES) — A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this section, batteries utilized in consumer products are excluded from these requirements.

CELL — The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.

COMMISSIONING — A systematic process that provides documented confirmation that a battery energy storage system functions according to the intended design criteria and complies with applicable code requirements.

ENERGY CODE — The New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law, as currently in effect and as hereafter amended from time to time.

FIRE CODE — The Fire Code section of the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL) — A U.S. Department of Labor designation recognizing a private sector organization to perform

certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

NEC — National Electrical Code.

NFPA — National Fire Protection Association.

OPERATING PERMIT — As defined in § 78-2 of the Hartland Town Code.

UL — Underwriters' Laboratories, an accredited standards developer in the U.S.

UNIFORM CODE — The New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

G. Applicability.

- (1) The requirements of this section shall apply to all battery energy storage systems permitted, installed, or modified in Town of Hartland after the effective date of this section, excluding general maintenance and repair.
- (2) Battery energy storage systems constructed or installed prior to the effective date of this section shall not be required to meet the requirements of this section.
- (3) Modifications to, or retrofits or replacements of, an existing battery energy storage system that increase the total battery energy storage system designed discharge duration or power rating shall be subject to this section.

H. General requirements.

- (1) A building permit and an electrical permit shall be required for installation of all battery energy storage systems.
- (2) Issuance of permits and approvals by the Hartland Town Board or Planning Board shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 (SEQRA)].
- (3) All battery energy storage systems and all other buildings or structures that 1) contain or are otherwise associated with a battery energy storage system and 2) are subject to the Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, all applicable provisions of the Energy Code, and all applicable provisions of the codes, regulations, and industry standards as referenced in the Uniform Code, the Energy Code, and the Town Code.
- (4) Fees. Fees as set by the Town Board periodically by resolution must be paid at the time of submission of an application for site plan approval, a special use permit, a building permit, an amended building permit, or renewal of a building permit. Applicants for Tier 2 projects may also be required to pay the costs of the Town's engineers and attorneys or outside professional consultants for time spent reviewing and analyzing the application.

I. Permitting requirements for Tier 1 battery energy storage systems. Tier 1 battery energy storage systems shall be permitted in all zoning districts, subject to the Uniform Code, all other applicable codes, and the battery energy storage system permit, and are exempt from site plan review.

- J. Permitting requirements for Tier 2 (2A and 2B) battery energy storage systems.
- (1) Tier 2A battery energy storage systems that are located within a structure shall be permitted in Agricultural-Business Use (AB) or Light Industrial Use (I) Districts , subject to the Uniform Code, all other applicable codes, and the battery energy storage system permit, and are exempt from site plan review.
 - (2) Tier 2B battery energy storage systems that are located exterior of the primary building on-site shall be permitted through the issuance of site plan approval within Agricultural-Business Use (AB) or Light Industrial Use (I) Districts and shall be subject to the Uniform Code and the site plan application requirements set forth in this section. Tier 2B battery energy storage systems associated with a solar or wind energy project shall also only be allowed in conformance with the Town laws associated with these type projects (only allowed in the zoning districts that allow a Large Scale Solar and/or wind project).
 - (3) Applications for the installation of a Tier 2B battery energy storage system have the following requirements:
 - (a) They shall be reviewed by the Code Enforcement Officer and the Town engineering consultant for completeness. An application shall be complete when it addresses all matters listed in this section, including, but not necessarily limited to,
 - i) compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code and ii) matters relating to the proposed battery energy storage system and floodplains, utility lines and electrical circuitry, signage, lighting, vegetation and tree-cutting, noise, decommissioning, site plan and development, special use and development, ownership changes, safety, and permit time frame and abandonment. Any deficiencies in the application must be addressed prior to substantive review.
 - (b) They shall be referred to the County Planning Board pursuant to General Municipal Law § 239-m, if required.
 - (c) The Planning Board shall act on the application after the SEQR process is completed, which can include approval, approval with conditions, or denial.
 - (d) Utility lines and electrical circuitry. 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 right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.
 - (e) Signage.
 - [1] The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage system(s), any special hazards associated with the battery energy storage system(s), the type of suppression system installed in the area of the battery energy storage system(s), and twenty-four-hour emergency contact information, including a reach-back phone number.
 - [2] As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light-reflective surface. A clearly visible

- (4) Tier 2A battery energy storage systems that are located within a structure shall be permitted in Agricultural-Business Use (AB) or Light Industrial Use (I) Districts , subject to the Uniform Code, all other applicable codes, and the battery energy storage system permit, and are exempt from site plan review.
- (5) Tier 2B battery energy storage systems that are located exterior of the primary building on-site shall be permitted through the issuance of site plan approval within Agricultural-Business Use (AB) or Light Industrial Use (I) Districts and shall be subject to the Uniform Code and the site plan application requirements set forth in this section. Tier 2B battery energy storage systems associated with a solar or wind energy project shall also only be allowed in conformance with the Town laws associated with these type projects (only allowed in the zoning districts that allow a Large Scale Solar and/or wind project).
- (6) Applications for the installation of a Tier 2B battery energy storage system have the following requirements:
 - (a) They shall be reviewed by the Code Enforcement Officer and the Town engineering consultant for completeness. An application shall be complete when it addresses all matters listed in this section, including, but not necessarily limited to,
 - i) compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code and ii) matters relating to the proposed battery energy storage system and floodplains, utility lines and electrical circuitry, signage, lighting, vegetation and tree-cutting, noise, decommissioning, site plan and development, special use and development, ownership changes, safety, and permit time frame and abandonment. Any deficiencies in the application must be addressed prior to substantive review.
 - (b) They shall be referred to the County Planning Board pursuant to General Municipal Law § 239-m, if required.
 - (c) The Planning Board shall act on the application after the SEQR process is completed, which can include approval, approval with conditions, or denial.
 - (d) Utility lines and electrical circuitry. 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 right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.
 - (e) Signage.
 - [3] The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage system(s), any special hazards associated with the battery energy storage system(s), the type of suppression system installed in the area of the battery energy storage system(s), and twenty-four-hour emergency contact information, including a reach-back phone number.
 - [4] As required by the 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.

- (f) Lighting. Lighting of the battery energy storage system(s) shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties. In accordance with Town law, there shall be no light spillage onto adjoining properties.
- (g) Vegetation and tree-cutting. Areas within 10 feet on each side of Tier 2 battery energy storage systems shall be cleared of combustible vegetation and other combustible growth in accordance with all applicable codes. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted to be exempt, provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.
- (h) Noise. The one-hour average noise generated from the battery energy storage system(s), components, and associated ancillary equipment shall not exceed a noise level of 45 dBA as measured at the outside wall of any nonparticipating residence or occupied community building. Applicants may submit equipment and component manufacturers' noise ratings to demonstrate compliance. The applicant may be required to provide operating sound pressure level measurements from a reasonable number of sampled locations at the perimeter of the battery energy storage system(s) to demonstrate compliance with this standard.
- (i) Decommissioning.
 - [1] Decommissioning plan. The applicant shall submit a decommissioning plan, developed in accordance with the Uniform Code, to be implemented upon abandonment and/or in conjunction with removal from the BESS facility. The Planning Board or Town Board may determine the extent of what is required in the decommissioning plan, depending on the size and location of the installation. The decommissioning plan may be required to include the following:
 - [a] A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all battery energy storage system components, structures, equipment, ancillary equipment and below-ground infrastructure, 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] The anticipated life of the battery energy storage system.
 - [d] The estimated decommissioning costs and how said estimate was determined.
 - [e] The method of ensuring that funds will be available for decommissioning

and restoration.

- [f] The method by which the decommissioning cost will be kept current.
 - [g] The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed.
 - [h] A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.
- (j) Site plan application. For a Tier 2B battery energy storage system, the site plan application shall include the following information:
- [1] Property lines and physical features, including roads, for the project site.
 - [2] Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
 - [3] A one- or three-line (as determined by the Town) electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National-Electrical-Code-compliant disconnects and over current devices.
 - [4] A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of the building permit. This information should include any information on structures to enclose the system, such as elevations, renderings, etc.
 - [5] Name, address, and contact information of the proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information of the final system installer shall be submitted prior to the issuance of building permit.
 - [6] Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the battery energy storage system.
 - [7] Zoning district designation for the parcel(s) of land comprising the project site.
 - [8] Commissioning plan. Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where commissioning is required

by the Uniform Code, battery energy storage system commissioning shall be conducted by a New York State (NYS) licensed professional engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to the Town prior to final inspection and approval and maintained at an approved on-site location.

- [9] Fire safety compliance plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code.
- [10] Operation and maintenance plan. Such plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information, and shall meet all requirements set forth in the Uniform Code.
- [11] Erosion and sediment control and stormwater management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established in the Town of Hartland and by the Town Board through the approval process.
- [12] Prior to the issuance of the building permit, but not required as part of the application, engineering documents must be signed and sealed by an NYS licensed professional engineer.
- [13] Emergency operations plan. A copy of the approved emergency operations plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:
 - [a] Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe startup following cessation of emergency conditions.
 - [b] Procedures for inspection and testing of associated alarms, interlocks, and controls.
 - [c] Procedures to be followed in response to notifications from the battery energy storage management system, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed-upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.

- [d] Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire.
 - [e] Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
 - [f] Procedures for dealing with battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility.
 - [g] Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.
 - [h] Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.
- (k) Additional standards (Tier 2B projects).
- [1] Setbacks. Tier 2B battery energy storage systems shall comply with the setback requirements of the underlying zoning district for principal structures, or as prescribed in the following subsections, whichever is greater.
 - [a] Shall not be placed in the front yard.
 - [b] Shall be set back a minimum of 100 feet from any side or rear lot line that abuts a nonresidential district.
 - [c] Shall be set back a minimum of 250 feet from a side or rear lot line that abuts a residential district or a residential use.
 - [2] Height. Tier 2B battery energy storage systems shall comply with the building height limitations for accessory structures of the underlying zoning district, or as required by the Fire Code.
 - [3] Fencing requirements. Tier 2 battery energy storage systems, including all mechanical equipment, shall be enclosed by a seven-foot-high fence with a self-locking gate to prevent unauthorized access unless housed in a dedicated-use building and not interfering with ventilation or exhaust ports, or as otherwise required by any federal, state or local laws or codes.
 - [4] Screening and visibility. Tier 2 battery energy storage systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and

surrounding area and not interfering with ventilation or exhaust ports. Visibility should also be improved through context-sensitive design of any structures to fit in the character of the surrounding area.

2. Editor's Note: See Executive Law § 94-c.

H. Safety.

- (1) System certification. Battery energy storage systems and equipment shall be listed by a nationally recognized testing laboratory to UL 9540 or the most recent standard for battery energy storage systems and equipment with subcomponents meeting each of the following standards as applicable:
 - (a) UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power, and Light Electric Rail Applications) or most recent standard.
 - (b) UL 1642 (Standard for Lithium Batteries) or most recent standard.
 - (c) Other applicable standards for other battery types.
 - (d) UL 1741 or UL 62109 (Inverters and Power Converters) or most recent standard.
 - (e) Certified under the applicable electrical, building, and fire prevention codes as required.
 - (f) Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 and applicable codes, regulations and safety standards may be used to meet system certification requirements.
- (2) Site access maintenance. Battery energy storage systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and emergency service providers.
- (3) Battery energy storage systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70 or most recent standard.

I. Permit time frame and abandonment.

- (1) The special use permit and site plan approval for a battery energy storage system shall be valid for a period of 24 months, provided that a building permit is issued for construction and/or construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Planning Board, within 24 months after approval, the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 36 months, the approvals shall expire.
- (2) The battery energy storage system shall be considered abandoned when it ceases to

operate consistently for more than one year. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, enter the property and utilize the available bond and/or security for the removal of a Tier 2B battery energy storage system and restoration of the site in accordance with the decommissioning plan. The Town retains the sole right to make the determination of site decommission completion (whether by the site owner or by the Town through the security). Any costs borne by the Town to make the determination that the site is decommissioned fully may be passed on to the developer/site owner.

(3) .

J. Ownership changes (Tier 2 projects).

1If the owner (or lessee) of the battery energy storage system changes or the owner of the property changes, the special use permit and/or operating permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of any special use permit, operating permit, site plan approval, and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the Town of Hartland of such change in ownership or operator within 30 days of the ownership change. A new owner or operator must provide such notification to the Town in writing.

2The successor owner or operator shall assume in writing all the obligations within the decommissioning plan. Proof of acknowledgement of the decommissioning plan and proof of bond may be requested by the Town at time of ownership change. The new owner should sign the acknowledgement regarding the costs exceeding the bond.

3The special use permit and/or operating permit and all other local approvals for the battery energy storage system would be void if a new owner or operator fails to provide written notification to the Town in the required time frame. Reinstatement of a void special use permit and/or operating permit will be subject to the same review and approval processes for new applications under this section.

K. Enforcement; penalties and remedies for violations.

(1) This section shall be enforced by the Town Code Enforcement Officer.

(a) Any person owning, controlling, or managing any building, structure or land who shall install a battery energy storage system in violation of this section, or who operates such facility in noncompliance with the terms and conditions of any permit issued pursuant to this section, shall be guilty of a violation and subject to a fine of not more than \$250 or to imprisonment for a period of not more than 15 days, or to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue.

(b) The Code Enforcement Officer may, after notice of violation, enter into a consent order with the applicant/owner/operator to remedy the violation with specifications to be taken and an agreed-upon schedule.

(c) Special proceeding. In addition to any other remedy, the Town Board may institute an action or proceeding in equity, correct or abate any unlawful construction, erection, structural alteration, reconstruction, modification and/or use of a battery energy storage system, and shall be entitled to injunctive relief, including a temporary restraining order and a temporary injunction as the court deems appropriate.

(2) Battery energy storage systems requiring an operating permit shall be required to submit

a certified report by the owner and be inspected annually, and shown to be in accordance with the operating permit and any other approvals.

L. Stop-work orders.

- (1) Authority to issue. The Code Enforcement Officer is authorized to issue stop-work orders pursuant to this section. The Code Enforcement Officer shall issue a stop-work order to halt:
 - (a) Any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, the Zoning Code or any other general or local laws, ordinances, rules or regulations without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work;
 - (b) Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work; or
 - (c) Any work for which a building permit is required which is being performed without the required building permit, or under a building permit that has become invalid, has expired, or has been suspended or revoked.
- (2) Content of stop-work orders. Stop-work orders shall:
 - (a) Be in writing;
 - (b) Be dated and signed by the Code Enforcement Officer;
 - (c) State the reason or reasons for issuance; and
 - (d) If applicable, state the conditions which must be satisfied before work will be permitted to resume.
- (3) Service of stop-work orders. The Code Enforcement Officer shall cause the stop-work order, or a copy thereof, to be served on the owner of the affected property and, if the owner is not the permit holder, on the permit holder personally or by registered mail or certified mail. Service by registered or certified mail shall be sufficient if addressed to the address set forth in the building permit application. The Code Enforcement Officer shall be permitted, but not required, to cause the stop-work order, or a copy thereof, to be served on any new applicant, owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work affected by the stop-work order, personally or by registered mail or certified mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the stop-work order.
- (4) Effect of stop-work order. Upon the issuance of a stop-work order, the owner of the affected property, the permit holder and any other person performing, taking part in or assisting in the work shall immediately cease all work which is the subject of the stop-

work order.

- (5) Remedy not exclusive. The issuance of a stop-work order shall not be the exclusive remedy available to address any event described in Subsection N(1) of this section, and the authority to issue a stop-work order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under Subsection M, Enforcement; penalties and remedies for violations, of this section or under any other applicable local law or state law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a stop-work order.
- M. Severability. The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.
- N. When effective. This section shall take effect immediately upon filing with the Secretary of State of New York.