

Chapter 196

SOLAR ENERGY SYSTEMS

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[HISTORY: Adopted by the Town Board of the Town of Wales 3-14-2017 by L.L. No. 1-2017. Amendments noted where applicable.]

GENERAL REFERENCES

Wind energy conversion systems — See Ch. 195.

Zoning — See Ch. 200.

ARTICLE I
General Provisions

SECTION 1. TITLE AND AUTHORITY.

This Local Law shall be referred to as “Solar Energy Systems” and shall repeal and replace Local Law XXXXXX, titled “XXXXXX”.

This local law is adopted pursuant to the authority granted by sections 261-263 of Town Law and section 20 of the Municipal Home Rule Law of the State of New York, and:

- 1. Article IX of the New York State Constitution, §§ 1(a), 2 (c), and 3(c).;**
- 2. New York Statute of Local Governments, §10(1), (5), (6) and (7);**
- 3. New York Municipal Home Rule Law, §10(1)(i) and (ii) and §10(1)(a), (11), (12), and (14);**
- 4. New York Town Law §130 (11) (peace, good order and safety), (15) (promotion of public welfare); and**
- 5. New York Town Law §64(17-a) (protection of aesthetic interests), (23) (general powers).**

§ 196-1. Findings.

- A. The Wales Town Board recognizes that solar energy is a clean, readily available and renewable energy source and that the Town of Wales intends to accommodate the use of solar systems.
- B. However, the Town Board finds a need to properly site solar energy systems in the Town of Wales to protect residential, agriculture, and business areas and other land uses, to preserve the overall beauty, nature and character of the Town of Wales, to promote the effective and efficient use of solar energy, and to protect the health, safety and general welfare of the citizens of Wales.
- C. **Prior to the adoption of this chapter, no specific procedures existed to address the siting of solar energy systems. Accordingly, the Town Board finds that the promulgation of this chapter is necessary to direct the location and construction of these systems.**
- D. Solar energy systems need to be regulated for removal when no longer utilized.
- E. **The Town Board finds that, because of the limited water supply in the Town of Wales, only solar energy systems which require water solely for the periodic cleaning of solar panels and solar energy systems requiring little or no water consumption shall be allowed in the Town of Wales.**

§ 196-2. Definitions. TO BE FURTHER UPDATED ONCE DRAFT IN PLACE.

As used in this chapter, the following terms shall have the meanings indicated:

ACCESSORY USE SOLAR ENERGY SYSTEM — Generates power solely for on-site use to benefit the principal use of the land. Accessory use solar energy systems exist on the same lot as the principal use and are subordinate, incidental to, and customarily found in connection with the principal use. Usually this system is a small-scale, roof-, building- or ground-mounted system designed to supply energy for a principal use on a residential, commercial or mixed-use parcel.

BATTERY ENERGY STORAGE SYSTEM (BESS): One or more devices, assembled, capable of storing energy to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. See the Town of Belfast Battery Energy Storage System Law (to be adopted).

BUILDING- OR OTHER ARCHITECTURALLY INTEGRATED SOLAR ENERGY SYSTEM — An

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active solar energy system that is an integral part of a principal or accessory building, rather than a separate device, replacing or substituting for an architectural or structural component of the building. Building-integrated systems include, but are not limited to, photovoltaic or thermal solar systems that are contained within roofing materials, windows, skylights and awnings.

FACILITY AREA: The cumulative land area occupied during the construction and commercial operation of the solar energy generating facility. This shall include all areas and equipment within the facility's perimeter boundary including the solar energy system, onsite interconnection equipment, onsite electrical energy storage equipment, and any other associated equipment as well as any site improvements beyond the facility's perimeter boundary such as access roads, permanent parking areas, or other permanent improvements. The facility area shall not include site improvements established for impact mitigation purposes, including but not limited to vegetative buffers and landscaping features.

GLARE — The effect produced by light with an intensity sufficient to cause annoyance, discomfort or loss in visual performance and visibility.

GRID-INTERTIE — A solar energy system connected directly to a utility.

GROUND-MOUNTED PANELS — Freestanding solar panels mounted to the ground by use of stabilizers or similar apparatus. Ground-mounted systems may be systems which are accessory to the principal use of the site and designed to supply energy to the principal use or may be a part of a solar farm operation.

KILOWATT (KW) AND MEGAWATT (MW): A unit of power. KW is equal to 1,000 watts of power. MW is 1,000 KW or a million watts of power.

NATIVE PERENNIAL VEGETATION: Wildflowers, grasses, or other native vegetation that serve as habitat, forage, or migratory stations. Such vegetation may be used to stabilize land erosion, provide aesthetics to solar installations, or for other reasons.

NON- PARTICIPATING PROPERTY: A property that is not affiliated with a solar energy system project in any contractual manner.

PHOTOVOLTAIC SYSTEM — A solar energy system which converts solar energy directly to electricity.

PRIME FARMLAND: Soils classified by the NYS Department of Agriculture and Markets Agricultural Land Classification as mineral soils groups 1 through 4, prime farmland. This definition of Prime Farmland also includes prime farmland where drained.

PRIME FARMLAND WHERE DRAINED: Land that meets the United States Department of Agriculture's (USDA) criteria for prime farmland, provided it is adequately drained.

~~PRINCIPAL USE SOLAR ENERGY SYSTEM — A principal use requiring a special use permit issued by the Town Board. This system is allowed conditioned upon compliance with specific requirements imposed to prevent any negative effects on adjacent properties and/or the community and consists of an overall footprint of greater than five and less than 50 acres. The requirements for this system may include, but are not limited to, those listed in this chapter.~~

ROOF- OR BUILDING-MOUNTED SOLAR ENERGY SYSTEM — A solar energy system that is mounted to the roof or building using brackets, stand or other similar apparatus; typically accessory to the land use.

SETBACK: Setbacks, for the purposes of ground mounted systems, shall be calculated from the fence line to any property line or designated item in the code (wells, structures, etc.). Setbacks can also include restriction for solar energy system structures outside of the fence line, such as poles.

SECONDARY USE SOLAR ENERGY SYSTEM — Provides energy partially for on-site uses but ships some off-site. A secondary use solar energy system sited on a commercial or agricultural parcel provides energy for the on-site principal use while shipping a significant amount of energy off-site to generate additional revenues.

SOLAR ACCESS — A view of the sun, from any point on the collector surface that is not obscured by any vegetation, building or object located on parcels of land other than the parcel upon which the solar collector is located, between the hours of 9:00 a.m. and 3:00 p.m., Standard time, on any day of the year.

SOLAR ARRAY — A group of solar panels wired together.

SOLAR COLLECTOR — A device, structure or part of a device or structure, the principal purpose of which is to transform solar radiant energy into thermal, mechanical, chemical or electrical energy.

SOLAR EASEMENT — A right, expressed as an easement, restriction, covenant or condition contained in any deed, contract or other written instrument executed by or on behalf of any landowner, for the purpose of ensuring adequate access to direct sunlight for solar energy systems.

SOLAR ENERGY — Radiant energy (direct, diffused or reflective) received from the sun.

SOLAR ENERGY SYSTEM (SES) — A system that collects or stores solar energy and transforms it into another form of energy or transfers heat from a collector to another medium using mechanical, electrical, thermal or chemical means. A Solar Energy System in the Town of Wales can be defined as follows:

TIER 1 – rooftop, building mounted, or building integrated solar energy system – limited to 110% of electricity needed on site (as shown by the applicant and per NYSEDA rules).

TIER 2 – ground mounted solar energy system that is an accessory use – limited to 110% of electricity needed on site (as shown by the applicant and per NYSEDA rules).

TIER 3 – “large scale” solar project up to 15 acres in size designed and intended to supply energy primarily into a utility grid for sale (as measured by the fenced-in area).

TIER 4 – utility scale solar. Any solar energy system that is 15 acres or more in size (as measured by the fenced-in area), that cumulatively on a lot is designed and intended to supply energy primarily into a utility grid for sale or does not meet the definition of a Tier 1, Tier 2 or Tier 3 solar energy system.

SOLAR FARM — A utility-scale commercial facility that converts sunlight into electricity, whether by photovoltaics (PV), concentrating solar thermal devices (CST), or other conversion technology, where the principal purpose of the land is to provide energy to off-site uses or wholesale sales of generated electricity.

SOLAR HOT-WATER SYSTEM — A system that includes a solar collector and a heat exchanger that heats or preheats water for building heating systems or other hot water needs.

SOLAR PANEL — That part or portion of a solar energy system containing one or more receptive cells or modules, the purpose of which is to convert solar energy for use in space heating, water heating or electricity.

SOLAR THERMAL — A water-cooled solar thermal energy system which converts water to steam to electricity.

YARD, FRONT: The area extending across the entire width of the lot between the building, line or front main wall of a building and the front property line (street or road right-of-way line).

YARD, REAR: The area extending across the entire width of the lot between the rear wall of the principal building and the rear line of the lot.

§ 196-3. Zoning districts where permitted.

- A. Tier 1 (Rooftop-mounted and building-mounted accessory use and secondary use) solar energy systems are permitted in all zoning districts in the Town of Wales.
- B. Tier 2 (Ground-mounted accessory use and secondary use) solar energy systems are permitted in all zoning districts in the Town, subject to site descriptions as stated in this chapter.
- C. Tier 3- Large-scale ~~Principal use~~ solar energy systems are permitted in agricultural zoning districts, with restrictions, subject to the issuance of a special use permit by the Town Board.
- D. Tier 4-Utility-scale solar energy systems are permitted in agricultural zoning districts, with restrictions, subject to the issuance of a special use permit by the Town Board.

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ARTICLE II
General Regulations

§ 196-4. Regulations applicable in all districts. Applicability and General Requirements

A. 1. The requirements of this Section shall apply to all Solar Energy Systems installed or modified after the effective date of the local law by which it was adopted, excluding general maintenance and repair. It also will not apply to single pole mounted panels (less than 4 SF) that are used by residential homes or businesses to charge small batteries. In addition, this law shall apply to all applications related to Solar Energy Systems pending before the Town Board or Planning Board as of the effective date of this law, including any applications subject to any local moratorium on the review or processing of such applications.

B. Under SEORA regulations, actions are classified as Type I, Type II, or Unlisted Actions. Type II Actions are exempt from review and include actions such as the construction, expansion or placement of minor or accessory structures. The Town of Belfast considers building-integrated solar components and Tier 1 systems to be Type II Actions and therefore exempt from all SEORA requirements, including the submission of an EAF (Environmental Assessment Form). Tier 2 systems are also Type II Actions as they do not require a local discretionary approval, only a building permit. Large-scale systems, utility-scale systems, and solar energy production facilities that meet thresholds contained in the SEORA regulations and are considered more likely than others to have a significant adverse impact shall be considered Type I Actions. However, the need for an Environmental Impact Statement (EIS) shall be determined by the permitting board/ Lead Agency on a case-by-case basis in accordance with the significance of the potential adverse environmental impacts.

C. All applications for solar projects shall include the appropriate application fee as determined by the Town, as set by resolution of the Town Board.

A.D. A building permit is required for all solar energy systems in the Town of Wales.

B.E. Prior to the issuing of a building permit, applicants must acknowledge, in writing, that the issuing of said permit shall not and does not create in the property owner, its, his or her or their successors and assigns in title, to create in the property itself:

- (1) The right to remain free of shadows and/or obstructions to solar energy created by development of adjoining or other property or the growth of any trees or vegetation on such property; or
- (2) **The right to prohibit the development on or growth of any trees or vegetation on adjoining or other property.**

C.F. Layout, design, installation and ongoing maintenance shall conform to applicable industry standards, Underwriters' Laboratories, **National Electrical Code (NEC)**, **National Fire Protection Code 70 (NFPA 70)**, the New York Uniform Construction Code, the New York State Fire Code and the Town of Wales Zoning Code, as interpreted by the Building Inspector/Zoning Officer of the Town of Wales. The manufacturers' specifications for the key components of the proposed system shall be submitted as part of the application.

D.G. Building permit applications shall document compliance with this section and shall be accompanied by to-scale drawings showing the location of the system on the property or building, including property lines.

E.H. All solar energy systems shall adhere to all applicable federal, state, county and Town of Wales laws, regulations and building, plumbing, electrical and fire codes.

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~~F.I.~~ This chapter shall not apply to any lot owned by a municipality.

~~G.J.~~ Any solar energy system shall be accessible for all emergency services vehicles and personnel.

~~K.~~ 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 in excess of that which already exists.

~~L.~~ All solar energy systems/installations will require approval by a certified electrical inspector prior to use.

~~H.M.~~ Fire Service Notice. Notification in writing to the Fire Department having operational authority at the location where the system is installed shall be made no later than 10 days following installation or as prescribed later in this law. Notification shall include a site map showing the location of the solar energy electrical panel as well as other information concerning the operation and shutdown of the solar energy system and posting of that information (full requirements to be provided at building permit application, including roof load bearing information, if applicable).

~~I.N.~~ All solar energy systems must be properly maintained and kept free from all hazards, including, but not limited to, faulty wiring, loose fastening, being in an unsafe condition or detrimental to the public health, safety and general welfare. In the event of the violation of any of the foregoing provisions, the Building Inspector shall give written notice, specifying the violation, to the owner of the system to conform or to remove the system.

~~J.O.~~ If the use of an approved solar energy system is discontinued, the owner or operator shall notify the Building Inspector within 30 days of such discontinuance. If the solar energy system is to be retained and reused, the owner or operator shall further inform the Building Inspector of this in writing at such time and obtain any necessary approvals within one year; otherwise the system shall be deemed abandoned.

~~K.P.~~ The special use permit shall be revoked if the solar system, whether new or preexisting, is moved or otherwise altered, either intentionally or by natural forces, in a manner which causes the system to not be in conformity with this section. Routine maintenance and like-kind replacements are excluded.

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L.Q. All solar energy systems existing on the effective date of this chapter shall be allowed to continue usage as they presently exist. New construction other than routine maintenance shall comply with this chapter.

M.R. Any applications (including variance applications) pending for solar energy systems on the effective date of this chapter shall be subject to the provisions herein.

N.S. This chapter shall take precedence over any inconsistent provisions of the Zoning Law of the Town of Wales.

O.T. Any solar energy system to be used strictly for agricultural use purposes in accordance with the New York State Agriculture and Markets Law may have some of the requirements of this chapter waived by the Building Inspector or the Town of Wales.

P.U. Solar storage batteries. When solar storage batteries are included as part of any solar energy system, they shall be placed in a secure container or enclosure meeting the requirements of the New York State Building Code.

§ 196-5. Tier 1- Rooftop- or building-mounted accessory uses.
BUILDING INSPECTOR NEEDS TO AGREE WITH THIS!

This section governs the placement and installation of smaller scale rooftop, building integrated or building mounted solar energy systems (Tier 1) as defined herein. The installation of these smaller scale solar energy systems does require the applicant to obtain a building permit from the Town of Wales.

A. Height: Rooftop-mounted solar energy systems shall not be more than three feet higher than the finished roof to which they are mounted, and in no instance shall any part of the system extend beyond three feet before the edge of the roof. There shall be at least a three-foot center walkway for safety access purposes.

A.B. Setbacks: Solar energy systems are subject to the setback requirements of the underlying zoning district (including any special lot requirements, if applicable).

C. For rooftop- or wall-mounted solar energy systems, the applicant shall provide evidence that the plan complies with the Uniform Construction Code and the adopted Building Code of the Town of Wales and that the roof or wall involved is capable of holding the load imposed on the structure.

D. Aesthetics. Solar energy equipment shall incorporate the following design requirements:

[1] Solar energy equipment shall be installed outside the primary residence or accessory structure and as close to a public utility electrical meter as possible.

[2] Roof-mounted panels facing the front yard must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof and the highest edge of the system (or as required by the Building Code). Panels cannot exceed a height of 30 feet in accordance with the Town Zoning Code.

[3] Access and Pathways (NFPA Section 324.7 or the current requirement section of that code): Roof access, pathways, and spacing requirements for solar photovoltaic systems shall be provided in accordance with NFPA Sections R324.7.1 through R324.7.6, or most recent standards.

EXCEPTIONS:

i. Roof access, pathways and spacing requirements need not be provided where an alternative ventilation method has been provided, or where vertical ventilation techniques will not be employed.

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ii. Detached garages and accessory units.

[4] Size of solar photovoltaic array (324.7.1). Each photovoltaic array shall not exceed 150 feet in any direction.

[5] Roof Access Points (324.1.2). Roof access points shall be located:

i. In areas that establish access pathways which are independent of each other and as remote from each other as practicable so as to provide escape routes from all points along the roof.

ii. In areas that do not require the placement of ground ladders over openings such as windows or doors or areas that may cause congestion or create other hazards.

iii. At strong points of building construction, such as corners, pilasters, hips, and valleys and other areas capable of supporting the live load from emergency responders.

iv. Where the roof access point does not conflict with overhead obstructions such as tree limbs, wires or signs.

v. Where the roof access point does not conflict with ground obstructions such as decks, fences, or landscaping.

vi. In areas that minimize roof tripping hazards such as vents, skylights, satellite dishes, antennas, or conduit runs.

[6] Ground access areas (324.7.3). Ground access areas shall be located directly beneath access roofs and roof access points. The minimum width of the ground access area shall be the full width of the access roof or roof access point, measured at the eave. The minimum depth shall allow for the safe placement of ground ladders for gaining entry to the access roof.

[7] Single ridge roofs (324.7.4). Panels, modules or arrays installed on roofs with a single ridge shall be located in a manner that provides two (2), 36 inches wide (914mm) access pathways extending from the roof access point to the ridge. Access pathways on opposing roof slopes shall not be located along the same plane as truss, rafter, or other such framing system that supports the pathway.

EXCEPTIONS:

i. Roofs with slopes of 2 units vertical in 12 units horizontal (16.6 percent) and less.

ii. Structures where an access roof fronts a street, driveway, or other area readily accessible to emergency responders.

iii. One access pathway shall be required when a roof slope containing panels, modules or arrays is located not more than 24 inches (610 mm) vertically from an adjoining roof which contains an access roof.

[8] Hip roofs (324.7.5). Panels, modules, and arrays installed on dwellings with hip roofs shall be located in a manner that provides a clear access pathway not less than 36 inches (914mm), extending from the roof access point to the ridge or peak, on each roof slope where panels, modules or arrays are located.

EXCEPTIONS:

i. Roofs with slopes of 2 units vertical in 12 units horizontal (16.6 percent) or less.

ii. Structures where an access roof fronts a street, driveway or other area readily accessible to emergency responders.

[9] Roofs with valleys (324.7.6). Panels and modules shall not be located less than 18 inches (457 mm) from a valley.

EXCEPTIONS:

i. Roofs with slopes of 2 units vertical in 12 units horizontal (16.6 percent) or less.

[10] Allowance for smoke ventilation operations (324.7.7). Panels and modules shall not be located less than 18 inches (457 mm) from a ridge or peak.

EXCEPTIONS:

i. Where an alternative ventilation method has been provided or where vertical ventilation methods will not be employed between the uppermost portion of the solar photovoltaic system and the roof ridge or peak.

ii. Detached garages and accessory structures.

iii. Notification to the Fire Service. Notification in writing to the Fire Department having operational authority at the location where the system will be installed shall be made no later than 10 (ten) days following installation:

[11] Notification shall include a site map showing the location of the solar energy electrical panel, as well as the proper operation of the disconnect switch(s) in the event of a fire or other emergency situation where the homeowner, tenant or other personnel is not available or familiar with the safe shut down operation of unit so as to have the ability to cut power from the solar panels.

[12] In addition a proper written statement showing the method of shut down shall be posted inside the main electrical panel of the unit which can be readily accessible for and to firefighting personnel.

i. Roof mounted solar panels must be positioned to avoid glare which interferes with other properties or restrict views.

B. ii. Roof mounted panels shall have non-hazardous anti-reflective coating and, in the event that the replacement of a panel is necessary, it shall also have non-hazardous anti-reflective coating.

C. A roof-mounted solar energy system may be located on a front-facing roof as viewed from any adjacent street only when approved as a conditional use and if the applicant can demonstrate that glare or other effects will not negatively impact others and that, due to solar access limitations, no location exists other than the street-facing roof where the solar energy system can perform effectively.

D. A roof or wall mounted solar energy system may be located on a principal or accessory building and shall be subject to the maximum height regulations specified for such buildings in the relative sections of this Code book.

E. Any electrical controls associated with a building-mounted solar energy system shall be located on an exterior wall, common with and not more than 10 feet from the electrical utility meter for said building.

§ 196-6. Tier 2- Ground-mounted accessory uses.

A. Ground mounted Tier 2 solar energy systems are permitted as an accessory use/structure in all zoning districts except the XXXXX districts, and are subject to site plan approval and the requirements set forth in this section.

B. All Tier 2 ground-mounted solar panels shall be installed in the rear yard. Ground-mounted solar energy systems are not permitted in the front yard. Any application for installation and placement of a small-scale solar energy system under this section that requires a side yard location shall require an application containing a site plan showing the location of all solar energy system components, their location on the premises, their location on the premises in relation to the property line and any and all structures on the premises, and the nearest structure located on the

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premises adjacent thereto, and any other information requested by the Zoning Board of Appeals. The Zoning Board of Appeals in allowing this side yard installation may require additional screening or other requests or can deny this request.

C. Setback(s). Ground mounted solar panels are subject to setback requirements of the underlying zoning district, and if applicable, other requirements such as for special lots (corner, etc.). In no case, shall the setback from a property line be less than 25 feet.

D. Height. Solar panels are restricted to a height of fifteen (15) feet. All height measurements are to be calculated when the solar energy system is oriented at maximum tilt.
5. Lot Coverage. The surface area (facility area) of ground mounted solar panels shall be included in lot coverage and impervious surface calculations. The total lot coverage shall not exceed thirty-five percent (35%), accounting for all other impervious surfaces on the lot, such as buildings and driveways.

E. Glare. All Solar Panels shall have a non-hazardous anti-glare coating to prevent glare. Proof of such shall be provided during any approval process and at time of permit application.

F. The site plan for such installation shall be reviewed by the ~~Zoning Board of Appeals~~ **PLANNING BOARD** and shall be approved by a majority thereof.

~~A. The location of said solar energy system shall be placed no closer than standard setback requirements for an accessory structure in the use district in which it is located.~~

~~B. The location of said solar energy system shall only be located in the side or rear yard.~~

~~C. A. The orientation of said solar energy system shall not be directed at any adjoining building, public roads or public parks where such would create a negative impact due to glare or other results.~~

~~D. The height of said solar system shall not exceed 15 feet when oriented at a maximum tilt when~~

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~~situated on a lot in R or B Zoning Districts.~~

~~E.B.~~ Ground-mounted solar energy systems may not be located in a required front yard unless authorized by the Building Inspector and where no location exists on the property other than the front yard where the solar panel can perform effectively.

~~F.C.~~ Ground-mounted solar energy systems do not count as an accessory structure for the purpose of meeting limits on the total square footage or number of accessory structures allowed.

~~G.D.~~ The total surface area of said solar energy system shall not exceed the allowed accessory structures or combinations of accessory structures where permitted.

§ 196-7. Tier 3 and Tier 4 - Large Scale and Utility Scale ~~Principal use of~~ solar energy systems.

Large-scale (Tier 3) and Utility-scale (Tier 4) solar energy systems are permitted by the issuance of a special use permit by the Wales Town Board within the A1 (Agricultural) District, subject to the restrictions and requirements as set forth in this section. In order to ensure that the benefits of the project are available to the entire community, the Town of Wales requires the applicant for a large-scale or utility-scale solar energy system to enter into a Host Community Agreement with the Town.

1. General Requirements

(1) Every application for a large-scale or utility-scale solar energy system within the Town of Wales shall be made to the Town Board and shall be approved by a majority vote thereof.

(2) Prior to Town Board review of the application, it may refer said application to the ~~Zoning Planning Board of Appeals~~ for site plan review, report and recommendation for approval or Disapproval of the SUP and input on SEQR.

(3) The Town Board shall hold a public hearing upon ten (10) days' notice duly posted and published in the official newspaper of the Town and on the Town bulletin board, before granting the special use permit. This hearing shall take place after the ~~Zoning Board of Appeals~~ ~~Planning Board~~ issues their report.

(4) Once the Town Board makes a final SEQR decision and if the special use permit is approved, the project will return to the ~~Zoning Board of Appeals~~ ~~Planning Board~~ for final conditional site plan review and approval.

(5) On applying for a building/site development permit for the project, the applicant/developer shall present final design plans and other SUP requirements to the Town for review for conformance to the SUP and its conditions, and site plan approvals and conditions. No building/site development permit shall be issued until the project is shown to meet all the SUP and site plan requirements, has received all other regulatory approvals and meets other requirements of the Town.

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ARTICLE III
Special Permit Requirements

§ 196-8. Special Use permit requirements.

- A. All solar energy systems under this chapter shall require a special use permit. Applicants for a special use permit to place, construct and make modifications to a Tier 3 or Tier 4 principal use solar energy system within the boundaries of the Town of Wales shall submit 12 sets of the following information to the Town Board. Of the 12 sets, the following shall be submitted to the Town Clerk, who shall then forward to the Town Building Inspector. The Building Inspector will review the contents for completeness and notify the applicant to submit the appropriate fee to the Town Clerk. In the event the application is not complete, the Building Inspector shall notify the applicant of what is required in order to properly complete the application. The Town will then determine whether it chooses to present the application to a professional engineer or consultant for an initial review. The Town Board may make referrals as it deems appropriate. No such application shall be deemed filed until any required application fee has been paid. The requirements of a special use permit contained in Chapter 200, Zoning, shall be applicable where so determined by the Town Board, together with the required information as set forth herein.
- (1) A completed State Environmental Quality Review Act (SEQRA) short-form environmental assessment form (EAF), if required, unless a long form is required by the Town's professional engineer or consultant or the Town of Wales Town Board, with the Town of Wales Town Board designated as lead agency for the SEQRA process.
 - (2) Information required in the special use permit application:
 - (a) 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; and
 - (b) Documentation of access to the project site(s), including the location of all access roads, gates, parking areas, etc.; and
 - (c) Documentation of the clearing, grading, stormwater and erosion control plans; and
 - (d) Utility interconnection data and a copy of written notification to the utility of the proposed interconnection. Foreseeable infrastructure upgrades shall be documented and submitted. Off-grid systems are exempt from this requirement.; and
 - (e) One- or three-lined electrical diagram detailing the solar energy system installation, associated components and electrical interconnection methods, with all disconnects and overcurrent devices; and
 - (f) A property owner who has installed or intends to install a Tier 3 or Tier 4 principal use 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 the Town Code. In the event that solar easements are negotiated by an applicant or property owner for a Tier 3 or Tier 4 principal use solar energy system, a copy of 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 hour 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 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.
- (g) A site plan in accordance with New York Town Law § 274-a, as required by Chapter 200 of the Town Code, including, but not limited to, the following:
- [1] 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
 - [2] Property lot lines and the location and dimensions of all existing structures and uses on site within 500 feet of solar panels; and
 - [3] Proposed fencing and/or screening for said project; and
 - [4] Such additional information as may be required by the professional engineer or consultant of the Town, the Town of Wales Town Board, Town Attorney, Building Inspector or other Town entity.
- B. Prior to the issuance of a building permit, the applicant shall document that all applicable federal, state, county and local permits have been obtained.
- C. The Town Board shall conduct a public hearing, with notice of said hearing to be printed in the newspaper of general circulation in the Town at least five days prior to the date thereof.
- D. The Town Board may:
- (1) For ~~Tier 3 or Tier 4 principal use~~ solar energy systems, grant a special permit, deny a special permit, or grant a special permit with written stated conditions.

Commented [CB8]: Are we keeping or getting rid of the skyspace easement stuff? I have never seen it actually used

- (a) Denial of a special permit shall be by written decision based upon substantial evidence considered by the Board. Upon issuance of a special permit, the applicant shall obtain a building permit for ~~the the Tier 3 or Tier 4 principal use~~ solar energy system.

E. Minimum lot area. The minimum lot area shall be 15 acres.

F. Setbacks.

- (1) Any ~~Tier 3 or Tier 4 principal use~~ solar energy system shall adhere to the following:

- (a) From any residential (R) or (B) zoning district boundary or manufactured home park: a minimum of 500 feet.
- (b) From any manufacturing (M) district boundary: a minimum of 250 feet.
- (c) From buildings or structures not on the lot proposed for the solar energy system:
 - [1] A minimum of 250 feet from any building or structure, other than a dwelling, on any adjacent land.
 - [2] A minimum of 500 feet from any dwelling on adjacent land.
- (d) From buildings or structures on the lot proposed for the solar system:
 - [1] A minimum of 100 feet from any building, structure or dwelling.
 - [2] Two hundred feet from any public road (measured from the center line of the road).
- (e) From schools, public parks: a minimum of 1,000 feet from all property lot lines bordering a school or public park.

- (2) Notwithstanding the setback provisions set forth in this section, such setbacks from property lines do not apply if the application is accompanied by a legally enforceable agreement that runs with the property for a period of 20 years or the life of the special permit, whichever is longer, that the adjacent landowner(s) agree(s) to the elimination of the required setbacks. ~~These~~ setback requirements in this section can only be varied through this agreement process with adjoining landowners and not through a variance with the Zoning Board of Appeals. Any agreement to the elimination of such property line setbacks shall not constitute the reduction or elimination of required setbacks from structures, as previously identified, and such setbacks from structures, for safety reasons, shall not be reduced or eliminated.

G. Maximum overall height. The height of a principal use solar energy system shall not exceed 20 feet when oriented at maximum tilt.

H. There shall only be allowed one principal use solar energy system per lot.

I. A principal use solar energy system shall adhere to all applicable federal, state, county and Town of Wales laws, regulations, building, plumbing, electrical and fire codes.

J. Technical drawings signed by a NYS Professional Engineer, showing the layout of the proposed solar energy system, including proposed access roads, landscaping, and screening (see site plan requirements).

K. Equipment specification sheets for all photovoltaic panels, significant components, mounting systems, and inverters that are to be installed.

J.—A property operation and maintenance plan describing continuing photovoltaic maintenance and

property upkeep, such as mowing, trimming, and maintenance of landscaping, fencing and other screening components, etc.

L. Information on the environmental and cultural resources (as identified through the NYSDEC Mapping system and by the Town of Wales) on the subject property and surrounding properties.

M. Elevations showing the front and side view of all components of the solar energy system (panels, inverters, interconnection poles, etc.).

N. Any such additional information that may be required by the Town's professional engineer or consultant, Town of Wales Zoning Board of Appeals, Town Board, Town Attorney, or Code Enforcement Officer.

O. Information on soils, lot coverage, etc. illustrating how the project meets the requirements of this law.

Special Use Permit Requirements for Tier 3 and Tier 4 Solar Projects

All large-scale (Tier 3) and utility-scale (Tier 4) solar energy systems shall be enclosed by fencing to prevent unauthorized access. Warning signs shall be placed on the entrance and perimeter of the fencing. The height and type of fencing shall be determined by the site plan review process, blend into the character of the area, and meet applicable NYS codes and requirements. In areas with large deer populations, an eight-foot fence may be necessary. In areas of important habitats or species, the NYSDEC may require a gap at the bottom of the fence.

All Tier 3 or Tier 4 solar energy systems shall have views minimized from adjacent properties and roadways using landscaping that shall, at a minimum, be comprised of evergreen/coniferous trees, at least eight (8) to ten (10) feet in height at the time of planting (depending on site conditions and the results of the visual impact assessment) and at the recommend spacing for the tree species. It is a preference that existing trees and vegetation be preserved to help screen the project (layouts should try and accomplish this, if applicable). New trees to be planted may need to be planted in a staggered, "zig-zag" pattern to maximize screening. Supplemental deer-resistant shrubs are to be planted between the evergreen/coniferous trees at the reasonable discretion of the Town Board. Use of multiple species is encouraged to prevent disease and contribute to a more naturalistic aesthetic. In some cases, existing vegetation located on participating properties may be used to satisfy all or a portion of the required landscaped screening. Berms can also be utilized (but not preferred) to reduce the heights of proposed plantings, but the berms must not interfere with site drainage and must be properly designed to maintain vegetation. Suitable tree and shrub species are to be determined by a professional arborist and approved by the Town. All plantings shall be maintained in accordance with the approved property operation and maintenance plan and must be replaced if dead or diseased for the life of the permit.

All Tier 3 or Tier 4 solar energy systems constructed with the Town of Wales shall utilize only silicon-based panels and/or panels similarly based using nontoxic materials and must pass the TCLP test and be classified as non-toxic. The applicant must provide MSDS Sheets.

Tier 3 or Tier 4 solar energy system owners/operators shall, prior to the operation of these systems and at their expense, provide appropriate training sessions for the local fire/emergency services personnel to ensure their full capability in dealing with solar-energy-system-related emergencies.

The owner of a Tier 3 or Tier 4 solar energy system shall provide the Town of Wales written confirmation that the public utility company to which the system will be connected has been informed of the customer's intent to install a grid-connected system and has approved such connection. Off- grid and primarily off-grid systems are exempt from this requirement.

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The Tier 3 or Tier 4 solar energy system owner and/or operator shall maintain a phone number and identify a person responsible for the public to contact with inquiries or complaints throughout the life of the project and provide said name and number to the Town of Wales. The system owner/operator shall make reasonable efforts to respond in a timely fashion to the public's inquiries and complaints.

A noise study shall be performed by an independent noise study expert, paid for by the applicant, and showing that noise from a Tier 3 or Tier 4 solar energy system:

(1) Does not exceed 45 DBA as measured at the property line; or

(2) Shall not have any adverse effect on the surroundings, evidence of which is conclusive in the opinion of the Wales Town Board.

The total surface area (footprint) of a Tier 3 or Tier 4 solar energy system, defined as the surface area actually covered by the system-related equipment, shall not exceed 10 acres or 20% of the parcel on which it is located and shall be screened from any adjacent property that is residentially zoned and used for residential purposes. The screen may consist of plant materials which provide a visual screen or a decorative fence meeting the requirements of the appropriate zoning ordinance listed elsewhere in this Code. The site area footprint size shall be computed by determination of the Building Inspector.

The removal of trees six (6) inches or more in diameter at breast height shall not exceed 10% of the project area, or five acres, whichever is less. The removal of shrubs, underbrush, and trees under three (3) inches in diameter at breast height shall be limited to the extent necessary for the construction and maintenance of the solar installation. Plans submitted should clearly indicate tree locations and those to be removed (clearing limit).

Deforestation Mitigation: In accordance with the restrictions set in Section (e), forested sites shall not be deforested, and sites deforested less than five years before application submittal shall not be used to construct Solar Energy Systems, unless the applicant offsets the adverse impact of deforestation through conservation of the same amount of existing similar habitat, or creation of the same number of new sites to host similar habit ("Conserved Forest Habitat"). Conserved Forest Habitat created pursuant to this section shall be permanently conserved through creation of public parkland with covenants prohibiting deforestation and requiring the land to be kept in a natural, forested state, or by creation of a conservation easement held by an entity other than the applicant, and with restrictions requiring the land to be kept in a natural, forested state, or by any other means of permanent conservation acceptable to the Town. The Town may, but is not required to, hold any real property interest created pursuant to this section. Conserved Forest Habitat shall be located within the Town of Wales.

Forest Buffer: when the site contains or is surrounded by existing forest, a buffer of at least 50 feet of forest on the participating parcel where no trees shall be cut shall be established and maintained as a forested zone for the life of the facility. The exception to this shall be dead or diseased trees, which will be cut and removed to encourage healthy growth of existing trees.

At a minimum, a twelve-foot-wide cartway shall be provided between the solar arrays to allow access for maintenance vehicles and emergency management vehicles, including fire apparatus, as well as water-runoff mitigation. "Cartway width" is the distance between the bottom edge of a solar panel to the top edge of the solar panel directly across from it.

All solar panel materials shall be contained in a solid matrix, insoluble and nonvolatile at ambient conditions, and enclosed to prevent ground leaching and volatilization to the air.

The owner or operator of a Tier 3 or Tier 4 solar energy system shall contain all unenclosed electrical conductors and equipment located above ground within structure(s) that control access.

Appropriate safety/warning signage concerning voltage or other hazards shall be placed at ground-

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mounted electrical and/or other devices, equipment and structures. All electrical control devices and/or other hazardous devices associated with the solar energy system shall be locked away to prevent any unauthorized access, contact or entry.

Tier 3 and Tier 4 Solar Energy Systems shall not result in conversion of more than 10% of soils classified by the NYS Department of Agriculture and Markets Agricultural Land Classification as mineral soils groups 1 through 4, prime farmland, and prime farmland if drained. All Solar Energy Facilities shall also adhere to the Department of Agriculture and Markets' Guidelines for Construction Mitigation for Agricultural Lands. Converted farmland includes both prime farmland inside any perimeter fencing associated with Tier 3 or 4 facilities, and any adjacent prime farmland on the same parcel as the fencing that is no longer suitable for farming because of the Tier 3 or 4 facility.

To offset or mitigate the adverse impact of using high quality soils for a non-agricultural purpose, and/or as required by New York Public Service Law Section 138(4), any Solar Energy Facility sited on soils classified by the NYS Department of Agriculture and Markets' Agricultural Land Classification as mineral soils groups 1 through 4, prime farmland, and/or prime farmland if drained, shall (1) prepare and carry out an agricultural co-utilization plan acceptable to the Town; and (2) permanently conserve an equal amount of soils classified by the NYS Department of Agriculture and Markets' Agricultural Land Classification as mineral soils groups 1 through 4, prime farmland, and/or prime farmland if drained, located in the Town of Wales, in a manner acceptable to the Town.

Access roads must meet applicable NYSDEC requirements for limited use pervious access roads and provide adequate access for emergency vehicles (H20 loading; sufficient width, turnarounds, and/or pull-offs). This includes extending access roads to allow emergency responders to respond to medical emergencies or fires throughout the site. The applicant must provide written documentation that the applicable emergency service providers have reviewed and approved of the type and location of the proposed access roads.

No signage or graphic content shall be displayed on the solar energy system components, except for the manufacturer's name, equipment specification information, safety information, and 24-hour contact information. All other information/signage as required by the National Electric Code.

Any changes or alterations post-construction to a Tier 3 or Tier 4 solar energy system shall be done only by amendment to the special permit and/or site plan (if required), subject to all requirements of this Code.

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ARTICLE IV
Supplementary Regulations

§ 196-9. Supplementary regulations.

- A. Development and operation of a ~~Tier 3 or Tier 4 principal use~~ 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 Wales or other federal or state regulatory agencies.
- B. The design, construction, operation and maintenance of a ~~Tier 3 or Tier 4 principal use~~ solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads and public parks in excess of that which already exists from other sources.
- ~~C. Historic and/or archaeological map(s) shall be utilized where available to identify any cultural or historical significance existent on the site which impacts the project.~~
- ~~D.C.~~ All structures and devices used to support solar collections shall be nonreflective and/or painted a subtle or earth-tone color. All transmission lines and wiring associated with a ~~Tier 3 or Tier 4 principal use~~ solar energy system shall be buried, to the extent reasonably possible, 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 electrical utility lines, including substations and junction boxes and other electrical components, for the project on the site plan.
- ~~E.D.~~ All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.
- ~~F.E.~~ Artificial lighting of utility-scale 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.
- ~~G.F.~~ The display of advertising is prohibited except for reasonable identification of the manufacturer of the equipment and shall be in accordance with the Town's signage regulations.
- ~~H. A berm, landscape screen or other opaque enclosure or any combination thereof acceptable to the Town capable of screening the site may be required along any property line that abuts an existing residence.~~
- ~~I.G.~~ After completion of a ~~Tier 3 or Tier 4 principal use~~ solar energy system, 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 to the design plans.
- ~~J.H.~~ Compliance with regulatory agencies. The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county and local agencies having jurisdiction and approval related to the completion of a ~~Tier 3 or Tier 4 principal use~~ solar energy system.
- ~~K.I.~~ Clearing, grading, stormwater and erosion control.
- (1) Before the Town of Wales shall issue a clearing, grading, stormwater or building permit for a ~~Tier 3 or Tier 4 principal use~~ solar energy system, the applicant shall submit a stormwater and erosion control plan to the Engineering Department for its review and approval; and
 - (2) 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

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Town of Wales, NY

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sedimentation.

ARTICLE V
Construction, Use and Termination

~~§ 196-10. Construction, inspections, use and termination.~~

Maintenance and Procedures

~~A. Time limit on construction. After the granting of a special permit for a Tier 3 or Tier 4 principal use solar energy system with concurrent site plan approval by the Town Board, the building permit shall be obtained within six ~~months~~months, and the project shall be completed within 12 months. If not constructed, the special permit and/or site plan approval shall automatically lapse within 12 months after the date of approval by the Town of Wales Board. If not constructed, the special use permit and site plan approval and building permit shall require new review and approval.~~

~~B. Inspections. Upon reasonable notice, the Town of Wales Building Inspector or his or her designee may enter a lot on which a solar energy system has been approved for the purpose of determining compliance with any requirements or conditions. Twenty-four hours' advance notice by telephone or e-mail to the owner or designated contact person shall be deemed reasonable notice. Furthermore, a principal use solar energy system shall be inspected annually by a New York State licensed professional engineer that has been approved by the Town, or at any time upon a determination by the Town's Building Inspector that damage may have occurred, and a copy of the inspection report shall be submitted to the Town Building Inspector. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.~~

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2. Inspections: Upon reasonable notice, the Town of Wales 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. Twenty-four 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 or utility-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. 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 or utility-scale solar energy system shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements.

4. 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.

5. Annual report: The owner and/or operator of a large-scale or utility-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:

- (1) The rated capacity of the system;
- (2) The amount of electricity generated by the system in the most recent twelve-month period;
- (3) The amount of electricity transmitted to the power grid in the most recent twelve-month period; and
- (4) Any damage that has occurred to the system in the most recent twelve-month period, evidence that the damage was repaired (if damage has occurred), and testing of groundwater or wells (if damage has occurred) and the findings of that testing; and
- (5) Any updates or maintenance performed to solar energy system components in the most recent twelve-month period and potential plans for such in the coming year.
- (6) 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 Wales Town Board or the solar energy system has been deemed to be non-operating 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 utilize the Bond to remove the solar energy system in accordance with the decommissioning plan. Such action shall be in addition to and not in lieu of any other enforcement remedies the Town may have.

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(7) Determination of abandonment or non-operation: A determination of the abandonment or non-operation 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 Wales Town Board 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 Town Board or a court of competent jurisdiction grants a stay or reverses said determination. At the earlier of the 366 days from the date of determination of abandonment or inoperability without re-activation approved or upon completion of dismantling and removal, any approvals for the solar energy system shall automatically expire.

A. Decommissioning Plan.

(1) A Decommissioning Plan will be submitted with the application to ensure that the owner or operator properly removes the equipment and facilities upon the end of the project life or after its useful life. The owner or operator shall decommission the solar panels and equipment in the event they are not in use for 12 consecutive months. The plan shall include details of the provisions for the removal of all structures and foundations, the removal of all electrical transmission components, the restoration of soil vegetation where appropriate, and a soundly based plan ensuring financial resources will be available to fully decommission the site. The disposal of structures and/or foundations shall meet the requirements of the New York State waste disposal statutes. The owner/operator shall provide a current-day decommissioning cost estimate and shall post a bond or letter of credit or establish an escrow account, including an inflation escalator, in an amount determined by the Town Board, to ensure proper decommissioning. A cost estimate detailing the projected cost of executing the decommissioning plan shall be prepared by a Professional Engineer or contractor. Cost estimates shall take inflation into account and not reflect any salvage value. In the case of a lease, the cost of decommissioning shall be borne by the entity or corporation that is leasing the property in question and not the landowner.

(2) A form of Decommissioning security acceptable to the Town, through escrow, letter of credit, bond or the equivalency of, shall be established during the special use permit process and must be in place prior to the commencement of construction to cover the cost of decommissioning the site. After completion of the project, the escrow, bond or equivalency of, shall be renewed on a determined schedule, adjusted for inflation and based on updated cost estimates. The amount of surety required shall be a minimum of 125 percent of the estimated cost to decommission (not allowing for recycling value). This decommissioning security shall be revisited at a minimum of every 5 years or at times of bond renewal. The revisiting will take into consideration inflation and other cost increases.

(3) If the owner or operator fails to dismantle and remove said solar energy system as required, the Town Board may, after a hearing at which the owner or operator shall be given the 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.

(4) If the applicant violates any of the conditions of its special permit, or site plan or violates any other local, state or federal laws, rules or regulations, this shall be grounds for revocation of the special permit or site plan approval. Revocation may occur after the applicant is notified, in writing, of the violations and the Town of Wales Town Board holds a hearing on the same.

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REIMBURSEMENT OF FEES AND EXPENSES.

1. The Applicant for a Solar Energy Facility Permit for a non-Tier 1 Solar Energy Facilities shall be responsible for reimbursing the Town for the cost of any legal services or engineering review by the Town Designated Engineer required in processing the application, and monitoring construction of the facility (collectively the "professional services fees"). Applications for non-Tier 1 Solar Energy Facilities shall be accompanied by a payment of thirty-five-thousand dollars (\$35,000.00) to the Town, to be held in an escrow controlled by the Town (the "professional services escrow"), for the purpose of paying any professional services fees incurred for review of the application, and construction and compliance monitoring. Whenever the amount of funds in the professional services escrow falls below \$10,000, the Applicant shall contribute an additional \$10,000.00 to the escrow. Any funds remaining in the professional services escrow upon commencement of commercial operation of the non-Tier 1 Solar Energy Facilities shall be returned to the Applicant, or its successor or assign.

Town Board may use the Town Designated Engineer (TDE) and retain consultants, lawyers, and/or other experts necessary to assist the Town in reviewing and evaluating the Application.

2. The applicable fees for any review or permit required by this local law can be re-set from time to time by resolution of the Town Board.

OWNERSHIP CHANGES.

1. If the owner of the solar energy system changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, HCA, and decommissioning plan. A new owner or operator of the solar energy system shall notify the Town Code Enforcement Officer 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 Code Enforcement Officer in writing. The special use permit and all other local approvals for the solar energy system would be void if a new owner or operator fails to provide written notification to the Town Code Enforcement Officer in the required timeframe. Reinstatement of a void special use permit will be subject to the same review and approval processes for new applications.

2. Any changes or alterations post-construction to a large-scale or utility-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.

SOLAR STORAGE BATTERIES.

1. If solar storage batteries are included as part of the Solar Energy Collection system, they must be placed in a secure container or enclosure meeting the requirements of the New York State Building Code. All solar storage batteries, their maintenance, placement, and location shall also comply with all applicable rules and regulations as promulgated by New York State Building and Fire Code and the National Electric Code.

2. When batteries are no longer in use, they shall be disposed of in accordance with the laws of the State of New York and any applicable Federal or Local disposal rules or regulations.

3. See the Town of Wales's Battery Energy Storage System Law for additional requirements and restrictions.

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SECTION 12. SOLAR ENERGY SYSTEM LIABILITY INSURANCE.

1. The holder of a special use permit for a Tier- 3 or Tier-4 solar energy system shall agree to secure prior to construction and maintain for the duration of the permit, public liability insurance as follows:

(1) 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 Wales and its officers, councils, employees, attorneys, agents, and consultants as an additional name insured.

(3) 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 Wales with at least thirty (30) days prior written notice in advance of cancellation.

4. Insurance Policy Renewal: Renewal or replacement policies shall be delivered to the Town of Wales at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.

5. Copies of Insurance Policy: No more than fifteen (15) days after the grant of the permit before construction is initiated, the permit holder shall deliver to the Town of Wales 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 Wales; therefore, a certificate of insurance shall not be deemed to comply with this law.

7. Indemnification: Any application for a solar energy system within the Town of Wales 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 Wales 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 Wales 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 Wales.

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ARTICLE VI
Additional Provisions

§ 196-11. Variances and waivers.

Where the Town Board finds that, due to special circumstances of a particular proposed solar energy system, the provisions of certain required provisions are not requisite in the interest of the public health, safety and general welfare or are inappropriate because of inadequacy, it may have such requirements subject to appropriate conditions.

§ 196-12. Interpretation; conflict with other provisions.

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety and general welfare. It is not intended to interfere with, abrogate or annul other rules, regulations or laws, provided that, whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted regulations, rules or laws, the most restrictive, or those which impose the highest standards, shall govern.

~~§ 196-13. Severability.~~

~~If any section, subsection, phrase, sentence or other portion of this chapter 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.~~

ARTICLE VII
Enforcement

§ 196-14. Penalties for offenses.

A. Any person or persons, association or corporation committing an offense against this chapter or any section or provision thereof is guilty of a violation punishable by a fine not exceeding \$250 or imprisonment for a period not exceeding 15 days for each such offense, or by both such fine and imprisonment.

B. This chapter may also be enforced by civil action or by proceedings by the Town of Wales.

C. Each week that a violation is permitted to exist shall constitute a separate offense.

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SECTION 14. VALIDITY AND SEVERABILITY.

If any part or provision of this Local Law shall be declared invalid, void, unconstitutional or unenforceable by a court of law, all unaffected provisions hereof shall survive such declaration, and this Local Law shall remain in full force and effect as if the invalidated portion had not been enacted.

SECTION 15. EFFECTIVE DATE

☞ This Local Law shall take effect immediately upon filing with the Secretary of State of the State of New York.

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