

TOWN OF CONCORD - 6/3/21

ARTICLE XXXIX OF THE TOWN OF CONCORD ZONING CODE

THESE PROPOSED AMENDMENTS REPLACE THE EXISTING ARTICLE XXXIX

SECTION 150- SOLAR ENERGY SYSTEMS

150-208. Authority

This Solar Energy Local Law is adopted pursuant to Sections 261-263 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 solar energy systems and equipment and access to sunlight necessary therefore."

150-209. Statement of Purpose

The Town finds that restrictions of regulations in regard to the use of land within the Town for solar power projects or private solar projects are appropriate to properly address community impact, concerns or issues in a manner in which is meaningful and consistent with the Comprehensive Plan of the Town.

A. The Town Board of the Town of Concord recognizes that solar energy is a clean, readily available and renewable energy source and the Town of Concord intends to responsibly consider the use of solar energy systems. The Town of Concord also desires to adopt zoning provisions that advance and protect the health, safety, and welfare of the community, and "to make provision for", so far as conditions may permit, the accommodation of solar energy systems and equipment

B. This chapter is adopted to advance and protect the public health, safety, and welfare of the Town of Concord, including:

- (1) Taking advantage of a safe, abundant, renewable, and nonpolluting energy resource;
- (2) Decreasing the cost of energy to the owners of commercial and residential properties, including single-family houses; and
- (3) Increasing employment and business development in the region by furthering the installation of solar energy systems.

C. However, the Town Board finds a need to properly site solar energy systems within the boundaries of the Town of Concord to protect residential, business areas, agriculture and other land uses, to preserve the overall beauty, nature and character of the Town of Concord, to promote the effective and efficient use of solar energy resources, and to protect the health, safety and general welfare of the citizens of the Town of Concord.

150-210. Definitions

APPLICANT

The person or entity filing an application and seeking an approval under this article; 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; or any person legally authorized to act on behalf of an applicant, solar energy system or proposed solar energy system. Whenever the term "applicant," "owner," or "operator" is used in this chapter, said term shall include any person legally authorized to act on behalf of an applicant, owner or operator.

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. Said system is designed and intended to generate energy primarily for on-site consumption.

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM: A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for onsite consumption.

CONCORD UNIFIED SOLAR PERMIT

This is the adopted Concord Unified Solar Permit (USP), form, instructions, and online guidance which is promulgated by NYSERDA and/or other New York State agencies and provides for the expedited permitting process for certain classes of private Tier 1 solar energy systems which are 25kW or less in capacity. The Concord USP allows for private roof-mounted, building mounted and building integrated systems.

DWELLING UNIT: Any residence/house/apartment that may be occupied or vacant

FARMLAND OF STATEWIDE IMPORTANCE: Land, designated as "Farmland of Statewide Importance" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey that is of state wide 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.

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 onsite or offsite 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.

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.

NET ENERGY METERING

Use of a net energy meter to measure the net amount of electricity supplied to the premises equipped with a solar energy system less the electricity provided by the solar energy system to the electric corporation (NYSEG for the case of Concord). Net metering shall be in accordance with the New York Public Service Law § 66-j. Net energy metering for a private solar energy system is allowed and permitted as long as the excess energy produced falls within 110% of historical demand for the lot on which the private solar energy system is installed.

NON-PARTICIPATING 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, and includes 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 (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.

QUALIFIED SOLAR INSTALLER

A person or organization who has the skills and knowledge related to the construction and operation of solar energy systems and installation and who has received safety training on the hazards involved. Persons who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA) shall be deemed to be qualified solar installers for the purposes of this definition. Persons who are not on the NYSERDA list of eligible installers may be deemed to be qualified solar installers if the Concord Code Enforcement Officer or the Concord Town Board determines such persons have training to perform the installation appropriately and safely. Such training shall include the proper use of precautionary techniques and personal protective equipment as well as the skills and techniques necessary to distinguish exposed energized parts or other parts of electrical equipment on the site and to determine the nominal voltage of exposed live parts.

ROOF-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or offsite consumption.

SOLAR ACCESS: Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive Solar Energy Systems on individual properties.

SOLAR ENERGY EQUIPMENT: Electrical material, hardware, inverters, conduit, storage devices, fencing or

other electrical and photovoltaic equipment associated with the production of electricity.

SOLAR ENERGY SYSTEM: The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. A Solar Energy System in the Town of Concord is classified as a Tier 1, Tier 2, Tier 3 or Tier 4 Solar Energy System as follows.

- A. Tier 1 Solar Energy Systems include the following:
 - 1. Roof-Mounted and Building Mounted Solar Energy Systems
 - 2. Building-Integrated Solar Energy Systems
- B. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems up to 1,500 square feet in size (defined as the actual square footage of panels) and that generate no more than 110% of the electricity consumed on the site over the previous 12 months.
- C. Tier 3 Solar Energy Systems are systems that do not meet the definition of a Tier 1 or Tier 2 Solar Energy Systems and do not meet the requirements of a Tier 4 Solar Energy System (50 acres or less - defined as the fenced in area that encloses the panels and other related solar energy equipment).
- D. Tier 4 Solar Energy Systems meet the definition of a Tier 3 Solar Energy System but are over 50 acres in size (defined as the fenced in area that encloses the panels and other related solar energy equipment).

SOLAR PANEL: A photovoltaic device capable of collecting and converting solar energy into electricity.

STORAGE BATTERY: A device that stores energy and makes it available in an electrical form.

USP: The abbreviation for the Concord Unified Solar Permit process, form, instructions, and implementation of the unified solar permit process in the Town. Forms and details are available from the Concord Town Clerk and online at the Town's website.

WETLANDS: Any areas designated as such by the NYS Department of Environmental Conservation or the US Army Corps of Engineers

150-211. Applicability

- 1. The requirements of this Local Law shall apply to all Solar Energy Systems permitted, installed, or modified in the Town after the effective date of this Local Law, excluding general maintenance and repair.
- 2. Solar Energy Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.
- 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 Local Law.

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.

150-212. General Requirements

1. A Building Permit shall be required for installation of all Solar Energy Systems.
2. Issuance of approvals by the Town 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 Article shall take precedence over any inconsistent provision of the Zoning Law of the Town of Concord.
4. All permitted solar energy systems are required to be installed by a qualified solar installer.
5. This article shall not apply to any lot owned by a municipality.

150-213. Permitting Requirements for Tier 1 Solar Energy Systems

All Tier 1 Solar Energy Systems shall be permitted in all zoning districts through a Building Permit or Concord Unified Solar Permit (USP) and shall be exempt from site plan review under the local zoning code or other land use regulation, subject to the following conditions for each type of Solar Energy Systems:

1. Roof-Mounted, Building Integrated and Building Mounted Solar Energy Systems.
 - a. Roof-Mounted Solar Energy Systems shall incorporate, when feasible, the following design requirements:
 - i. Solar Panels on pitched roofs shall be mounted with a maximum distance of 8 inches between the roof surface the highest edge of the system.
 - ii. Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
 - iii. Height: Tier 1 Solar Energy Systems shall have the following height restrictions for all zoning districts: 2 feet above roof of highest existing structure but shall not be higher than the allowed height in the underlying zoning district, unless a variance is received.
 - iv. Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 24 inches above the flat surface of the roof, whichever is higher.
 - b. Glare: All Solar Panels shall have anti-reflective coating(s) and proof of such must be provided with the building permit application.

- c. Fire safety: All roof-mounted systems shall be designed and installed in accordance with the Uniform Fire Prevention and Building Code Standards.
2. Building-Integrated Solar Energy Systems - Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system.
3. Building-Mounted Solar Energy Systems - Building-mounted solar energy systems (non-rooftop) shall not be more than 18 inches from the building wall and in no instance shall any part of the system extend beyond the eave line or top of a parapet wall. All proposed installations must be accompanied by a set of drawings sealed by a New York State-licensed professional engineer or registered architect, verifying the structural integrity of the building and with the New York State Code Compliance checklist. They must also meet the requirements listed in paragraph b. and c. for roof mounted systems. The approval of any building-mounted systems shall be by the building permit method as they are not eligible for consideration under Concord's Unified Solar Permit method regardless of capacity of the system.

150-214. Permitting Requirements for Tier 2 Solar Energy Systems -

All Tier 2 Solar Energy Systems shall be permitted in all zoning districts as an accessory use and require site plan review in accordance with the Town of Concord zoning code and other Town land use regulations. The Site Plan application shall include a site plan and address the following requirements:

1. Glare - All Solar Panels shall have anti-reflective coating(s) and proof of such must be provided with the building permit application.
2. Setbacks - Tier 2 Solar Energy Systems shall be setback a minimum of 50 feet from any side or rear property line. All Ground-Mounted Solar Energy Systems shall only be installed in the side or rear yards. In all cases, the solar panels shall be located a minimum of 75 feet from any dwelling unit on an adjoining non-participating property. For Tier 2 systems, the setback requirement is from any panel or other related solar energy system equipment.
3. Installations in Residential districts - The total surface area of said solar energy system on a lot shall not exceed 800 square feet per acre in R1, R2, R-RB, RE, RM, R12, and R-AG.
4. Height - Tier 2 Solar Energy Systems shall be less than 12 feet in height in any Residential District. Height shall be less than 15 feet for all remaining districts. Height shall be measured at maximum tilt.
5. Screening and Visibility.
 - a. All Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable (as determined through the site plan process).
 - b. Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.

6. Additional Site Plan requirements

- a. Submit a site plan in accordance with the Town of Concord's site plan requirements and also drawn in sufficient detail as set forth below:

- (1) Plans and drawings of the solar energy system installation signed by a New York State certified professional engineer or registered architect showing the proposal layout of the solar energy system along with a description of all components, existing vegetation, any proposed clearing and grading of the lot involved, any stormwater or erosion disturbances, and utility lines, both above and below ground, on the site and adjacent to the site; and clearly showing the direction of surface water flow from the site.
- (2) The site plan will illustrate all property lot lines and the location and dimensions of all existing structures and uses within 500 feet of the solar panels.
- (3) Any proposed fencing and/or screening for said project.
- (4) Any such additional information as may be required by the Town's professional engineer or consultant, the Town Planning Board, the Town Board, the Town Attorney, the Code Enforcement Officer, or other Town entity.
- (5) A public hearing on said site plan may be waived by the Town Board at the Town Board's discretion.
- (6) If 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 and any Town of Concord Battery Energy Storage law.

150-215. Permitting Requirements for Tier 3 Solar Energy Systems

All Tier 3 Solar Energy Systems are permitted through the issuance of a special use permit (in accordance with Article XXXIV of the Town Zoning Code and this Article) within Residential - Agricultural (R-AG) Zone, General Commercial Zone (C-2), and Industrial Zone (M), and subject to site plan application requirements set forth in this Section. In order to ensure that the benefits of the community solar energy resource are available to the entire community, the Town of Concord requires the applicant to enter into a Solar Energy System PILOT and Host Community Agreement with the Town of Concord.

In reviewing and considering Tier 3 solar proposals, the Town will give deference to those sites that are NYS brownfield sites and sites that are non-agricultural in nature. The Town values its agricultural land and the farming that takes place on that land.

1. Applications (Process) for the installation of Tier 3 Solar Energy System shall be:

Tier 3 applications for solar energy systems will be required to proceed via the Concord special use permit procedures and process in order for the solar energy conversion system to be considered for site plan approval and building permit approval. Applications under this article shall be made as described in this section. Applicants for a special use permit to place, construct, and make a major modification to a Tier 3 solar energy system, or other solar energy conversion system which is required to proceed via the special use permit method, within the boundaries of the Town of Concord shall submit 12 sets of the materials identified in this law and follow the following process:

- a. Received by the Code Enforcement Officer (CEO) and checked to make sure the appropriate documents have been submitted. No such application shall be deemed filed until any required application fee has been paid by the applicant. The CEO will then forward to the Town Board, by having it placed on the next available agenda, for them to determine completeness of the application and refer to the Planning Board and/or a professional engineer or consultant for an initial review. Applicants shall be advised within 10 business days of the first Planning Board meeting of the completeness of their application or any deficiencies that must be addressed prior to substantive review of the Special Use Permit and Site Plan.
- b. Once the application is deemed complete and while the Planning Board is completing their reviews and recommendations, the project/application shall be referred back to the Town Board to begin completion of the Host Community Agreement. This agreement will need to be finalized before the Special Use Permit is issued.
- c. The Planning Board shall complete their reviews and issue an advisory recommendation for consideration by the Town Board. The Planning Board may make such additional referrals to experts, consultants, or applicable engineering professionals as it deems appropriate (these costs shall be paid by the applicant through an escrow fund to be set up with the Town).
- d. The Town Board shall review the advisory report and set a public hearing in accordance with the Special Use Permit law to hear all comments for and against the application. The Town Clerk shall complete all public notice requirements in accordance with the Special Use requirements of the Town.
- e. If required, the application shall also be referred to the Erie County Department of Environment and Planning (ECDEP) pursuant to General Municipal Law § 239-m.
- f. The Special Use Permit shall be acted upon by the Town Board, once the required steps are completed and the Town Board has completed the SEQR process.
- g. The Town Board may grant a special use permit, deny a special use permit, or grant a special use permit with written stated conditions. Denial of a special use permit shall be by written decision based upon substantial evidence and advisory recommendations considered by the Town Board. Upon issuance of a special use permit, the applicant shall obtain a building permit for the Tier 3 or Tier 4 solar energy system.
- h. The Town Board then can proceed with acting on the Site Plan.

2. Design and Application Requirements

Applications for Tier 3 Solar projects shall address and include the following:

- a. Vehicular Paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.
- b. Signage.
 - i. No signage or graphic content shall be displayed on the Solar Energy Systems except the

manufacturer's name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted within an area no more than 8 square feet.

- ii.* As required by National Electric 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.
- c. Glare. All Solar Panels shall have anti-reflective coating(s) and proof of such submitted at application and at the building permit stage.
- d. Lighting. 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.
- e. Noise. Information on any noise producing equipment (as determined by the Town based on application materials) shall be submitted. If necessary, the Planning Board will require analysis of the noise on any sensitive receptors, including single family homes.
- f. Tree-cutting. Removal of existing trees larger than 6 inches in diameter should be minimized to the extent possible (or, if allowed by the Town, replace as necessary on the site).
- g. Decommissioning.
 - i.* Solar Energy Systems that have been abandoned and/or not producing electricity (defined as operated at a minimum of 50% capacity for a period of at least 6 months) shall be removed at the Owner 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 law.
 - ii.* A decommissioning plan (see Appendix 1) signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant, addressing the following:
 - (a) The methodology and the cost of removing the Solar Energy System. The Town strongly encourages the recycling of all materials (and should be reflected in the decommissioning plan), but there will be no allowance for recycle value in the cost estimate (as they are too speculative).
 - (b) The time required to decommission and remove the Solar System and any ancillary structures.
 - (c) Restoration of the property to the original condition of the site, in accordance with NYS Department of Agriculture and Markets (NYSDAM) standards or as determined through Town input.
 - (d) The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.
 - iii.* Security
 - (a) The deposit, executions, 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 Tier 3 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. The security amount shall be reviewed on a regular basis (as set by the Town) and the amount of the security may change based on any new figures.

- (b) 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.
- (c) In the event of default or abandonment of the Solar Energy System, the system shall be decommissioned as set forth in this law.

- h. Application Fees: All applications for Tier 3 (and Tier 4) solar energy systems shall include the appropriate fees as set by the Concord Town Board. The applicant shall also be responsible for any costs incurred by the Town for consulting and legal services.
- i. Maintenance Plan: applications shall include a maintenance plan for all leased lands (including required setbacks/buffers). The maintenance plan shall also include the minimum guarantee period on the plantings (10 years). The maintenance plan shall address the maintenance of the equipment, the access roads (condition and plowing), plantings, buffer areas and the area under the panels. With regards to maintenance, the Town will not allow the use of herbicides, pesticides and other chemicals. The maintenance plan should include environmentally friendly maintenance procedures including the use of animal grazing and the use of pollinator species and low maintenance vegetation.
- j. Safety; applications shall include a safety plan (including communication with emergency service providers).
- k. Environmental and cultural resources; information on the environmental and cultural resources (as identified through the NYSDEC Mapping system and by the Town of Concord. This includes resources such as wetlands, viewsheds, scenic byways, forestry lands, habitats, etc.) on the subject property and surrounding properties.
- l. A property owner who has installed, or intends to install, a Tier 3 solar energy system or private 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 by the Town 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.

- 3. Site plan application requirements - For any Solar Energy system requiring a Special Use Permit, site plan approval shall be required. This required site plan application shall include a site plan in accordance with the

Town of Concord's site plan requirements and this law, and include the following additional information:

- a. A Plan illustrating property lines and physical features, including roads, for the project site.
- b. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
- c. c. A one- or three-line electrical diagram detailing the Solar Energy System layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
- d. Plans must also illustrate all off-site infrastructure, including transmission lines, points of grid interconnection, poles and electric lines servicing the project. These "off-site" improvements will be considered part of the project and considered in the project review.
- e. A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
- f. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.
- g. 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 Solar Energy System.
- h. Zoning district designation for the parcel(s) of land comprising the project site and adjoining lands.
- i. Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic and other equipment maintenance and property upkeep, such as mowing and trimming (or other methodologies).
- j. Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board or Town Engineer.
- k. Engineering documents must be signed and sealed by a New York State (NYS) Licensed Professional Engineer or NYS Registered Architect.
- l. A completed SEQR Full Environmental Assessment Form.
- m. A Landscape Plan in accordance with the Special Use Permit requirements of this law.
- n. Proposed fencing and screening of the project.
- o. Any such additional information as may be required by the Town Planning Board, a Town professional engineer or consultant, the Concord Town Board, the Town Attorney, the Town Code Enforcement Officer, or other Town entity

150-216. Special Use Permit Standards and requirements

In addition to the general requirements for the issuance of a special use permit in the Town of Concord, the following additional standards and requirements will be utilized to make a decision on the approval of the special use permit for these projects.

I. Specific Standards

- a. The total surface area of a Tier 3 solar energy system situated in a Residential-Agricultural (R-AG) Use District, on a lot which is greater than 15 acres, is determined by the size of the parcel, as indicated below:
 - i. For parcels 15 acres or less, a Tier 3 solar energy system shall not exceed 50% of the total square footage of the entire lot.
 - ii. For parcels greater than 15 acres, a Tier 3 solar energy system shall not exceed 40% of the total square footage of the entire lot.
- b. The total surface area of a Tier 3 solar energy system, on a lot which is greater than 15 acres, situated in a Commercial (C) Use or Industrial Use District, shall not exceed 20% of the total square footage of the entire lot.
- c. Setbacks - All Tier 3 Solar Energy Systems shall be setback a minimum of 100 feet (all setbacks are measured from the fence surrounding the solar panels and all equipment) to all non-participating property lines and to the edge of any road ROW. Additionally, the setback from the fence line shall be a minimum of 300 feet from the side or rear of a dwelling unit on an adjoining non-participating property. The setback to any off-site participating dwelling unit shall be 100 feet from the side or rear of the dwelling unit. For participating properties with proposed solar panels, the setback from a property line is not required. Additional setback requirements are as follows:
 - (1) If parcel/lot is in a Residential-Agricultural (R-AG) Zoning, but is shown on the current Town of Concord (Zoning Map as a parcel/lot which has the first 300 feet of depth from the road frontage zoned as RI, R2, RE, RM, R12, R-AG or R-RB, then no portion or component of the Tier 3 solar energy system may be located within that frontage zoning (R1, R2, R-RB, RE, RM, R12, and R-AG) except for any existing overhead or proposed buried electrical wire infrastructure associated with the solar energy system as proposed by the applicant.
 - (2) From railroads: A minimum of 100 feet from any railroad (measured from the railroad right-of-way).
 - (3) From an inactive railroad's rail bed right-of-way corridor that is part of the rail-banking system: A minimum of 100 feet from any railroad roadbed in the rail-banking system (as measured from the rail bed's right-of-way).
 - (4) From schools, public parks: A minimum of 750 feet from all property lot lines bordering a school or public park.
- a. Height - The Tier 3 Solar Energy Systems shall be less than or equal to 20 ft. The height of systems will be measured from the highest natural grade below each solar panel. This height requirement can

be waived by the Planning Board if the panels are being raised to accommodate agricultural purposes.

- b. Fencing Requirements - All mechanical equipment, including any structure for storage batteries, shall be enclosed by a fence, and meet any other regulatory requirements such as NEC, with a self-locking gate to prevent unauthorized access. Warning signs with the owner's contact information shall be placed on the entrance and perimeter of the fencing.
- c. Screening and Visibility.
 - i. Solar Energy Systems smaller than 5 acres shall have views minimized from adjacent 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.
 - ii. Solar Energy Systems larger than 5 acres shall be required to:
 - (a) 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 shall 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.
 - (b) Submit a screening & 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. The Planning Board will in good faith determine the adequacy of these measures in its sole and absolute discretion.
 - (c) The screening & 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 1 evergreen tree, at least 6 feet high at time of planting, plus 2 supplemental shrubs at the reasonable discretion of the Town Planning Board, all planted within each 10 linear feet of the Solar Energy System. Existing vegetation may be used to satisfy all or a portion of the required landscaped screening. A list of suitable evergreen tree and shrub species should be provided by the Town. This minimum screening requirement will be reduced if adjoining properties are participating properties.
 - (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, buildings can be made to look like agricultural structures such as barns.
 - iii. If a Tier 3 or 4 solar energy system is situated on a parcel/lot which is at the edge of a zoning boundary (for example, the last parcel in an R-AG Zoning District which abuts to a residential parcel (R1, R2, RE, R-RB, RM, RI2), then additional screening via retaining existing trees, suitable vegetation, plantings, or the topography, shall be included in the site plan so as to screen the boundary parcel from the visual impact of the solar energy system.

a. Other standards:

All Tier 3 or 4 solar energy systems, if located within 1,000 feet of a public or private airfield/airport must, at the time of special use permit submission include results of the Federal Solar Glare Hazard Analysis Tool (SGHAT) for the Airport Traffic Control Tower (if any) and for the final approach aircraft flight paths, consistent with the current policy of the FAA for Review of Solar Energy Projects, and any similar regulatory mandates which include private airfields near the solar energy system's area.

A Tier 3 or 4 solar energy system shall adhere to all applicable federal, state, county and Town of Concord laws and regulations, and all building, plumbing, electrical, and fire codes. The applicant is also required to obtain all necessary formal regulatory approvals and/or permits from any federal, state, county, or local agency having jurisdiction and approval requirements related to the completion of a Tier 3 or 4 solar energy system.

Artificial lighting of Tier 3 or 4 solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded (down cast and dark sky compliant) from all neighboring properties and public roads.

Any signage used to advertise the solar energy facility shall be in accordance with the Town's signage regulations.

After completion of construction of a Tier 3 or 4 solar energy system, the applicant shall provide a post-construction certification from a professional engineer (PE), registered in New York State, that the project complies with applicable codes and industry practices, and that it has been constructed and is operating according to the design plans.

Clearing, grading, stormwater and erosion control:

- (1) It has been determined that much of the soil type classification within the Town of Concord consists of highly and moderately erodible soils types; erosion control and prevention are a critical component of any solar energy system project. Therefore, the Town will require formal documentation that any proposed solar energy project will not cause a negative impact on the Town's soil resources. This is especially true for Tier 3 or 4 solar energy systems; therefore, Concord requires a determination that erosion will be addressed in any development for solar energy systems.
- (2) Before the Town of Concord shall issue a clearing, grading, stormwater, or building permit for a Tier 3 or 4 solar energy system, the applicant shall prepare an acceptable New York State Pollutant Discharge Elimination System (SPDES), filed and issued in accordance with Environmental Conservation Law, which fully defines the measures to be taken during and after the construction phase(s) of the solar energy system as required by law. When the permit coverage is received by the applicant, a copy should be filed within five days with the Concord Code Enforcement Officer for review.
- (3) Before the Town of Concord shall issue a clearing, grading, storm water or building permit for a Tier 3 or 4 solar energy system, the applicant shall submit a complete New York State storm water pollution prevention plan (SWPPP) to the Town for review and approval by the Planning Board and/or their designated consultant or professional engineer, the Concord Environmental Board, and the Concord Code Enforcement Officer whom will all supply advisory recommendations to the Town Board when they determine approval status.

- (4) The applicant's SWPPP 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.
 - (5) To assist in processing, if not mandated elsewhere, the SWPPP should include a copy of the filed New York State Environmental Quality Review Act (SEQRA) document(s), so that efficient review of both submittals may be done by the Town's advisory boards as well as the Town Board.
- b. Agricultural Resources. Due to the importance of agricultural lands and the economy of farming, projects proposed to be located on agricultural lands shall have the following additional requirements:
- i. Any Tier 3 Solar Energy System located in areas that consist of Prime Farmland soils or Farmland soils of Statewide Importance shall not exceed 50% of the area of Prime Farmland or Farmland of Statewide Importance on the parcel upon which panels and other Solar Energy Equipment (the fenced in area) are to be installed. Any program in which the applicant participates that provides for the use of the land within the fenced in area as farm related uses may be excluded from this 50% coverage threshold calculation based on the amount of space actually occupied by the farm use. This exclusion will only be allowed based on a Planning Board's determination that these lands are being used for actual Agricultural uses.
 - ii. Tier 3 Solar Energy Systems located on Prime 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).
 - iii. Tier 3 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. Input from the local farmers and Town Agricultural Committee will be needed to make these determinations.
 - iv. Agricultural Restoration Requirements: once the system is decommissioned, the site shall be restored and remediated in accordance with the NYS Department of Agriculture and Markets (NYSDAM) Guidelines (this will be a condition of the Special Use Permit).
- c. Noise: The project shall be shown to not have any adverse noise impacts on any surrounding homes or other sensitive receptors (use of NYSDEC regulations concerning noise).
- d. Hazardous Materials: The project components shall not contain any hazardous materials that could contaminate soils or the air by their release (units shall not contain cadmium or other hazardous materials). Any equipment containing liquids must show adequate spill containment requirements. Proof of these requirements must be provided with the application.
- e. Solar Energy System Liability Insurance:
- i. 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 Concord and its officers, councils, employees, attorneys, agents and consultants as additional named insured;
- (b) Umbrella coverage: \$10,000,000.
- ii. Insurance Company: The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with at least a Best's rating of "A".
- iii. Insurance Policy Cancellation: The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town of Concord with at least thirty (30) days prior written notice in advance of cancellation.
- iv. Insurance Policy Renewal: Renewal or replacement policies shall be delivered to the Town of Concord at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
- v. 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 Concord a copy of each of the policies or certificates representing the insurance in the required amounts.
- vi. 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 Concord shall not be deemed to comply with this Law.
- vii. Indemnification: Any application for a Solar Energy System within the Town of Concord 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 Concord 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 Concord 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 Concord.

150-217. Permitting Requirements for Tier 4 Solar Energy Systems

All Tier 4 Solar Energy Systems are permitted through the issuance of a special use permit within the Residential-Agricultural (R-AG) Zone, and subject to site plan and special use permit requirements set forth in this Article for Tier 3 projects (all requirements in Sections 150-215 and 150-216). They are also subject to all of the requirements for Tier 3 projects and as revised below. In order to ensure that the benefits of the community solar energy resource are available to the entire community, the Town of Concord shall require all Tier 4 applicants to enter into a Solar Energy System PILOT and Host Community Agreement.

These Tier 4 systems are very large systems that have a potential to significantly impact the Town of Concord, its citizens and the economy of the community. Therefore, the Tier 4 systems shall require the following additional (in addition to those in the Tier 3 level) submittals and requirements or revisions to Tier 3 requirements:

1. Submittal of an Agricultural Impact Statement (In addition to any other requirements such as Agricultural Data Statements and Notice of Intent) to determine the impact to Agriculture in the Town.
The Planning Board, on a project by project basis, will work with the applicant on finalizing the requirements of this Agricultural Impact Statement. It will not only include the direct impacts on the subject properties and surrounding agricultural properties, but also include analysis of the loss of leased lands and the impact on other leased lands.
2. Submittal of an Economic Impact Analysis to determine the impact to the economy of the Town. This includes the agricultural impacts in the Ag Impact statement and information as noted by the Town Planning Board (Town to provide scoping of this study)
3. Any Tier 4 Solar Energy System located on lands that consist of Prime Farmland soils or Farmland soils of Statewide Importance shall not exceed 50% of the area of Prime Farmland or Farmland of Statewide Importance on the parcel or project site as a whole (if multiple parcels are included) upon which panels and other solar energy equipment (the fenced in area) are to be installed. Any program in which the applicant participates that provides for the use of the land within the fenced in area as farm related uses may be excluded from this 50% coverage threshold calculation based on the amount of space actually occupied by the farm use. This exclusion will only be allowed based on a Planning Board's determination that these lands are being used for actual Agricultural uses.
4. For Tier 4 systems, if the project proposes to impact more than 50% of these Prime or Statewide Important soils, the applicant may purchase or lease (for the lease period of the proposed project) development rights, of an equal amount of land over the 50% threshold, of another active farm within the Town of Concord with Prime or Statewide Important soils located on that land to offset the farmland used or leased in the primary project area.
5. For Tier 4 systems, the setback and other bulk requirements for Tier 3 projects must be met.

150-218. Ownership Changes

If the owner or operator 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, and decommissioning plan. A new owner or operator of the Solar Energy System shall notify the zoning enforcement officer of such change in ownership or operator within 30 days of the ownership change.

150-219. Safety

1. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.
2. Solar Energy 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, if the Tier 3 Solar Energy System is located in an ambulance district, the local ambulance corps.

3. If Storage Batteries are included as part of the Solar Energy System, they shall meet the requirements of any applicable Local Law, fire prevention and building code when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the Town and any applicable federal, state, or county laws or regulations.

150-220. Permit Time Frame and Abandonment

1. The Special Use Permit and site plan approval for a Solar Energy System shall be valid for a period of 18 months, provided that construction has 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 18 months after approval, the applicant or the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 24 months, the approvals shall expire.
2. Upon cessation of electricity generation of a Solar Energy System on a continuous basis for 12 months, the Town may notify and instruct the owner and/operator of the Solar Energy System to implement the decommissioning plan. The decommissioning plan must be completed within 360 days of notification.
3. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, utilize the bond and/or security for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan.

Inspections. Upon reasonable notice, the Concord Code Enforcement Officer, or his designee, may enter a lot on which a solar energy system has been approved for the purpose of compliance verification 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. Furthermore, a Tier 3 or Tier 4 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 other time, upon a determination by the Town's Code Enforcement Officer that damage may have occurred. A copy of the inspection report shall be submitted to the Town Code Enforcement Officer. Any fee or expense associated with this inspection shall be borne entirely by the permit holder. The Town may also set up a yearly fee for the Special Use permits for Tier 3 and 4 projects.

General complaint process. During construction, the Town Code Enforcement Officer can issue a stop work order at any time for any violations of a special use or building permit. After construction is complete, the permit holder of a Tier 3 or Tier 4 solar energy system shall establish a contact person, including name, e-mail address and phone number, for receipt of any complaint concerning any permit requirements.

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 Code Enforcement Officer shall also have the right to request documentation from the owner of a solar energy system regarding the system's usage at any time.

Changes after approval of the SUP: If after approval of the SUP or after construction, changes are proposed to the approved plan; location of the panels/equipment, equipment types, number of units, etc., the applicant will need to reappear before the Planning Board for consideration of amending the SUP.

150-221. Enforcement

Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town.

150-222. 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.

