

§ 1. Title

This Local Law will be referred to as, "Local Law No. 2 of 2022 - Battery Energy Storage Systems."

§ 2. Legislative authority

This chapter is adopted pursuant to the legislative authority in Municipal Home Rule Law § 10, Town Law §§ 261 through 264, General Municipal Law § 96-a and § 119-dd and Public Service Law, Article 10.

§ 3. Purpose and intent

A. The purpose of this Battery Energy Storage System Local Law is to advance and protect the public health, safety, and welfare of Gaines by regulating the installation and use of Battery Energy Storage, and equipment, with the following objectives:

- 1) To take advantage of a safe, abundant, renewable and non-polluting energy resource;
- 2) To decrease the cost of electricity to the owners of residential and commercial properties, including single-family houses;
- 3) To increase employment and business development in the Town of Gaines, to the extent reasonably practical, by furthering the installation of Battery Energy Storage Systems; and
- 4) To mitigate the impacts of Battery Energy Storage Systems on environmental resources and agricultural land.
- 5) To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of Battery Energy Storage Systems.
- (6) To ensure compatible land uses in the vicinity of the areas affected by Battery Energy Storage Systems.
- (7) To mitigate the impacts of Battery Energy Storage Systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources.

§ 4. Definitions

APPLICANT: The person or entity submitting 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; any person acting on behalf of an Applicant, Solar Energy System or proposed Solar Energy System. Whenever the term "applicant" or "owner" or "operator" are used in this Article, said term shall include any person acting as an applicant, owner or operator of such Solar Energy System.

ABANDONMENT: A solar energy system that has no produced electrical energy for 12 months and must be removed from the property.

BATTERY ENERGY STORAGE SYSTEM: One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1 or Tier 2 Battery Energy Storage System as follows:

- (1) Tier 1 Battery Energy Storage Systems have an aggregate energy capacity less than or equal to 600kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.
- (2) Tier 2 Battery Energy Storage Systems have an aggregate energy capacity greater than 600kWh or are comprised of more than one storage battery technology in a room or enclosed area.

BUILDING-INTEGRATED PHOTOVOLTAIC 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.

BUILDING-MOUNTED SOLAR ENERGY SYSTEM (onsite use): Any Solar Energy System that is affixed to the side(s) or rear of a Building or other Structure either directly or by means of support structures or other mounting devices, intended to produce energy for onsite consumption or credit for onsite consumption for a building, single-family residence, multi-family residence or business, but not including those mounted to the roof or top surface of a Building. (See definition of Roof-Mounted Solar Energy System)

BUSINESS: An organization or enterprising entity engaged in commercial, limited industrial, or professional activities that provide employment opportunities and broadens the tax base.

COMMERCIAL BUILDING-MOUNTED SOLAR ENERGY SYSTEM (offsite use): Any Solar Energy System that is affixed to the side(s) or rear of a Building or other Structure either directly or by means of support structures or other mounting devices, intended to produce energy for offsite sale to and consumption by one or more customers.

COMMERCIAL ROOF-MOUNTED SOLAR ENERGY SYSTEM (offsite use): A Solar Energy System mounted on the roof of any legally permitted Building or Structure and wholly contained within the limits of the roof surface, intended to produce energy for offsite sale to and consumption by one or more customers.

DECOMMISSIONING: The removal and disposal of all Solar Panels, Solar Energy Equipment, Structures, equipment and accessories, including subsurface foundations and all other material, concrete, wiring, cabling, or debris, that were installed in connection with a Solar Energy System and the restoration of the parcel of land to the original state prior to construction on which the Solar Energy System is built to either of the following, at the landowner's (either the Initial Landowner or it's heirs, successors or assigns) sole option: (i) the condition such lands were in prior to the development, construction and operation of the Solar Energy System, including but not limited to restoration, regrading, and reseeding, or (ii) the condition designed by landowner (either the Initial Landowner or it's heirs, successors or assigns) and the Town. Details of the expected Decommissioning activities and costs are to be described in the Decommissioning Plan and Decommissioning Agreement as may be required pursuant to this Article.

DECOMMISSIONING AGREEMENT: A written Agreement between Applicant, Initial Landowner and Town that sets forth the obligations of the Applicant and/or the Initial Landowner to properly decommission the Solar Energy System if the use of such system is discontinued, abandoned or becomes inoperable.

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

FARM OPERATION: Land and on-farm buildings, equipment, facilities, and practices which contribute to the production, preparation, and marketing of crops, livestock, and livestock products as a commercial enterprise (in accordance with Agriculture & Markets Law § 301[11])

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 DISTURBANCE: Any activity that contributes to soil compaction, alters the soil profile or removes vegetative cover, therefore, is susceptible to erosion

GROUND-MOUNTED SOLAR ENERGY SYSTEM: A solar energy system that is anchored to the ground and attached to a pole or other mounting system that is detached from any other structure and which generates electricity for onsite or offsite consumption.

INITIAL LANDOWNER: The record title owner to the real property upon which a Solar Energy Systems is constructed, at the time such Solar Energy System is originally constructed.

LARGE-SCALE SOLAR ENERGY SYSTEM: A solar energy system that is ground-mounted and produces energy primarily for the purpose of on-site usage or consumption, with lot coverage of more than 4,000 sq. ft.

LOT COVERAGE: The land area occupied by a ground-mounted solar energy system. Lot coverage encompasses the entire area of the solar array, including spaces between the solar panels, as well as all fences, roadways, parking, structures and equipment.

MINERAL SOIL GROUPS 1-4 (MSG 1-4): Soils recognized by the New York State (NYS) Department of Agriculture and Markets as having the highest value based on soil productivity and capability, in accordance with the uniform statewide land classification system developed for the NYS Agricultural Assessment Program.

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 NYS Department of Environmental Conservation.

NAMEPLATE CAPACITY: A solar energy system's maximum electric power output under optimal operating conditions. Nameplate Capacity may be expressed in terms of Alternating Current (AC) or Direct Current (DC).

NEIGHBORHOOD: A collection of 8 or more houses (residential dwellings) within a 1-mile boundary with similar housing types and market values. The 1-mile boundary is measured from the start of the first house to the start of the last house in that 1-mile boundary.

PRIME FARMLAND: Land, designated as "Prime Farmland" in the US Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database 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 uses. It has the soil quality, growing season and moisture supply needed to produce economically sustained high yields of crops when treated and managed according to acceptable farming methods, including water management. In general, Prime Farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content and few or no rocks. They are permeable to water and air. Prime Farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding.

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

ROOF-MOUNTED SOLAR ENERGY SYSTEM: A solar energy system, located on the roof of any legally permitted building or structure, which produces electricity for on-site or off-site consumption. S

ROOF-MOUNTED LARGE-SCALE SOLAR ENERGY SYSTEM: A large-scale roof-mounted solar (PV) system is prohibited from being mounted upon the roof of any legally permitted Building or Structure and wholly contained within the limits of the roof surface, intended to produce energy for onsite consumption or credit for onsite consumption for a building, a single-family detached dwelling, a multi-family structure, a commercial or industrial building, or a farm building

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

SOLAR ENERGY SYSTEM: An electrical generating system composed of a combination of both solar panels and solar energy equipment.

SOLAR ENERGY EQUIPMENT: Electrical energy devices, material, hardware, inverters, or other electrical equipment and conduit, not to include any type of battery energy storage system or similar device, that are used with Solar Panels to produce and distribute electricity.

SOLAR FARM: A Solar Energy System that generates electricity primarily for off-site sale, usage or consumption.

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

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

TILT – The vertical angle, where 0° minimum tilt means the panel is lying flat, and 90° maximum tilt means that it is vertical.

TOWN – The Town of Gaines, Orleans County, New York.

WETLAND DISTURBANCE (TEMPORARY): Temporary impacts occur when fill and/or cut impacts occur in wetlands that are restored to preconstruction contours when construction activities are complete.

WETLAND DISTURBANCE (PERMANENT): Permanent impacts occur when fill and/or cut impacts occur in wetlands that are not restored to the preconstruction state.

§ 5. Applicability

A. The requirements of this Local Law apply to all standalone Battery Energy Storage Systems and/or Battery Energy Storage Systems that are associated directly with a proposed solar energy system or proposed solar farms, installed, operated, maintained, modified or constructed in Gaines after the effective date of this Local Law, excluding general maintenance and repair.

B. Battery Energy Storage Systems constructed or installed prior to the effective date of this Local Law are not required to meet the requirements of this Local Law.

C. All Battery Energy Storage Systems must 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 of Gaines local laws and ordinances.

D. Modifications to, retrofits or replacements of an existing battery energy storage system that increase the total battery energy storage system designed discharge duration or power rating shall be subject to this Local Law.

§ 6. General Requirements

A. A building permit and an electrical permit shall be required for installation of all Battery Energy Storage Systems.

B. Issuance of permits and approvals by the Planning Board shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 (“SEQRA”)].

C. All battery energy storage systems, all Dedicated Use Buildings, and all other buildings or structures that:

(1) Contain or are otherwise associated with a battery energy storage system; and

(2) Subject to the Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, all applicable provisions of the Energy Code, and all applicable provisions of the codes, regulations, and industry standards as referenced in the Uniform Code, the Energy Code, and the local laws and ordinances of the Town.

§ 7. Battery Energy Storage Systems as an accessory use or structure

A. Permitting Requirements for Tier 1 Battery Energy Storage Systems

(1) Building-mounted and ground-mounted Tier 1 battery energy storage systems shall be permitted in all areas of the Town, subject to the Uniform Code and the battery energy storage system permit and are exempt from site plan review.

(2) Ground-mounted Tier 1 battery energy systems are permitted as accessory structures and are subject to the following requirements:

- (a) The height of the ground-mounted Tier 1 battery energy storage system and any mounts shall not exceed 15 feet.
- (b) The total surface area of the ground-mounted Tier 1 battery energy storage system on the lot shall not exceed 5% lot coverage.
- (c) The ground-mounted Tier 1 battery energy storage system is not the primary use of the property.
- (d) The ground-mounted Tier 1 battery energy storage system is located in a side or rear yard.
- (e) The ground-mounted Tier 1 battery energy storage system shall comply with the minimum setbacks for accessory structures applicable to the zoning district in which the battery energy storage system is sited.
- (f) The ground-mounted Tier 1 battery energy storage system shall be screened from adjacent residences through the use of architectural features, earth berms, landscaping, or other screening which will harmonize with the character of the property and surrounding area.

(3) Where site plan approval is required elsewhere in the regulations of the Town for a development or activity, the site plan review shall include review of the adequacy, location, arrangement, size, design, and general site compatibility of proposed ground-mounted Tier 1 battery energy storage system.

B. Permitting Requirements for Tier 2 Battery Energy Storage Systems

Tier 2 Battery Energy Storage Systems are permitted through the issuance of a Special Use Permit within the AR Agricultural Residential and C Commercial zoning districts, and shall be subject to the Uniform Code and the site plan application requirements set forth in this Section.

(1) The Town shall require any operator to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA, and for battery energy storage system emergency response training for the local and mutual aid fire departments. Payment of said escrow and all application fees shall be made at the time of application submission.

(2) Applications for the installation of Tier 2 Battery Energy Storage System shall be:

- (a) Reviewed by the Code Enforcement/Zoning Enforcement Officer and the Planning Board Chairperson for completeness; the appropriate environmental assessment form pursuant to the NY State Environmental Quality Review Act will also be reviewed for completeness during this process. An application shall be complete when it addresses all matters listed in this Local Law including, but not necessarily limited to (i) compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code, and (ii) matters relating to the proposed battery energy storage system and Floodplain, Utility Lines and Electrical Circuitry, Signage, Lighting, Vegetation and Tree-cutting, Noise, Decommissioning, Site Plan and Development, Special Use and Development, Ownership Changes, Safety, and Permit Time Frame and Abandonment. The operator shall submit 10 copies of the application and site plan for review. Applicants shall be advised within 10 business days of the completeness of their application or any deficiencies that must be addressed prior to substantive review;
- (b) Subject to a public hearing to hear all comments for and against the application. The Planning Board of the Town of Gaines shall have all applicable notices of such hearing posted per the Town's Zoning Code. Applicants shall have delivered the notice by certified mail to adjoining landowners or landowners within a half (0.5) mile of the property at least 12 days prior to such a hearing. Proof of mailing shall be provided to the Planning Board at or prior to the public hearing;
- (c) Referred to the County Planning Board pursuant to General Municipal Law § 239-m when the application is deemed to have all relevant documents submitted to the Town.
- (d) Upon closing of the public hearing, the Planning Board shall take action on the application within 62 days of the public hearing, which can include approval, approval with conditions, or denial. The 62-day period may be extended upon consent by both the Planning Board and Applicant.

(2) Utility Lines and Electrical Circuitry. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.

(3) Signage.

(a) The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of suppression system installed in the area of battery energy storage systems, and 24-hour emergency contact information, including reach-back phone number.

(b) As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

(4) Lighting. Lighting of the battery energy storage systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.

(5) Vegetation and tree-cutting.

(a) Areas within 20 feet on each side of Tier 2 Battery Energy Storage Systems shall be cleared of combustible vegetation and other combustible growth. Removal of trees should be minimized to the extent possible, and it will be to the discretion of the Planning Board if the amount of clearing is acceptable.

(6) Noise.

(a) The 1-hour average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level of 30 dBA as measured at the outside wall of any non-participating residence or occupied community building. Applicants may submit equipment and component manufacturers noise ratings to demonstrate compliance. The applicant is required to provide Operating Sound Pressure Level measurements from a reasonable number of sampled locations at the perimeter of the battery energy storage system to demonstrate compliance with this standard.

(7) Site Plan Application.

(a) All Tier 2 Battery Storage Energy Systems are required to submit a site plan for review by the Planning Board. If the Tier 2 Battery Storage System is part of a combined application with a Large-Scale Solar Energy System the site plan for the Tier 2 Battery Storage System can be submitted under the same cover as the Large-Scale Solar Energy System plan set. Any site plan application shall include the following information:

1. Site plans of the battery energy storage system signed by a licensed professional engineer showing the proposed layout of the system.
2. Property lines and physical features, including roads, for the project site;
3. A screening and landscaping plan prepared by a landscape architect showing proposed screening and buffering of all structures on the site. The plan shall include the proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures, and the plan for ongoing vegetation management. The screening and landscaping plan shall include locations, elevations, site lines, 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. Suggested plant species for screening are presented in Appendix A. Invasive species that shall not be planted as part of the landscape buffer, include, but are not limited to, winter creeper, garden loosestrife, Chinese silver grass, yellow flag iris, bamboo, Norway maple, Japanese barberry, sweet autumn clematis, burning bush and siebold's viburnum, or other invasive species as identified by the NYSDEC or the NY Invasive Species Clearinghouse at Cornell University;
4. Location of safety devices on site (such as water tank, pump, Carbon Dioxide storage, etc.);
5. Diagram and detailed description of how possible contaminated runoff will be collected and stored prior to being removed per local, state, and federal guidelines. All catchment systems shall be designed to capture twice the anticipated volume of potentially contaminated runoff;
6. Perimeter soil testing prior to development of the site is required. A report is to be generated by a third-party to establish the chemistry of the soil, identify any known contaminants, and establish overall soil health. This report is to be filed with the Town and to be referenced at the time of an accident on site and prior to decommissioning of the site;

7. A one- or three-line electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices;
8. A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit;
9. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information of the final system installer shall be submitted prior to the issuance of building permit;
10. Name, address, phone number, and signature of the project Applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the battery energy storage system;
11. Zoning district designation for the parcel(s) of land comprising the project site;
12. Commissioning Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where commissioning is required by the Uniform Code, Battery energy storage system commissioning shall be conducted by a New York State (NYS) Licensed Professional Engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to Code Enforcement/Zoning Enforcement Officer and Planning Board prior to final inspection and approval and maintained at an approved on-site location;
13. Fire Safety Compliance Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code;
14. Operation and Maintenance Manual. Such plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code;
15. 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.
16. Prior to the issuance of the building permit or final approval by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a NYS Licensed Professional Engineer;
17. Emergency Operations Plan. A copy of the approved Emergency Operations Plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, Orleans County Office of Emergency Management, and emergency responders. The emergency operations plan shall include the following information:
 - a. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions;
 - b. Procedures for inspection and testing of associated alarms, interlocks, and controls; and
 - c. Procedures to be followed in response to notifications from the Battery Energy Storage Management System, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.
 - d. Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions.

Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire.

- e. Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
- f. Procedures for dealing with battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility.
- g. Other procedures as determined necessary by the Town of Gaines to provide for the safety of occupants, neighboring properties, and emergency responders.
- h. Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.
- i. Post-accident testing of the air, soil, and water.
- j. Disposal of contaminated water and soil.

(b) Special Use Permit Standards.

1. Application for Special Use Permit and Site Plan Review and Approval, completed and signed by the applicant.
2. Application checklist completed and signed by the applicant.
3. A letter of intent describing the proposed project, details of the size, scope, and impact of the project; as well as how the application complies with all the requirements of the local zoning code. The applicant should clearly state if the project will propose a localized Battery Energy Storage System on site, and if so, how is this in compliance with the local zoning code.
4. If the property of the proposed project is to be leased, legal consent between all parties specifying the use(s) of the land for the duration of the project, including easements, leased area, and other agreements, must be submitted.
5. A plat map should be submitted to support the language of the lease to establish the leased area.
6. If there is an active lease on the property the owner of the property must provide a U.S. Department of Agriculture Farm Service Agency documentation of any active leases on the property. If there is not an active lease, then the owner of the property must submit a signed and notarized affidavit stating that there are no active leases on said property.
7. A complete Coordinated Electric System Interconnection Review (CESIR) should be presented to the Planning Board without redactions for review. This should be accompanied with a letter from the applicant's engineer stating that the interconnection point has been reviewed and vetted and will be able to handle the physical stress of interconnection.
8. Engineer drawings and maps showing the layout of the solar energy system signed by a professional engineer or registered architect are required. These at a minimum should include the following:
 - a. Existing Site Map;

- b. Proposed Clearing Plan (if applicable);
- c. Proposed Site Plan and Layout;
- d. Utility Plan;
- e. Grading Plan;
- f. Erosion and Sediment Control Plan;
- g. Landscaping Plan; and
- h. Detail Sheets.

9. Location of drainage tile and proof of the registered location of the drainage tile per the records at the Orleans County Soil and Water Conservation District Office. If there are no records of drainage tile a field study to confirm the absence of any drainage tile in the location proposed to be developed is required. Development within the area of drainage tile is prohibited, only areas without drainage tile are allowed to be developed.

10. A Wetland Delineation Report should be prepared and Identify the size, location, and jurisdiction of all wetland found on, or immediately adjacent to the proposed lot to be developed. It should also be identified if there will be permanent or temporary disturbance to the wetlands prior to, during, and after the construction phase of the project. If construction is to occur within or adjacent to a state or federal wetland coordination with the regulating body for that wetland is to be provided to the Planning Board for review.

11. The equipment specification sheets must be documented and submitted for all photovoltaic panels, significant components, mounting systems and inverters that are to be installed.

12. Property operations and maintenance plan. Such plan must describe continuing photovoltaic maintenance property upkeep such as mowing and trimming.

A notice of intent should be prepared identifying the project location, scope, and how the application addresses the requirements per the Town's Local Zoning Code.

13. Setbacks. Tier 2 Battery Energy Storage Systems shall comply with the setback requirements of the underlying zoning district for principal structures.

14. Height. Tier 2 Battery Energy Storage Systems shall comply with the building height limitations for principal structures of the underlying zoning district.

15. Fencing Requirements. Tier 2 Battery Energy Storage Systems, including all mechanical equipment, shall be enclosed by an 8-foot high fence, no barbed wire, with a self-locking gate to prevent unauthorized access unless housed in a dedicated-use building and not interfering with ventilation or exhaust ports.

16. Screening and Visibility. Tier 2 Battery Energy Storage Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfering with ventilation or exhaust ports.

D. Standards.

(1) Setback. Battery Energy Storage Systems must be set back a minimum of 300 feet from the centerline of the road except that the minimum front setback along Ridge Road will be 120 feet. The minimum

setback from the side and rear lot lines will be 300 feet, except that Large-scale solar energy systems must be set back a minimum of 1.13 miles from the boundary of the Commercial Historic District. In locations adjacent to a neighborhood the front setback is to be 300 feet from the centerline of the road, the side and rear lot line setbacks are to be 300 feet from the closest neighboring property line to the closest perimeter fence line.

(2) Height. Ground-mounted panels must not exceed 15 feet in height.

(3) Lot size. Battery Energy Storage Systems must be located on lots with a minimum lot size of three (3) acres.

(4) Lot coverage. The lot coverage of a Battery Energy Storage System must not exceed 10% of the lot on which it is installed. The lot coverage of Battery Energy Storage System includes all equipment and site improvements necessary or required for the system, including but not limited to the battery storage facility, spaces between facilities, fences, roadways, driveways, and parking areas.

(5) Vegetation Clearing. Cutting of trees on any lot for the placement of a Tier 2 Battery Energy Storage System shall be limited to 2.0 percent of the total lot acreage. Only 0.5 percent of the proposed trees to be cut can be six (6) inches and greater in diameter. A tree survey will be required for all proposed cutting, this should include the limits of clearing, as well as the proposed limb trimming that will be proposed;

(6) All Battery Energy Storage Systems must be enclosed by fencing to prevent unauthorized access. Warning signs that are NFPA compliant, also with the owner's contact information must be placed on the entrance and perimeter of the fencing. The type of fencing must be specified in the application. The Planning Board may require additional screening, fencing or landscaping to avoid adverse aesthetic impacts.

(7) All applications must comply with all applicable Site Plan Review requirements specified in the Town's Zoning Ordinance.

(8) The Planning Board may impose conditions on its approval of the Site Plan as needed to enforce the standards in this local law or to mitigate or minimize any potential environmental impacts identified during the State Environmental Quality Review (SEQR) process.

(9) The Tier 2 battery energy storage system approval shall include appropriate conditions to mitigate adverse impacts of the battery energy storage system, including, but not limited to:

(a) Compliance with the approved landscaping plan, vegetation management plan, and operations and maintenance plan;

(b) Prior to the issuance of a building permit, the operator shall provide a copy of all necessary titles to or leasehold interests in the facility, including ingress and egress access to public streets, and such deeds, easements, leases, licenses, or other real property rights or privileges as are necessary for all interconnections for the facility;

(c) The decommissioning plan shall run to the benefit of the Town of Caledonia and be executed by the operator as well as the owners and such signatures shall be notarized in a format that allows the plan to be recorded at the Office of the Livingston County Clerk. This document shall be recorded as an irrevocable deed restriction indexed against the property upon which the battery energy storage system is to be constructed;

(d) Battery energy storage system construction-related damage. The operator of any permitted battery energy storage system shall, repair or replace all real or personal property, public or private, damaged as a result of the battery energy storage system construction;

(e) Tier 2 battery energy storage system shall be required to enter into a road maintenance agreement acceptable to the Highway Superintendent if the construction and servicing of the project site requires access to local Town roads. Prior to the commencement of construction of the battery energy storage system, an existing condition survey of the approved hauling routes for construction of the battery energy storage system. Any road damage during construction that is caused by the operator or one or more of its subcontractors that is identified by the New York State Department of Transportation ("NYSDOT"), Orleans

County Highway, and Town of Gaines Highway (as appropriate) shall be repaired or reconstructed to the satisfaction of NYSDOT, Orleans County Highway, and Town of Gaines Highway (as appropriate) at the operator's expense, prior to the final inspection. In addition, the operator shall pay for all costs related to NYSDOT, Orleans County Highway, and Town of Gaines Highway (as appropriate) pre-inspection work prior to receipt of the final inspection.

- (f) Site access shall be maintained to a level acceptable to the local fire department and emergency medical services. All means of shutting down the battery energy storage system shall be clearly marked;
- (g) The operator shall be responsible for the cost of maintaining the battery energy storage system and any access road(s), unless accepted as a public way;
- (h) The operator shall identify a responsible person with contact information for public inquiries from the commencement of construction of the battery energy storage system until the completion of the decommissioning plan;
- (i) The operator is responsible to provide the Town of Gaines with a current written list of all chemicals used for maintenance and operation of the battery energy storage system (e.g., pesticides, herbicides, cleaners). This list shall include quantity and frequency of application of each of these chemicals. The operator shall be liable for a civil penalty of not more than \$500 for each day or part thereof during which violation of the requirements of this subsection continues. The civil penalties provided by this subsection shall be recoverable in an action instituted in the name of the Town of Gaines.
- (j) The operator shall secure and maintain public liability insurance from the commencement of construction of the battery energy storage system until the completion of the decommissioning plan, as follows:

1. Commercial general liability covering personal injuries, death and property damage: \$1,000,000 per occurrence (\$2,000,000 aggregate), which shall specifically include the Town of Gaines and its officers, employees, board members, attorneys, agents and consultants as additional named insured.
2. Umbrella coverage: \$5,000,000;
3. 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;
4. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town of Gaines with at least 30 days' prior written notice in advance of cancellation.
5. Renewal or replacement policies shall be delivered to the Town of Gaines at least 15 days before the expiration of the insurance that such policies are to renew or replace.
6. No more than 15 days after the grant of the permit and before construction is initiated, the permit holder shall deliver to the Town of Gaines a copy of each of the policies or certificates representing the insurance in the required amounts.
7. A certificate of insurance that states that it is for informational purposes only and does not confer sufficient rights upon the Town of Gaines shall not be deemed to comply with this chapter.

D. Transfer

(1) No transfer of any Battery Energy Storage System or Special Use Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), will occur without prior approval of the Town, which approval shall be granted upon written acceptance of the transferee of the obligations of the transferor under this Section, and the transferee's demonstration, in the sole discretion of the Town Board, that it can meet the technical and financial obligations of the transferor. No transfer shall eliminate the liability of the transferor nor of any other party under this Section unless the entire interest of the transferor in all facilities in the Town is transferred and there are no outstanding obligations or violations.

§ 8. Safety

A. If a Battery Energy Storage System is included as part of the Solar Energy System, they shall meet the requirements of Local Law No. 3 of 2022. Battery Energy Storage Systems of this local zoning code, any applicable 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 of Gaines and any applicable federal, state, or county laws or regulations.

B. Where deemed necessary by the Planning Board, the Applicant shall ensure emergency access to the Facility Area for local first responders by installing an emergency lock box or similar device, in a location subject to approval by the Town of Gaines Code Enforcement Officer, Local Fire Chief(s), and Orleans County Office of Emergency Management.

C. Emergency action plan. A copy of the approved emergency operations plan shall be given to the owner, Orleans County Emergency Management, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The owner and operator are responsible for ensuring any updates to the approved Emergency Operations Plan are provided to the above holders of the Emergency Operations Plan, and for providing, and paying for, initial and annual training drills with local emergency responders and fire departments identified by the Orleans County Office of Emergency Management.

D. System Certification. Battery energy storage systems and equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 9540 (Standard for battery energy storage systems and Equipment) or approved equivalent, with subcomponents meeting each of the following standards as applicable:

(1) UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail Applications);

(2) UL 1642 (Standard for Lithium Batteries);

(3) UL 1741 or UL 62109 (Inverters and Power Converters);

(4) Certified under the applicable electrical, building, and fire prevention codes as required; and

(5) Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 (or approved equivalent) and applicable codes, regulations and safety standards may be used to meet system certification requirements.

E. Site Access. Battery energy storage systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 2 Battery Energy Storage System is located in an ambulance district, the local ambulance corps.

F. Battery energy storage systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70 and NFPA 855.

§ 9. Abandonment and decommissioning

A. Tier 2 Battery Energy Storage Systems

(1) A Tier 2 Battery Energy Storage System will be considered abandoned after six months without consistent electrical energy generation and must be removed from the property. The Gaines Planning Board may grant an extension for a period of up to six months after such abandonment.

(2) Decommissioning Plan. The applicant shall submit a decommissioning plan, developed in accordance with the Uniform Code, to be implemented upon abandonment and/or in conjunction with removal from the facility. The decommissioning plan shall include:

(a) A narrative description of the activities to be accomplished, including who will perform that activity

and at what point in time, for complete physical removal of all battery energy storage system components, structures, equipment, security barriers, and transmission lines from the site;

(b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;

(c) The anticipated life of the battery energy storage system;

(d) The estimated decommissioning costs and how said estimate was determined. The salvage value of the battery energy storage system equipment shall not be accounted for in the estimated cost of implementing the decommissioning plan;

(e) The method of ensuring that funds will be available for decommissioning and restoration;

(f) The method by which the decommissioning cost will be kept current;

(g) The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed;

(h) For battery energy storage systems constructed on designated farmland, the restoration of the designated farmland pursuant to the decommissioning guidelines of the New York State Agriculture and Markets Solar Energy Project Guidance; and

(i) A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.

(3) Prior to obtaining a building permit and as a condition to issuance of any Special Use Permit, the Applicant and Initial Landowner must enter into a Decommissioning Agreement with the Town that sets forth the obligations of the Applicant and/or the Initial Landowner to properly decommission the Solar Energy System if the use of such system is discontinued, abandoned or becomes inoperable. Said Decommissioning Agreement shall require the Applicant to provide an irrevocable financial security bond (or other form of surety acceptable to the Town of Gaines at its discretion) for the removal of the Solar Energy System, with Gaines as the designated assignee/beneficiary, in an amount approved by the Planning Board which is equal to 125% of the estimated removal cost. The bond or surety shall provide for an annual increase in the amount of the surety to compensate for the cost of inflation or any other anticipated increase in costs of removal. Each year after a Solar Energy System has been constructed, and no later than sixty (60) days prior to the anniversary date of the issuance of the building permit for such system, the then owner/permit holder for the system shall provide the Town of Gaines with written proof that the required financial security bond (or other form of surety) is still operable and valid and that such surety has been properly increased to account for inflation or any other anticipated increase in costs of removal as provided for above. The Decommissioning Agreement shall provide that Initial Landowner (or the successor and/or assigns of Initial Landowner) shall be responsible for all obligations pursuant to the Decommissioning Agreement in the event Applicant (or the successor owner of the Solar Energy System) does not complete all obligations as required by said Decommissioning Agreement. The Decommissioning Agreement shall be recorded at the office of the Orleans County Clerk and shall be indexed as deed restrictions against the property upon which the Solar Energy System is constructed, with the Town as a benefitted party, so as to put all future owners of the subject real property on notice of the obligations contained in the Decommissioning Agreement.

(4) Decommissioning Fund. The owner and/or operator of the energy storage system, shall continuously maintain a fund or bond payable to the Town of Gaines, in a form approved by the Town of Gaines for the removal of the battery energy storage system, in an amount to be determined by the Town of Gaines, for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed-financial institution. All costs of the financial security shall be borne by the applicant

§ 10. Permit Timeframe

The Special Use Permit and site plan approval for all Solar Energy Systems and Battery Energy Storage Systems shall be valid for a period of 12 months, provided that a building permit is issued for construction. 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 12 months, the applicant may request to extend the time to obtain a building permit for 6 months, this may be performed at the most twice before the approval shall expire. Approval of a request to extend the time to complete construction shall not be unreasonably withheld by the Town of Gaines. If the owner and/or operator fails to perform substantial construction within 24 months, the approvals shall expire.

§ 11. Enforcement

Any violation of this chapter will be subject to the same civil and criminal penalties provided for in the Gaines Town Code, including any applicable zoning regulations, and/or the laws of the State of New York.

A. Inspections. Upon reasonable notice, the Town of Gaines Code Enforcement Officer, or his or her designee, may enter a Lot on which a Tier 2 Battery Energy Storage System has been approved for the purpose of determining compliance with any requirements or conditions of this Article or any approval given or permit issued pursuant to this Article. Twenty-four (24) hour notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a Tier 2 Battery Energy Storage System shall be inspected by a New York State licensed Professional Engineer that has been approved by the Town of Gaines at any time upon a determination by the Town's Code Enforcement Officer that damage to such system may have occurred, and a copy of the written inspection report shall be submitted to the Code Enforcement Officer. Any fee or expense associated with this inspection shall be borne entirely by the permit holder and shall be reimbursed to the Town of Gaines within thirty 30 days after delivery to the permit holder of an invoice substantiating such charges. Any failure to pay such reimbursable charges may result in revocation of any Special Use Permit granted. The Town of Gaines reserves the right to levy all such un-reimbursed expenses onto the real property tax bill associated with the real property upon which the Tier 2 Battery Energy Storage System is located.

B. Annual Reporting. The Battery Energy Storage System owner shall, on a yearly basis from the date of the certificate of compliance issued by the Code Enforcement Officer (CEO), provide the CEO a written report identifying the rated capacity of the system and the amount of electricity that was generated by the system and transmitted to the grid over the most recent twelve-month period. The annual report shall show:

- (1) All restrictions, if any, that were placed upon the Battery Energy Storage System imposed by identified factors beyond the control of the system operator;
- (2) All changes to batteries or energy storage system used and the reasons therefor;
- (3) The number, location, and kind (by manufacturer and model) of said changes to batteries or energy storage system used;
- (4) Site plantings needing replacement and identify the plan for their replacement;
- (5) Any change of ownership or operator of the system and/or ownership of the lot/parcel upon which the Battery Energy Storage System is located; and
- (6) Any change in the party(ies) responsible for decommissioning and removal of the Battery Energy Storage System.
- (7) The renewal information regarding the decommissioning surety and the decommissioning surety review will need to be provide for review. The applicant will be obligated to ensure that the decommissioning value is keeping with current values and if there is any value change upon the annual review/certification this will need to be identified in writing to the Town, provide a revised decommissioning estimate for review,

and proposed revised decommissioning agreement with the revised decommissioning value.

(8) Written confirmation that the required insurance coverage identified in §7.D.(1)(j) of this local law, is current and still in compliance.

§ 12. Severability and/or validity

If any clause, sentence, paragraph, subdivision, section or part of this chapter, or the application thereof to any person, individual, firm or corporation, or circumstance, is found by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment will not affect, impair or invalidate the remainder thereof, but will be confined to the clause, sentence, paragraph, subdivision, section or part of this chapter, or in its application to the person, individual, firm or corporation, or circumstance, directly involved in the controversy in which said order or judgment will be rendered.

§ 13. Effective Date

This chapter will take effect upon the date it is filed in the Office of the New York State Secretary of State in accordance with the Municipal Home Rule Law § 27.