

# Draft Order

## Of the Bar Harbor Town Council

### For the November 2, 2021 Town Meeting

It is hereby ordered that the following article be placed on the annual town meeting warrant with voting thereon to be held by Australian ballot.

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### Warrant Article

Article **XX** LAND USE ORDINANCE AMENDMENT – Solar Photovoltaic Systems – Shall an ordinance, dated June 2, 2021, and entitled “An amendment to allow solar photovoltaic systems as principal use;” be enacted?

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### Solar Photovoltaic Systems

An amendment to define ‘solar photovoltaic system, accessory use;’ to create and define a new use ‘solar photovoltaic system, principal use’ and associated definitions; to allow the ‘solar photovoltaic system, principal use’ use in the Emery District, Hulls Cove Business, Hulls Cove Residential Corridor, Hulls Cove Rural, Indian Point Residential, Indian Point Rural, Industrial, Ireson Hill Corridor, Ireson Hill Residential, McFarland Hill Residential, McFarland Hill Rural, Otter Creek, Salisbury Cove Corridor, Salisbury Cove Rural, Scientific Research for Eleemosynary Purposes, Town Hill Business, Town Hill Residential Corridor, Town Hill Residential, and Town Hill Rural districts; to exempt the solar panels and arrays of the ‘solar photovoltaic system, principal use,’ from lot coverage and establish additional standards and requirements for safety, fencing and screening, visual impacts, financial capacity, emergency and operation/maintenance plan, decommissioning plan, abandonment, and financial assurance of performance.

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### EXPLANATION

**Photovoltaic systems are presently permitted as an accessory use but not as a principal use. These regulations are intended to allow for the construction and operation of ground-mounted solar photovoltaic systems, as a principal use. It establishes use-specific standards to ensure that projects are sited and designed to maintain aesthetic quality, visual character, and compatibility with surrounding uses. These regulations do not apply to solar photovoltaic systems that would be accessory to a permitted use or structure.**

**More specifically, it adds four definitions: Array; Photovoltaic; Solar Photovoltaic System, Principal Use (SPVS-PU); and Solar Photovoltaic System, Accessory Use. It proposes to allow Solar Photovoltaic System, Principal Use (SPVS-PU), in the following 19 districts: Emery District, Hulls Cove Business, Hulls Cove Residential Corridor, Hulls Cove Rural,**

**Indian Point Residential, Indian Point Rural, Industrial, Ireson Hill Corridor, Ireson Hill Residential, McFarland Hill Residential, McFarland Hill Rural, Otter Creek, Salisbury Cove Corridor, Salisbury Cove Rural, Scientific Research for Eleemosynary Purposes, Town Hill Business, Town Hill Residential Corridor, Town Hill Residential, and Town Hill Rural.**

**Solar Photovoltaic System, Principal Use (SPVS-PU), would be reviewed by the Planning Board as a Major Site Plan; would be required to meet all requirements of the district(s) where they are proposed to be allowed with the exception that the panels/arrays would be exempt from lot coverage; would be required to submit all applicable information per Submission Requirements §125-66 and meet all applicable General Review Standards per §125-67, as well as the following additional requirements/standards: Safety, Fencing and Screening, Visual Impacts, Financial Capacity, Emergency and Operation/Maintenance Plan, Decommissioning Plan, Abandonment, and Financial Assurance of Performance.**

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**Solar Photovoltaic System**

**An amendment to Articles III, V, and XII**

*The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:*

[Please Note: Old language is ~~stricken~~. New language is underlined.]

**Chapter 125 , LAND USE ORDINANCE**

**Article III. Land Use Activities and Standards**

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**§ 125-23 Emery District.**

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D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

- Agriculture, commercial
- Commercial boatyard
- Commercial stable
- Kennel, boarding
- Municipal school
- Noncommercial kennel
- Noncommercial stable
- Road construction

**Solar Photovoltaic System, Principal Use (SPVS-PU)**

Transient accommodations (TA-1)  
Wireless communications facility

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**§ 125-24 Hulls Cove Business.**

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D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Bank  
Commercial boatyard  
Commercial fish pier  
Commercial stable  
Employee living quarters  
Ferry terminal  
Hospital  
Light manufacturing/assembly plant  
Marina  
Multifamily dwelling II  
Municipal school  
Parking lot  
Recreational boating facility  
Research facility  
Research production facility  
Road construction  
Shared accommodations (SA-2)  
Shared accommodations (SA-3)

**Solar Photovoltaic System, Principal Use (SPVS-PU)**

Transient accommodations (TA-1)  
Transient accommodations (TA-2)  
Wireless communications facility

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**§ 125-26 Hulls Cove Residential Corridor.**

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D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Campground  
Cemetery

Multifamily dwelling II

Place of worship

Road construction

Solar Photovoltaic System, Principal Use (SPVS-PU)

Transient accommodations (TA-1)

Transient accommodations (TA-3)

Transient accommodations (TA-4)

Wireless communications facility

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§ 125-27 **Hulls Cove Rural.**

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Agriculture, commercial

Campground

Cemetery

Mineral extraction

Mineral extraction and processing

Mobile home park

Municipal school

Place of worship

Retirement community

Road construction

Solar Photovoltaic System, Principal Use (SPVS-PU)

Transient accommodations (TA-1)

Wireless communications facility

§ 125-28 **Indian Point Residential.**

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Cemetery

Road construction

Solar Photovoltaic System, Principal Use (SPVS-PU)

Wireless communications facility

§ 125-29 **Indian Point Rural.**

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D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Agriculture, commercial  
Cemetery  
Road construction  
Solar Photovoltaic System, Principal Use (SPVS-PU)  
Wireless communications facility

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§ 125-30 **Industrial.**

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D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Automobile repair garage  
Bulk oil and fuel tank storage  
Commercial boatyard  
Food processing and freezing (excluding slaughterhouse)  
Food processing and freezing  
Light manufacturing/assembly plant  
Mineral extraction  
Mineral extraction and processing  
Newspaper or printing facility  
Other processing and manufacturing facility  
Research facility  
Research production facility  
Retirement community  
Road construction  
Solar Photovoltaic System, Principal Use (SPVS-PU)  
Terminal yard and trucking facility  
Transportation facility  
Upholstery shop  
Uses or structures accessory to permitted uses or structures  
Warehousing or storage facility  
Wholesale business establishment  
Wireless communications facility

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§ 125-31 **Ireson Hill Corridor.**

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D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Bank  
Campground  
Employee living quarters

Mineral extraction  
Mineral extraction and processing  
Multifamily dwelling II  
Municipal school  
Parking lot  
Place of worship  
Road construction

**Solar Photovoltaic System, Principal Use (SPVS-PU)**

Transient accommodations (TA-1)  
Transient accommodations (TA-2)  
Transient accommodations (TA-3)  
Transient accommodations (TA-4)  
Transient accommodations (TA-5)  
Transient accommodations (TA-6)  
Transient accommodations (TA-7)  
Transient accommodations (TA-8)  
Warehousing or storage facility  
Wholesale business establishment  
Wireless communications facility  
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**§ 125-32 Ireson Hill Residential.**

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D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Cemetery  
Eleemosynary, educational or scientific institution  
Municipal school  
Place of worship  
Road construction

**Solar Photovoltaic System, Principal Use (SPVS-PU)**

Transient accommodations (TA-1)  
Wireless communications facility

**§ 125-33 McFarland Hill Residential.**

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D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Cemetery  
Commercial stable  
Municipal school  
Place of worship  
Road construction

**Solar Photovoltaic System, Principal Use (SPVS-PU)**

Transient accommodations (TA-1)  
Veterinary clinic  
Wireless communications facility  
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§ 125-34 **McFarland Hill Rural.**

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Agriculture, commercial  
Cemetery  
Commercial stable  
Eleemosynary, educational or scientific institution  
Municipal school  
Place of worship  
Road construction  
Solar Photovoltaic System, Principal Use (SPVS-PU)  
Veterinary clinic  
Wireless communications facility  
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§ 125-35 **Otter Creek.**

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D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Cemetery  
Commercial stable  
Municipal facility and grounds  
Place of worship  
Road construction  
Solar Photovoltaic System, Principal Use (SPVS-PU)  
Veterinary clinic  
Transient accommodations (TA-1)  
Wireless communications facility  
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§ 125-37 **Salisbury Cove Corridor.**

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D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Cemetery  
Kennel, boarding  
Multifamily dwelling II  
Place of worship  
Road construction

**Solar Photovoltaic System, Principal Use (SPVS-PU)**

- Transient accommodations (TA-1)
- Transient accommodations (TA-2)
- Transient accommodations (TA-3)
- Transient accommodations (TA-4)
- Transient accommodations (TA-5)
- Transient accommodations (TA-6)
- Wireless communications facility

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**§ 125-39 Salisbury Cove Rural.**

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- D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

- Agriculture, commercial
- Campground
- Cemetery
- Commercial boatyard
- Commercial stable
- Place of worship
- Road construction

**Solar Photovoltaic System, Principal Use (SPVS-PU)**

- Veterinary clinic
- Wireless communications facility

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**§ 125-42 Scientific Research for Eleemosynary Purposes.**

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- D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

- Parking deck
- Parking lot
- Road construction

**Solar Photovoltaic System, Principal Use (SPVS-PU)**

- Wireless communications facility

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**§ 125-43 Town Hill Business.**

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- D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:



Automobile repair garage  
Automobile sales lot  
Automobile service station  
Bank  
Campground  
Commercial boatyard  
Eleemosynary, educational or scientific institution  
Employee living quarters  
Food processing and freezing (excluding slaughterhouse)  
Food processing and freezing  
Hospital  
Light manufacturing/assembly plant  
Mobile home park  
Multifamily dwelling II  
Municipal school  
Newspaper or printing facility  
Parking garage and parking lot  
Research facility  
Research production facility  
Road construction  
**Solar Photovoltaic System, Principal Use (SPVS-PU)**  
Terminal yard and trucking facility  
Transient accommodations (TA-1)  
Transient accommodations (TA-2)  
Transient accommodations (TA-3)  
Transient accommodations (TA-4)  
Transient accommodations (TA-5)  
Transient accommodations (TA-6)  
Transient accommodations (TA-7)  
Transient accommodations (TA-8)  
Upholstery shop  
Warehousing or storage facility  
Wholesale business establishment  
Wireless communications facility

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§ 125-44 **Town Hill Residential Corridor.**

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D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Agriculture, commercial  
Campground  
Cemetery  
Multifamily dwelling II  
Municipal school

Municipal facility and grounds  
Place of worship  
Road construction  
Solar Photovoltaic System, Principal Use (SPVS-PU)  
Transient accommodations (TA-1)  
Transient accommodations (TA-3)  
Transient accommodations (TA-4)  
Wireless communications facility  
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§ 125-45 **Town Hill Residential.**

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D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Agriculture, commercial  
Campground  
Cemetery  
Commercial stable  
Employee living quarters  
Marina  
Mobile home park  
Municipal facility and grounds  
Municipal school  
Place of worship  
Road construction  
Solar Photovoltaic System, Principal Use (SPVS-PU)  
Transient accommodations (TA-1)  
Wireless communications facility  
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§ 125-46 **Town Hill Rural.**

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D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Agriculture, commercial  
Cemetery  
Commercial boatyard  
Commercial stable  
Eleemosynary, educational or scientific institution  
Kennel, boarding  
Mineral extraction  
Mineral extraction and processing  
Municipal school  
Place of worship  
Road construction

**Solar Photovoltaic System, Principal Use (SPVS-PU)**

Transient accommodations (TA-1)

Wireless communications facility

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**Article V Site Plan Review**

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**§ 125-67 General review standards.**

The Planning Board, before granting site plan approval, must find that the proposed plan will comply with each of the following standards. In all instances the burden of proof shall be upon the applicant.

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B. Lot standards.

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(8) Exceptions to lot coverage.

- (a) In the required front setback, the footprint of driveways and sidewalks required for access to a site from a public or private road shall not constitute lot coverage, except in the Shoreland Districts. In the application of this standard, any footprint area of the portion of driveways larger than the minimum width required under § 125-67. E. (26) shall constitute lot coverage; and any footprint area of a sidewalk that exceeds four feet in width or is wider than that required under § 125-67. G. (3)(a) shall constitute lot coverage.
- (b) In the required setbacks, essential services shall not constitute lot coverage.
- (c) The panels/arrays of the solar photovoltaic system, principal use (SPVS-PU), located over live ground cover with sufficient space between the panels/arrays and above the ground to allow sunlight for vegetation to grow shall be exempt from lot coverage calculations due to sharing of the space. All other SPVS-PU related amenities such as, but not limited to, roads, etc. are not exempt from lot coverage calculations. Live ground cover includes, but is not limited to, native perennial vegetation and foraging habitat beneficial to gamebirds, songbirds, and pollinators.

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**§ 125-69 Standards for particular uses, structures or activities.**

Notwithstanding and in addition to any other provision of this chapter, before granting site plan approval for any land use activity described in this section, the Planning Board must find that the proposed plan will comply with such of the following standards as are applicable:

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## **Z. Solar photovoltaic system, principal use (SPVS-PU).**

The purpose of these regulations is to allow for the construction and operation of solar photovoltaic systems, principal use (SPVS-PU), that produce energy for use on-site and/or off-site by establishing use-specific standards to ensure that the project is sited and designed to maintain aesthetic quality, visual character, and compatibility with surrounding uses. These regulations do not apply to solar photovoltaic systems accessory to a permitted use or structure.

**(1) Safety.** The SPVS-PU shall be installed in compliance with the NFPA 70 National Electric Code and the NFPA 1 Uniform Fire Code, as adopted by the town.

**(2) Fencing and Screening.** Perimeter fencing, installed around the boundary of the SPVS-PU shall be elevated by a minimum of 5 inches off the ground to allow for passage of small animals. Warning signs shall be posted on the fence. Any portion of the fence visible from a road or abutter's dwelling shall be screened.

**(3) Visual Impacts.** The SPVS-PU shall be sited on a lot in a manner that reduces the visual impacts of the installation to the greatest extent that is practical. The Planning Board may impose design-related conditions where findings of negative impacts on sensitive resources, as listed below, are made.

The applicant shall prepare a visual impact assessment to include a narrative and demonstration detailing the extent to which the proposed SPVS-PU would be visible from any sensitive visual resources; designated scenic resource(s); Acadia National Park; archaeological and historic resources (specifically those listed in the National Register of Historic Places, or eligible for inclusion); and the distance to the proposed SPVS-PU from the designated resources and noted viewpoints.

Information to be submitted shall include:

- (a) A photomontage, field mockup, or other technique(s) to identify the potential visual impacts, at design capacity, of the SPVS-PU on sensitive resources and adjacent properties.
- (b) Photos showing existing site vegetation, structures, and land uses of the subject lot and abutting properties; views of the proposed SPVS-PU from sensitive visual resources and adjacent properties; and showing the topography of the subject lot and abutting properties.
- (c) Landscaping, screening, and buffering plan showing location of proposed plantings, screening, and buffering and existing vegetation to be retained.
- (d) Demonstration that the siting of the SPVS-PU has reduced the visual impact to the extent practical by methods that may include, but are not limited to, the following:

- [1] Avoiding impacts to sensitive visual resources, as listed above;
- [2] Installing the SPVS-PU in such a way as to use natural topography to obscure the project;
- [3] Using material and colors that blend with the background; and
- [4] Retaining or planting vegetation to obscure views of the SPVS-PU.

**(4) Financial capacity.** Proof of financial capacity to build, maintain, and remove/decommission the SPVS-PU.

**(5) Emergency and Operation/Maintenance Plans**

The owner of the SPVS-PU shall provide:

- (a) A plan including but not limited to a project summary, electrical schematic, and site plan to the town's Police Chief and Fire Chief. All means of shutting down the SPVS-PU shall be clearly marked.
- (b) A 24-hour emergency contact name and phone number to respond to public safety inquiries throughout the life of the SPVS-PU.
- (c) A general maintenance schedule for the SPVS-PU including the replacement/removal of all major components during the lifespan of the facility.
- (d) A list of cleaning chemicals and solvents, which shall be low in volatile organic compounds, to be used during the operation or maintenance of the SPVS-PU (including biodegradable products).
- (e) An Integrated Vegetation Management (IVM) Plan that promotes desirable, stable, low-growing plant communities such as, but not limited to, native perennial vegetation and foraging habitat beneficial to gamebirds, songbirds, and pollinators through the use of appropriate, environmentally sound, and cost-effective methods. The goal is to balance safe, reliable, cost-effective vegetation management to attain stable desired plant communities while minimizing risk to human health and the environment. The plan shall address the following:

[1] The type of existing and proposed plant communities.

[2] Describe the use of control mechanisms to manage unwanted vegetation and promote desirable plant communities short- and long-term, such as, but not limited to: biological control (grazing sheep, goats, and other animals); mechanical and manual control (mowing, cutting, grubbing, hand-pulling, and tilling); cultural control (introduction of specific plants or mulches); and chemical control (application of herbicides).

[3] Quinquennial reevaluation of the IVM plan to determine efficacy, and make adjustments necessary to improve the plan. The findings and proposed amendments to the IVM plan shall be submitted to the Code Enforcement Officer who shall review the plan per the above stated goal, request changes if needed, and accept the plan.

**(6) Decommissioning Plan**

Within 365 days of the SPVS-PU ceasing operation, including if construction begins but is not completed, the owner shall begin site restoration according to the decommissioning plan approved by the Planning Board. Decommissioning shall be completed within 365 days. The owner shall submit a decommissioning plan to include, but not limited to, the following:

- (a) Provision for the notification to the Code Enforcement Officer by certified mail of the proposed date of the discontinued operations of the SPVS-PU and of the removal schedule.
- (b) Provision for the removal of aboveground and underground equipment and of structures and foundations to least three feet below grade. Underground equipment, structures and

- foundations that are at least three feet below grade and do not constitute a hazard or interfere with agricultural or other resource-based land use do not need to be removed.
- (c) Provision for the removal of graveled areas, access roads, fences, gates, etc., unless leaving it in place benefits an agricultural or other resource-based land use.
  - (d) Provision for the restoration of the surface grade and soil after removal of aboveground structures and equipment.
  - (e) Provision for the revegetation of restored soil area with, to the maximum extent possible, native pollinator-friendly seed mixtures and plant species suitable to the area.
  - (f) Provisions for the protection of public health and safety, as well as for protection of the environment and natural resources during the site restoration.
  - (g) Provisions for the disposal of all solid and hazardous waste in accordance with state and federal waste disposal regulations.
  - (h) A schedule for completion of site restoration work.
  - (i) An estimated cost to implement the decommissioning plan at the estimated date of decommissioning. The cost is to be determined by an independent registered professional engineer in the State of Maine, to be mutually acceptable by the owner and the Town. The engineer will be paid by the owner but hired by the Town. The cost to implement to the decommissioning plan shall be acceptable to the Town's Finance Director.
  - (j) Provision of financial assurance of performance.

#### **(7) Abandonment.**

- (a) Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances to the Code Enforcement Officer, a SPVS-PU shall be considered abandoned when it fails to operate for more than 365 days.
- (b) If the owner of the SPVS-PU fails to remove the installation within 365 days of abandonment or the proposed date of decommission, the Town of Bar Harbor retains the right to use all available means to cause an abandoned or hazardous SPVS-PU to be decommissioned.

#### **(8) Financial Assurance of Performance**

- (a) At the time of approval, the owner of the SPVS-PU shall submit to the town a bond or other financial surety per Article IX of this Chapter, to be approved by the Town Council for 110% of the estimated decommissioning of the facility based on the average life span of the SPVS-PU.
- (b) The bond or other financial surety shall be in effect until the decommissioning of the SPVS-PU facility is completed. The performance guarantee shall be used by the town to remove/decommission the abandoned SPVS-PU (or the use of which has ceased) and associated abandoned structures only if the owner has not done so within the required 365-day period. Financial assurance provisions must be noted in the Planning Board Decision and must be transferred with the development if it is sold.

## **Article XII Construction and Definitions**

### **§ 125-109 Definitions.**

The following terms shall have the following meanings:

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**Array:**

Multiple solar photovoltaic panels combined together to create a system.

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**Photovoltaic (PV):**

A semiconductor-based device that converts light directly into electricity.

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**Solar Photovoltaic System, Principal Use (SPVS-PU):**

A solar collection system consisting of one or more ground-mounted solar photovoltaic cells, panels or arrays, and solar-related equipment that rely upon solar radiation as an energy source for collection, inversion, storage and/or distribution of solar energy for electricity generation.

**Solar Photovoltaic System, Accessory Use:**

A solar collection system accessory to a permitted use or structure, consisting of one or more roof-mounted and/or ground-mounted solar photovoltaic cells, panels or arrays, and solar-related equipment that rely upon solar radiation as an energy source for collection, inversion, storage and/or distribution of solar energy for electricity generation. The ground-mounted solar collection system shall not exceed a total surface area (all panels/arrays) of 20,000 square feet in size.

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Given under our hands and seal at Bar Harbor this XXXX day of XXXX, 2021:

**Municipal Officers of the Town of Bar Harbor**

\_\_\_\_\_  
Jefferson Dobbs, Chair

\_\_\_\_\_  
Matthew A. Hochman, Vice Chair

\_\_\_\_\_  
Gary Friedmann

\_\_\_\_\_  
Joseph Minutolo

\_\_\_\_\_  
Valerie Peacock

\_\_\_\_\_  
Erin E. Cough

\_\_\_\_\_  
Jill Goldthwait