

**TOWN OF FORT ANN  
COUNTY OF WASHINGTON, STATE OF NEW YORK  
Ordinance 1 of 2025**

**AN ORDINANCE REGULATING THE SITING OF SOLAR ARRAYS  
IN THE TOWN OF FORT ANN**

**Section 1.     Authority and Title.**

This Ordinance shall be known as “An Ordinance Regulating the Siting of Solar Arrays,” and shall amend and replace Ordinance 1 of 2016.

This Ordinance is adopted pursuant to the authority granted to the Town of Fort Ann in Articles 2 and 3 of the Municipal Home Rule Law and Section 130 of Article 9 of the NYS Town Law.

**Section 2.     Legislative Intent.**

It is the purpose of this Ordinance to promote the health, safety and general welfare of the inhabitants of the Town of Fort Ann by establishing specific minimum requirements and regulations governing the location, use, and maintenance of solar arrays within the Town of Fort Ann.

Solar energy is a renewable and nonpolluting energy resource that can prevent fossil fuel emissions and reduce a municipality's energy load. Energy generated from solar energy systems can be used to offset energy demand on the grid when excess solar power is generated.

The purpose of this legislation is to balance the potential impact on agriculture and neighbors when solar collectors may be installed near their property while preserving the rights of property owners to install solar collection systems without excess regulation. The intent is to allow small scale building-integrated photovoltaic (BIPV) systems, flush-mounted solar systems, roof-mounted and building-mounted and pole-mounted solar installations that have a minimum footprint (height) to be approved using the building permit process while requiring solar energy system installations rated for an electrical output of 25 kW or greater to go through the site plan review process before the Planning Board.

**Section 3.     Definitions.**

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

**ALTERNATIVE ENERGY SYSTEM:** Structure, equipment devices or construction techniques for the production of heat, light, cooling, electricity or other forms of energy on site and may be attached to or separate from the principal structure.

**BUILDING-INTEGRATED PHOTOVOLTAIC (BIPV) SYSTEM:** A solar energy system that consists of integrating photovoltaic modules into the building structure such as the roof or the

facade and which does not alter relief of the roof.

**COLLECTIVE SOLAR:** Solar installation owned collectively through subdivision homeowner association, college student groups, "adopt-a-solar-panel," or other similar arrangements.

**FLUSH-MOUNTED SOLAR PANEL:** Photovoltaic panels and tiles that are installed flush to the surface of a roof or wall and which cannot be angled or raised.

**FREESTANDING OR GROUND-MOUNTED SOLAR ENERGY SYSTEM:** A solar energy system that is directly installed on the ground and is not attached or affixed to an existing structure.

**NET METERING:** A billing arrangement that allows solar customers to get credit for excess electricity that they generate and deliver back to the grid so that they only pay for their net electricity usage.

**PERMIT GRANTING AUTHORITY:** The Town of Fort Ann authority charged with granting permits for the installation of alternative energy systems.

**PHOTOVOLTAIC (PV) SYSTEM:** A solar energy system that produces electricity by the use of semiconductor devices, called photovoltaic cells, which generate electricity when light strikes them.

**QUALIFIED SOLAR INSTALLER:** A person who has skills and knowledge related to the construction and operation of solar electrical equipment and installations and 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), or who are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be qualified solar installers for the purposes of this definition. Persons who are not on NYSEDA's or NABCEP's list of certified installers may still be deemed to be qualified solar installers if the Town of Fort Ann determines such persons to have had adequate training to determine the degree and extent of the hazard and the personal protective equipment and job planning necessary to perform the installation safely. Such training shall include the proper use of special precautionary techniques and personal protective equipment, as well as the skills and techniques necessary to distinguish exposed energized parts from other parts of electrical equipment and to determine the nominal voltage of the exposed parts.

**RATED NAMEPLATE CAPACITY:** The maximum rated output of electric power production of the Solar Collector in watts of Direct Current (DC).

**ROOFTOP OR BUILDING-MOUNTED SOLAR SYSTEM:** A solar system in which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle.

**SOLAR ACCESS:** Space open to the sun and clear of overhangs or shade including the orientation of the streets and lots to the sun so as to permit the use of active and/or passive solar energy systems on individual properties.

**SOLAR COLLECTOR:** A solar photovoltaic cell, panel or array, or any solar hot air or solar energy collector which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored energy to heat, air or water.

**SOLAR EASEMENT:** An easement recorded pursuant to the NY Real Property Law § 335-b, the purpose of which is to secure the right to receive sunlight across real property of another for continued access to sunlight necessary to operate a solar collector.

**SOLAR ENERGY SYSTEM:** Solar collectors, controls, energy storage devices, heat pumps, heat exchangers, and other materials, hardware or equipment necessary to the process by which solar radiation is collected and converted into another form of energy and is stored, protected from unnecessary dissipation and distributed. Solar systems include solar thermal, photovoltaic and concentrated solar.

**SOLAR ENERGY SYSTEM, ACTIVE:** A solar energy system whose primary purpose is to harvest energy by transforming solar energy into another form of energy or transferring heat from a collector to another medium using mechanical, electrical, or chemical means.

**SOLAR ENERGY SYSTEMS, SMALL SCALE:** A Solar Energy System having a rated nameplate capacity of less than 25 kW DC.

**SOLAR ENERGY SYSTEM, LARGE SCALE:** A Solar Energy System that having a rated nameplate capacity of 25 kW DC or greater.

**SOLAR PANEL:** A device for the direct conversion of solar energy into electricity.

**SOLAR STORAGE BATTERY:** A device that stores energy from the sun and makes it available in an electrical form.

**SOLAR THERMAL SYSTEM:** Solar thermal systems directly heat water or other liquid using sunlight. The heated liquid is used for such purposes as space heating and cooling, domestic hot water, and heating pool water.

#### **Section 4. Applicability.**

The requirements of this Ordinance shall apply to all solar energy system installations modified or installed after the effective date of this Ordinance.

A. All applications for Large Scale Solar Energy Systems shall be designed as follows:

1. The solar energy system shall be designed by a licensed engineer and contain site specific building plans which bear the seal and signature of a licensed engineer

and satisfy the permitting requirements contained in this Ordinance.

2. Building permits, where required for solar energy systems, in accordance with the NYS Uniform Building Code.
3. The Town encourages installations that would employ landscape screening and other methods of enhancing the appeal of the ground-mounted and freestanding solar collector such as the use of architectural features, earth berms, or other screening which will harmonize with the character of the property and surrounding area.
4. Any proposed Large Scale Solar Energy System subject to the New York Board on Electric Generation and Siting and the Environment pursuant to Article 10 of the New York State Public Service Law, or the office of Renewable Energy Siting pursuant to Article 94-c of the Executive Law, shall be subject to all substantive provisions of this law and other applicable laws, codes, ordinances and regulations of the Town of Fort Ann, and any other applicable state or federal laws.

B. Exemptions:

1. Small Scale Solar Energy Systems shall be exempt from the requirements of this Ordinance.
2. Large Scale Solar Energy Systems that do not exceed One Hundred Ten Percent (110%) of a farm operation which otherwise meets the requirements of NYS Agriculture and Markets Law shall be exempt from the requirements of this Ordinance.

**Section 5. Requirements.**

All Large Scale Solar Energy Systems shall undergo Site Plan Review in accordance with the Site Plan Review Law of the Town of Fort Ann, prior to any land disturbance, construction, installation, or modification as provided in this Ordinance.

- A. Site Plan Document Requirements. In addition to the Site Plan Review process contained in the Site Plan Review Law of the Town of Fort Ann, the Applicant shall provide the following documents to the Town of Fort Ann Planning Board.
  1. A site plan depicting the following:
    - a. Name, address, phone number and signature of the Applicant, as well as all co-Applicants or property owners, if any;
    - b. The name, contact information and signature of any agents representing the project Applicant; and

- c. Name and address of all property owners within 1,000 feet of the boundaries of the site; and
  - d. Property lines and physical features, including roads, for the project site;
  - e. Location, approximate dimensions and types of existing structures and uses on the site, public roads, and other properties within 1,000 feet of the boundaries of the site; and
  - f. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
  - g. Blueprints or drawings of the solar energy system signed by a professional engineer licensed to practice in New York State showing the proposed layout of the system, any potential shading from nearby structures or trees, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the tallest finished height of the solar collector;
  - h. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods with all NYS building code compliance disconnects and overcurrent devices;
  - i. Documentation of the major system components to be used, including the panels, mounting system, and inverter;
  - j. Name, address, and contact information for proposed system installer;
  - k. Location of agricultural district, location of active farmland, and soil type delineations, for the property and 1,000 feet adjoining the property;
  - l. Locations of floodplains and wetlands;
2. A Full Environmental Assessment Form and accompanying environmental reports.
  3. Application Fee. The Applicant shall submit a non-refundable application fee of Ten Thousand Dollars (\$10,000.00).
  4. SWPPP. The project Storm Water Pollution Prevention Plan (SWPPP) must meet all NYSDEC design guidelines and shall be prepared and submitted for Planning Board review. All SWPPP's submitted must address erosion and sediment control during construction and post-construction design, capacity, operation and maintenance of stormwater facilities. Disturbances greater than five acres of soil are not permissible at one time unless the NYSDEC grants a variance and a copy

of the same is provided to the Town. No work shall commence on site until a Notice of Intent has been submitted by the applicant to NYSDEC and a Notice of Acknowledgment has been received from the NYSDEC.

5. Documentation of actual or prospective access and control of the project site.
6. Applicant must have a Coordinated Electric System Interconnection Review (CESIR) study before Planning Board will review a site plan or set a public hearing on a potential project.
7. All approvals will require an interconnection agreement with the power company to be submitted prior to any ground disturbance occurring on site. Failure to submit a copy of the fully signed interconnect agreement within one (1) year of the site plan approval shall render the site plan approval void.
8. Visual Impact Evaluation. The Applicant shall include the submission of a GIS viewshed analysis of the Zone of Visual Impact (ZVI); defined as the area from which the proposed undertaking may be visible within a one-mile (1.0) buffer. Positive visibility of the solar field must be based upon bare-earth topography only (do not factor in vegetation). The analysis should be presented as an orthorectified aerial base map with the buffer boundary and project area indicated and ZVA highlighted. The Visual Impact Assessment shall also follow the guidelines established by the NYSDEC Visual Impact Assessment Policy Document developed in connection with the NYS Environmental Quality Review Act (SEQRA).
9. Glare Analysis. A glare study shall be submitted with the application. Any areas that may experience glare for more than one hour in a 24-hour period shall be shown on a drawing in a manner that can be easily understood by the neighboring property owners.
10. Noise Study. Substations, inverters, and other noise producing equipment shall be set back a minimum distance and screened to achieve no significant increase in noise levels when compared to background noise levels at the property line. A 3 dBA increase in noise levels shall be deemed significant. A sound study, using actual on-site data for the background noise levels shall be prepared following the noise assessment guidelines established by the NYSDEC in connection with SEQRA implementation. Based on the background data, the Applicant shall also submit a plan detailing expected noise levels during construction. The goal is to site the facility so that neighboring properties are not adversely affected by noise during the construction or operation of the facility.
11. Wildlife. The results of on-site bird and bat migration, nesting and habitat surveys. Surveys must be conducted during appropriate seasonal windows during the year prior to submittal of an application. Applicants shall use the most recent NYSDEC survey protocols for grassland birds and winter raptors. For other

wildlife, applicants shall follow NYSDEC guidance on appropriate survey methods.

12. Landscaping Plan. Existing on-site vegetation shall be preserved to the maximum extent practicable. A screening and landscaping plan, prepared by a landscape architect, or similar professional, must show the proposed screening and buffering of all arrays, buildings, and other non-array structures on the site or sites. 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 use of pesticides and herbicides shall be expressly prohibited in the landscaping plan. 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 in order to mitigate any potential visual impact in accordance with this ordinance. The applicant shall guarantee that all plantings that form part of the approved landscape and screening plan will be maintained and replaced if necessary during the life of the project.
13. An operation and maintenance plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep such as mowing and trimming. Such plan will provide for the inspection, and replacement by the following growing season if necessary, of landscaping and trees that are part of the approved landscaping plan to ensure compliance with the landscaping plan requirements. The plan shall also include the following:
  - a. Storm and severe weather event follow-up, and other actions that shall be taken to keep the solar energy system operating quietly, efficiently, and not polluting land, water, or air;
  - b. Plans to ensure the proper operation of the Large-Scale Solar Energy System and all of its components;
  - c. Preventative maintenance inspections shall occur at least every six months, and after any hail, wind, or other severe weather event likely to result in damage to the Large-Scale Solar Energy System. A wind event is defined as severe wind, which would be wind over 40 miles per hour for one hour or wind gusts 58 miles per hour or greater. Each inspection shall consider solar panel condition, metal fatigue, fastener condition, leakage, and other potential failures that might impact public health and safety or the environment. Any releases to the environment shall be managed in the same manner as hazardous material spills;
  - d. Provision for an annual safety inspection by a NYS licensed Professional Engineer; and

e. All inspection reports required by this section shall be made available to the Town upon fourteen (14) days notice.

14. A decommissioning plan. To ensure the proper removal of Large-Scale Solar Energy Systems, a Decommissioning Plan shall be submitted as part of the application. Compliance with this Plan shall be made a condition of the site plan approval. The Decommissioning Plan must specify that after the Large-Scale Solar Energy System can no longer be used, it shall be removed by the applicant or any subsequent owner. The Plan shall demonstrate how the removal of all infrastructure and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction. The Plan shall demonstrate how the removal of all infrastructures and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction. Applicant shall utilize the most recent Guidelines for Solar Energy Projects, Construction Mitigation for Agricultural Lands available from the New York State Department of Agriculture and Markets. The Plan shall also include an expected timeline for execution. A cost estimate detailing the projected cost of executing the Decommissioning Plan shall be prepared by a Professional Engineer or Contractor. Cost estimations shall take into account inflation. The cost estimates shall be based upon prevailing wages and any other requirements applicable to municipalities under State or federal law. All transportation and disposal costs must be included in the estimate. There shall be no credit for reuse, recycle, or salvage of any equipment. Removal of Large-Scale Solar Energy Systems must be completed in accordance with the Decommissioning Plan; and

15. Financial surety. In addition to the decommissioning plan, the applicant shall also provide an estimate, prepared by a qualified engineer, setting forth the costs associated with decommissioning the solar energy collectors. The Planning Board shall also establish the amount of such surety to be established by the applicant prior to any ground disturbance. The surety shall be in the form of escrow funds held by the Town of Fort Ann and remains in place for the life of the solar energy system and available to the Town to ensure the solar energy system is decommissioned in accordance with the approved decommissioning plan. The surety amount shall not be less than one hundred twenty five percent (125%) of the aforementioned decommissioning costs complete with an escalation factor of not less than three percent (3%) annually. It is the intention of this provision to ensure that the Town has sufficient funds available to remove the installations, including all mounting hardware, and restore landscaping consistent with this chapter, in the event the applicant fails to comply with its decommissioning obligations. The Decommissioning Plan and financial surety will be reviewed every 3 years by a qualified engineer to ensure there are sufficient funds for the Applicant to comply with its decommissioning obligations. Failure to update the decommissioning plan and financial surety shall be a term of default under the escrow agreement with the Town of Fort Ann.

B. Site Plan Review Design and Operation Standards.



1. Compliance. All Large-Scale Solar Energy Systems shall adhere to this ordinance and all applicable Town, County, State, and Federal laws and regulations.
2. Fencing. All electrical and control equipment, including any battery and storage cells, shall be labeled and secured to prevent unauthorized access. Such equipment shall be enclosed with a fence of sufficient height as required by applicable codes. Fencing shall be located inside the vegetated buffer areas required herein. The Solar Energy System shall be enclosed by perimeter fencing at a height of at least seven feet in order to restrict unauthorized access. There shall be a six-inch gap at the bottom of the fencing to allow small wildlife access to and from the site.
3. Visual Impact. The Large-Scale Solar Energy System, including any proposed off-site infrastructure, shall be located and screened in such a way as to avoid visual impacts as viewed from public locations, public roads and highways, residences on neighboring parcels, historic sites, or together locations identified by the Planning Board. Acceptable screening would include maintenance of existing vegetation, new vegetative barriers or berms, landscape screen or other opaque enclosures, or any combination thereof capable of fully screening the site.
  - a. When the site is surrounded by existing mature trees, a buffer where no trees shall be cut shall be established and maintained as a wild zone for the life of the facility. The exception to this shall be dead or diseased trees, which will be cut and removed so as to encourage healthy growth of existing trees.
  - b. Trees to be included in screening shall be native and non-invasive species of evergreen, e.g. Eastern red cedar and white spruce, a minimum of 8' tall and 3" in diameter at breast height. It shall be determined and documented by the developer if at the time of planting any species are threatened due to regional blight, disease, etc. Final decisions on appropriate plantings will be made by the Planning Board.
  - c. The solar facility shall provide for the creation of a buffer that has an offset, double row of densely growing evergreens with the addition of some smaller trees and shrubs in front to create more of a naturalized hedgerow habitat. The purpose of the double row is to provide additional screening early while the trees are still small. While the evergreens should be the dominant tree for screening, addition of some smaller trees and shrubs are to be provided to benefit wildlife and aesthetics.
  - d. Appropriate shrubs and small trees to include to create a hedgerow could be shadbush, flowering dogwood, flowering raspberry, maple leaved viburnum, nannyberry, and choke cherry.

- e. The design, construction, operation, and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists. The Planning Board reserves the right to individually assess what they deem to be sensitive areas potentially impacted by any proposed solar facility as part of their review to ensure that negative impacts of solar ray reflection will be prevented.
  - f. All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth tone color to aid in blending the facility into the existing environment.
4. Panel Height. Free standing ground mounted systems shall not exceed fifteen (15) feet in total height from the existing grade.
  5. Setback. Solar collectors shall be set back at least three hundred (300) feet from the highway and three hundred (300) feet from all side and rear lot lines. In addition, all structures and equipment shall be set back a minimum of four hundred fifty (450) feet from the exterior of any occupied residence located on a non-participating property. Fencing, collection lines, access roads and landscaping may occur within the setbacks.
  6. Lot Coverage. The Large-Scale Solar Energy System shall not exceed sixty percent (60%) lot coverage.
  7. Slopes. No solar collectors shall be placed on slopes of fifteen percent (15%) or greater as averages over fifty (50) horizontal feet. No cutting or filling may be done to alter natural slopes for placement of panel arrays.
  8. Road Use. Designated traffic routes for construction and delivery vehicles to minimize traffic impacts, wear and tear on local roads, and impacts on local business operations shall be proposed by the applicant and reviewed by the Planning Board.
  9. Blasting. Blasting is prohibited for the construction of all Large-Scale Solar Energy Systems.
  10. Hazardous Materials. All solar panels shall be solid state materials. All solar panels shall have anti-reflective coating(s) not identified as a hazardous material by the U.S. Environmental Protection Agency, unless an applicant demonstrates the hazardous material is unlikely to cause harm to people, plants, or animals when released into the environment. The applicant shall adhere to all federal and state laws, regulations and guidelines regarding PFAS and polytetrafluoroethylene (PTFE) films. The use of pesticides and herbicides shall be prohibited.

11. **Underground Wiring.** All transmission lines and wiring associated with a Large-Scale Solar Energy System shall be buried and include necessary encasements in accordance with the National Electric Code. The Planning Board may waive this requirement if sufficient engineering data is submitted by the applicant to demonstrate that underground transmission lines are not feasible or practical. The applicant is required to show the locations of all proposed overhead and underground electric utility lines including substations, switchyards, junction boxes and other electrical components for the project on the site plan. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.
12. **Construction Hours.** Pre, post, and during construction working hours shall be limited to Monday through Friday between the hours of 8 a.m. and 6 p.m. The Planning Board shall have discretion on whether to allow work on Saturdays. Work shall not be done outside these hours or on Sundays and holidays, to ensure the quiet rural character of the Town.

C. Abandonment or Decommissioning

1. **Abandonment.** A Large-Scale Solar Energy System shall be deemed abandoned under the occurrence of any of the following conditions:
  - a. If the applicant fails to commence construction within one (1) year of receiving site plan approval;
  - b. If the applicant begins, but does not complete construction of the project and receive confirmation from the utility that it has been connected to the energy grid, within 18 months after the initial ground disturbance pursuant to the SWPPP;
  - c. The owner or lessee of any facility ceases for a period of six months to use or operate said facility;
  - d. The use of the solar energy system has been discontinued; or
  - e. The Large-Scale Solar Energy System has reached the end of its useful life.
2. **Removal Requirements.** Any large scale solar energy systems which has been abandoned consistent with this Ordinance shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of abandonment. The owner or operator shall notify the Enforcement Officer by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:
  1. Physical removal of all solar energy systems, structures, equipment, security barriers and transmission lines from the site.

2. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
  3. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
- b. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the Large-Scale Solar Energy System shall be considered abandoned when it fails to operate for more than one year without the written consent of the Enforcement Officer. If the owner or operator of the solar energy system fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town retains the right, after the receipt of an appropriate court order, to enter and remove an abandoned, hazardous, or decommissioned large scale solar energy system. As a condition of Site Plan approval, the applicant and landowner shall agree to allow entry to remove an abandoned or decommissioned installation.
3. Decommissioning Plan - If the Large-Scale Solar Energy System is not decommissioned after being considered abandoned in accordance with the Decommissioning Plan, the Town may remove the system, including all mounting hardware, and restore the property and impose a lien on the property to cover these costs to the municipality.
  4. Estimate and Financial Surety - In addition to the Decommissioning Plan, the applicant shall also provide an estimate, prepared by a qualified engineer, setting forth the costs associated with decommissioning the solar energy collectors. The Planning Board shall also establish the amount of such surety to be established by the applicant prior to the issuance of a building permit. The surety may be in the form of escrowed funds, bonds or otherwise, so long as the surety remains in place for the life of the solar energy system and available to the Town to ensure the solar energy system is decommissioned in accordance with the approved Plan. It is the intention of this provision to ensure that the Town has sufficient funds available to remove the installations including all mounting hardware and restore landscaping consistent with this Ordinance, in the event the applicant fails to comply with its decommissioning obligations.

D. Escrow deposits.

1. In connection with the review of an application, the Planning Board may require an applicant to deposit an initial sum of money into an escrow account in advance of the review of the application. Said sum shall be based on the estimated cost to the Town of reviewing the particular type of application before it.

2. Use of funds. Said sum of money shall be used to cover the reasonable and necessary costs of reviewing an application. Costs may include publication and mailing costs for public notices, staff costs or consultant fees for planning, engineering, legal, and other professional and technical services required for the proper and thorough review of an application. The reviews governed by this section shall include but not be limited to all environmental review pursuant to law including review of the proposed action under the State Environmental Quality Review Act.
3. Upon receipt of monies requested for an escrow account, the Town Supervisor shall cause such monies to be placed in a separate non-interest-bearing account in the name of the Town and shall keep a separate record of all such monies deposited and the name of the applicant and project for which such sums were deposited.
4. If the escrow deposit falls below 25% of the required escrow, the applicant shall, unless the requirement is waived by the Planning Board, pay additional funds into the escrow account to replenish the escrow account to 100% of the required escrow. If such an account is not replenished within 10 days after the applicant is notified, in writing, of the requirement for such additional deposit, the Planning Board may suspend its review of the application until the escrow is replenished.
5. In the event the applicant fails to deposit the requested review fees into an escrow account, any application review, approval, permit or certificates of occupancy may be withheld or suspended by the Planning Board, officer or employee of the Town until such monies are deposited.
6. Upon completion of the review of an application or upon the withdrawal of an application, and after all fees already incurred by the Town have been paid and deducted from the escrow account, any balance remaining in the escrow account shall be refunded within 60 days after the applicant's request.

#### E. Contractual Requirements

1. Road Use. Large-Scale Solar Energy System shall execute a road use agreement with the Town if town roads are to be used for the project. Prior to the issuance of the building permit and/or commencement of construction, an existing condition survey of the approved hauling routes using town roads shall be undertaken by the applicant at the applicant's expense. Any road damage during construction caused by the operator or its subcontractors on town roads shall be repaired or reconstructed to the satisfaction of the Town Highway Superintendent at the operator's expense.
2. Indemnification. The applicant for a Large-Scale Solar Energy System shall execute an indemnification agreement with the Town. The agreement shall require the applicant/owner/operator to at all times defend, indemnify, protect,

save, hold harmless and exempt the Town 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 be 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 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.

3. Community Host. The applicant shall enter into a community host agreement providing a public benefit fee to mitigate the additional burdens placed on the town as a result of the project. The fee shall be utilized as a source of funding for prospective costs and expenses associated with and related to anticipated municipal services and additional infrastructure improvements to be provided as a result of the project's presence within the town. The fee shall be in an amount established by resolution of the Town Board.
- F. Ownership Changes. If the owner or operator of the Large-Scale Solar Energy System changes or the owner of the property changes, all requirements of the site plan approval shall remain in effect. Approval to operate the system shall continue, provided that the successor owner or operator assumes in writing all of the obligations of the site plan approval, decommissioning plan, community host agreement, security and any agreements. A new owner or operator of the Large-Scale Solar Energy System shall notify the Enforcement Officer and the Town Supervisor of such change in ownership or operator 30 days prior to the ownership change.
- G. Certification. After completion of a Large-Scale Solar Energy System, the applicant shall provide a post- construction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans. The applicant shall further provide certification from the utility that the facility has been inspected and connected.

**Section 6. Waiver.**

The Town Board may, in its sole discretion, waive the requirements of this Ordinance for a Large Scale Solar System that it believes is harmonious with land uses in the area where it is proposed to be built and where, because of its size or other considerations, the Town Board believes that it does not need to be subjected to the special use permit and site plan regulations imposed by this section. This waiver may be a partial waiver, allowing the Town Board to require a Large-Scale Solar System to comply with individual requirements found in this

Ordinance.

**Section 7. Enforcement.**

The Applicant shall be responsible to meet all additional State, Federal, Local, County or other municipal laws or regulations which may apply. The Enforcement Officer and the Town are only responsible to enforce specific provisions of this Ordinance and are not responsible for ensuring compliance with other applicable laws and regulations.

**Section 8. Penalties.**

A. Any person who commits an offense under this Ordinance or any section or provision thereof is guilty of a violation and shall, upon conviction thereof, be subject to a fine not to exceed Nine Hundred Fifty Dollars (\$950.00) or imprisonment not exceeding fifteen (15) days, or both.

B. In the event of a continuing offense of any section or provision of this Ordinance, each day such offense shall continue shall be a separate violation and subject to a separate fine, imprisonment or combination thereof.

C. In addition to Sections (a) and (b) above, the violation of any section or provision of this Ordinance shall subject the person violating the same to a civil penalty not to exceed Nine Hundred Fifty Dollars (\$950.00), and when a violation of this Ordinance is continuous, each day shall constitute a separate and distinct violation, said penalty to be recovered by the Town of Fort Ann in a civil action.

D. The application of the above penalty or penalties, or the prosecution for the violation of the provisions of this Ordinance shall not be deemed to prevent the revocation of any permit issued pursuant thereto, without reimbursement of the fee paid therefor or the enforced removal of conditions prohibited by this Ordinance. Said cost for enforced removal of non-complying conditions will be assessed against the owner.

E. The penalties and remedies of the Town set forth in this Section are in addition to and not exclusive of other remedies found within this Ordinance or the laws of the State of New York.

**Section 9. Severability.**

If any clause, sentence, paragraph, subdivision, section, or part of this Ordinance or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this Ordinance, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or

judgment shall be rendered.

**Section 10.**    **Effective Date.**

This Ordinance shall take effect ten (10) days after publication and posting, or immediately upon personal service as provided by Section 133 of the Town Law.