

STATE OF INDIANA  
SPENCER COUNTY BOARD OF COMMISSIONERS  
ORDINANCE NO. 2023-16

**AN ORDINANCE TO ADOPT STANDARDS OF SOLAR ENERGY SYSTEMS**

WHEREAS, this ordinance is intended to regulate the construction, placement, and modification of Solar Energy Systems; minimize impacts to the aesthetic character of the county and surrounding jurisdiction and to minimize the land use impact of such facilities while providing the community with the benefit of new technological advances; and to protect the public health, safety, and general welfare of the community and to further the goals and policies of the comprehensive plan, by:

- (1) Regulating the location of Commercial Solar Energy Systems in non-residential areas, brownfields, non-prime farmland.
- (2) Minimizing the adverse visual, environmental and property value effects of Solar Energy Systems through careful design and site standards;
- (3) Maintaining the aesthetic environment of the county; and
- (4) Providing for the administration and enforcement of this ordinance.

**NOW THEREFORE BE IT ORDAINED BY THE SPENCER COUNTY BOARD OF COMMISSIONERS AS FOLLOWS:**

- (1) The provisions of this ordinance are applicable to those zoning districts which allow or may allow Solar Energy Systems and to govern the siting, development, operation, rehabilitation, decommissioning and restoration of Solar Energy Systems, which generate electricity to be sold in the wholesale market or retail market, or which are utilized to generate electricity for private use and public use.
- (2) No person shall construct, operate, or locate a Solar Energy System within Spencer County without having fully complied with all of the provisions of this ordinance and applicable Rules of the Advisory Plan Commission and Board of Zoning Appeals.
- (3) Nothing in this ordinance is intended to preempt other applicable state and federal laws or regulations, nor shall any provision of this ordinance interfere with, abrogate, or annul any other ordinance, rule, regulation, statute or other provision of law. In the event that any provision of this ordinance imposes restrictions different from any other ordinance, rule, regulation, statute, or provision of law, the provision which is more or most restrictive or which imposes the higher or the highest standard(s) shall control.
- (4) "DEFINITIONS."

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ACCESSORY USE SOLAR ENERGY SYSTEM (AUSES):** A solar panel, or array thereof, used for a solar collection system principally used to capture solar energy and to convert it to electrical energy or thermal power to supply electrical or thermal power primarily or solely for on-site use and consisting of one or more free-standing, ground or roof-mounted panel(s) or modules and solar related equipment, intended to primarily reduce on-site consumption of utility power and/or fuels. An AUSES may be used in all zoning districts as accessory structures in each zoning district in which they are erected. The maximum size of AUSES is limited to the maximum size allowed for an accessory structure in each zoning district, and AUSES shall not be excluded from maximum height, setback, or lot coverage restrictions.

**ADVISORY PLAN COMMISSION:** Spencer County Advisory Plan Commission.

**AMBIENT BASELINE SOUND PRESSURE LEVEL:** The L90 A-weighted sound pressure emissions level (the level of sound exceeded 90% of the time) for a project area prior to construction as determined by a baseline acoustics emissions study.

**APPLICANT:** The term "Applicant" when used in connection with or in respect of a project shall mean the person(s) and/or entity(s) which is/are the developer and/or owner of the project which prepares and files the initial application to the applicable approval body, and the term shall include all successors and assigns of the initial Applicant. The term "Applicant" shall not include any person or entity which signs the application solely in the capacity as an Owner of an interest in real property on which a project shall be located. When used in this Ordinance to affix liability or for a binding agreement or obligation Applicant shall include the Owner or Operator of the project that intends to be legally liable or so bound.

**CO-APPLICANT:** A person or entity which executes an application for a Solar Energy System project solely because of an ownership interest in real property to be used in connection with the project. The term "Co-Applicant" when used in connection with or in respect of a project shall mean a person or entity which executes an application for a project solely because of an ownership interest in real property to be used in connection with the project.

**COLLECTOR:** Any power line whether above ground or below ground that carries electrical power from one or more solar panels or transformers or converters associated with solar panels to the point of interconnection with the electrical power grid. In the case of interconnection with high voltage transmission systems the point of interconnections shall be a substation serving the project.

**COMMERCIAL SOLAR ENERGY SYSTEM (CSES):** An area of land or other area used by a property owner, multiple property owners, and/or corporate entity and its contained industrial scale group or series of photo-voltaic (or solar) panels placed to convert solar radiation into useable direct current electricity or thermal power, and supply electrical or thermal power, primarily or solely for offsite utility grid use, and consisting of one or more free standing ground mounted, solar arrays or modules, battery storage facilities, solar related equipment, and ancillary improvements, including substations, operations, maintenance and storage buildings.

**COUNTY:** Spencer County, Indiana.

**CSES NET SALVAGE VALUE:** The net value of all of the saleable parts and commodities which make up the CSES whether sold as used parts or on a commodity/scrap basis or any combination thereof (whichever is greater) after deducting all estimated costs and expenses of dismantling, removal, and transportation and all costs and expenses of sale (including but not limited to all commissions and fees) and the amount necessary to pay and satisfy all liens, security interests, and other encumbrances attaching to the CSES. The commodity/scrap value shall be based on the prior five (5) years average scrap value of the commodity.

**DECOMMISSIONING PLAN:** The term "Decommissioning Plan" with regards to a project shall have the meaning and include the requirements set forth at Sections \_\_\_\_\_.

**DISTAL SOLAR PANEL:** Means each solar panel closest to an adjoining non-participating property line.

**DRAINAGE PLAN:** The term "Drainage Plan" with regards to a project shall mean the Storm Water Management Plan approved by the Spencer County Drainage Board for the project as required by Section P (3).

**ECONOMIC DEVELOPMENT AGREEMENT:** An agreement between the Applicant, Owner and/or Operator and the County setting forth the applicant, owner and/or operator's financial commitment to support economic development and/or provide other financial assistance in the County, or any portion thereof as required by Section P (4).

**GROUND-MOUNTED SOLAR ENERGY SYSTEM:** A solar energy system that is installed into the ground and is not attached or affixed to any structure.

**NON-PARTICIPATING (Property or Landowner):** Property or the property owner of land adjacent to the CSES project that is not participating in a Solar Energy System project as Co-Applicant.

**OPERATOR:** Any person or entity which has the primary involvement with or responsibility for the use, operation, or maintenance of all or a portion of a Solar Energy System project. The term "Operator" when used in connection with or in respect of a project means any person or entity which has the primary involvement with or responsibility for the use, operation, or maintenance of all or a portion of a project.

**OWNER:** The term "Owner" when used in connection with or in respect of a project shall mean any person or entity and his, her or its assigns and successors in interest which has any ownership interest in any of all of the necessary devices to convert solar energy into electricity. The term "Owner" does not include any person or entity whose ownership interest in a CSES is limited to an interest in real property which is used in a CSES.

**PARTICIPATING (Property or Landowner):** Property or the property owner of land adjacent to the CSES project that is participating in a Solar Energy System project as Co-Applicant.

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

**PRINCIPAL STRUCTURE:** A structure in which the principal use of the lot on which it is located is conducted but limited to those structures in which individuals dwell or are employed (but excluding small agricultural buildings and barns).

**ROOF-MOUNTED SOLAR ENERGY SYSTEM:** A solar energy system located on the roof of a lawfully established structure.

**SAFETY AND SECURITY PLAN:** The CSES project site safety and security plan as provided by Section Q (1).

**SOLAR ARRAY:** Multiple solar panels combined together to create one system, which may be small enough to serve as an Accessory Use Solar Energy System or large enough to be paired with multiple arrays to create a Commercial Solar Energy System.

**SOLAR ENERGY SYSTEM (SES):** A system capable of collecting and converting solar radiation into heat or mechanical or electrical energy and transferring these forms of energy by a separate apparatus to storage or to point of use, including, but not limited to, water heating, space heating or cooling, electric energy generation, or mechanical energy generation. This definition shall include Solar Thermal, Photovoltaic, and Passive Solar Systems and both large-scale commercial and small-scale accessory use solar energy systems.

SOLAR PANEL: A device for the direct conversion of sunlight into useable solar energy (including electricity or heat).

TRANSPORTATION PLAN: The detailed route plan used for construction and maintenance by a project as required in Section P (2).

VIEW SHED AREA: Means the areas of visual impact of a project as set forth in Section F (3).

(5) "ACCESSORY USE SOLAR ENERGY SYSTEM (AUSES)."

(A) Roof-Mounted AUSES

- (1) A roof-mounted AUSES is considered an incidental accessory use to the principal use and allowed without an Improvement Location Permit in all zoning districts.
- (2) Roof-mounted AUSESs shall adhere to the development standards of the underlying zoning district including minimum setbacks, maximum height, and maximum lot coverage. Where feasible, panels on residential structures facing the front yard shall be mounted at the same angle as the roof surface with a maximum distance of eighteen (18) inches between the roof and the highest edge of the system. Roof-mounted AUSESs are subject to the rules of historic preservation districts and restrictive covenants.

(B) Ground-Mounted AUSES

- (1) A ground-mounted AUSES is considered an accessory structure to the principal use and will require improvement location permits.
- (2) Ground-mounted AUSESs shall adhere to the development standards of the underlying zoning district including minimum setbacks, maximum height, and maximum lot coverage. Ground-mounted AUSESs shall be located at least one hundred (100) feet from the foundation of any neighboring residence and ten (10) feet off all property lines. A ground-mounted AUSES is considered a permitted use in zoning districts designated A, R1, R2 and is considered a Conditional Use in said zoning districts. Conditional Uses require approval from the appropriate Board of Zoning Appeals.
- (3) Ground-mounted AUSESs shall not be placed within any legal easement or right-of-way, or be placed within any storm water conveyance system, or in any other manner that would alter or impede storm water runoff from collecting in a constructed storm water conveyance system.

(C) Application

- (1) Prior to the construction of a ground-mounted AUSES, the landowner is required to obtain an improvement Location Permit by filing an application with the Zoning Administrator. An application for an Improvement Location Permit shall be accompanied by a site plan in accordance with the Spencer County Zoning Ordinance, and additionally showing the location of all solar panels and equipment and the location of the emergency disconnect for the equipment.
- (2) The application shall include information regarding the type of solar technology proposed, mounting methods, dimensions, generating capacity, means of interconnecting, and manufacturer's data.
- (3) Evidence that the local electrical utility has been informed of the customer's intent to install a customer owned SES must also be submitted with the application unless no interconnection is proposed.

(D) Glare. The AUSES shall be designed and located in order to prevent glare toward any inhabited buildings and adjacent highways or right of way.

(E) Approved Components: Electric SES components shall have an underwriters Laboratory (UL) listing or approved equivalent.

(F) An Improvement Location Permit may be revoked if the AUSES is moved or otherwise altered in a manner which causes the AUSES not to be in conformity with this Ordinance. The AUSES must be properly maintained and be kept free from all hazards, including but not limited to, faulty wiring, loose fastenings, being in an unsafe condition or detrimental to public health, safety, or general welfare. In the event of a violation of any of the foregoing provisions, the Zoning Administrator shall give written notice specifying the violation to the owner of the AUSES to conform or to remove the AUSES.

(G) Energy Conversion System Distinctions: Only Photovoltaic and Thermal Solar energy Conversion systems may be installed in the County. Concentrated Solar Power systems may not be installed in the County. Acreage is measured from all applicable property boundaries seeking contingent use and the totality of the solar generation facilities including any transmission lines, substations, energy storage or electrical support buildings. Any solar energy generation facilities intended to be operated as an integrated system shall be regulated according to the aggregate total acreage. Any subsequent phase of an approved project shall meet the criteria required of the total acreage of all phases.

TYPE	ACREAGE	OTHER
CSES-1	Greater than 20 acres	Electricity sold to utility transmission lines
CSES-2	More than 1 acre up to 20 acres on one or more properties	Electricity used primarily for on-site use
CSES-3	One acre or less and one landowner	Electricity exclusively behind the meter generation for single property owner

(6) CSES-1 DESIGNATION OF USE IN DISTRICTS:

Commercial Solar Energy Systems may be located in zoning districts designated I1 and I2. After being zoned industrial, a special exception shall be applied for in regards to operation of a CSES-1. No Improvement Location Permits shall be issued to any Applicant without the Advisory Plan Commission, or Board of Zoning Appeals granting preliminary and final approval at public hearings. No construction of a CSES shall commence before issuance of an Improvement Location Permit by the Zoning Administrator. Prior to the issuance of an Improvement Location Permit, the Applicant, Owner, and Operator shall be required to obtain the following:

H. APPROVAL PROCESS:

- (A) All Tier 1 and Tier 2 projects subject to this Ordinance shall be considered at two public hearings before the Advisory Plan Commission and shall comply with all requirements of this Ordinance. The first hearing shall consider granting preliminary approval. The second hearing shall consider granting final approval. Final approval may not be granted sooner than 56 days after preliminary approval absent extraordinary circumstances proven by the Applicant to the satisfaction of the Advisory Plan Commission.
- (B) Tier 3 projects are required to submit only a final development plan and need only one hearing for consideration and approval of a final development plan. Tier 3 projects need submit only the following with its Final Development Plan application: Section P and coordination with any applicable agencies listed in Section I (E).
- (C) An application for any use designated as a special exception shall be heard by the Board of Zoning Appeals prior to submission of a site development plan to the Advisory Plan Commission. Applicant may submit the preliminary site development plan and the Special Exception application at the same time, however, the BZA must take action on

Industrial Zoning decisions prior to issuance of a Special Exception Application prior to the public hearing on a preliminary site development plan before the Advisory Plan Commission.

- (D) Following final approval, the applicant must comply with the requirements as set forth in this Ordinance with respect to receiving improvement location permits for the project.
- (E) All information provided and gathered during a preliminary development plan review and/or a final development plan review may be used by the Commission in determining whether to approve or disapprove the plan and, if approved, what reasonable additional restrictions or provisions shall be included in the plan in addition to those outlined herein.

I. PRELIMINARY DEVELOPMENT PLAN APPROVAL.

A completed application for preliminary development plan approval signed by the Applicant shall be filed with the Advisory Plan Commission. If the applicant is not the owner of the real property on which the project is sited, all property owners of the real property where the project is to be located must be Co-Applicants. The application shall include the following items submitted in both hard copy and electronic format;

- A. PROJECT SUMMARY. An initial project summary including description of the project stating the approximate total name plate generating capacity and the name plate generating capacity of each solar panel, the total acreage included in the project and the GIS coordinates of the general outline of the project area, the potential equipment manufacturers and the type of solar energy conversion system to be used, the number of solar panels, the size and maximum height of the solar panels, and description of substations, power inverters, maintenance structures, storage yards, permanent solar resource monitoring structures and equipment, and other buildings that are a direct functional part of the project. If any part of the project will include battery storage, the kinds of batteries to be used, the manufacturer, and the type of installation shall also be included.
- B. APPLICANT AND CO-APPLICANTS. A description of the Applicant, Owner and Operator and any other responsible party and if applicable each of their intermediate and ultimate parent companies, listing experience in similar projects and gross capitalization. List names, addresses, email addresses, websites and phone numbers of the Applicants, Owners and Operators and all Co-Applicants.
- C. MAPS. A map or maps of the project site and surrounding half-mile radius that shows the topography (at 2-foot contours), political and natural features of the project site. The map shall include the individual land parcels by state tax parcel number, property survey and clearly identify whether the property is participating in the project or not. The map shall also identify the zoning designations, all streets and roadways by classification, municipal and township boundaries, residential



structures, public lands, public and private schools (include colleges and universities) existing utilities and transmission lines, public safety facilities, governmental boundaries, public recreational land, and any commercial or public structure such as stores, churches, airports or landing strips. If more than one map is submitted, all maps shall be drawn at the same scale. All maps shall be submitted in hard copy and electronic format as specified by the Administrator of the Advisory Plan Commission.

- D. **SITE PLAN.** The Applicant shall submit a site plan at an appropriate scale showing the proposed location of the project facilities; proposed access roads; substations; maintenance structures; storage yards; permanent solar resource measuring or monitoring installations; electrical cabling; ancillary equipment; and any other structures that are a direct functional part of the project. Each contiguous row of solar panels and/or structure shall be assigned a unique identification number on the site plan. In addition, the site plan shall show: primary structures within one half mile of any project; property lines; including identification of non-participating adjoining properties; setback lines; public roads; County regulated drains, open ditches or tiles including private tiles if located in a public right of way; location of all above-ground utility lines; location of all existing underground utility lines associated with the site; recognized historic or heritage sites as noted by the Indiana Department of Natural Resources; floodplains; and any wetlands based upon a delineation prepared in accordance with the applicable U.S. Army corps of Engineer requirements and guidelines, and the location of any other condition or facility regulated by any other agency having jurisdiction of activity on the site. This site plan must also be distributed to all emergency management agencies, fire departments serving any part of the project site, the County Sheriff and the chief executive body of any incorporated city limit whose boundary is within three (3) miles of the project site.
- E. **COORDINATION WITH APPLICABLE ENTITIES.** The Applicant shall submit a summary report identifying the entities the Applicant has communicated with and coordinated with respect to the project. The report shall list the entity name, the primary contact person at the entity and contact information, the dates of coordination and list of documents submitted to each agency. The report shall also transmit any comments, suggestions, concerns, approvals, or disapprovals with respect to the project issued by the entity and/or communicated to the Applicant. The following entities shall be contacted:

Authority	Purpose	Type of Documentation	When required
Federal			
FAA	Coordinate to reduce any flight or airport interference	Compliance letters for each solar project	Preliminary
DOD Siting, NOAA	Coordinate siting to mitigate radar	Any recommendations or comments	Preliminary

	interference or any other interference	received submitted to APC	
EPA	Compliance with air and water quality standards under NEPA, Disposal of Panels	Any recommendations or comments received submitted to APC	Preliminary
USFWS Indiana Field Office Migratory Bird Treaty Act (MBTA) Eagle Protection Act, Endangered Species Act	Compliance with any solar guidelines	Any recommendations or comments submitted to APC and part of Natural Resources Report	Preliminary
Army Corps of Engineers	Floodplain or wetlands involvement	Designations and comments and permit if required	Preliminary
State			
IDNR	Historical preservation, Floodplains, Archaeology	Comments	Preliminary
IDEM	Erosion, Sediment Control, Water Protection, Endangered Species, Panel Disposal	Comments	Preliminary
Local			
Private airport authorities permitted by FAA and IAA, including EVV and OWB	Coordinate siting process	Any recommendations or comments submitted to APC	Preliminary
Spencer County Drainage Board	Drainage Plan Approval	Drainage Plan	Final
Telecommunications Infrastructure Owners and Operators	All Telecommunications owners and operators with infrastructure within 2 miles of project boundary shall be notified and consulted	Any comments or recommendations received from owners and operators shall be submitted to the APC	Preliminary

F. VISUAL IMPACT EVALUATION REPORT: The Applicant shall submit a Visual Impact Evaluation Report evaluating the visual impact of all solar panels on properties within certain distances of the project. The report shall assess the visual impact on all properties within the visual impact zones identified below. Report must be conducted by a third party approved by Spencer County and funded by the applicant or co-applicant. The following shall be included in the Visual Impact Evaluation Report:

1. A map depicting the dimensions of the proposed site, names and addresses of adjoining property owners not participating in the project that clearly identifies the setbacks distance in feet from each of the proposed Distal Solar Panels and adjoining property lines, the site of each of the photographic simulations taken in the View Shed Area, town and city boundaries, historic sites/districts, state and local designated scenic areas and roads, recreational areas, open space and conservation areas, schools, parks, water resources, military installations airports or landing strips, cell towers, weather and radar stations.
2. Detailed description of the potential visibility of each Distal Solar Panel and the methodology used to evaluate visibility within the following View Shed Areas and maps of the applicable View Shed Area identifying town and city boundaries, historic sites/districts, state and local designated scenic areas and roads, recreational areas, open space and conservation areas, schools, parks, water resources, military installations, airports or landing strips, cell towers, weather and radar stations.
3. View Shed Areas Defined: ½ mile radius from each Distal Solar Panel adjacent to the project boundary.
4. Photographic simulations of the View Shed Area in sufficient number to capture the general visibility of Distal Solar Panels and a map depicting the location for each photographic simulation
5. Any mitigation measures proposed to minimize the visual impact of the project.

G. NOISE EVALUATION REPORT. The applicant shall submit a Noise Evaluation Report for each grouping of solar arrays and any substation or facility that emits noise in the project. The report shall state the daytime and nighttime base-line noise level at the primary dwelling on an adjoining non-participating parcel, in the event permission for the receptor to be located at the primary dwelling is not granted by the non-participant, than at a point on the property line closest to the primary dwelling; the potential noise level generated by the solar panels and inverters and any substation associated with the project; the manufacturer's technical documentation of the proposed solar energy generating equipment noise levels. The Noise Evaluation Report shall include the project maximum levels of infrasonic sound, ultrasonic sound, impulsive noise and prominent discrete tones generated and measured at the primary dwelling on the non-participating parcel (or property line receptor if permission not give as set forth above). The report shall include a map depicting the noise study area radius, project boundaries, sound level monitoring locations and the nearest receptor locations. The Noise Evaluation Report shall include

any potential mitigation measures to minimize sound levels. Report shall be conducted by a third party approved by Spencer County and funded by the applicant or co-applicant.

H. TELECOMMUNICATIONS AND WIRELESS SIGNALS REPORT. The Applicant shall submit a Telecommunications and Wireless Signals Report identifying any expected interference with over the air communications and information gathering and provide a verified statement that it will mitigate any such interference. The Applicant will coordinate its report with NOAA and any other agencies dependent on wireless communications that may be affected. Report must be conducted by a third party approved by Spencer County and funded by the applicant or co-applicant.

I. NATURAL RESOURCE IMPACT REPORT. The Applicant shall submit a Natural Resources Impact Report for the proposed project site. The Natural Resources Impact Report shall include a detailed description of the potential natural resource impacts as a result of the construction, operation and maintenance of the CSES that includes identification and analysis of (a) topography, geology, vegetation, soil types, water resources including wetlands, avian, terrestrial, and marine wildlife habitats as applicable; (b) compliance with applicable air and water quality standards; (c) compliance with any USFWS solar energy guidelines as applicable, and (d) compliance with any site specific recommendations made by IDNR or IDEM. The report shall include a study area map with identification of any areas of importance such as bat habitat, flood zones, wetlands and water courses evaluated in the report. The report shall also include any potential mitigation measures such as open space, erosion control, and habitat replacement to reduce the identified impacts on the project area.

J. ARCHAEOLOGY REPORT: The applicant shall submit an Archaeological Impact Report for the proposed project site. The Archaeological Impact Report shall include a detailed description of the potential archaeological sites and impacts as a result of the construction, operation, and maintenance of the CSES. The report shall include a study area map with the identification of any areas of importance such as previously identified sites. The report shall also include any potential mitigation measures such as best practices to reduce the identified impacts on the project area. Report must be conducted by a third party approved by Spencer County and funded by the applicant or co-applicant.

K. COST REIMBURSEMENT. For Tier 1 projects only, an agreement and written undertaking with adequate surety, bond, or other accepted form of adequate financial assurance must be submitted to pay or reimburse the County, the Advisory Plan Commission, any impacted school corporation, and any other impacted municipal corporation in evaluating the documents required to be submitted for preliminary and final development plan approval. The costs to be reimbursed shall include expenses and professional fees actually incurred including but not limited to all electrical, structural, mechanical, acoustical and transportation engineers, aviary experts, financial consultants, attorneys and other professionals. Within thirty (30) days of submission of an invoice, the

Applicant shall pay or reimburse all such expenses. This obligation for payment or reimbursement of professional fees shall continue so long as the CSES-1 is in existence through the completion of decommissioning and its removal.

L. SOIL PRODUCTION FACTOR: No land shall be rezoned or receive contingent use for the intent of installation of a solar facility if the Soil ID and Production Factor reach a specified threshold. Designation of prime agricultural farmland is based on the Soil ID and its corresponding production factor. The production factor ranging from .05-1.15, reflects the soil composition, with higher values indicating better suitability for agriculture. Any parcel with a Soil ID Production Factor with an average of .90 or higher shall be considered prime agricultural land and not be eligible for rezoning to industrial or receive a contingent use permit. The Area of Interest (AOI) established in "Soil ID Production Factor" could be delineated to reflect the precise, contiguous land area being developed with arrays, buildings, and utility and access infrastructure, but shall not include land area set aside for conservation, designated prime agricultural areas or land otherwise undisturbed by development. The Advisory Plan Commission and County Commissioners shall consider any AOI with an Average Production Factor of .90 or greater as Prime Agricultural Land.

M. PROTECTION OF WETLANDS, WATERWAYS, FLOODPLAINS: Owner/Operator shall conduct a thorough inventory of wetlands, waterways and floodplains within and adjacent to the designated solar installation area. The ordinance mandates the delineation of these sensitive areas, employing recognized techniques and methodologies. Owner/Operators are required to avoid encroachment upon these areas during construction and operation phases. To mitigate potential drainage and sedimentation issues the implementation of sediment ponds or other appropriate techniques shall be enforced to capture and divert water runoff away from these environmentally sensitive zones.

N. WELL TESTING: All residential, commercial and industrial wells within a three and a half mile (3 ½) radius of each distal solar panel shall be tested once a month for a period of six months prior to final approval being sought for the solar installation. Following the approval and commencement of solar operation, each well inside the perimeter of the three and a half mile (3 ½) radius shall be tested once every six months throughout the life of the solar installation. For a period of five years after the completion of decommissioning of the solar facility, the wells within the designated area shall continue to be tested every six (6) months to ensure any potential long-term impacts are properly monitored. All costs related to the well testing and remedial measures will be assumed by the owner/operator of the CSES-1.

1. WATER QUALITY PARAMETERS: The testing shall assess various water quality parameters, including but not limited to PH levels, turbidity, total dissolved solids (TDS), heavy metals, nitrates, and coliform bacteria, as per the local and state water quality standards. All well testing shall be conducted by

an independent laboratory certified by the appropriate regulatory bodies, ensuring accurate and reliable results. The results of each well test shall be promptly reported to the Spencer County Health Department (SCHD) or any other designated authority responsible for monitoring environmental matters within the county. Report must be conducted by a third party approved by Spencer County and funded by the applicant or co-applicant.

2. **COMPLIANCE AND REMEDIAL MEASURES:** In the event of any well test result indicating water quality issues exceeding the acceptable limits, the solar installation operator shall promptly notify SCHD and undertake necessary measures to address the situation. The solar installation owner/operator shall bear the responsibility for implementing any remedial measures required to restore the water quality within acceptable standards. The operator must take necessary actions promptly and in coordination with SCHD. Failure to comply with the well testing requirements outlined in this ordinance may result in penalties, fines, or other appropriate legal actions, as determined by the Spencer County Attorney's office and in accordance with existing local ordinances. This section of the solar ordinance is designed to prioritize the safety and protection of the water resources surrounding solar installations within Spencer County. By implementing rigorous and periodic well testing procedures, we aim to ensure the continued wellbeing of our community and the environment.

O. **COMMUNITY IMPACT ASSESSMENT:** A community impact assessment will be conducted by a Spencer County approved third party, including but not limited to, a comprehensive economic impact, agricultural and tourism revenue, employment and taxation, shall be required and shall assess the various project tax and revenue options. Assessment must be conducted by a third party approved by Spencer County and funded by the applicant or co-applicant.

P. **FINAL DEVELOPMENT APPROVAL:** After approval of the Primary Development Plan, a petition for Final Development Plan approval shall be submitted to the Advisory Plan Commission and shall include:

1. **REVISED SITE PLAN:** A revised site plan indicating any changes to the site plan submitted for the Preliminary Development Plan Approval.
2. **TRANSPORTATION PLAN:** A Transportation Plan recommended by the CSES Transportation Committee and approved by the County Commissioners including a form of financial assurance acceptable to the County Commissioners for the repair or replacement of all damaged roads, bridges, signage, or other transportation structures during construction, maintenance, and operation.
3. **DRAINAGE PLAN:** A Drainage Plan approved by the Spencer County Drainage Board and including a form of financial assurance acceptable to the County for the repair or replacement of all damaged drains, ditches, and tiles (if in the public right of way). The Transportation Plan and the Drainage Plan shall state that any newly constructed assess roads shall not impeded the flow of water and will comply with

the County drainage ordinance. Plan must be conducted by a third party approved by Spencer County and funded by the applicant or co-applicant.

4. ECONOMIC DEVELOPMENT AGREEMENT: The Applicant, Owner and Operator shall enter into an Economic Development Agreement with the Board of Commissioners of Spencer County and the Spencer County Council to address matters related to economic development and the economic impact of the proposed Solar Energy System project with respect to each Spencer County governing entities duly respective powers. No abatements will be considered for CSES-1. However, the Applicant shall submit an Economic Development Agreement approved by the County Commissioners. The Economic Development Agreement must be developed in consultation with the Spencer Economic Development Organization and the County Council. The Economic Development Agreement shall include, as applicable, estimated property taxes and any economic development payments, estimated lease payments and overall cost and tax revenue impact on the County as well as the estimated current economic impact of the project area in its current use. The Economic Development Agreement shall also include a Property Value Guarantee Agreement in the form found on page 30 of this Ordinance.

5. DEVELOPMENT PLAN: The Development Plan shall be submitted with the application for an Improvement Location Permit and in accordance with the Spencer County Zoning Ordinance, with a map or set of maps at appropriate scales depicting the following items:

- (A) Approximate location of all SES structures including:
  - a. Location, number, and spacing of solar panels blocks
  - b. Substations
  - c. Maintenance and storage buildings
  - d. Transmission lines, collectors
  - e. Ancillary equipment
  - f. Identification, access, informational, and warning signs
  - g. Battery Storage, if any
- (B) Boundary Survey, or a reference to a previously recorded survey, conducted in accordance with the Minimum Standards for Competent Practice of Land Surveying as outlined in 865 JAC-1-12
- (C) Location of fencing, screening, and buffer areas
- (D) Location of all access roads and access points
- (E) Location of all above ground and underground utility lines associated with the site
- (F) Floodplain location and elevation, and wetlands if any
- (G) Location of all residences and other principal structures within 200 feet of the nearest SES structure
- (H) Location of all easements
- (I) Location of all security lights.

6. DECOMMISSIONING PLAN: A Decommissioning Plan shall be submitted to ensure that the project is properly decommissioned. The Decommissioning

Plan must be updated and approved by the Advisory Plan Commission every three (3) years after the approval of the initial Decommissioning Plan and after any material improvements are added to the project, in the same manner as the initial decommissioning plan. The standard process will be conducted every three (3) years with the engineer being selected by the county and paid for by the current owner. The Decommissioning Plan shall include a contractor cost estimate from a licensed engineer with experience in these matters for demolition and removal of similar facilities. The estimates shall reflect and use local market rates when applicable. The Decommissioning Plan will delineate the process of beneficiaries and how the benefits will be distributed among Spencer County, and the current landowners. The Decommissioning plan shall include allocation of fault to the current landowners for any failure to decommission the project. A decommissioning plan can not be approved without a detailed plan for how the work will be conducted to restore it to its natural state. The Decommissioning Plan shall include a requirement for obtaining a reclamation permit from the Indiana Department of Natural Resources (IDNR). All disposals must comply with local, state and federal law, rules and regulations in effect at the time of decommissioning.

1. A Decommissioning Plan shall be submitted with the Development Plan to assure the project will be properly decommissioned by the Applicant or any subsequent Owner upon the end of the project life or abandonment. The plan shall demonstrate how the removal of all infrastructure and remediation of soil and vegetation will be conducted, and the expected timeline for execution of the decommissioning. A cost estimate for decommissioning, determined by a third-party professional engineering firm, shall be included. Salvage value may not be considered in determining decommissioning cost.
2. The Decommissioning Plan shall include financial assurance that the project facilities are properly decommissioned upon the end of the project life or abandonment consistent with this Ordinance. The financial assurance must be made prior to the issuance of any Improvement Location Permit. The Applicant shall secure and provide to the Board of Commissioners of Spencer County a financial assurance in the form of cash for 125% of the decommissioning costs and a performance bond, surety bond, or other form of financial assurance in an amount not less than 25% of said third-party professional engineering firm's estimate that is acceptable to the Board of Commissioners of Spencer County before the issuance of an Improvement Location Permit.
3. The obligations with respect to decommissioning shall include removal and proper disposal of all physical material pertaining to the project improvements to a depth of ten (10) feet beneath the soil surface, and restoration of the area occupied by the project improvements such that it is suitable for an equivalent land use to what existed immediately before



- construction of such improvements. The Decommissioning Plan must include proper disposal of all hazardous material and Operator must provide to the Advisory Plan Commission the certification of disposal issued by the entity providing the disposal service and/or the receiving disposal facility.
4. In the event of a force majeure or other events that results in the absence of electrical generation for six (6) consecutive months, by the end of the sixth month of non-operation the Applicant must demonstrate to the Advisory Plan Commission that the project will be substantially operational and producing electricity with six (6) months of the force majeure. If such demonstration is not made to the Advisory Plan Commission's satisfaction, the decommissioning must be initiated six (6) months after the force majeure or other event. A force majeure event means fire, earthquake, flood, tornado, or other acts of God and natural disasters, and war, civil strife, or other similar violence.
  5. The Decommissioning Plan shall include the full written legal description(s) of all Participating properties from the last recorded deed(s) or subsequently recorded project legal description. It shall also include the record owner name(s) of the property(ies) from the last recorded deed(s), and a cross-reference to the book and page and document number of those deed(s) as recorded in the Office of the Spencer County Recorder.
  6. The Decommissioning timeline must not exceed the following standards: six (6) months to initiate decommissioning and an additional twelve (12) months to satisfactorily complete the decommissioning from the time decommissioning begins, with a cure rate of fifteen (15) days. Failure to adhere to any of these stipulations should grant the county the opportunity to seek injunctive relief. The same timeline will apply to operations deemed abandoned or non-operational. If a facility operates at an average of 25% of its maximum operational capacity for six (6) consecutive months, decommissioning shall begin. If a facility operates an average of 10% or less of its maximum capacity for three (3) consecutive months, decommissioning shall begin. Annually, the facility shall provide Spencer County Commissioners with a monthly summary of production. Any deviation of this section shall allow Spencer County to force Decommissioning and seek injunctive relief.
  7. Before an Improvement Location Permit is issued, the Decommissioning Plan shall be duly recorded in the Office of the Spencer County Recorder.

Q. SAFETY AND SECURITY PLAN; INSURANCE:

1. A Safety and Security Plan shall be submitted demonstrating provisions for site security and safety. If the plan includes using Spencer County services, it shall include the signature of the proper authorities indicating they are aware of their role and are capable of performing it. A Safety and Security Plan which must include adequate provisions for general site security and overall site

safety. The plan must include detailed instructions and must be coordinated in conjunction, with all of the County Services deemed necessary. These plans must be approved in writing by the head of each County Service that is being utilized for these services. Coordination with local emergency responders and area hospitals must be included. Applicants for new solar facilities, or a change in ownership of existing solar facilities, shall coordinate with all of the intended County's emergency services staff to provide annual equipment, updated materials, ongoing education and/or training to the departments serving the property with emergency services on how to safety respond to on-site emergencies. Again, these annual training events must be sanctioned and approved by the head of each County Service that is being utilized for these services. If at any time, any of one of these County Services feels the need for any info or training materials, they must be presented to that County Service, in a timely manner and free of charge. Be it known that any response, either security or safety, made to this facility, may incur a cost that may be billed to the owner of said facility. That bill is to be paid as per the invoice and any late charges will constitute a breach of contract with all services contracted with the County for the facility and the Site Owner. A breach of contract with County Services will immediately be cause for site closure until those payments are made in full and a new service agreement is made with all County Services covering that facility.

2. Safety & Warnings: All CSESs shall provide the following warnings and safety information at all locked entrances:

- a. A visible "High Voltage" warning sign
- b. Name and phone number for the electric utility operator.
- c. Name and phone number for the site operator
- d. The facility's 911 address, GPS coordinates, and
- e. A lock box with keys as needed

3. Insurance: The Owner and Operator of a CSES shall maintain commercial general liability insurance covering death, bodily injury, and property damage, which may be combined with umbrella coverage, and shall be required to name Spencer County, Indiana as an additional insured solely to the extent of liabilities arising under this Ordinance. In such amounts as agreed upon in the Safety and Security Plan.

4. Coordination Report: The Applicant shall submit a final summary report identifying the applicable federal, and state entities with permitting authority in respect to environmental, health, and safety standards and regulations, and identifying the entities the Applicant has communicated and coordinated with in respect to the project.

5. Waste Handling and Disposal: All solid waste, whether generated from supplies, equipment, permits, packaging, operation, or maintenance of the facility, shall be removed from the site promptly and disposed of in accordance with all local, state and federal laws. All hazardous waste

related to the construction, operation, maintenance, or decommissioning of the facility shall be handled, stored, transported, and disposed of in accordance with all local, state, and federal laws.

6. Additional Assurances:

All bonds, sureties, letters of credit or other financial assurances provided under this Ordinance shall remain in full force and effect upon any transfer, assignment, or conveyance of an ownership interest until the successor in interest delivers an accepted replacement obligation. The transfer, assignment or conveyance of an ownership interest in the project without the advance approval of replacement bonds, sureties, letters of credit or other financial assurance shall constitute a default and shall not relieve the responsible party of liability. However, the transfer of the interest of the Owner(s) shall be allowed without advance approval so long as the bond surety, letter of credit or other financial assurance posted by the Applicant or Operator covers the successors in interest of the Owner(s).

R. The Applicant shall provide a notarized statement acknowledging and affirming the following with respect to the project.

- (1) All duties and obligations of the Owner and Operator shall be joint and several, and shall be binding upon each of their heirs, successors in interest and assigns.
- (2) At least thirty (30) days prior to any transfer of ownership interest in the project, written notice shall be given to the administrator of the municipality where the project is located and the Advisory Plan Commission.

S. An Owner, or Applicant, or Operator which violates any provision of this Ordinance (including violations by their agents, contractors, or subcontractors) shall be subject to fines and all legal remedies under any and all relevant State and Local statutes. Any Owner, or Applicant, or Operator or a contractor or agent thereof who engages in any activity prohibited by or under the control of this Ordinance without first obtaining any required approval or permit including but not limited to an Improvement Location Permit or a Certificate of Occupancy shall be subject to fines and all legal remedies under any and all relevant State and Local statutes. Each day a violation occurs or continues constitutes a separate offense. The authority to assess fines rests only with the County Commissioners. The Advisory Plan Commission shall also have all recourse to address violations as provided by law.

T. Enforcement of this Ordinance shall be in compliance with the Zoning Ordinances of Spencer County, as it may be amended.

U. FINAL DEVELOPMENT PLAN TIME LIMITATION. An application for Final Development Plan approval must be submitted no later than eighteen (18) months after the Preliminary Development Plan approval. If not submitted within eighteen (18) months, the Applicant must re-submit its Preliminary Development Plan for approval before

submitting its Final Development Plan. The Applicant may, but is not required, combine its Preliminary and Final Development Plan approval into one submission in that case. No project may exceed the total acreage approved in the Final Development Plan by more than 1% without further approval by the Advisory Plan Commission and Spencer County Commissioners.

V. IMPROVEMENT LOCATION PERMITS AND COMMENCEMENT OF CONSTRUCTION. After Final Development Plan approval is obtained, but before any construction commences or Improvement Location Permits may be issued, all applicable state and federal permits, approvals and licenses must be obtained (with copies provided to the Advisory Plan Commission) and all state and Federal Statutes and Regulations must be complied with and the following requirements satisfied:

a. INSURANCE REQUIREMENTS: The Owner or Operator of the project shall maintain liability policies covering (1) bodily injury and property damage and (2) environmental contamination (pollution) arising from construction, operation, maintenance and decommissioning of the project. Limits on the bodily injury and property damage policy shall be of at least \$2 million per occurrence and \$5 million in aggregate with a deductible of no more than \$20,000, and the environmental contamination policy shall be of at least \$2 million per occurrence and \$5 million in the aggregate. A minimum umbrella policy of \$10 million per occurrence, covering both the liability policies and environmental contamination for a total coverage amount per occurrence of \$12 million respectively. Deductible for the umbrella shall not exceed \$20,000. All such policies shall name the County, the municipality in which the project is located, and adjacent, non-participating land owners as additional insured(s) and a binder showing proof of coverage shall be provided to the county on a quarterly basis.

b. SIGNAGE AND CONTACT. The Applicant shall establish a 24-hour toll-free phone number for the registering of complaints and concerns made available at all parcels involved in the project. This number shall be posted at every project service road intersection with a public roadway throughout the project area before Improvement Location Permits are issued and before any construction or earth moving can commence. If legitimate complaints are not remedied within 24 hours the County may address these complaints with any expenses incurred to be reimbursed by the Applicant.

c. PRE-CONSTRUCTION MEETING. The Applicant must attend a Pre-Construction Meeting between the Advisory Plan Commission Administrator, Advisory Plan Commission President, County Building Inspector, Spencer County Commissioners, Drainage Board Members, all county emergency services and any other public officer or official whose input is deemed appropriate to verify that all requirements in the Ordinance have been met. A quorum must be met for this meeting for each designated body named. This meeting shall take place as the final step before construction and all other requirements should already have been met. Once reviewed, if all requirements have been met, the Applicant may then obtain Improvement Location Permits. If any requirements have not been met then further pre-construction meetings will be held until it can be verified that the identified issues have been resolved.

d. FEES. All Improvement Location Permit fees must be paid for the entire project before any Improvement Location Permits will be issued. No Improvement Location Permit shall be issued if the Applicant has overdue amounts owed to the County.

V. CONSTRUCTION STANDARDS. Prior to and during construction the Applicant, Owner and Operator shall be responsible for:

a. Implementing reasonable dust control measures during construction.

b. Complying with existing septic and well regulation as required by the County Health Department, the Indiana Department of Public Health, and Indiana Department of Natural Resources.

c. Repairing all damages to County owned or regulated or non-participating landowner's waterways, drainage ditches, field tiles, or any other infrastructures caused by the construction or maintenance of the project. Damages must completely be repaired to original or better condition, and so as not to impede the flow of water. All repairs must be completed in a timely manner and the Owner, Operator and/or Applicant shall be responsible for loss or damage proximately resulting from its impairment of such drainage structures. All repairs to County regulated drainage structures must be completed within ten (10) business days as approved by the Spencer County approved engineer, Spencer County Surveyor paid for by the Applicant, Owner/Operator.

d. Using concrete armoring techniques at each and every location where County regulated drains and subsurface power transmission lines of any type cross. Unopened bags of premixed concrete shall be laid on top of the transmission lines to cover six (6) inches on both sides of the line and eight (8) feet to each side of the County regulated drain the line is crossing. Open drain and transmission line intersections where the line is below the invert of the open drain shall be armored using the same technique. Red warning tape (printed with "warning electrical line below" or similar language) shall be buried no closer than twelve (12) inches above the actual power line at all crossing locations. The County Surveyor or agent designated by the County Surveyor shall inspect every such crossing before backfilling. Concrete armoring techniques will not be required in cases where directional boring is used.

e. Installing permanent, visible markers where directional boring is used. Markers shall be placed within the line of sight indicating direction changes and borings.

f. Submitting a weekly plan of work detailing where construction and transportation activities will occur to the Advisory Plan Commission staff, County Highway Supervisor, County Sheriff, County Surveyor, Soil & Water Conservation District, the Superintendent(s) of the School District(s) in which construction is occurring and to the emergency services with jurisdiction over the areas in which construction is occurring. This shall include notification of any oversize or overweight loads entering or exiting the project each day as well as any work on roads, drainage, or access roads.

g. During construction, roads shall remain open at all times except for periods of time less than twenty (20) minutes unless notice is provided as required herein. Expected loss of capacity (i.e., temporary closures) greater than twenty (20) minutes shall require notice to neighboring and affected property owners at least twenty-four (24) hours prior to

the temporary closure, and either a detour to be established or personnel to redirect traffic to alternate routes during the temporary closure unless closed for the day by County Highway. Any necessary temporary closures and proposed detours shall be made known to the County at least twenty-four (24) hours prior to the temporary closure or as otherwise agreed.

h. Adhering to the approved Transportation Plan, the County Highway Superintendent and/or appropriate municipal road personnel shall conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage. The County Highway Superintendent and/or appropriate municipal road personnel may choose to require remediation of road damage during or upon completion of the project and is authorized to collect fees for oversized load permits. If repairs are not made in a timely manner, the County Highway Superintendent and/or appropriate municipal road personnel is authorized to make repairs and charge the Applicant a fee to cover the costs of repair. Such fees shall be established at the start date of construction and may be revised at three (3) month intervals. Further, a corporate surety bond shall be required by the County Highway Superintendent and/or appropriate municipal road personnel to ensure the County of affected municipality that future repairs are completed to the satisfaction of the County or affected municipality. The bond shall not be released at the conclusion of construction of the project, but it may be reduced to cover any damages or losses from the operation and maintenance of the project. If the Applicant or its contractors require material changes from the approved Transportation Plan or if post completion repairs, improvements, or expansions require oversize and overweight loads or involve new routes, an Amended Transportation Plan must be approved in the same manner as the initial plan. Any violation of the approved Transportation Plan may be subject to fines as provided in \_\_\_\_\_ and in addition, may also be subject to fines established by the governing body having jurisdiction over the roadway(s) affected.

i. Adhering to the approved Development Plans. Any non-material proposed changes, modifications, or amendments to the Development Plans must be approved by the Administrator of the Advisory Plan Commission and the Administrator shall thereafter make report of the non-material changes, modifications or amendments to the Advisory Plan Commission. All material changes to the approved Development Plans,

j. Cable Strand: adhered to for the installation of cable barriers along any state, county or local road that is adjoining or adjacent to solar arrays:

- A minimum of four (4) high tension cable strands shall be installed as a barrier.
- The size of each cable strand shall be no less than 0.5 inches in diameter.
- All posts and cabling shall be galvanized to ensure durability and longevity.

Cable Barrier Installation:

- Posts supporting the cable barrier shall be spaced no further than ten (10) feet apart.
- The top cable shall be positioned at a minimum height of forty eight (48) inches from the topsoil.
- A mow strip shall be included to facilitate maintenance and prevent vegetation encroachment.

Terminal and Anchor Posts:

- Terminal posts, which mark the ends of the cable barrier, shall be securely placed no less than twenty-four (24) inches deep in concrete footings.
- Anchor posts, which provide additional support to the cable barrier, shall be embedded no less than four (4) feet deep in concrete footings.

Maintenance and Responsibility:

- The responsibility for maintaining the cable barrier system shall rest with the county.
- The solar project owner shall bear the costs associated with the maintenance, as determined by the county.

W. "DEVELOPMENT STANDARDS FOR COMMERCIAL SOLAR ENERGY SYSTEMS."

(a) CSEs shall adhere to the development standards of the underlying zoning district unless specified otherwise below:

1. All installed equipment shall conform to applicable industry standards and the application shall include certificates of design compliance of the proposed equipment from nationally recognized third parties in the business of certifying compliance. The photovoltaic panels shall not contain harmful chemicals such as Cadmium or Amorphous Silicon. Prior to construction, the Applicant shall provide written panel specifications to include composition, toxicological information, and the physical and chemical properties of all panels used at the facility. The Applicant shall also provide the supplier and country of origin of the panels used at the facility. Only biodegradable cleaners and water shall be used to clean panels.
2. All electrical components of the project shall conform to applicable local, state, and national codes, and relevant national and international standards.
3. A visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
4. PV solar panels and any associated equipment shall not be located on slopes 6% or less and no site shall be graded more than 10% of the site surface area.
5. The facility shall provide at least one access corridor for wildlife to navigate through the solar facility per 50 acres of acreage coverage. Proposed wildlife corridors shall be shown on the site plan submitted to the county during the preliminary approval process. The corridors shall be 25 feet in width. Areas between fencing shall be kept open to allow for the movement of migratory animals and other wildlife.

6. The acreage coverage of a utility-scale solar facility shall be a maximum of 200 acres. No utility-scale solar facility shall be located within two (2) miles of another existing or permitted utility-scale solar facility unless the combined acreage coverage is 200 acres or less. Spencer County has allotted a maximum 1% of total acreage for use to be developed for Renewable Energy including CSES-1 facilities.
7. Utility-scale solar facilities shall be within one tenth (.1) mile of electric transmission lines.
8. Any other condition added by the Advisory Plan Commission and/or Spencer County Commissioners as part of the Approval.
9. Lighting: Lighting shall be limited to that required for safety, inspection, repair, maintenance, and operational purposes. If lighting is provided, lighting shall be shielded and downcast such that the light does not spill onto any adjacent parcel, residence, or principal structure. All warning lights in the project shall conform to best industry practices to reduce impacts on migrating birds and other wildlife. No red pulsating incandescent lights or white strobe lights shall be installed. All lighting shall be in compliance with applicable Federal Aviation Administration regulations. All lighting shall be shielded so that no glare extends substantially beyond the boundaries of the project and installed lights shall be Dark Sky certified.
10. Glare: The CSES shall be designed and located in order to prevent glare toward any inhabited buildings, adjacent highways, or rights-of-way.
11. Fencing: All solar panels and accessory buildings for the project must be fenced in with a fence not less than ten (10) feet in height. The fence shall not be topped with razor/barbed wire. The fencing shall be landscaped with native and non-invasive plant materials consisting of an evergreen and deciduous mix as approved by county staff, except to the extent that existing vegetation and natural landforms on the site provide such screening as determined by Spencer County. Trees shall be a minimum of six (6) feet in height at time of planting and in staggered rows of ten (10) feet on center. The effectiveness of screening shall be maintained as the plant materials mature. Unhealthy and dead plants shall be replaced within six (6) months of being provided written notice by the county of the violation. Opaque architectural fencing may be used to supplement other screening methods but shall not be the primary method. A performance bond reflecting the costs of anticipated fence maintenance shall be posted and maintained. Failure to maintain the security fencing shall result in revocation of Improvement Location Permits and the facilities decommissioning.
12. Noise: At any non-participating landowner's residential lot, public school, public library, or recreational area within three (3) miles of the project boundaries, for a period of more than 10% out of every hour, the



audible A-weighted sound pressure levels as a result of the sound emitted by the project shall not exceed either, the greater of 45 decibels or, 5 decibels above the Ambient Baseline Sound Pressure Level of the project. The Ambient Baseline Sound Pressure Level, is used, shall be determined by a baseline acoustic emissions study conducted by the County Advisory Plan Commission and funded by the Applicant. Measurement of sound and vibration levels shall be conducted adhering to best practices within the applicable industry and in compliance with all other applicable county, state and federal regulations.

13. Outdoor Storage: Only the outdoor storage of materials, vehicles, and equipment that directly support the operation and maintenance of the facility shall be allowed.
14. Easements: Components of the CSES-1 shall not be placed within any legal easement or right-of-way, or be placed within any storm water conveyance system, or in any other manner that would alter or impede storm water runoff from collecting in a constructed storm water conveyance system.
15. All underground wiring required for operation shall be encased in conduit.
16. No CSES Solar projects shall be constructed in a floodplain, floodway their fringes or above an aquifer.

#### X. ADDITIONAL DEVELOPMENT PLAN REQUIREMENTS,

(A) Revisions: All revisions o the approved Development Plan or modifications to the CSES after installation require approval prior to being implemented. The proposed revisions along with any supporting information shall be submitted to the Zoning Administrator for review, to determine whether the revisions are in compliance with the Ordinance. If the Zoning Administrator determines that the revisions require Advisory Plan Commission approval, the revisions will be forwarded to the Advisory Plan Commission for review. Once sent to the Advisory Plan Commission, a public hearing is necessary, notification of the public hearing will be consistent with the Rules and Procedures of the Advisory Plan Commission.

(B) Approval: Notice shall be given to interest parties and the hearing conducted in accordance with the Advisory Plan Commission's Rules of Procedures. Upon concluding the hearing for the Development Plan, the Advisory Plan Commission shall state its findings with respect to the Development Plan's conformance to this Ordinance and determine the approval, disapproval, or conditional approval of the application. The Advisory Plan Commission will inform the Applicant of its decision and any modifications or conditions to which approval is subject. The findings and decision of the Advisory Plan Commission will be entered in the official minutes of the meeting. The Zoning Administrator

will give written notice of approval, conditional approval, or disapproval and the reasons therefore within five (5) working days following the public hearing.

(C) Construction shall commence within twelve (12) months of the approval date, unless extended by the Advisory Plan Commission. If construction does not commence within such one-year period, the Development Plan approval shall be null and void. Upon request of the Applicant, the Advisory Plan Commission may extend the Development Plan Approval in increments of one (1) year beyond the expiration date without further notice or public hearing.

(D) Maintenance: An Improvement Location Permit may be revoked if the CSES is moved or otherwise altered in a manner which causes the CSES not to be in conformity with this Ordinance. The CSES must be properly maintained and be kept free from all hazards, including but not limited to, faulty wiring, loose fastenings, being in an unsafe condition or detrimental to public health, safety, or general welfare. In the event of a violation of any of the foregoing provisions, the Zoning Administrator shall give written notice specifying the violation to the Owner or Operator of the CSES to conform to the ordinance standards or to remove the CSES.

(E) AS-BUILT PLANS: The Applicant shall deliver to the Administrator of the Advisory Plan Commission and to all providers of emergency services serving the project area copy of the as-built site map. Upon request by the local fire department, the Applicant shall cooperate with the local fire department to develop or update the fire department's emergency response plan. Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.

Y. SETBACKS AND HEIGHT RESTRICTIONS: No part of the project shall be constructed in any required setback, dedicated public easement or dedicated public right-of-way without prior written authorization from the County Commissioners. All necessary surveys shall be paid for by the Applicant, Owner/Operator.

No solar panel may be located less than one thousand (1,000) feet from any non-participating landowner property line.

No solar panel may be located less than twelve thousand (12,000) feet from any school corporation property line.

No distal solar panel may be located less than two (2) miles from any residential, commercial, industrial or artisan well.

No solar panel may be located less than one hundred (100) feet from the nearest edge of the right-of-way from a county, state, local or collector road.

Any CSES-1 project proposed shall not have a boundary closer than three (3) miles to any incorporated municipalities jurisdictional boundary line.

No solar panel may exceed twenty (20) feet in height at its highest extended rotation.

No Tier 3 CSES solar panel may exceed the height restriction in the underlying zoning district.

Applicant shall give notice to the owner of any private certified landing strip. Setbacks will be determined based upon the agreement of the landing strip owner, Applicant and the Advisory Plan Commission which shall take into consideration the guidelines provided in a U.S. Department of Transportation FAA Advisory Circular dated February 26, 2014, as may be updated. Proof of notice must be included with the Preliminary Development Plan.

Allowed Variances. Variances may only be granted for relief from required setbacks. However, the variance application must include an executed agreement between the applicant and all participating and non-participating landowners affected by the requested variance prior to consideration of the variance request by the Board of Zoning Appeals.

#### Z: POST-CONSTRUCTION AND CONTINUED MAINTENANCE

DECOMMISSIONING SECURITY. At the completion of construction but before any commercial operations begins, the Applicant shall secure and provide to the Advisory Plan Commission a performance bond, surety bond, letter of credit, or other form of financial assurance that is acceptable to the Advisory Plan Commission (the "Decommissioning Security") equal to 25% of the estimated cost of decommissioning the project pursuant to the Decommissioning Plan. An additional 100% of decommissioning costs shall be submitted in the form of cash. The Decommissioning Security, in computing the estimated cost of decommissioning, shall not consider or deduct the Net Salvage Value (as defined) of the project. The amount of the Decommissioning Security shall be adjusted annually by January 31 by an amount equal to the increase in the CPI Index. "CPI Index" shall mean the Consumer Price Index for "All Urban Consumers, U.S. City Average, all items," issued by the Bureau of Labor Statistics of the United States Department of Labor, or, if discontinued or no longer published, such other governmental index that most closely matches the manner in which information had been previously tracked as selected by the Advisory Plan Commission. The Decommissioning Plan and Decommissioning Surety shall be re-evaluated every three (3) years commencing with the operation of the project by a licensed engineer approved by the Advisory Plan Commission, funded by the Owner/Operator and qualified to provide an estimate of the cost of decommissioning of the project (the "Decommissioning Engineer"). A new Decommissioning Security, and 100% cost in cash, in the

revised amount, if any, shall be provided within sixty (60) days of the approval of the updated Decommissioning Plan.

**WASTE REMOVAL.** All solid waste whether generated from supplies, equipment, parts, packaging, or operation or maintenance of the facility, including old parts and equipment, shall be removed from the site in a timely manner. All hazardous waste generated by the operation and maintenance of the facility, including but not limited to lubricating materials, shall, be handled in a manner consistent with all local, state and federal rules and regulations.

**MODIFICATIONS.** Any physical modifications to the project that alters the mechanical load, mechanical load path, nameplate generating capacity, size or location or major electrical components shall require a new improvement location permit and/or of there is more than a 1.5% increase in total acreage of the project. Like-kind replacements that do not have the effects listed above do not require new permitting. Prior to making any physical modification (other than a like-kind replacement), the Applicant shall confer with the Building Inspector to determine whether the physical modification requires new permitting.

**INSPECTIONS. Biannual Professional Inspection of Solar Facilities**

**Inspection Frequency and Scope:**

- Biannual inspections: The solar facility shall undergo professional inspections twice a year, with the inspections spaced approximately six (6) months apart.
- Comprehensive Evaluation: The inspections shall encompass a thorough evaluation of all aspects of the solar facility, including but not limited to the structural integrity, electrical systems, equipment functionality, environmental compliance, and overall safety protocols.

**Inspector Qualifications and Approval:**

- Independent Inspectors: The inspectors shall be professionals with expertise in related fields, possessing the necessary qualifications and experience.
- County Approval: Prior to conducting inspections, the appointed inspectors must receive approval from the county based on their qualifications, expertise, and adherence to relevant industry standards.

**Financial Responsibility:**

- Developer's Obligation: The solar developer shall bear all financial responsibility for hiring the approved independent inspectors and covering the costs associated with the inspections.
- Cost Determination: The exact fees and compensation for the inspection services shall be determined through a mutually agreed-upon arrangement between the solar developer and the approved inspectors, with the oversight and approval of the county.

**Reporting and Compliance:**

-Inspection Reports: Following each inspection, the approved inspector shall provide a comprehensive written report detailing the findings, observations, and recommendations related to the solar facility's compliance and overall condition.

-Corrective Actions: If any deficiencies, violations, or issues are identified during the inspections the solar developer shall promptly address and rectify them in accordance with the recommendations provided by the inspector, ensuring compliance with applicable regulations and safety standards.

COMPLAINTS. If, after construction, the Applicant receives a written complaint related to interference caused with local broadcast residential television, telecommunication, communication or microwave transmissions, glares, or sound the Applicant shall promptly resolve the complaint within twenty-four (24) hours. If legitimate complaints are not remedied within twenty-four (24) hours the county may address these complaints with any expenses incurred to be reimbursed by the applicant.

AS-BUILT PLANS. The Applicant shall deliver to the Administrator of the Advisory Plan Commission and to all providers of emergency services serving the project area a copy of the as-built site map. Upon request by the local fire department, the Applicant shall cooperate with the local fire department to develop or update the fire department's emergency response plan. Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.

RECORD OF GROUND DISTURBANCE AND ROAD USAGE. On completion of construction the Applicant shall submit to the County Surveyor a site map detailing all ground disturbed through construction activity, surface and subsurface as-built infrastructure and all routes over which trucks and equipment traveled. The scale and format of the submitted map shall conform to the County Surveyor's specifications.

LIABILITY FOR DRAINAGE. For a period from construction to five (5) years following the decommissioning, the Applicant shall be liable for all costs of repair to county drain tiles, regulated drains and ditches and other county regulated surface and subsurface structures and private tiles located in the public right of way within one hundred (100) feet of the routes and disturbed ground. This period shall be extended for any damages occurring as a result of operations, replacement or maintenance of the project after the five (5) year period.

ABANDONMENT. The county shall require the owner/operator to provide a biyearly statement of activity to ensure that the facility is actively producing electricity for the power grid. If an CSES-1 or any individual solar panel constituting a portion of the project is presumed at the end of its useful life and/or abandoned if the CSES or the individual solar panel generates less than 25% of expected maximum output of electricity for a continuing period of six (6) months or if the CSES or individual panel generates less than 10% of expected maximum output of electricity for a continuing period of three (3) months.

If there is evidence that the facility or any aspect of such is not in conformance with these conditions, a Notice of Violation shall be sent to the owner of the facility and the landowner. This presumption may be rebutted by submitting to the Advisory Plan Commission for approval and within ninety (90) days of submission obtaining approval thereof of a plan outlining the steps and schedules for returning the CSES or individual solar panel to service. Any CSES or individual solar panel which pursuant to the terms hereof has either reached the end of its useful life and/or abandoned pursuant to the terms hereof shall be subject to removal pursuant to the Decommissioning Plan.

**UNSAFE STRUCTURES.** Any CSES or structure thereof declared to be unsafe by the County Building Commissioner or the Advisory Plan Commission by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment is hereby declared to be a public nuisance and shall be abated by repair or rehabilitation within six (6) months or be deemed abandoned and at the end of its useful life and subject to Decommissioning. Nothing herein prevents the County Building Commissioner or the Advisory Plan Commission issuing an immediate cease use order as to any structure that he or she determines is unsafe during the repair or rehabilitation period.

**POST CONSTRUCTION MODIFICATIONS.** Any post-construction proposed non-material modifications, alterations, expansions, or changes of any type or size to the Final Development Plan must be approved by the Advisory Plan Commission as well as the Board of Zoning Appeals. All material post construction proposed changes must apply in the same way as a new project. The Advisory Plan Commission shall have the Authority and discretion, considering all relevant factors to determine whether the proposed post-construction change is material.

**NO PREEMPTION.** Nothing in the Ordinance is intended to preempt other applicable state and federal laws and regulations, except to the extent this Ordinance provides higher or more stringent standards.

**PROPERTY VALUE GUARANTEE FORM.** The following is the form of Property Value Guaranty to be used by the County Commissioners and the Spencer County Economic Development Organization in the Economic Development Agreement.

The following form of Property Value Guaranty shall be used by the County Commissioners as part of the Economic Development Agreement, if a Property Value Guaranty is included in the Agreement. The County Commissioners Shall Determine and complete the matters which are left blank in the following form:

#### PROPERTY VALUE GUARANTEE

Legal name of Owner and Operator of the (Legal Name of CSES project) and their assigns and successors in interest (hereinafter jointly and severally referred to as "Guarantor")

agree to guarantee (the "Guarantee") the value of all owner-occupied residential dwellings owned by all Non-Participating Landowners owners of record (hereinafter referred to individually as "Owner" and collectively as "Owners") as of the date of the granting of secondary approval of the Development Plan for the [Legal Name] for properties which are located within one mile of a CSES solar panel as shown on the approved Site Plan contained within the Development Plan in all directions and to guarantee the value of all residential dwellings owned by Owners whose ownership is of record in the office of the Spencer County Recorder on the date of the granting of secondary approval of the Development Plan.

The location of each owner of a residential dwelling within two (2) miles of a solar panel shall be noted on the Development Plan. Within thirty (30) days of the granting of secondary approval of the Development Plan, the Guarantor shall provide each eligible Owner with written notice by certified mail to the Owner's address as set forth in the property tax records of Spencer County describing the terms of the Guarantee. To qualify for the Guarantee each Owner must notify the Guarantor within ninety (90) of the mailing of the notice of his or her intent to participate, and Guarantor shall thereafter obtain and submit to the Owner an M.A.I. appraisal of Owner's property within sixty (60) days following the date of the Guarantor's receipt of Owner's notice. Owner may accept the value of the property based on the appraisal or may obtain his or her own N.A.I. appraisal. If the Owner's appraisal is less than or within 5% above the Guarantor's appraisal, the guaranteed value ("Guaranteed Value") shall be the average of the two appraisals. If the Owner's appraisal is more than 5% above the Guarantor's appraisal and the Owner is not willing to accept the Guarantor's appraisal, the two appraisers shall agree upon a third N.A.I. appraiser, to be paid for 100% by Guarantor and 0% by the Owner, who shall appraise the property and whose appraised value shall become the Guaranteed Value for that property.

The period of the Guarantee shall be for a period of thirty-five (35) years following the issuance of a certificate of Occupancy for the operation of the [Legal Name] CSES system. The Guarantee shall extend only to Owners of record as of the date of the approval of the Secondary Development Plan for the CSES and not to the assignees or subsequent owners or purchasers. In the event any property covered by this Guarantee is listed for sale by a licensed real estate broker for a period of not less than 90 days and during such period, an Owner, subject to the restrictions below, shall notify Guarantor of the intent to exercise Owner's right under this Guarantee and within Thirty (30) days of the receipt of the notice Guarantor shall do one of the following:

Authorize Owner to accept the pending bona fide offer and to pay the Owner at closing of the sale the difference between the purchase price set forth in the offer and the guaranteed value.

Immediately take steps to purchase the dwelling from Owner at the guaranteed value with such purchase to be completed within sixty (60) days of receipt by Guarantor of notice by Owner of Owner's failure to receive a bona fide offer for the guaranteed value after having listed the property for a period of 90 days with a licensed real estate broker.

In any case in which there is a purchase offer pending for which Owner expects to make a claim under this Guarantee, Owner shall provide a copy of such offer to Guarantor. In the event Guarantor is required to purchase Owner's dwelling, Owner shall convey fee simple title to the property, free and clear of any liens and encumbrances by delivery of a Warranty Deed at closing. At closing Guarantor shall pay preparation of the Warranty Deed, Vendor's affidavit, and all title insurance fees, closing fees, and all survey expenses if it is necessary to subdivide the dwelling from other real estate of the Owner.

Guarantor's obligations hereunder are hereby expressly made contingent upon Owner; performing routine maintenance and repairs on the dwelling; the dwelling or property being in the same condition on the date of sale as it was on the date first appraised hereunder; the delivery of the property free and clear of all liens and subject only to such easements and other encumbrances commonly accepted in residential real estate transactions; and Owner conveying fee simple title to the dwelling or property to Guarantor by recordable Warranty Deed at closing. All notices to Owner and Guarantor shall be to the address of Owner and Guarantor as listed on the property tax records of Spencer County.

The following fee schedule is for informational purposes only as the fee schedule is set by the Spencer County Advisory Plan Commission:

Amendment to Fee Schedule:

The following fees shall be added to the Spencer County Advisory Plan Commission Fee Schedule for 2023:

**CSES FEE SCHEDULE**

CSES Tier 1 \$20,000.00/acre plus \$1,700.00 per megawatt produced from annual summary.

CSES Tier 2 \$ 7,000.00

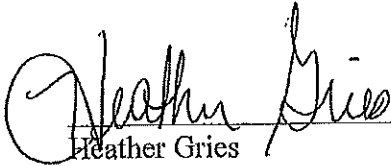
CSES Tier 3 \$ 75.00



SPENCER COUNTY BOARD OF COMMISSIONERS



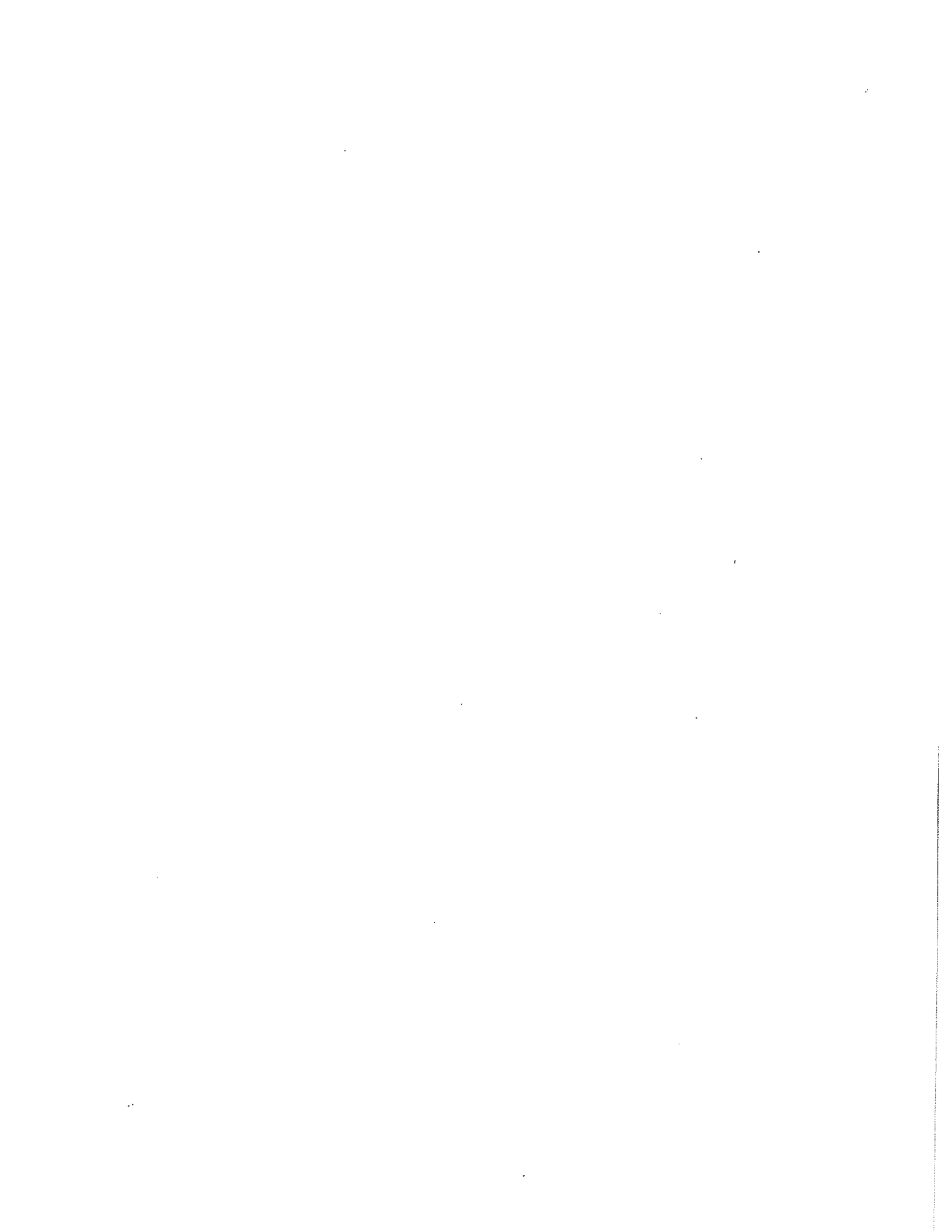
Tom Brown, President



Heather Gries



Jim Seiler



**Ordinance 2022- 02**  
**WIND ENERGY CONVERSION SYSTEMS**  
**SITING REGULATIONS**

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**WHEREAS, Spencer County desires to regulate the construction, placement, and modification of wind conversion systems; minimize impacts to the aesthetic character of the county and surrounding jurisdiction and to minimize the land use impact of such facilities while providing the community with the benefit of new technological advances; and to protect the public health, safety, and general welfare of the community and to further the goals and policies of the comprehensive plan by:**

- A. Assuring that any development and production of wind-generated electricity in Spencer County is safe and effective;
- B. Facilitating economic opportunities for local residents; and
- C. Promoting the supply of wind energy in support of Indiana's alternative energy sources potential and other such economic development tools.

**NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF SPENCER COUNTY, INDIANA AS FOLLOWS:**

**SECTION ONE. INTENT**

It is the intent of the Wind Energy Conversion Systems (WECS) siting regulations to provide a regulatory scheme for the construction and operation of WECS in the county; subject to reasonable restrictions these regulations are intended to preserve the health and safety of the public.

**1.1 APPLICABILITY**

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The provisions of this Ordinance are applicable to those areas which allow wind energy conversion systems (WECS), govern the siting of WECS and substations that generate electricity to be sold to wholesale or retail markets, or that generate electricity for private use. A reasonable attempt shall be made to notify all property owners within the defined area of the WECS project prior to making application for a WECS permit. Notification may be done by media, separate mailings, or through the public notice requirements prescribed by IC 5-3-1 as amended from time to time. Said notice shall inform land owners of the intent to build a Commercial WECS and/or wind farm.

**1.2 PROHIBITION**

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No applicant shall construct, operate, or locate a wind energy conversion system (WECS) within Spencer County without having fully complied with the provisions of this Ordinance.

**1.3 CONFLICT WITH OTHER REGULATIONS**

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Nothing in this Ordinance is intended to preempt other applicable state and federal laws or

regulations, including compliance with all Federal Aviation Administration rules and regulations and shall comply with the notification requirements of the FAA. Nor are they intended to interfere with, abrogate, or annul any other ordinance, rule, or regulation, statute or other provision of law. In the event that any provision of these regulations imposes restrictions different from any other ordinance, rule, regulation, statute, or provision of law, the provisions that are more restrictive or that imposes higher standards shall govern.

## 1.4 DISTRICT REGULATIONS

### 1.4.1 Location

Commercial, non-commercial, and micro-WECS will be permitted, or not permitted, in various districts as prescribed by the Official Schedule of Uses, however no permitting will be allowed in any areas designated as floodplain.

### 1.4.2 Height

Any NON-COMMERCIAL WECS or meteorological tower greater than two hundred (200) feet in height shall require a special exception use permit. For COMMERCIAL WECS there is no limitation on height, except those height limitations imposed by FAA rules and regulations. No Micro-WECS shall exceed sixty (60) feet in height.

### 1.4.3 Horizontal extension

The furthest horizontal extension of a WECS (including guy wires) shall not extend into a required setback by the zoning district or be closer than twelve (12) feet to any primary structure, or right-of-way easement for any above-ground telephone, electrical transmission or distribution lines.

## 1.5 SETBACK REQUIREMENTS

### 1.5.1 Minimum setback distances for COMMERCIAL Wind Energy Conversion Systems

Distance from a...	Minimum Setback Distance
Property line, measured from the center of the WECS to the property line	1.1 times the total height (where the blade tip is at its highest point) for non-participating landowners. The setback requirement may be waived, in writing, by participating landowners.
Residential dwellings, measured from the center of the WECS to the nearest corner of the structure	One thousand (1,000) feet for non-participating landowners. <sup>1</sup> The setback requirement may be waived, in writing, by participating landowners.
Road right-of-way, measured from the center of the WECS to the edge of the right-of-way	1.1 times the total height (where the blade tip is at its highest point), provided that the distance is no less than three hundred and fifty (350) feet <sup>2</sup>

Other rights-of-way, such as railroads and utility easements, measured from the center of the WECS to the edge of the right-of-way	1.1 times the total height (where the blade tip is at its highest point), provided that the distance is no less than three hundred and fifty (350) feet
Public conservation lands, measured from the center of the WECS to the nearest point of the public conservation land in question	Seven hundred and fifty (750) feet
Wetlands, as defined by the U.S. Army Corps of Engineers, measured from the center of the WECS to the nearest point of the wetland in question	As determined by a permit obtained from the Army Corps of Engineers
Ohio River measured from the center of the WECS to the shoreline	One-half (1/2) mile
Incorporated limits of a municipality, measured from the center of the WECS to the corporate limits	Fifteen hundred (1,500) feet

<sup>1</sup> The setback for residential dwellings shall be reciprocal in that no residential dwelling shall be constructed within one thousand (1,000) feet of a COMMERCIAL WECS.

<sup>2</sup> The setback shall be measured from future rights-of-way width if a planned road improvement or expansion is known at the time of application.

#### 1.5.2. Minimum setback distances for NON-COMMERCIAL Wind Energy Conversion Systems and MICRO-Wind Energy Conversion Systems

Distance from a...	Minimum Setback Distance
Property line, measured from the center of the WECS to the property line	1.1 times the total height (where the blade tip is at its highest point), provided that the distance is no less than the required yard setback prescribed for that district
Residential dwellings, measured from the center of the WECS to the nearest corner of the structure	1.1 times the total height (where the blade tip is at its highest point)
Road right-of-way, measured from the center of the WECS to the edge of the right-of-way	1.1 times the total height (where the blade tip is at its highest point), provided that the distance is no less the required yard setback prescribed for that district
Other rights-of-way, such as railroads and utility easements, measured from the center of the WECS to the edge of the right-of-way	1.1 times the total height (where the blade tip is at its highest point), provided that the distance is no less than the required yard setback prescribed for that district
Public conservation lands, measured from the center of the WECS to the nearest point of the public conservation land in question	Seven hundred and fifty (750) feet

Wetlands, as defined by the U.S. Army Corps of Engineers, measured from the center of the WECS to the nearest point of the wetland in question	As determined by a permit obtained from the Army Corps of Engineers
Ohio River measured from the center of the WECS to the shoreline	One half (1/2) of a mile

<sup>3</sup> The setback shall be measured from future rights-of-way width if a planned road improvement or expansion is known at the time of application.

### 1.5.3. Minimum setback distances for Meteorological Towers

Distance from a...	Minimum Setback Distance
Property line, measured from the center of the WECS to the property line	1.1 times the total height, provided that the distance is no less than the required yard setback
Residential dwellings, measured from the center of the WECS to the nearest corner of the structure	1.1 times the total height
Road right-of-way, measured from the center of the WECS to the edge of the right-of-way	1.1 times the total height, provided that the distance is no less than the required yard setback <sup>4</sup>
Other rights-of-way, such as railroads and utility easements, measured from the center of the WECS to the edge of the right-of-way	1.1 times the total height, provided that the distance is no less than the required yard setback

## 1.6 SAFETY DESIGN AND INSTALLATION STANDARDS

### 1.6.1. Equipment type

B. Turbines

ALL turbines shall be constructed of commercially available equipment.

C. Meteorological towers

Meteorological towers may be guyed.

D. Experimental, or proto-type equipment

Experimental or proto-type equipment still in testing which does not fully comply with industry standards, may be approved by the Board of Zoning Appeals per the variance process established by this Ordinance.

### 1.6.2. Industry standards and other regulations

ALL WECS shall conform to applicable industry standards, as well as all local, state and federal regulations. An applicant shall submit certificate(s) of design compliance that wind turbine manufacturers have obtained from Underwriters Laboratories, Del Norske Veritas, Germanischer Lloyd Wind Energia, or an equivalent third party.

<sup>4</sup> The setback shall be measured from future rights-of-way width if a planned road improvement or expansion is known at the time of application.

### **1.6.3 Controls and brakes**

#### **E. Braking system**

ALL WECS shall be equipped with a redundant braking system. This includes both aerodynamic over speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Stall regulation shall not be considered a sufficient braking system for over speed protection.

#### **F. Operation mode**

ALL Mechanical brakes shall be operated in a fail-safe mode.

### **1.6.4. Electrical components**

#### **G. Standards**

All electrical components of ALL WECS shall conform to applicable local, state and national codes, and any relevant national and international standards.

#### **H. Collection cables**

All electrical collection cables between each WECS shall be located underground wherever possible.

#### **I. Transmission lines**

ALL transmission lines that are buried should be at a depth consistent with or greater than local utility and telecommunication and Spencer County Ordinances.

### **1.6.5. Color and finish**

In addition to all applicable FAA requirements, the following shall also apply:

#### **J. Wind turbines and towers**

ALL wind turbines and towers that are part of WECS shall be white, grey, or another non-obtrusive color.

#### **K. Blades**

ALL blades shall be white, grey, or another non-obtrusive color. Blades may be black in order to facilitate deicing.

#### **L. Finishes**

Finishes shall be matte or non-reflective.

#### **M. Exceptions**

Exception may be made for meteorological towers, where concerns exist relative to aerial spray applicators.

### 1.6.6. Warnings

#### N. Towers, transformers, and substations

For all COMMERCIAL WECS, a sign or signs shall be posted on the tower, transformer and substation warning of high voltage. Signs with emergency contact information shall also be posted on the turbine or at another suitable point.

#### O. Guy wires and anchor points

For ALL guyed towers, one of the following warning mechanisms shall be used for each anchor point:

##### 1. Visible or reflective objects

Visible and reflective objects, such as flags, plastic sleeves, reflectors, or tape placed on the anchor points of guy wires and along the innermost guy wires up to eight (8) feet above the ground.

##### 2. Visible Fencing

Visible fencing not less than four (4) feet in height installed around anchor points of guy wires.

#### P. Non-commercial WECS and Micro-WECS

The following notices shall be clearly visible on all Non-commercial WECS, and Micro-WECS towers and accessory facilities

1. "No Trespassing" signs shall be attached to any perimeter fence.
2. "Danger" signs shall be posted at the height of five (5) feet on WECS towers and accessory structures
3. A sign shall be posted on the tower showing an emergency telephone number
4. The manual electrical and/or overspeed shutdown disconnect switch(es) shall be clearly labeled.

#### Q. Meteorological towers

Consideration shall be given to paint aviation warning on all Meteorological Towers.

### 1.6.7 Climb prevention

All COMMERCIAL WECS tower designs shall include features to deter climbing or be protected by anti-climbing devices such as:

R. Fences with locking portals at least six (6) feet in height; or

S. Anti-climbing devices fifteen (15) feet vertically from the base of the WECS tower; or

T. Locked WECS Tower doors.

### 1.6.8 Blade clearance

The minimum distance between the ground and any protruding blades(s) utilized on all Commercial WECS shall be twenty-five (25) feet, as measured at the lowest point of the arc of the blades. The minimum distance between the ground and any protruding blade(s) utilized on all remaining WECS shall be a minimum of fifteen (15) feet, as measured at the lowest point of the arc of the blades, provided the rotor blade does not



exceed 20 feet in diameter. In either instance, the minimum distance shall be increased as necessary to provide for vehicle clearance in locations where over-sized vehicles might travel.

### **1.6.9 Lighting**

#### **U. Intensity and frequency**

ALL lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by Federal Aviation Administration permits and regulations.

#### **V. Shielding**

Except with respect to lighting required by the FAA, lighting may require shielding so that no glare extends substantially beyond any WECS structure.

### **1.6.10 Materials handling, storage and disposal**

#### **W. Solid wastes**

All solid wastes whether generated from supplies, equipment, parts, packaging, operation or maintenance of the facility, including old parts and equipment related to the construction, operation and/or maintenance of any WECS shall be removed from the site promptly and disposed of in accordance with all federal, state, and local laws.

#### **X. Hazardous materials**

All hazardous materials or waste related to the construction, operation and/or maintenance of any WECS shall be handled, stored, transported and disposed of in accordance with all applicable local, state and federal laws.

## **2.0 OTHER APPLICABLE STANDARDS**

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### **2.0.1 Guyed wire anchors**

No guyed wire anchors shall be allowed within any required road right-of-way setback.

### **2.0.2 Sewer and water**

ALL WECS facilities shall comply with the existing septic and well regulations as required by the Spencer County Health Department and/or the State of Indiana Department of Public Health.

### **2.0.3 Noise and vibration**

The noise level of NON-COMMERCIAL WECS shall be no greater than sixty (60) decibels measured from the nearest residence. This level may only be exceeded during short-term events such as utility outages and/or severe wind storms. All other noise and vibration levels shall be in compliance with all county, state and federal regulations.

### **2.0.4 Utility interconnection**

The WECS, if interconnected to a utility system, shall meet the requirements for interconnection and operate as prescribed by the applicable regulations of the electrical utility, as amended from time to time.

## **2.0.5 Signage**

In addition to complying with Chapter 10, Sign Standards, the following signage regulations and standards shall also apply. In the event that one of the following regulations or standards conflicts with another sign regulation or standard prescribed by this ordinance, the most restrictive regulation or standard shall apply.

### **Y. Surface area**

No sign shall exceed sixteen (16) square feet in surface area.

### **Z. Height**

No sign shall exceed eight (8) feet in height.

### **AA. Manufacturer's or owner's company name and/or logo**

The manufacturer's or owner's company name and/or logo may be placed upon the compartment containing the electrical equipment.

### **BB. Development signs**

An identification sign relating to the wind farm development may be located on each side of the total project area, provided that there are no more than four (4) signs located on any one project site.

### **CC. Other signs and logos**

No other advertising signs or logos shall be placed or painted on any WECS.

## **2.0.6 Feeder lines**

With the exception of minimum setback distances, feeder lines installed as part of any WECS shall not be considered an essential service. To wit, all communications and feeder lines installed as part of any WECS shall be buried underground wherever possible.

## **2.0.7 Other appurtenances**

No appurtenances other than those associated with the wind turbine operations shall be connected to any wind tower except with express, written permission by the Board of Zoning Appeals.

## **2.1 OPERATION AND MAINTENANCE**

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### **2.1.1 Physical modifications**

In general, any physical modification to any WECS that alters the mechanical load, mechanical load path, or major electrical components shall require re-certification. Like-kind replacements shall not require re-certification. Therefore, prior to making any physical modification, the owner or operator shall confer with the Building Inspector and Area Plan Commission to determine whether the physical modification requires re-certification.

### **2.1.2 Interference**

Prior to construction, a communications study to minimize interference with public or public serving utility microwave transmissions shall be completed. If necessary, the applicant, owner and/or operator shall mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS. In addition, the applicant, owner, and/or operator shall comply with the following:

#### **DD. Pre-construction**

The applicant shall complete a communications study prior to construction so as to minimize interference with any public or public serving utility microwave transmissions.

#### **EE. Post-construction**

If, after construction of the WECS, the owner or operator receives a written complaint related to interference with the broadcast of residential television, telecommunication, communication or microwave transmissions, the owner or operator shall take reasonable steps to mitigate said interference. Interference with private telecommunications systems such as GPS shall be between the company and the complainant.

#### **FF. Failure to remedy a complaint**

If an agreement to remedy a known interference is not reached within ninety (90) days, appropriate action will be taken, which may result in requiring the WECS to become inactive. This does not apply to interference with private telecommunications systems.

### **2.1.3 Declaration of public nuisance**

Any WECS thereof declared to be unsafe by the Spencer County Building Inspector by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, damage or abandonment is hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition or removal in accordance with the approved Decommissioning Plan.

### **2.1.4 Safety and Security Plan**

A Safety and Security Plan shall be submitted demonstrating provisions for site security and safety. If the plan includes using Spencer County services, it shall include the signatures of the proper authorities indicating they are aware of their role and capable of performing it. Coordination of local emergency responders must be included.

## **2.2 DECOMMISSIONING PLAN**

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Prior to receiving an Improvement Location Permit or Building Permit, or siting approval under this Ordinance, the County and the applicant, owner and/or operator shall formulate a decommissioning plan outlining the anticipated means and cost of removing a WECS at the end of their serviceable life or upon becoming a discontinued or abandoned use to ensure that the WECS is properly decommissioned.

### **2.2.1 Content**

A decommissioning plan shall include, at a minimum, language to the following:

GG. Assurance

Written assurance that the facilities will be properly decommissioned upon the project life or in the event that the facility is abandoned.

HH. Cost estimates

The applicant shall provide a contractor cost estimate for demolition and removal of the WECS facility. The cost estimates shall be made by a competent party: such as a professional engineer, a contractor capable of decommissioning or a person with suitable expertise or experience with decommissioning WECS.

II. Financial assurance

Applicant will provide financial assurance in an amount at least equal to said demolition and removal contractor cost estimate, through the use of a bond, letter of credit or other security acceptable to the County, for the cost of decommissioning each tower and related improvements constructed under the permit. Said security will be released when each tower is properly decommissioned as determined by the Spencer County Building Inspector.

D. Future Re-evaluations

Any decommissioning plan shall be re-evaluated no less than every five (5) years and submitted to the Spencer County Commissioners for approval.

## 2.2.2 Discontinuation and abandonment

JJ. Discontinuation

All WECS shall be considered a discontinued use after one (1) year without energy production, unless a plan is developed and submitted to the Spencer County Board of Zoning Appeals outlining the steps and schedule for returning the WECS to service.

KK. Abandonment by the owner or operator

In the event of abandonment by the owner or operator, the applicant will provide an affidavit to the Spencer County Plan Commission representing that all easements for wind turbines shall contain terms that provide financial assurance, including access to the salvage value of the equipment, for the property owners to ensure that facilities are properly decommissioned within one (1) year of expiration or earlier termination of the project.

## 2.2.3 Removal

An applicant's obligations shall include removal of all physical material pertaining to the project improvements to no less than a depth of four (4) feet below ground level within three hundred sixty-five (365) days of the discontinuation or abandonment of the facility, and restoration of the project area to as near as practicable the condition of the site immediately before construction of such improvements by the owner, or by Spencer County at the owner's expense.

#### **2.2.4 Written notices**

Prior to implementation of the existing procedures for the resolution of such default(s), the appropriate County body shall first provide written notice to the owner and/or operator, setting forth the alleged default(s). Such written notice shall provide the owner and/or operator a reasonable time period not to exceed sixty (60) days, for good faith negotiations to resolve the alleged default(s).

#### **2.2.5 Costs incurred by the County**

If the County removes a tower and appurtenant facilities, it may sell the salvage to defray the costs of removal. By approval, the permittee or grantor grants a license to Spencer County to enter the property to remove a tower pursuant to the terms of an approved decommissioning plan.

### **2.3 LIABILITY INSURANCE**

The owner or operator of any WECS shall maintain a current general liability policy covering bodily injury and property damage and may be required to name Spencer County as an additional insured with dollar amount limits per occurrence, in the aggregate, and a deductible, which is suitable to the Board of Commissioner.

### **2.4 APPLICATION PROCEDURES**

Permits and variances shall be applied for and reviewed under the procedures established by this Ordinance, except that the application for a commercial WECS Improvement Location Permit shall also include the following information:

#### **2.4.1 Applications for ALL Wind Energy Conversion Systems**

An application for ALL WECS shall include the following information:

LL. Contact information of project applicant

The name(s), address(es), and phone number(s) of the applicant(s), as well as a description of the applicant's business structure and overall role in the proposed project.

MM. Contact information of current project owner

The name(s), address(es), and phone number(s) of the owner(s), as well as a description of the owner's business structure and overall role in the proposed project, and including documentation of land ownership or legal control of the property on which the WECS is proposed to be located. The Advisory Plan Commission and Board of Zoning Appeals shall be informed of any changes in ownership.

NN. Contact information of project operator

The name(s), address(es), and phone number(s) of the operator(s), as well as a description of the operator's business structure and overall role in the proposed project.

OO. Legal description

The legal description, address, and general location of the project

PP. Project description

A WECS Project Description, including to the extent possible, information on each wind turbine proposed, including:

Number of turbines;

1. Type;
2. Name plate generating capacity;
3. Tower height;
4. Rotor diameter;
5. Total height;
6. Anchor base;
7. The means of interconnecting with the electrical grid;
8. The potential equipment manufacturer(s); and
9. All related accessory structures.

QQ. A site layout plan

A site plan, drawn to scale, including distances and certified by a registered land surveyor.

RR. Engineering certification

For all WECS, the manufacturer's engineer or another qualified registered professional engineer shall certify, as part of the building permit application, that the turbine, foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions. An engineering analysis of the tower showing compliance with the applicable regulations and certified by a licensed professional engineer shall also be submitted. The analysis shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings.

SS. Proof of correspondence and cooperation with wildlife agencies

For the purposes of preventing harm to migratory birds and in compliance with the Migratory Bird Treaty Act, the applicant shall provide written documentation that he or she is in direct correspondence and cooperation with the U.S. Fish and Wildlife Service and the Indiana Department of Natural Resources.

I. Economic Development Agreement

The Applicant, Owner, and Operator shall enter into an Economic Development Agreement with the Board of Commissioners of Spencer County and the Spencer County Council to address matters related to economic development and the economic impact of the proposed WECS project with respect to each Spencer County governing entities duly respective powers.

## **2.4.2 Applications for NON-COMMERCIAL Wind Energy Conversion Systems**

In addition to the application requirements listed herein, Applications for ALL Wind Energy Conversion Systems, applications for NON-COMMERCIAL WECS shall also include the following information:

### **TT. Demonstration of energy need**

The primary purpose of the production of energy from a Non-Commercial WECS shall be to serve the energy needs of that tract. The applicant(s) shall demonstrate how much energy is needed and how the proposed size and number of the WECS fulfills this need. Net-metering may be allowed, but shall not be the primary intent of the WECS.

### **UU. Statement of FAA compliance**

A statement of compliance with all applicable FAA rules and regulations, including any necessary approvals for installations within close proximity to an airport.

### **VV. Utility notification**

No NON-COMMERCIAL WECS shall be installed until evidence has been given that the local utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

### **WW. Compliance with National Electrical Code**

A line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. This information is frequently supplied by the manufacturer.

## **2.4.3 Applications for COMMERCIAL Wind Energy Conversion Systems**

In addition to the application requirements listed in 7.1101, Applications for ALL Wind Energy Conversion Systems, applications for COMMERCIAL WECS shall also include the following information:

### **XX. A preliminary site layout plan**

In place of the site layout plan described in 7.1101(F), Applications for ALL Wind Energy Conversion Systems, an application for a COMMERCIAL WECS shall include a preliminary site layout plan with distances drawn to scale<sup>6</sup> illustrating the following:

1. Property lines, including identification of adjoining properties
2. The latitude and longitude of each individual wind turbine, along with individual identification of each WECS.

<sup>6</sup> All drawings shall be at a scale not smaller than one inch equals fifty feet (1"=50') with a scale of one inch equals thirty feet (1"=30') being preferred. Any other scale must be approved by the Executive Director. No individual sheet or drawing shall exceed twenty-four inches by thirty-six inches (24" x 36").

3. Dimensional representation of the structural components of the tower construction including the base and footings

4. WECS access roads
5. Substations
6. Electrical cabling
7. Ancillary equipment
8. Primary structures within one quarter (1/4) mile of all proposed WECS
9. Required setback lines
10. Location of all public roads which abut, or traverse the proposed site
11. The location of all above-ground utility lines within a distance of two (2) times the height of any proposed WECS structure.
12. The location of any historic or heritage sites as recognized by the Division of Historic Preservation and Archeology of the Indiana Department of Natural Resources, within one (1) mile of a proposed WECS
13. The location of any wetlands based upon a delineation plan prepared in accordance with the applicable U.S. Army Corps of Engineers requirements and guidelines, within one (1) mile of a proposed WECS
14. Any other item reasonably requested by the Board of Zoning Appeals.

YY. Topographic map

A USGS topographical map, or map with similar data, of the property and the surrounding area, including any other WECS within ten (10) rotor distance, but no less than a one quarter (1/4) mile radius from the proposed project site, with contours of not more than five (5) foot intervals.

ZZ. Noise profile

AAA. Location of all known WECS within one (1) mile of the proposed WECS, including a description of the potential impacts on said WECS and wind resources on adjacent properties.

BBB. Copy of the Communications Study

**2.4.4 Aggregated project applications**

Aggregated projects may jointly submit a single application and be reviewed under joint proceedings, including notices, hearing, and reviews and as appropriate, approvals.

**2.4.5 Fees**

CCC. COMMERCIAL WECS, NON-COMMERCIAL WECS, MICRO-WECS, and Meteorological Towers

As prescribed the County's Official Schedule of Fees.

DDD. Aggregated projects

Applications will be assessed fees for each construction phase within a single project, as prescribed by the County's Official Fee Schedule.

**2.4.6 Permits**



EEE. COMMERCIAL WECS, NON-COMMERCIAL WECS, MICRO-WECS, and Meteorological Towers

As prescribed by this Ordinance.

FFF. Aggregated projects

Permits for aggregated projects will be issued by construction phases and recorded separately, as prescribed by this Ordinance.

## **2.5 PRE-CONSTRUCTION REQUIREMENTS**

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Prior to the issuance of any Building Permit, the following shall be submitted to and reviewed by the Plan Commission Office, who shall certify that the following are in compliance with all applicable regulations:

### **2.5.1 FAA permit application**

An FAA permit application.

### **2.5.2 Decommissioning plan**

A decommissioning plan as prescribed in this Ordinance.

### **2.5.3 Economic Development, Drainage, and Road Use and Maintenance Agreements**

An Economic Development Agreement, a Drainage Agreement, and a Road Use and Maintenance Agreement approved by the County Commissioners. The agreement shall be developed in conjunction with the Spencer County Board of Commissioners. This agreement must be signed before any Building Permit is issued. The Drainage Agreement must prescribe or reference provisions to address crop and field tile damages.

### **2.5.4 Erosion control plan**

An erosion control plan developed in consultation with the Natural Resources Conservation Services (NRCS), and any storm water quality management plan adopted by the applicable jurisdiction.

### **2.5.5 Utility plan**

A utility plan drawn to the same scale<sup>7</sup> as the site plan illustrating the location of all underground utility lines associated with the total WECS project.

<sup>7</sup> All drawings shall be at a scale not smaller than one inch equals fifty feet (1"=50') with a scale of one inch equals thirty feet (1"=30') being preferred. Any other scale must be approved by the Administrator. No individual sheet or drawing shall exceed twenty-four inches by thirty-six inches (24" x 36").

### **2.5.6 Final Site Layout Plan**

Provide a copy of the Final Site Layout Plan illustrating the final location of all that is required in the preliminary site layout plan, as approved by the landowner.

### **2.5.7 Avoidance and mitigation of damages to public infrastructure**

In addition to complying with the approved Road Use and Maintenance Agreement, an applicant, owner, or operator proposing to use any county road(s), for the purpose of

transporting COMMERCIAL WECS or substation parts and/or equipment for construction, operation or maintenance of a COMMERCIAL WECS or substation, shall comply with the following pre-construction requirements.

**GGG. Identification of roads and services**

Identify all roads and services, to the extent that any proposed routes that will be used for construction and maintenance purposes shall be identified. If the route includes a public road, it shall be approved by the Spencer County Highway Department.

**HHH. Pre-construction survey**

The applicant shall conduct a pre-construction baseline survey acceptable to the Highway Superintendent to determine existing road conditions for assessing potential future damage. The survey shall include photographs, or video, or a combination thereof, and a written agreement to document the condition of the public facility.

## **2.6 CONSTRUCTION REQUIREMENTS**

During construction, the applicant shall demonstrate that the following requirements are being met:

**2.6.1 Dust control**

Reasonable dust control measures shall be required by the Board of Commissioners during construction of a COMMERCIAL WECS.

**2.6.2 Drainage**

Reasonable storm water best management practices as required by the approved Drainage Plan/Agreement on file with the Spencer County Surveyor.

Executive Director. No individual sheet or drawing shall exceed twenty-four inches by thirty-six inches (24" x 36").

## **2.7 POST-CONSTRUCTION REQUIREMENTS**

Post-construction, the applicant shall comply with the following provisions:

**2.7.1 Road Repairs**

Any road damage caused by the construction of project equipment, the installation of the same, or the removal of the same, shall be repaired to the satisfaction of the Spencer County Highway Superintendent. The superintendent shall require remediation of road repair upon completion of the project and is authorized to collect fees for oversized load permits. Further, a corporate surety bond in an amount to be fixed by a professional engineer may be required by the superintendent to insure the county that future repairs are completed to the satisfaction of the unit of local government. The cost of bonding is to be paid by the applicant.

**2.7.2 As-Built Plans Requirement**

Where upon completion of all development, the exact measurements of the location of utilities and structures erected during the development are necessary for public record and shall therefore be recorded. The applicant, owner, or operator shall submit a copy

of the Final Construction Plans (as-built plans), as amended, to the Plan Commission with the exact measurements thereon shown. The Plan Commission, after being satisfied that the measurements are substantially the same as indicated on the originally approved final plan(s), shall approve, date and sign said Construction Plans for the project, which the applicant, owner, or operator shall then record.

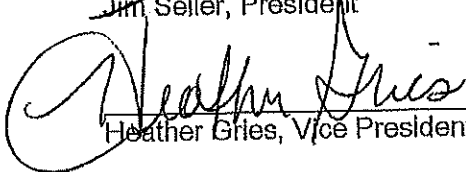
**2.7.3 Change in ownership**


It is the responsibility of the owner or operator listed in the application to inform the Executive Director of all changes in ownership and operation during the life of the project, including the sale or transfer of ownership or operation.

Adopted this 5<sup>th</sup> day of April, 2022

SPENCER COUNTY  
BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
Jim Seiler, President

  
\_\_\_\_\_  
Heather Gries, Vice President

  
\_\_\_\_\_  
Tom Brown, Commissioner

ATTEST:   
\_\_\_\_\_  
Melissa Bunner, Auditor

