

PROPOSED COMMERCIAL SOLAR ORDINANCE

The following is a proposed text amendment to the Revised Zoning Ordinance, City of Winchester and Revised Zoning Order, Clark County, Kentucky (“**Zoning Order**”) in order to add a new Section 6.144 under the “Special Uses” section of the Zoning Order to allow for solar energy generating facilities. The proposed amendments to the Zoning Order are set forth below.

1. *That Section 6.144 shall be added to the Zoning Order as follows:*

“6.144 Solar Energy Facilities as regulated by Article 8, Section 8.10.”

2. *That Section 8.10 shall be added to the Zoning Order as follows:*

“Section 8.10 Solar Energy Facilities (SEFs)

8.101 This section sets forth the procedure and regulations for the approval and maintenance of ground-mounted solar energy facilities, including the components, equipment and infrastructure required to convert solar energy into electrical energy, store such energy, and inject such electrical energy onto the transmission grid, that have a nameplate capacity of 20 megawatts or more (“**Solar Energy Facility**” or “**SEF**”). A Solar Energy Facility may be constructed and maintained in an Agricultural District as a special use. To the extent any provision of Section 8.10 is inconsistent with any other term or provision of the Zoning Order, the terms set forth in this Section 8.10 shall govern.

8.102 Any person or entity desiring to construct a SEF (“**Applicant**” or “**Owner**”) shall first submit to the Winchester-Clark County Planning Commission a Site Plan, Screening Plan, and Decommissioning Plan (as defined below, together the “**Plans**”), which shall contain the following:

1. Site Plan. The project site plan (“**Site Plan**”) shall be prepared by an experienced professional engineer licensed in Kentucky and contain at least the following elements:

(A) A vicinity map showing the location of the entire project, including each parcel on which the SEF will be located (“**Project Parcels**”) and each adjacent parcel, with lot lines, ownership information (from the tax assessor rolls or title research), and parcel ID numbers on each parcel. The Site Plan shall have an overlay, or shall include on a separate sheet, the topographical elevations of the Project Parcels.

(B) A depiction of (i) all existing buildings and structures on adjacent non-participating property, specifically noting any dwellings that exist and are occupied, or capable of being occupied, as a residence served by sanitary service or a septic system, on the date of the application (“**Occupied Residences**”), (ii) any existing buildings and structures on Project Parcels that will remain after the SEF is built, (iii) all public and private roads with names, if applicable, that are adjacent to the Project Parcels, (iv) all existing above ground utilities and underground utilities (to the extent they can be field-located by above ground indicators or from information from Kentucky 811), (v) FEMA mapped flood plain designations applicable to the Project Parcels, (vi) the location of the proposed Solar Energy Facility and related infrastructure, including site roads and proposed groundcover (vii) all setback lines from Occupied Residences, property lines, and public rights-of-way in accordance with Section 8.103.

(C) A certification by the engineer that the SEF depicted on the Site Plan does not exceed any of the height and setback requirements provided in the Zoning Order.

2. Site Screening Plan. The screening plan (“**Screening Plan**”) shall provide for reasonable perimeter screening to reduce the site view of the SEF from Occupied Residences located within 200 feet of the SEF on parcels adjacent to the Project Parcels, including adjacent parcels located across any public right-of-way. The Screening Plan shall depict perimeter screening on that portion of the perimeter of the SEF directly visible from such Occupied Residences, which may be located on the Project Parcels within the setback areas required by Section 8.104. Applicant may satisfy the screening requirements by incorporating one or a combination of the following:

(A) When reasonably practical, any existing natural tree growth and land forms along the applicable boundary of the Project Parcels shall be preserved and may create a sufficient buffer.

(B) A vegetative buffer consisting of shrubbery, trees, hedges or other non-invasive plant species that are at least four feet high when planted and will grow to at least eight feet high within five years of planting. Once fully grown, gaps between the shrubs, trees, hedges or plants shall not be more than six feet in width. A vegetative screen may also be grown on a fence; provided, that, the vegetation on the fence provides a minimum of 50% opacity in winter and 70% opacity in summer within four years of installation.

(C) In lieu of the vegetative buffer described above, an opaque fence may be used; provided, that, the fencing material or veneer is, or has the appearance, of wood, stone, or other natural material, and is at least eight feet high.

3. Decommissioning Plan. A decommissioning plan prepared by a professional engineer or contractor (“**Decommissioning Plan**”) and shall provide the estimated cost to remove the SEF and related infrastructure, including: foundations, pads, underground collector lines, and permanent roads built on the Project Parcels as part of the construction of the SEF, all to a depth of four feet below the surface, (ii) the estimated cost to restore the Project Parcels to a condition substantially similar to the condition of the Project Parcels prior to construction of the SEF, and (iii) the estimated salvage value of the SEF. The estimated cost to decommission the SEF and restore the Project Parcels minus the estimated salvage value of the SEF is referred to hereafter as the “**Decommissioning Cost**”.

8.103 Pre-Construction Deliverables.

Prior to issuance of a building permit, the applicant shall provide the following to the county planning director, or applicable governing body (if noted below):

1. Decommissioning Security. Security in the form of a performance bond or letter of credit, in the amount of the Decommissioning Cost, if the Decommissioning Cost is a positive number, securing Owner’s decommissioning obligations under Section 8.105, naming the County as beneficiary (“**Decommissioning Security**”). The Decommissioning Security will be delivered to the applicable governing body, with a copy to the planning director. Decommissioning Security shall be required to be posted to reflect the revised Decommissioning Cost every five years as set forth in Section 8.105.

2. Traffic Map. A traffic map (“**Traffic Map**”) that depicts the primary county roads that will be used as haul routes and as ingress and egress routes to and from the SEF for material and equipment deliveries (“**Impacted Roads**”). Owner shall work with the Clark County road superintendent and planning director to coordinate impacts to traffic, including revising the Traffic Map as may be reasonably required to accommodate school bus routes or planned construction of public roads.

3. Pre-Construction Inspection. Applicant shall document the existing condition of the Impacted Roads prior to construction of the SEF by submitting an inspection report that includes either (i) a series of still images of the Impacted Roads surfaces taken every 20 feet and compiled to provide a viewer a “virtual drive” of the roads, or (ii) a video of the entire length of the Impacted Roads, and any other applicable road surface documentation the Owner produces in preparation for construction, including copies of any documents such as cross-section surveys, centerline profiles, and culvert condition inventory (“**Pre-Construction Inspection**”).

4. Road Repair Security. The planning director may, in the director’s reasonable discretion, require Owner to provide a letter of credit or performance bond, naming the County as beneficiary, to secure Owner’s obligations to repair the Impacted Roads in an amount equal to \$25,000 per mile of Impacted Roads, not to exceed a total amount of \$250,000 (“**Road Security**”). After completion of construction of the SEF, including any repairs to the Impacted Roads, Owner shall submit to the planning director a post-construction inspection report, which shall include the same forms of documentation as the Pre-Construction Inspection (“**Post-Construction Inspection**”). Within 15 calendar days after submission of a Post-Construction Inspection showing the Impacted Roads are in substantially the same condition as they were prior to construction of the SEF, the County shall release the Road Security.

8.104 Solar Energy Facility Requirements.

All SEF installations shall comply with the following requirements:

1. Height. Notwithstanding Section 6.15 of the Zoning Order, no SEF shall exceed 20 feet in height measured from the highest edge of a panel to the ground beneath; provided, however, excluded from this height restriction are overhead power lines, poles, operations and maintenance buildings, and substations/switch yards, if applicable.

2. Side and Rear Setback. Notwithstanding Section 6.15 of the Zoning Order, all SEFs, measured from the outer edge of the panels or perimeter fence, whichever is closer to the applicable property line, shall be set back at least 50 feet from property lines of non-participating adjacent landowners. If the Solar Energy Facility is located on multiple adjacent tracts, no setback from such contiguous participating parcels’ interior property lines shall be required.

3. Front Setback. Notwithstanding Section 6.15 of the Zoning Order, all SEFs, measured from the outer edge of the panels or perimeter fence, whichever is the furthest exterior edge of the SEF, shall be set back at least 50 feet from the centerline of any public road. This setback requirement shall not apply to the SEF access roads, nor shall it apply to collector and transmission lines.
4. Occupied Residence Setback. Notwithstanding Section 6.15 of the Zoning Order, all SEFs shall be set back 100 feet from any Occupied Residence, measured from the outer edge of the panels or perimeter fence of the SEF, whichever is closer to the Occupied Residence, and the nearest edge of the Occupied Residence's foundation.
5. Waiver. Property owners of non-participating parcels that are within the setback distances required by Section 8.102(2) and Section 8.104(2)–(4) may waive such setback and screening requirements by executing a written waiver. Such waiver shall be recorded in the official records of the County, be a burden on the adjacent parcel(s) and a benefit on the Project Parcels, and run with the land so long as the SEF is located on the Project Parcels.
6. Compliance with Laws. All SEF installations shall comply with all applicable federal, state and local laws; provided, however, to the extent that any provision of this Section 8.10 is in conflict with any other provision of the Zoning Order, the provisions of this section shall govern.
7. Lighting. SEF installations shall include outdoor lighting as required for security purposes or required by federal, state or local law. To the extent commercially reasonable, all lighting shall be shielded and downcast.
8. Screening. If applicable, SEFs shall incorporate the screening requirements set forth in Section 8.102(2).
9. Signage. Notwithstanding any other provision in the Zoning Order, all SEFs may include signage with warning and safety information and any other information required by federal, state and local law, or otherwise allowed under this Zoning Order.
10. Assignment. The special use approval and building permit issued under this Section may be assigned to a successor Owner of the Solar Energy Facility. Any successor Owner shall comply with all terms and conditions of the approval and/or building permit, as applicable.

8.105 Decommissioning and Abandonment.

1. Project Abandonment. Owner shall decommission and remove the SEF in compliance with this Zoning Order within six months after the date Project Abandonment occurs, and restore the Project Parcels to as close to pre-construction condition as reasonably practical. “**Project Abandonment**” means the SEF has not, for 12 continuous months (i) generated electric energy and delivered such energy to the utility grid, (ii) been decommissioned in accordance with this Zoning Order, and (iii) such cessation of operations is not attributable to an event beyond the reasonable control of Owner.
2. Updated Decommissioning Plan. Owner shall submit a revised and updated Decommissioning Plan to the planning office five years after the date the building permit was issued for the SEF, and each five year anniversary thereafter until the SEF has been fully decommissioned and the Project Parcels have been restored as required by this Zoning Order. Such revised Decommissioning Plan may be submitted up to 180 days prior to the dates due.
3. Updated Decommissioning Plan Contents. The revised Decommissioning Plans shall include the same information as the original and shall provide an updated Decommissioning Cost. Decommissioning Security shall be posted or revised in the amount of the new Decommissioning Cost within 60 calendar days after delivery of the updated Decommissioning Plan and shall replace the existing Decommissioning Security, if applicable.
4. Decommissioning Security Release. Within 45 calendar days after the date the SEF is fully decommissioned and the Project Parcels have been restored to a condition substantially similar to the condition they were in prior to construction of the SEF, the County shall release the Decommissioning Security.

Section 8.106 Application and Review Fee.

An application, review and inspection fee equal to: \$10,000 for a Solar Energy Facility with an alternating current (AC) nameplate capacity up to 50 megawatts *plus* \$5,000 for each additional 50 megawatts, not to exceed a total of \$30,000 (“**Review Fee**”) shall be payable to the planning commission as follows:

1. One-third of the Review Fee shall be paid to the planning commission upon submission of the application and Plans.

2. One-third of the Review Fee shall be paid to the planning commission upon submission of the Traffic Map, Decommissioning Security, Pre-Construction Inspection, and Road Security, if applicable.
3. One-third of the Review Fee shall be paid to the planning commission upon issuance of the building permit.

Section 8.106 Solar Energy Facility Approval Procedures.

An application to construct a SEF under Section 6.144 and 8.10 shall be considered and approved by the planning commission after a public hearing noticed in accordance with KRS 100.211. To request approval for the placement of a SEF the Owner shall file an application with the planning office and submit the following, which shall be considered under the following procedures:

1. Filing – The Owner shall file three completed copies of the Site Plan, Screening Plan, and Decommissioning Plan “collectively “**Plans**”) as required by Section 8.102. If the Owner is not the fee simple owner of the Project Parcels, the Owner must also file an affidavit of the owner of the Project Parcels consenting to the filing of the Plans.
2. Review – The planning commission staff shall review the Plans and consult as necessary with the county road department and other professionals, and shall take the necessary action to give notice of, advertise and schedule a public hearing before the planning commission within 35 days.
3. Report – At least seven days prior to the public hearing, the planning commission staff shall provide a written recommendation to the planning commission and provide Owner a copy thereof.
4. Commission Action – At the public hearing the planning commission will review staff’s report and recommendations and comments from the Owner and the public, and then act for approval, conditional approval with conditions noted, postponement, or disapproval. The planning commission may modify or disapprove the Plans if it finds the Plans do not comply with the requirements of the Zoning Order. The planning commission shall take final action on the Plans and application within 65 days of its filing
5. Building Permit – Upon approval of the Plans by the planning commission and satisfaction of the requirements of Section 8.103, a building

permit may be issued by the planning director for construction of the Solar Energy Facility on the Project Parcels. Construction of the Solar Energy Facility must commence within one year after the date on which the building permit is issued.

6. Minor Amendments – A minor amendment to a Site Plan or Screening Plan that has already been approved by the planning commission may be approved by the planning director to expedite approval in those situations where amendments are of minor significance and generally relate to the shifting of previously approved spaces, locations of facilities or access; provided, that, such amendments do not cause the Solar Energy Facility to be out of compliance with the requirements set forth in Section 8.104. Any material modification to the Plans that causes the Solar Energy Facility to be out of compliance with the requirements of Section 8.104 shall be approved by the planning commission, after notice and a public hearing, in accordance with the procedures in Section 8.106.”

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