



ORDINANCE NO. 2020- 0804
AN ORDINANCE REGULATING SITING OF COMMERCIAL SOLAR ENGERY
CONVERSION SYSTEMS IN BENTON COUNTY, INDIANA

WHEREAS, the generation of electricity from solar resources must by practicality be located where sufficient solar resources exist;

WHEREAS, solar energy projects may be undertaken in differing sizes ranging from large scale projects intending to deliver wholesale electricity to the grid (commercial), to smaller installations on one or more contiguous parcels and intended to deliver electricity for use onsite (non-commercial), to installations on a single parcel designed to generate supplemental electricity, for use or credit, for the parcel on which it is sited (private);

WHEREAS, the County desires to regulate the permitting and approval of commercial solar energy projects;

WHEREAS, development of solar energy projects may result in substantial economic investment in the county to the benefit the County and its residents through lease payments, tax payments, and temporary and permanent employment opportunities;

WHEREAS, construction of commercial scale solar energy projects involves the use of heavy equipment and the transport of heavy loads that have the potential of damaging public and private infrastructure of the County, including roads, bridges, and drainage structures and for disruption on public roads;

WHEREAS, the failure to complete a commercial solar project after the commencement of construction, the failure to continue in operation, and/or the failure to remove the solar energy facility at the end of its useful life create significant risks of damage to the value of the property of adjacent landowners, the environment, and the safety and security of persons in the County;

WHEREAS, the adoption of an ordinance regulating the location, construction, and operation of commercial solar projects is necessary and appropriate to achieve and secure the benefits of these projects and to avoid and/or minimize the risks, dangers, and inconvenience to health, safety and general welfare of the County;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of Benton County that Chapter 25. Commercial Solar Energy Conversion Systems, is hereby adopted as follows:

I. DEFINITIONS

- A. "Commercial Solar Energy Conversion System" ("CSECS") means all necessary devices that together convert solar energy into electricity and

deliver that electricity to a utility's transmission lines, including but not limited to solar panels, arrays of multiple solar panels on ground-mounted racks or poles, electrical components, and electrical cabling from the CSECS Array to the Substation(s) and other required facilities and equipment, as related to the CSECS project.

- B. "Applicant" means the entity or person who submits to the County, pursuant to Section IV of this Ordinance, an application for the siting of any CSECS or Substation or thereafter operates or owns a CSECS.
- C. "Financial Assurance" means reasonable assurance from a credit-worthy party, examples of which include a surety bond, trust instrument, cash escrow, or irrevocable letter of credit or combinations thereof.
- D. "Operator" means the entity responsible for the day-to-day operation and maintenance of the CSECS, including any third party subcontractors.
- E. "Owner" means the entity or entities with an equity interest in the CSECS(s), including their respective successors and assigns. Owner does not mean (i) the property owner from whom land is leased for locating the CSECS (unless the property owner has an equity interest in the CSECS); or (ii) any person holding a security interest in the CSECS(s) solely to secure an extension of credit, or a person foreclosing on such security interest provided that after foreclosure, such person seeks to sell the CSECS(s) within one year of such event.
- F. "CSECS Project" means the collection of CSECS panels and arrays and Substations as specified in the siting approval application pursuant to Section IV of this Ordinance.

II. APPLICABILITY

This Ordinance governs the siting of CSECSs and Substations that generate electricity to be sold to wholesale or retail markets, except that owners of CSECSs with an aggregate generating capacity of 1MW or less who locate the CSECS(s) on their own property must obtain a variance to this Ordinance. CSECS may be sited and operated in all Benton County townships.

III. PROHIBITION

No entity shall construct or operate a commercial solar energy conversion system (CSECS) without having fully complied with the provisions of this Ordinance.

IV. APPLICATION REQUIREMENTS

Prior to the construction of a CSECS, the Applicant shall obtain approval for the following: (1) an Application for a Conditional Use Permit, also known as Special Exception Permit, from the Benton County Board of Zoning Appeals (“BZA”) to permit a CSECS in any zone other than R-1, R-2, R-3 or R-4 (Residential) zoned land, as described below and in § 8-10(C) of the Benton County Zoning Code (the “Code”), (2) a Request for Variance for any variances anticipated on the CSECS Project, as described below and in § 8-22 of the Code, and (3) an Improvement Location Permit from the Benton County Building Commissioner, as described below and in § 8-18(B) of the Code.

A. The Application for a Conditional Use Permit

1. The application shall be filed with the Building Commissioner’s Office for the BZA and include the following items:

a. A CSECS Project summary, including, to the extent available: (1) a general description of the project, including its approximate name plate generating capacity; the potential equipment manufacturer(s), type(s) of CSECS(s), number of CSECS(s), the maximum height and width of the CSECS panel(s); the general location of the project; and (2) a description of the Applicant, Owner, and Operator, including their respective business structures.

b. The name(s), address(es), and phone number(s) of the Applicant(s), Owner and Operator, and all property owner(s) with CSECS on their properties, if known.

c. A topographic map of the project site and the surrounding area which shall encompass an area at least a quarter mile radius from the proposed project site with contours of not more than five foot intervals.

d. A site plan at an appropriate scale showing (standard sheet of 36 inches by 24 inches and individual array site not greater than 1 inch equals 20 feet): the proposed location of the solar energy facility (including planned locations of each CSECS Array (if possible)); Substations; electrical cabling; and ancillary equipment. In addition, the site plan shall show: Primary Structures within one quarter of one mile of any CSECS; property lines, including identification of adjoining properties; setback lines; public roads; recognized historic or heritage sites as noted by the Division of Historic Preservation and Archeology of the Indiana Department of Natural Resources; and any wetlands based upon a delineation prepared in accordance with the applicable U.S. Army Corps of Engineer requirements and guidelines.

e. Location of all existing underground utility lines associated with the CSECS site.

f. Assurance that no portion of the CSECS will contain or be used to display advertisements.

- g. Certification that layout, design and installation conform to and comply with all applicable industry standards.
- h. A Drainage Plan approved by the Drainage Board;
- i. A Transportation Plan approved by the Benton County Commissioners and the Benton County Highway Superintendent; and
- j. An Economic Development Agreement approved by the Benton County Commissioners and Benton County Council.

2. In determining whether to approve the Application for Conditional Use, the BZA shall determine whether the Application satisfies each of the six (6) criteria set forth in § 8-10(D) of the Code, and make written findings thereof.

3. The Conditional Use Permit granted by the BZA for a CSECS Project shall be valid for a period of one (1) year, after which the Conditional Use shall terminate and be of no further force or effect if construction in earnest of the approved CSECS has not commenced. The Applicant shall be granted a one (1) year extension to two (2) years from the date of the BZA approval if the Applicant presents its request for an extension to the BZA and provides a report to the BZA which shows the progress made on the CSECS Project. Thereafter, an additional extension shall be at the BZA's discretion.

4. The fee for the application for a Conditional Use Permit shall be payable at the time of submission of the Application as set forth in Figure 9. Fifty percent (50%) of the fee shall be applied toward fees for Improvement Location Permits. In the event that the Improvement Location Permit fees are less than \$10,000.00, the County shall retain the unused Improvement Location Permit fees. The Application fee shall be used to defray the costs associated with the Application for a Conditional Use, including professional fees and expenses, and other expenses associated with a Project.

B. The Application for Variance

1. Contemporaneously with the Application for a Conditional Use, the Applicant shall submit an Application for Variance for any variances sought as part of the CSECS Project. A single Application for Variance may be submitted for all variances sought.

2. In determining whether to approve the Application for Variance, the BZA shall determine whether the Application satisfies each of the five (5) criteria set forth in §8-22(A) of the Code, and make written findings thereof.

3. The fee for any variances is included in the Application fee.

C. The Application for Improvement Location Permit

1. The Applicant shall apply to the Building Commissioner for an Improvement Location Permit, as described in §8-22(A) of the Code. In addition to the information required on the Improvement Location Permit Application, the Applicant shall provide the following information to the Building Commissioner prior to the issuance of an Improvement Location Permit:

- a. Location of all underground utility lines associated with the CSECS site;
- b. Dimensional representation of the structural components of the array construction including the base;
- c. Schematic of electrical systems associated with the CSECS including all existing and proposed electrical connections;
- d. Manufacturer's specifications and installation and operation instructions or specific CSECS design information;
- e. All arrays shall be new equipment commercially available. Used, experimental or prototype equipment still in testing shall be approved by the BZA as per the normal special exception process;
- f. Necessary recorded access easements and necessary recorded utility easements, copies of which shall be submitted to the Benton County Building Commissioner;
- g. A revegetation plan for restoring areas temporarily disturbed during construction;
- h. A crop cover/vegetation plan describing how land covered by arrays will be used so as to prohibit noxious weeds;
- i. An erosion control plan must be developed in consultation with the Benton County Soil and Water Conservation District; and
- j. Any other item reasonably requested by the BZA.

V. DESIGN AND INSTALLATION

A. Minimum Lot Size

Minimum property size for any CSECS shall be five (5) acres.

B. Height

The height of any CSECS ground mounted solar equipment is limited to thirty-five (35) feet, as measured from the highest natural grade below each solar panel.

C. Visibility

1. The planting of evergreens or use of opaque fencing along the perimeter of the CSECS, including along road frontage, shall be considered, as described below. Screening may be in the form of a fence, a berm or be vegetative in nature (vegetative screenings are preferred). If vegetative, the plantings must reach a minimum height of six (6) feet within two (2) years after planting.
2. Along property lines, screening shall be left to the negotiation process between the developer and the individual neighboring land owner. In cases in which a neighboring property owner is not a participant in the project, a buffer shall be required unless waived by said property owner.

D. Security

1. Fencing
 - a. All CSECS's must provide security fencing around the CSECS Compound.
 - b. Said fencing must provide limited and secured access to prevent entry by unauthorized personnel.
 - c. Fencing and access gates shall be between five and one-half (5 1/2) and six (6) feet tall as measured from the average grade below the fence to the tallest point of the fence.
 - d. Barb wire or razor wire is prohibited on all fences.
2. Signage.
 - a. "No Trespassing" signs shall be attached to any perimeter fence.
 - b. "Danger" and "High Voltage" signs shall be posted at the height of five (5) feet on (on/near arrays) and on accessory structures.
 - c. At the locked entrance to the facility, a sign showing the names and phone numbers of the electric utility provider, the site operator and an emergency contact, as well as the facility's 911

address and GPS coordinates shall be provided. Additionally, a sign should be posted containing the name and phone number of a person for the public to contact with any inquiries and complaints throughout the life of the project.

E. Noise

1. A noise study shall be performed and included in the application.
2. At no point within 200 feet of a primary residence may the sound pressure levels from a solar array exceed the following sound levels. Sound levels shall be measured with an octave band analyzer or sound level meter and associated filter manufactured in compliance with standards prescribed by the American National Standards Institute (ANSI). This standard shall supersede any noise standard(s) set forth in Section 8-7 of the Benton County Zoning Ordinance as it applies to Commercial Solar Energy Conversion Systems.

Octave Bands for Benton County in Hertz (Hz), per ANSI	Maximum Permitted Sound Level (in decibels) measured 200 feet from edge of any Primary Structure.
63	75
125	70
250	65
500	59
1000	53
2000	48
4000	44
8000	41

F. Glare

Glare from a CSECS is prohibited from being directed towards vehicular traffic and any habitable portion of an adjacent inhabited structure.

G. Electrical Components

1. All electrical components of the CSECS shall conform to applicable local, state, and national codes, and relevant national and international standards.
2. All CSECS electrical collection cables between each CSECS shall be located underground unless they are located on public or utility rights-of-way or with prior County approval. All transmission lines that are buried should be at a depth consistent with or greater than local utility

and telecommunication underground lines standards or as negotiated with the land owner or the land owner's designate until the same reach the property line or a substation adjacent to the property line.

H. Waste Management

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 consistent with industry standards. 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.

I. Compliance with Additional Regulations

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

VI. SETBACKS

- A. Solar farms shall meet the minimum zoning setbacks for the zoning district in which located.
- B. County maintenance ditch, or right-of way to a solar panel must have a setback of seventy-five (75) feet measured from the center of the right-of-way.
- C. CSECS Equipment must be set back a minimum of two hundred (200) feet from the foundation of a primary dwelling unit located on a parcel not participating in the CSECS.
- D. These setbacks may be waived in writing by adjacent property owners.

VII. OPERATION

A. Maintenance / Inspection

- 1. The Owner or Operator of the CSECS shall develop a ground maintenance plan with the landowner to control the spread and growth of noxious weeds and grasses.
- 2. The Owner or Operator of the CSECS must submit, on an annual basis, a summary of the operation and maintenance reports to the

County. In addition to the above annual summary, the Owner or Operator must furnish such operation and maintenance reports as the County reasonably requests.

3. Any physical modification to the CSECS that alters the mechanical load, mechanical load path, or major electrical components shall require re-certification. Like-kind replacements shall not require re-certification. Prior to making any physical modification (other than a like-kind replacement), the owner or operator shall confer with the Building Commissioner to determine whether the physical modification requires re-certification.
4. The Benton County Building Commissioner staff, along with licensed 3rd party professionals retained by the County for the specific purpose of conducting inspections of the CSECS shall have the right, at any reasonable time and with sufficient prior notice, to accompany the owner or operator, or his agent, on the premises where a CSECS has been constructed, to inspect all parts of said CSECS installation and to require that repairs or alterations be made. The owner or operator of a CSECS may retain a licensed 3rd party professional engineer familiar with CSECS systems to prepare and submit to the Benton County Building Commissioner staff a written report which addresses the repairs or alterations requested, and which suggests alternate methods for addressing the concerns or provides evidence that said repairs or alterations are unnecessary, within thirty (30) days after receiving notice from the Benton County Building Commissioner staff that repairs or alterations are requested, or within a longer period of time mutually acceptable to both parties. The Benton County Building Commissioner staff will consider any such written report and determine whether the repairs or alterations should be made as originally requested or as suggested in the written report. In the event of a dispute between the Benton County Building Commissioner staff and the owner or operator, or a 3rd party professional engineer retained by them, as to the repairs or alterations which are required, the decision of the Building Commissioner shall be final.
5. Inspections, at a fee to be determined from time to time by the Benton County Commissioners and paid by the applicant, may be made by the Benton County Building Commissioner, or by a qualified inspector for equipment of this type selected by the Benton County Building Commissioner, no more than once annually to

certify the safety and maintenance of the CSECS and accessory structures.

B. Materials Handling, Storage and Disposal

1. All solid wastes related to the construction, operation and maintenance of the CSECS shall be removed from the site promptly and disposed of in accordance with all federal, state and local laws.
2. All hazardous materials or waste related to the construction, operation and maintenance of the CSECS shall be handled, stored, transported and disposed of in accordance with all applicable local, state and federal laws.

VIII. DECOMMISSIONING PLAN

Prior to receiving siting approval under this Ordinance, the County and the Applicant, Owner, and/or Operator must formulate a Decommissioning Plan to ensure that the CSECS Project is properly decommissioned. The Decommissioning Plan shall include:

- A. Decommissioning of solar panels must occur in the event they are not in use for 12 consecutive months.
- B. Assurance that the facilities are properly decommissioned upon the end of the project life or facility abandonment. Applicant's obligations with respect to decommissioning shall include removal of all physical material pertaining to the project improvements to a depth of 48" beneath the soil surface, and restoration of the area occupied by the project improvements to as near as practicable to the same condition that existed immediately before construction of such improvements. Prior to issuance of a building permit, the Applicant shall provide a contractor cost estimate for demolition and removal of the CSECS facility and 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 array to be constructed under that building permit, which security shall be released when such array is properly decommissioned as determined by the Benton County Building Commissioner.
 1. In the event of abandonment by the owner or operator, the Applicant will provide an affidavit to the Benton County Building Commissioner representing that all easements for solar arrays 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 twelve (12) months of expiration or earlier termination of the project.

2. Every five years after the start of construction, updated proof of acceptable financial assurance must be submitted to Benton County for review.
 3. If the owner fails to dismantle and/or remove the CSECS within the established timeframes, the County may complete the decommissioning at the owners expense.
- C. The Applicant’s, Owner’s, or Operator’s failure to materially comply with any of the above provisions shall constitute a default under this Ordinance.
- D. Prior to implementation of the existing County procedures for the resolution of such default(s), the appropriate County body shall first provide written notice to the Owner and Operator, setting forth the alleged default(s). Such written notice shall provide the Owner and Operator a reasonable time period, not to exceed 60 days, for good faith negotiations to resolve the alleged default(s).
- E. If the County determines in its discretion, that the parties cannot resolve the alleged default(s) within the good faith negotiation period, the existing County ordinance provisions addressing the resolution of such default(s) shall govern.
- IX. Requirements of these ordinance may be waived by the Benton County Board of Zoning Appeals upon application and after public hearings.

* * *

Figure 9

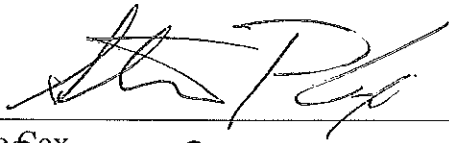
**A. Fees Relating to Chapter 5 of the Benton County Code
Permit/Inspection Fee Rate Schedule**

<u>Type of Construction</u>	<u>Permit/Inspection Fee</u>
* * *	* * *
Commercial Solar Energy Conversion Systems (CSECS) Improvement Location Permit	\$2,250 per megawatt (MW) capacity
Commercial Solar Energy Conversion Systems (CSECS) Application Fee	\$20,000

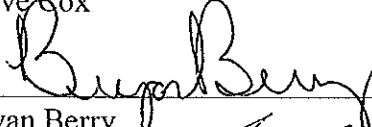
* * *

ORDAINED this 4th day of August, 2020.

BOARD OF COMMISSIONERS OF
BENTON COUNTY



Steve Cox

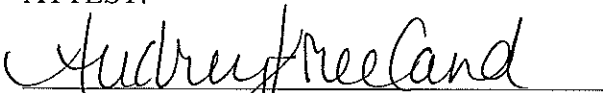


Bryan Berry



Mike Freeland

ATTEST:



Audrey Freeland, Auditor of
Benton County

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.

Ingrid J. Barce

This Instrument Prepared by:
Ingrid J. Barce
BARCE & REDLIN, P.C.
103 N. Jackson Ave.
P.O. Box 252
Fowler, IN 47944


**BENTON COUNTY ADVISORY PLAN COMMISSION'S
RECOMMENDATION REGARDING ZONE CODE CHANGE
FOR COMMERCIAL SOLAR ENERGY CONVERSION SYSTEMS**

COMES NOW, the Benton County Advisory Plan Commission, and certifies to the Benton County Commissioners that the Application for Zone Code Change for Commercial Solar Energy Conversion Systems has received the following recommendation:

The Advisory Plan Commission makes a FAVORABLE RECOMMENDATION.

DATED this 24th day of July, 2020.

BENTON COUNTY ADVISORY PLAN
COMMISSION

By: 
Secretary