

## ARTICLE XXXI

### Section 13. Solar Facility Requirements

These requirements are for the implementation of solar energy systems in Delaware County, Indiana. The County finds that it is in the public interest to encourage the use and development of renewable energy systems that enhance energy conservation efforts, reduce greenhouse gas emissions and promote sustainable development. A roof mounted solar panel(s) or any stand-alone system for a private dwelling, residence or farm and focusing area of eight (8) square feet are exempt from this Ordinance.

#### A APPLICATION REQUIREMENTS

Applications for solar facilities must include a concept plan, a site plan, a maintenance plan, a decommission plan, and an emergency/fire safety plan. If the solar facility extends into the floodplain, that area of the project must comply with the Floodplain Management Ordinance. As a part of the application submittal, the applicant shall provide proof of notification of the proposed project as set forth below. Prior to the issuance of any permits for the solar facility, verification of all agreements, bonds, and other required permits shall be provided including a drainage permit, a stormwater/erosion control permit, and driveway permits.

##### 1. Pre-Application Meeting

Prior to submitting an application, the solar facility is required to meet with the Planning Director at least thirty (30) days prior to the anticipated application submission to discuss the proposed request, and to become more familiar with the applicable requirements. The anticipated agenda date will be used in all public notice requirements.

##### 2. Concept Plan.

The Concept Plan is intended to be a one-page overview of the entire facility showing the requirements set forth herein. The facility shall be constructed and operated in substantial compliance with the approved concept plan, with allowances for changes required by any federal or state agency. The project shall be limited to the phases and conditions set forth in the concept plan that constitutes part of the application, notwithstanding any other state or federal requirements. No additional phasing or changes in facility size shall be permitted without obtaining approval of the changes from the staff. The concept plan shall include the subject parcels; the proposed general location of the solar panels and related facilities; the location of proposed fencing, the location and nature of proposed buffers, including vegetative and constructed buffers and berms; the location of points of ingress/egress; and any proposed construction phases. The concept plan shall be supplemented with: 1) all

landowner agreements and/or recorded memorandums and waivers; 2) proof of correspondence and cooperation with wildlife agencies including the U.S. Fish and Wildlife Service and the Indiana Department of Natural Resources and; 3) proof of compliance with applicable FAA regulations. Waivers may be provided on an on-going basis, however, waivers provided after the concept plan has been submitted will require a revised concept plan to be submitted along with a new site plan covering the area affected by a waiver

### 3. Site Plan.

A detailed plan, at a measurable scale, of all of the improvements to be placed on the site(s). Use of the Delaware County Geographic Information System (GIS) is recommended. Multiple site plans may need to be submitted to maintain a measurable scale in order to review and assess compliance with the requirements set forth herein. The site plan(s) must include:

- a. The location, number and spacing of all solar collectors and related structures;
- b. The location of fencing and buffer/screening areas;
- c. Property lines and setbacks;
- d. The location of easements, access roads and points of ingress/egress;
- e. The location of all above ground and underground utility lines.

The site plan must include ALTA survey results and show easements of record, contours, floodplain boundaries, 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, the location of any wetlands based upon a delineation plan, and waterways (including regulated drains, mutual drainage tiles/facilities, retention areas, etc.). A separate landscape plan prepared by a professional landscape architect is to be provided to ensure readability along with an assessment form or score card from an approved source showing that the proposed landscape plan meets or exceeds accepted pollinator and habitat standards. Delaware County currently recognizes the Purdue University 2020 Solar Site Pollinator Habitat Planning Scorecard and the Michiana Area Council of Governments Technical Guide: Establishment and Maintenance of Pollinator-Friendly Solar Projects and may consider other assessment forms as they are developed.

### 4. Maintenance Plan.

The developer shall submit a maintenance plan that includes how the solar facility will manage the following concerns:

- a. Maintenance of the Panels. Maintenance of the Panels shall be repaired or replaced when either nonfunctional or in visible disrepair. Panels that are not so maintained shall be considered a public nuisance. Damaged panels that result in a release of hazardous substances shall be reported and mitigated as set forth in the Emergency/Fire Safety Plan.
- b. Any physical modification to any solar facility or a part thereof which materially alters the mechanical load, mechanical load path, or major electrical components shall require recertification by all appropriate regulatory authorities. Like-kind replacements shall not require recertification, unless required by a regulatory authority. Prior to making any material physical modification, other than a like-kind modification, the owner or operator of such SES shall confer with the Executive Director and any other appropriate regulatory authority as to whether the proposed physical modification requires re-certification of such solar facility.
- c. Landscape requirements. Native grasses and perennials shall be used to stabilize the site for the duration of the facilities use.
- d. Wildlife protection. Detail strategies that will be utilize to reduce risk of “lake effect” and will maintain wildlife corridors.
- e. Landscape Maintenance Plan. The solar facility shall provide a landscape maintenance plan consistent with the requirements in ARTICLE XXX, Section 5 DEVELOPMENT STANDARDS, Subsection B5.i.
- f. Pesticide Management Plan. The solar facility shall provide a pesticide management plan to be approved by Delaware County/Purdue Extension and Soil and Water Conservation Services.

5. Decommission and Restoration Plan and Agreement.

- a. A Decommission and Restoration Plan shall be submitted and shall form the basis for a Decommissioning Agreement to be approved by the Delaware County Commissioners. The decommission plan shall include a reliable and detailed estimate of the costs of decommissioning prepared by a professional engineer or contractor who has expertise in the removal of solar facilities. The plan shall include a performance bond or other approved method in the amount of 125% of the cost estimate to decommission the solar facility. The cost estimate shall be updated every five (5) years and one (1) year prior to the end of the lease by a professional engineer or a contractor who has expertise in the removal of solar facilities.

The cost estimate updates shall be paid for by the owner or operator of the solar facility.

b. Decommissioning shall include removal of all solar electric systems, buildings, cabling, electrical components, security barriers, roads, foundations to a depth of four feet, pilings, and any other associated facilities, so that any agricultural ground upon which the facility or system was located is again tillable and suitable for agricultural uses. The site shall be graded and reseeded to restore it to as natural a condition as possible, unless the landowner requests in writing that the access roads or other land surface areas not be restored, and this request is approved by the County Commissioners.

c. Solar facilities which have reached the end of their useful life or have not been active and continuous service for twelve (12) months shall be removed within twelve (12) months except if the project is being repowered or a force majeure event has or is occurring requiring longer repairs. If the owner or operator of the solar facility fails to remove the installation in accordance with the agreement or within the proposed date of decommissioning, the County may collect the surety and staff or a hired third party may enter the property to physically remove the installation.

#### 6. Road Use Agreement.

Prior to the use of any county roads for the purpose of transporting parts and/or equipment for construction, operation or maintenance of a solar facility, the owner and/or operator must provide proof of a signed road use agreement between the Delaware County Commissioners and the owner/operator. The Road Use Agreement should include identification of all public roads that will be used for construction and maintenance. The County Engineer/Highway Superintendent or a qualified consultant hired by the County Commissioners at the expense of the owner/operator of the solar facility should conduct a pre-construction base-line survey to determine existing road conditions for assessing potential future damage. Any road damage caused by the construction, installation and/or removal of the solar facilities must be repaired to the satisfaction of the County Engineer. The County may require surety bonds, at the expense of the owner/operator, to ensure that future repairs are completed to the satisfaction of the County.

#### 7. Emergency/Fire Safety Plan.

An emergency and fire safety plan shall be provided to the Delaware County Emergency Management Agency for approval and the local fire departments whose jurisdiction is included in whole or in part within the solar facility project area. Any specialized training and equipment shall be

provided at the owner/operator's expense. If entrances are locked, Knox boxes and keys shall be provided at all locked entrances to the applicable emergency personnel. The names and phone numbers for the electric utility provider and the site operator, the 911 addresses and GPS coordinates shall be provided as a part of the plan and shall be posted at each entrance to the solar facility project. The plan shall include provisions dealing with damage to panels that result in a release of hazardous substances. It shall include a listing of potential hazardous substances, incident reporting requirements as applicable to the Emergency Management Agency, the Plan Commission Office, the Health Department Office, the Indiana Department of Homeland Security and the Indiana Department of Environmental Management, and a mitigation plan that includes the testing of water wells as deemed necessary by the applicable agencies.

#### 8. Economic Development Agreement.

Due to the complexity of solar facility projects, the Delaware County Commissioners may elect to enter into an Economic Development Agreement to address taxing, land use, assessments and other issues related to a solar facility project.

#### 9. Notification of Project.

- a. The applicant shall provide notice of intent to locate a solar facility to all property owners within one (1) mile of the boundaries of the solar facility within 3 months prior to submitting an application to Delaware County regarding the special use of a solar facility.
- b. In addition, for the Board of Zoning Appeals hearing, the applicant shall provide a copy of the written notice sent to all surrounding property owners within 300 feet or 2 properties deep, whichever is greater, from the boundaries of the solar facility project area. The applicant shall also provide a list of the surrounding property owners to whom notice was sent.

#### 10. Insurance.

- a. The owner or operator of the solar facility shall maintain a current comprehensive general liability insurance policy covering bodily injury and property damage, and cyber insurance to protect from data breaches and other cyber security issues. The insurance shall be in the amount of \$2,000,000 per occurrence and \$5,000,000 in aggregate, naming Delaware County as an additional insured. Proof

of insurance shall be provided to the Plan Commission office prior to the issuance of permits and on an annual basis thereafter. Failure to maintain insurance shall result in cancellation of the Improvement Location Permit by the Planning Director.

- b. It is the responsibility of the owner or operator of the solar facility to inform the Planning Director of all changes in ownership of any insurance policy during the life of the project, including the sale or transfer of ownership or policy cancellations. The County shall be named as a notified party by the insurance provider in the event there is a lapse in coverage.
- c. Terminology shall be included in any and all insurance policies that provides policy limit adjustments derived from the U. S. Bureau of Labor Statistics Consumer Price Index (CPI) to protect against inflation. The County Commissioners may review coverage amounts as often as every five (5) years and modify, as necessary, to determine if appropriate limits have drifted too far from the CPI adjusted level.

#### 11. . Property Value Guarantee.

a. Property Value Guarantee shall be offered by the solar owner to all non-participating residents and landowners within one (1) mile of a solar facility. The Property Value Guaranty shall only be valid for twelve (12) months after the owner is notified of the siting of a solar facility. Fair market value will be established by, at a minimum, two licensed appraisers acceptable to both the solar owner and the County: If the property value of a home decreases and a home or landowner is unable to sell his property at the baseline fair market value after the CS or CL SES is announced, the solar owner will pay that landowner the difference or buy the property at the baseline fair market value determined prior to announcement of the SES.

b. No permit for construction shall be given by any department until all property value guarantee agreements have been filed with the Delaware County planning department. A surety bond shall be provided in the amount of (20) twenty percent of the assessed value of all properties within three miles of any part of the Solar Energy System for the life of the project. The surety bond shall be used to pay for appraisals, cover decreases in value of affected homes, buyouts, and other uses to achieve the goals of this section.

#### 12. Erosion Control Plan.

An erosion control plan shall be developed in accordance with protocol of the Natural Resources Conservation Services (NRCS), and any storm water quality management plan adopted by Delaware County.

The area beneath the ground-mounted solar facility is considered pervious cover. However, use of impervious construction materials within the solar facility would cause areas to be subject to the impervious surface limitations for the applicable Zoning District. Natural (pervious) ground covers are required beneath the solar arrays.

### 13. Changes to Existing Solar Facilities.

Once an application is approved, any change to the solar panel footprint or adding additional property shall be considered a new application subject to the ordinance standards and procedures in effect at the time of the change. An application for said change does not affect any prior approvals.

#### B Land Use Limitations

The County is concerned with the preservation of farmland and therefore has limited the total number of acres that can be devoted to solar facilities within Delaware County. The maximum number of acres devoted to all solar facilities is 5,000 acres.

No more than 10% of a solar facility may be located on Prime Farmland as designated on the Soil Data Access (SDA) Prime and other Important Farmlands report for Delaware County in the "**Fmm Class**" column as "**All areas are prime farmland**" or "**Farmland of statewide importance**", and as indicated "Prime Farmland" (in light green) on the map in Appendix B. A letter from the Delaware County Natural Resources Conservation Service (NRCS) or another qualified source stating that no more than 10% of the proposed project is on Prime Farmland shall be included with the Improvement Location Permit and project application. Delaware County reserves the right to use its own Geographic Information System mapping to verify the stated percentage.

#### C HEIGHT

The height of the solar collector and any mounts shall not exceed 20 feet when oriented at maximum tilt.

#### D SETBACKS

1. A minimum fifty (50) foot setback shall be maintained from the closest point of the solar facility -of-way to the road right-of-way line, existing or proposed, whichever is greater.
2. A minimum five hundred (500) foot setback, which includes a screening buffer and other native vegetation as described below, shall be maintained from the solar facility structures to any non-participating property owner measured from the property line to the solar facility security fence. If the adjoining property does not contain a dwelling, the regular F Farming Zone side and rear setbacks of twenty-five (25) feet and fifty (50) feet, respectively, shall apply.
3. A minimum five hundred fifty (550) foot setback shall be maintained from any nonparticipating dwelling to any solar facility security fence. A minimum one hundred (100) foot setback shall be maintained for all other dwellings.
4. *Substation Setbacks.* The substation setbacks shall be the same as those of the solar facility.
5. *Poles and Underground Wiring.* For all poles carrying overhead wiring and for any underground wiring connecting the racks and components of a solar facility and/or to connect a solar facility to a substation for connection to or other direct connection to a utility's electric transmission line, there are no setback requirements from property lines of adjoining landowners so long as the poles and underground wiring are located within a recorded easement for such purpose.
6. *Easements.* Ground-mounted panels shall not be placed within any legal easement or right-of-way location, or be placed within any storm water conveyance system, regulated drain easement, special flood hazard area, or in any other manner that would alter or impede storm water runoff from collecting in a constructed stormwater conveyance system except by written permissions granted by the Delaware County Drainage Board, and owner of the land and/or right-of-way and/or easement. This would include but not be limited to state, county, and/or privately owned waterways, ditches, drainage tiles, retention areas and designated swales.
7. *Inverters.* Any inverter shall be a minimum of five hundred fifty (550) feet from any dwelling and shall be concealed by vegetation, fencing from the road.
8. *Horizontal Extension of Solar Facility.* The furthest horizontal extension of a solar facility excepting the solar facility collection system, solar facility transmission lines, ingress/egress road and solar facility access roads/lanes, shall not extend into a setback which is otherwise required for the zoning district in which the solar facility is located or into a required buffer yard or into a setback required for an adjacent zoning district nor be less than fifteen (15') feet from any structure or public right-of-way easement

for any above ground telephone line, electrical transmission line, electrical distribution line or other above ground communication or transmission line.

9. *Enclosure Guarantee.* No solar facility shall enclose more than two sides of a nonparticipating residential property.
10. *Properties classified as protected areas* under the authority of the National Park Service, Indiana Department of Natural Resources, or other private and public nature conservatories such as federal, state, or county parks wildlife reserves, and nature preserves shall have large-scale ground-mounted solar facility located no less than 550 feet from the property line.

The setbacks set forth above may be reduced by up to 50% with a written waiver from the property owner(s).

#### E SIGNAGE

Each solar facility must include an informational sign, 1 per frontage, with the name of the facility owner and the phone number for a 24-hour emergency contact. The informational sign may not exceed 6 square feet.

#### F BUFFERS AND LANDSCAPE

The facilities, including fencing, shall be significantly screened from the viewshed of adjacent residential dwellings or commercial buildings by a buffer zone extending from the property line. Adjacent includes dwellings across the road from the solar facility. A property owner may waive the buffer zone requirement in whole or in part. Existing vegetation or natural landforms on the site may provide such screening. Existing wooded areas of an acre or more of land may not be removed for the installation or operation of a solar facility. Large trees, greater than twelve (12) with native trees at a 2 to 1 ratio on the solar facility site. In the event that existing vegetation or landforms providing the screening are disturbed, new plantings shall be provided which accomplish equivalent screening. Opaque architectural screening methods may be used to supplement other screening methods but shall not be the primary method.

1. *Landscaping/Screening.* A minimum 50-foot buffer zone, containing native plants including trees, shrubs and pollinators, shall be maintained. If there is no existing vegetation or if the existing vegetation is inadequate to serve as a screen, native plants shall be planted to create the visual screen. Remaining areas in the setbacks shall be maintained with pollinator-friendly plants as shown on the landscape plan. New plantings of trees shall be approximately 6 feet in height at

time of planting. Blooming shrubs may be used in buffer areas as appropriate for visual screening.

2. Wildlife corridors. The concept plan shall identify an access corridor for wildlife to navigate through the solar facility project area. The proposed wildlife corridor shall be shown on the detailed site plan. To the extent it is reasonably practical, areas between and/or along fencing shall be kept open or contain openings to allow for the movement of migratory animals and other wildlife. Setbacks from county drain tiles, transmission lines, or natural gas lines are all valid wildlife corridors.
3. Landscape Plantings. The overall solar facility project area shall include pollinator-friendly plantings in an amount and configuration to meet or exceed pollinator-friendly standards.

## G FENCING

Facilities that are to be enclosed by security fencing shall have the fencing located on the interior of the buffer area. Solar facilities that do not coincide with livestock shall use wildlife-permeable fence, fencing with larger holes than a traditional chain-link fence that allows for small-to medium sized animals to move freely through the fence for at least ten (10) percent of the fence lines where the 10% shall be evenly distributed along each quarter mile section and at identified wildlife corridors. Wooded areas of 10 acres or greater must be incorporated into wildlife corridors so that fencing does not prevent access to the wooded area by large animals. Substation locations identified on the site plans will be allowed to use traditional chain-link fencing around the entire structure. Fencing shall be maintained in good condition for the life of the solar facility operation. Barbed wired fencing is prohibited as the sole type of fencing. Barb wire may be used in conjunction with other approved fencing.

## H GROUND COVER

The ground around and under solar arrays and in buffer areas that do not contain concurrent agricultural uses shall be planted and maintained in native perennial vegetated ground cover, and meet the following standards:

1. Top soil shall not be removed during development, unless part of a remediation effort.
2. Soil shall be planted and maintained in perennial vegetation to prevent erosion, manage run-off, and build soil. Seeds should include a mix of grasses and wildflowers, native to the region, that will result in short

stature prairie with a diversity of forbs (flowering plants) that bloom throughout the growing season.

3. An integrated pest management plan shall be submitted indicating the approach for site preparation and on-going ground cover maintenance. Nothing is intended to prevent pesticide use around on-site buildings or spot treatments for invasive species as may be deemed necessary to protect public health and safety. Plant materials must not have been treated with systemic pesticides, particularly neonicotinoids.

## I LIGHTING

Lighting must meet the requirements in ARTICLE XXX, Section 5 DEVELOPMENT STANDARDS.

## J GLARE

Solar panel placement should be prioritized to minimize or negate any solar glare onto nearby properties or roadways, without unduly impacting the functionality or efficiency of the solar system. Exterior surfaces of the collectors and related surfaces shall have nonreflective finish.

## K NOISE

Sound attributable to the solar facility shall not exceed an hourly average sound level of sixty (60) A-weighted decibels as modeled at the property line adjacent to a dwelling or residence zone.

## L DRIVEWAY ACCESS

Driveways shall be paved with a hard surface material for the first fifty (50) feet from the edge of the public road pavement. Interior drives are not required to be paved. A solar facility shall have a twelve (12) foot wide perimeter roadway around the facility to be used by the fire service in the event of an emergency.

## M CONCURRENT USES

Nothing will prevent a solar facility from coinciding with agricultural uses including but not limited to the grazing of livestock or apiculture.

## N POWER LINES

Power lines installed on the solar facility project sites that connect panel rows to inverters must be buried underground. Power lines between the solar facility project and the electric utility transmission system may be overhead.

## O . OPERATIONS AND MAINTENANCE

### 1. Pre-Construction Requirements:

In addition to complying with the approved Road Use and Maintenance Agreement, an applicant, owner, and/or operator propose to use any county road(s), for the purposes of transporting any component of a solar facility, substation and/or any other equipment for the construction, operation or maintenance of a solar facility shall comply with the following pre-construction requirements. All roads and services that will be used for transportation of construction materials, construction of the solar facility, and/or maintenance of the solar facility shall be identified. If the route includes a public road, such route shall be approved by the Delaware County Engineer. To the extent possible, state or federal Highways shall be utilized for the purposes of transporting any component of an solar facility, substation and/or any other equipment for the construction, operation, or maintenance of a solar facility.

The applicant, owner, and/or operator shall conduct a pre-construction baseline survey in coordination with, and acceptable to Delaware County. This survey shall be a part of the Road Use and Maintenance Agreement to determine existing road conditions for assessing current needed improvements and potential future damage. The survey shall include, but not be limited to, photographs, and/or video, or a combination thereof, and a written agreement to document the condition of the public facility as the same exists on the date of the baseline survey.

Any material change of location of the solar facility fenced boundary and any material change in the location of the solar facility outside of the solar facility fenced boundary prior to construction shall be furnished to the Director, and any other person designated and authorized by the County Commissioners. It shall be the responsibility of the applicant, owner and/or operator to obtain any variance required by such change and to comply with any other requirement necessitated by such change. Any variance required by this Section shall be obtained prior to construction or implementation of such change.

### 2. *Damages to waterways*

Drainage ditches, field tiles, or other drainage related infrastructure and their connections caused by the construction, installation, or maintenance of a solar facility system must be completely repaired by the project owner or remedied with the installation of new drainage infrastructure so as to not impede the natural flow of water. All repairs must be completed within a reasonable period of time and:

- (1) to the satisfaction of the Delaware County Drainage Board; and
- (2) as stated in an applicable lease or another agreement with the landowner; subject to applicable federal, state and local drainage laws and regulations.

### 3. *Sub-surface and surface drains (regulated and non-regulated).*

- a. Damages, including but not limited to damming, cutting, removing, and blocking, to surface, sub-surface drains, or any other drainage infrastructure, by any cause connected with the project during construction, post construction, while in operation, or before the decommissioning is complete, must be restored by the solar facility owner to a condition that is equal to the preexisting conditions after receipt of notice of such damage, unless such repair is rendered impractical by weather or other natural force. The solar facility owner shall be responsible for all expenses related to repairs, relocations, reconfigurations, and replacements of drainage infrastructure and systems that are damaged.
- b. The solar facility owner shall post a surety bond in an amount determined by the Drainage Board, payable to the Drainage Board to address any need for drainage tile repair, replacement or rerouting caused by construction activities or installation of the Project, such bond to be posted within 45 days after commencement of the construction of the solar facility and solar facility facilities. The bond is to remain in effect for a period of fifteen (15) years after the first day the SES is in operation. The Drainage Board shall determine and adjudicate whether claims brought by an adjacent property owner for damage and is a direct result from the project based on substantial evidence. The Drainage Board may waive the posting of a bond or modify the requirements of this section.
- c. The owner, operator, and/or petitioner shall enter into an agreement with the Drainage Board and County Surveyor to retain an appropriate inspector, at the owner/operator's sole expense. The inspector will ensure that all drainage infrastructure was installed according to specifications of the drainage plans and according to the requirements in the Storm Water Management Ordinance and any additional.

#### 4. Groundwater Monitoring

Prior to construction, the owner/operator shall engage at the owner/operators' expense an independent third party to develop a groundwater monitoring program within the fence line of the solar facility which will include, but not be limited to, the establishment of baseline levels of ground water and for monitoring to continue annually for the life of the Project, with the final monitoring taking place within six (6) month after the completion of decommissioning. The results of the monitoring program are to be submitted to the Executive Director within thirty (30) days of the owner/operator receiving the results from each monitoring every two years or in event of breakage of panels through storms or accidents or at the request of the Executive Director. Results shall also be provided to any necessary government agencies as required by law.

## 5. Construction Requirements

During construction, the applicant shall demonstrate and document to the satisfaction of the County, County Highway Superintendent, County Surveyor, Executive Director and any other person(s) designated and authorized by the County Commissioners, that the following requirements are met:

- All reasonable dust control measures required by the County Commissioners during construction of the solar facility are being followed together with any additional steps or adjustments for dust control which may from time to time be required by the County Commissioners.
  - Reasonable storm water best management practices as required by the approved Drainage Plan/Agreement.
  - Near a residence or public use noise shall be kept to a minimum from dusk to dawn.
6. Post-Construction Requirement for a solar facility

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

### a. Road Repairs

Any road damage caused by the transport of any matter or material utilized in any way regarding the solar facility, in the construction of the solar facility, the installation of the same, and/or the removal and decommissioning of the same, shall be repaired to the satisfaction of the Delaware County (as per the Road Use and Maintenance Agreement). The County may choose to require either remediation of road(s) upon completion of the solar facility or the County may, by ordinance, collect fees for oversized load permits. As-Built Plans Requirement

### b. As Built Plan Requirements

Where upon completion of all development, the exact measurements of the location of utilities, structures and components erected during the development are necessary for public record and shall therefore be recorded. The applicant, owner, and/or operator shall submit a copy of the final as-built survey to the Director with the locations of the solar facility facilities shown thereon. Said Director, after being satisfied that the locations of the solar facility are substantially similar to the locations on the originally approved final plan(s) or as the same were from time to time amended, shall approve, date and sign said as-built survey for the solar facility, which the applicant, owner, and/or operator shall then record and provide Plan Commission a copy of said recorded Plans.

### c. Change in Ownership

It is the responsibility of the solar facility applicant, solar facility owner and/or solar facility operator and any subsequent owner and operator, in addition to the notice

requirements of any solar facility plan(s) and solar facility agreement(s) to notify by written notice the County Commissioners and Director of any change in the ownership of the solar facility or any part of the ownership thereof to and through the time that the final Decommissioning-Restoration Plan and Agreement are concluded and all applicable acceptances, releases and performance standards of any description have been met and concluded and accepted by the appropriate local, state, federal or private authority, department, agency, and person(s) and all financial payments or other financial obligations are fully satisfied and all appropriate parties are in receipt thereof.

7. Decommissioning and removal.

Any Ground-mounted solar facility equipment which has reached the end of its useful life has been abandoned, or declared a public nuisance, shall be removed by the owner as per this Article.

Owner/operator shall give written notice of intent to abandon use of an solar facility 60 days prior to the discontinuation of electrical production to the County Commissioners and Plan Commission.

A solar facility or portion of a solar facility shall be considered abandoned use after one (1) year without energy production unless a Rehabilitation Plan developed by the solar facility owner and solar facility operator is submitted to, and approved by, the County Commissioners outlining the necessary procedures and time schedule for commencing or returning the SES to energy production as provided in this ordinance. Failure by the solar facility owner and/or operator to commence energy production at such solar facility or return such solar facility to energy production within the time schedule which has been approved by the County Commissioners, said solar facility or portion of solar facility shall be considered an abandoned use and/or a public nuisance.

- a. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Zoning Administrator may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
- b. A cost estimate for demolition and removal. The cost estimate shall be made by a competent party, such as a professional engineer, a contractor capable of decommissioning, or a person with suitable experience or expertise with decommissioning solar facilities;
- c. Owner/operator must remediate all land to its original state and fertility based on soil tests pre-construction paid for by the owner/developer. Testing firm and facility will be chosen by Delaware County.

8. Written notices

Prior to implementation of any procedures or remedy for the resolution of any solar facility owner's and/or operator's failure to decommission the solar facility pursuant to the

Decommissioning-Restoration Plan and Agreement, and/or Rehabilitation Plan and/or the Ordinance, the County Commissioners 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, except upon such longer time to which all said parties agree, for good faith negotiations between the solar facility owner and/or operator and the County Commissioners or its duly appointed representative, to resolve the default(s). In the event the negotiations fail to resolve the default issue(s), either party may pursue any and all remedies available by the terms of the Ordinance and/or Decommissioning-Restoration Plan and Agreement and/or Rehabilitation Plan.

9. Costs incurred by Delaware County

In the event, after written notice, the owner and/or operator should fail to enter into a Rehabilitation Agreement or decommission the solar facility in accordance with the Zoning Ordinance or the Decommissioning-Restoration Plan and Agreement, the owner and/or operator shall pay all reasonable costs, including reasonable attorney fees, incurred by the County to remove the solar facility.

10. Indemnification

The applicant, owner and/or operator of the solar facility project shall defend, indemnify, and hold harmless the County and its officials from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses, and liability whatsoever, including attorney fees without limitation, arising out of acts or omissions of the applicant, owner and/or operator associated with the construction and/or operations and/or design of the solar facility project.

P. GENERAL PROVISIONS

1. All solar facilities must meet or exceed the standards and regulations of the Federal Aviation Administration (FAA), the Federal Communications Commission (FCC), the Indiana Electrical Code and any other agency of the local, state, or federal government with the authority to regulate such facilities that are in force at the time of the application.
2. A solar collector shall not be considered an impermeable surface provided the ground underneath the collector is not compacted or of hard surface and contains a vegetated ground cover.
3. Installation of solar facilities must not interfere with existing drainage tiles unless mitigation measures are taken such as repairs, replacing tile, installing additional drainage features, or re-routing. This is the obligation of the project owner which continues and applies even if the interference is discovered after construction of the project.

4. All solar facility structures shall conform to applicable industry standards as well as all local, state, and federal regulations. Solar facility applicants shall submit certificates of design compliance that solar manufactures have obtained for UL (Underwriter Laboratories), DNV (Det Norske Veritas), or an equivalent third party. Solar facility applicants must also submit an estimate of the amount of local labor that will be used for the construction of the project and for the operation of the solar facility.

#### P. TRANSFER OF OWNERSHIP

All duties and obligations of each owner/operator of a solar facility shall be joined and several, and shall be binding upon all heirs, successors in interest, written notice shall be given to the Delaware County Commissioners and the Plan Commission. All agreements, bonds, and other financial assurances provided under this ordinance shall remain in full force and effect upon any transfer of ownership interest until the successor in interest delivers replacement documents for approval by the Delaware County Commissioners. Any transfer of ownership interest without prior approval of replacement documents shall constitute a default and shall not relieve the original responsibility of liability.

#### Q. NUISANCE

Any solar facility, or part thereof, declared to be unsafe by the Delaware County Building Commissioner 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, rehabilitation, demolition, or removal in accordance with an abatement order from said Building Commissioner or, if applicable, the Decommissioning Plan Agreement. Abatement orders shall allow no more than sixty (60) days for corrections or for a rehabilitation plan to be filed with the Plan Commission office setting forth a timeline for compliance with the abatement order.

#### ARTICLE XXXI

##### Section 14. Commercial Battery Energy Storage Systems (CBESS) Requirements

###### **Purpose**

The purpose of this Section is to plan for and regulate the use, improvement, and maintenance of real property and the location, condition, and maintenance of structures and other improvements. These regulations allow commercial battery energy storage systems in certain areas, and, therefore, do not have the effect of unreasonably restricting the use of such facilities other than for preservation and protection of public health and safety. These regulations are not intended to and do not have the effect of significantly increasing the cost of system systems, decreasing the efficiency of such systems, or impeding alternative systems of comparable cost and efficiency.

**Definitions**

Commercial battery energy storage systems mean one or more devices capable of collecting, storing, and distributing energy in order to distribute electricity at a future time.

**Exemptions**

Battery energy storage systems which collect, store, and distribute energy only for use at a residence or business are exempt from this regulation.

**Permitted Districts**

Commercial battery energy storage systems are allowed only in Agriculture and Industrial Zoning Districts. If a rezone application is made relating to a Commercial Battery Energy Storage System, the applicant must submit with the petition the following information:

- A. Detailed design of the project;
- B. Access and Traffic Circulation Plan;
- C. Decommissioning Plan;
- D. Fire Prevention & Control Plan;
- E. Hazardous Materials Handling Plan;
- F. Drainage Plan which complies with County ordinances;
- G. Lighting Plan;
- H. Landscape Plan; and
- I. Signage Plan

**Setbacks**

All commercial battery energy storage systems must meet the setback requirements for a solar facility as set forth ARTICLE XXXI Section 13, part D.

**Fencing**

The entire perimeter of all commercial battery energy storage systems shall be surrounded by a security fence of not less than the height of the commercial battery energy storage system(s) to prevent unauthorized access. Fences shall be black opaque vinyl coated chain link. All gates will be locked. The applicant will place a sign, not to exceed eight (8) feet in area, which contains the name and address of the operator and an emergency telephone contact number for the operator.

**Screening**

All commercial battery energy storage systems shall be surrounded by a vegetative screening along the outside of the perimeter of the fence at a suitable height and density to minimize the view of the systems. Screening shall, at a minimum, be the height of the required fencing and shall, at a minimum, include one evergreen for every 60 lineal feet. The landscape screen shall be part of a required buffer yard that is at least 50 feet in width from the required fencing.

**Exterior Lighting**

All exterior safety lighting will be developed in a manner which precludes light trespassing onto adjoining parcels, and which is limited to the amount of light needed for maintenance, safety, and security.

### **Fire Prevention/Suppression Plan and Requirements**

At the time of any application for a rezone or development plan review, the applicant shall submit a fire prevention and suppression plan which consists of the following:

1. Description of potential fire and emergency scenarios that may require a response from fire, emergency medical services, police, and other emergency responders.
2. Emergency procedures to be followed in the case of fire, explosion, or other potentially dangerous conditions. Procedures shall include notifying and providing access to the Delaware County Fire Department or the closest volunteer fire department.
3. Other procedures as determined necessary by the County to provide for the safety of occupants, neighboring properties, and emergency responders.
4. Details of the applicant's plan to comply with the National Fire Prevention Association (NFPA) Standard 855, including, but not limited to, hazard mitigation analysis, fire suppression design and equipment, fire and explosion testing, emergency planning and training, NFPA Standard 1 (Fire Code), NFPA 70 (Electric Code), and all applicable Indiana and local building, fire, safety, and construction rules, orders, ordinance, and regulations.
5. Description of public or private water sources and fire hydrants on the site which can be accessed for fire suppression.
6. Description of site access for fire and other first responders.
7. Description of the hazardous material signage plan.

### **Decommissioning**

Any Commercial Battery Energy Storage System (CBESS) that is not operated for a continuous period of six (6) months is considered to be abandoned. The owner of an abandoned CBESS will within twelve (12) months of receipt of notice from the Delaware County Zoning Administrator remove the system or the part of the system which is abandoned. After removal, the owner will restore the site to its condition as it existed prior to the installation of the system. If the owner fails to remove the system and restore the site as required by this Article, the owner will be in violation of this Article, and the Zoning Administrator may pursue all remedies for the violation. The owner will also provide for a decommissioning plan, and this plan must include written assurance that the system will be properly decommissioned upon the expiration of the system's serviceable life or upon abandonment. The plan must also include cost estimates for decommissioning and removing the system. Such cost estimates must be made by a professional engineer with experience in decommissioning or removal of such systems. The cost estimates must be updated by a professional engineer annually and must be submitted to the Zoning Administrator.

After submitting the cost estimates to the Zoning Administrator, the Administrator may accept the cost estimate provided or have a professional engineer engaged by the Administrator provide a cost estimate. In the event that the cost estimates of the owner's engineer and of the Administrator's engineer are not the same, the Plan Commission will determine the cost estimate which applies to the owner. The owner will provide Delaware County with financial security in the form of an irrevocable letter of credit, payable upon demand by Delaware County, in a form acceptable to the Plan Commission, for the full cost of the estimated decommissioning, removal and restoration in an amount determined by the Plan Commission and approved by the Delaware County Board of Commissioners. If the cost estimates change during annual reviews, the owner must provide revised irrevocable letters of credit which reflect the adjusted cost estimates. No deductions for salvage value or other credits are allowed from the estimated cost of decommissioning, removal, and restoration.

**Development Plan Review**

A development plan review is required. An applicant for a development plan review must submit a site plan prepared by a licensed engineer, an access and traffic circulation plan, lighting plan, signage plan, landscape plan, fire prevention plan, drainage plan, decommissioning plan, and other plans required by the Zoning Administrator. Within 60 days of receiving a complete application, the Plan Commission will conduct a public hearing and either approve or disapprove the application.

**Permit**

If the Plan Commission approves the development plan, the applicant may apply for an improvement location permit. No work, excavation or construction may occur prior to the applicant receiving an improvement location permit. Within 15 days of receipt of an application for a permit, the Zoning Administrator will determine whether the application is complete. The Zoning Administrator will notify the applicant in writing of his determination. If the application is complete, the application will be reviewed by the Zoning Administrator. The Administrator will either grant the permit or deny the permit within thirty (30) days of receiving a complete application. If the application is denied, the Administrator will provide written notice of the reasons for denial. If the application is not complete, the applicant must provide Zoning Administrative the supplemental information within sixty (60) days. If the applicant fails to provide the supplemental material for the application in a timely manner, the application will be dismissed.

**Permit Fee**

At the time of submission, the applicant will submit to the Zoning Administrator a nonrefundable fee in the amount of \$500.00, plus the following additional fee for systems that are more than one hundred (100) acres:

Acres	Additional Fee


**Noise**

A CBESS shall comply with the noise requirement of Article XXXI, Article 13, subpart K.

**Height Limitations**

A CBESS shall comply with the noise requirement of Article XXXI, Article 13, subpart C.

**Legal Drains:**

No CBESS may encroach upon the seventy-five (75) foot easement of any legal drain or ditch. If the construction of the system requires the relocation of any legal drain or ditch, such relocation must be approved by the Delaware County Drainage Board.

**Private and Mutual Drains:**

No CBESS may encroach upon any private or mutual drain or ditch. If the construction of the system requires the relocation of any private or mutual drain or ditch, such relocation must be approved by the parties to the private or mutual drain or ditch, performed at the expense of the operator, and relocated in a manner so as not to materially impede the function of the drain or ditch. This obligation to refrain from encroaching upon any private or mutual drain or ditch continues and applies even if the encroachment is discovered after construction of the project.

**Enforcement:**

In the event of a violation of this Section, the Zoning Administrator shall enforce the Ordinance using the rights and remedies provided for in the Zoning Ordinance.

