

ORDINANCE NO. 2020-1116 §
AN ORDINANCE REGULATING SITING OF
COMMERCIAL SOLAR ENERGY CONVERSION SYSTEMS
IN WARREN 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 Warren County that the following standards are required for the approval and permitting of a commercial solar energy project in Warren County, Indiana.

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 3MW 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 Warren 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) a Conditional Use Permit, also known as a Special Exception Permit, from the Warren 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 § 101 of the Warren County Zoning Code (the "Code"), (2) a Request for Variance for any variances anticipated on the CSECS Project, as described below and in § 134.02 of the Code, and (3) an Improvement Location Permit from the Warren County Building Commissioner, as described below and in § 161 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. Written consent from the proposed property owners where CSECS may be located;

d. 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;

e. 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;

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

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

h. Certification that layout, design and installation conform to and comply with all applicable industry standards;

i. A Drainage Plan approved by the Drainage Board;

j. A Transportation Plan approved by the Warren County Commissioners and the Warren County Highway Superintendent; and

k. An Economic Development Agreement approved by the Warren County Commissioners.

2. In determining whether to approve the Application for Conditional Use, the BZA shall determine whether the Application satisfies each of the three (3) criteria set forth in § 102 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 Conditional Use shall be payable at the time of submission of the Application. The fee shall be \$20,000.00, of which 50% 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.

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 § 134.024 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 Zoning Administrator for an Improvement Location Permit, as described in § 161.01 of the Code. In addition to the information required on the Improvement Location Permit Application, the Applicant shall provide the following information to the Zoning Administrator 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 Warren County Building Commissioner.
- g. A revegetation plan for restoring areas temporarily disturbed during construction.
- h. Any other item reasonably requested by the BZA.
- i. An erosion control plan must be developed in consultation with the Warren County Soil and Water Conservation District.

2. Each CSECS array shall require an Improvement Location Permit. The fee for each Improvement Location Permit shall be \$2,500.00 per megawatt, which shall be used to defray the costs of professional services, as well as other expenses associated with the issuance of Improvement Location Permits.

V. DESIGN AND INSTALLATION

A. Minimum Lot Size

Minimum property size for any CSECS shall be five (5) acres situated in either a single parcel or contiguous parcels.

B. Height

The height of any CSECS ground mounted solar equipment is limited to twenty-five (25) feet, as measured from the highest natural grade below each solar panel.

C. Visibility

The planting of evergreens or use of opaque fencing along the perimeter of the CSECS, including along road frontage, shall be required, as determined by the Board of Zoning Appeals.

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 eight (8) feet tall as measured from the average grade below the fence to the tallest point of the fence.
- d. 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 or 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 the 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).

Octave Bands for Warren County in Hertz (Hz), per ANSI	Maximum Permitted Sound Level (in decibels) measured 200 feet from edge of any Primary Structure.
2 through 8000	45

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. Electrical Collection Cables. 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 regulated drains, 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 property line of a primary dwelling unit located on a parcel adjoining the CSECS.

- D. CSECS inverters must be set back an additional three hundred (300) feet, for a total of five hundred (500) feet, from the property line of a primary dwelling unit adjoining the CSECS.
- E. These setbacks may be waived in writing by property owners adjacent to the CSECS.

VII. OPERATION

A. Maintenance / Inspection

1. 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.
2. 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.
3. The Warren County Building Commissioner staff, along with licensed third 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 Warren 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 Warren County Building Commissioner staff that repairs or alterations are requested, or within a longer period of time mutually acceptable to both parties. The Warren 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 Warren

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.

4. Site inspections of zoning code requirements may be undertaken by the Warren County Building Commissioner, as he or she may determine, for a fee of Sixty Dollars (\$60.00) per hour plus expenses, to be paid by the applicant or owner, no more than once annually.
5. The owner or operator of any CSECS shall maintain a current general liability policy covering pollution, bodily injury and property damage and naming Warren County as an additional insured with dollar amount limits per occurrence in the aggregate, and a deductible which is suitable to the County Commissioners. Proof of such insurance shall be provided annually to the Warren County Surveyor and Auditor.

B. Road Use

1. Any necessary, temporary closures and proposed detours shall be made known to the Highway Department and the County Emergency Management Agency at least twenty-four (24) hours prior to the temporary closure or as otherwise agreed.
2. The CSECS operator or owner shall sign an affidavit indicating they will compensate Warren County for any and all damage to public roads caused by CSECS construction vehicles or traffic.

C. 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 Warren County Building Commissioner.
 - 1. In the event of abandonment by the owner or operator, the Applicant will provide an affidavit to the Warren 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 the Warren County Commissioners 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.

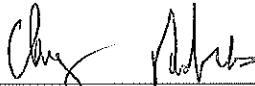
IX. Requirements of these ordinance may be waived by the Warren County Board of Zoning Appeals upon application and after public hearings.

So Ordained this 16th day of November, 2020.


BOARD OF COMMISSIONERS OF
WARREN COUNTY



W. Brian Jordan




Clay Andrews



Adam Hanthorne

ATTEST:



Robin Weston-Hubner, Auditor