

**SOLAR ENERGY PROJECT
ORDINANCE**

ORDINANCE NUMBER 2021-03

WHEREAS, the Board of Commissioners of Gibson County, State of Indiana wishes to establish safety regulations for solar energy projects in the County.

NOW THEREFORE BE IT ORDAINED by the Board as follows:

Solar Energy Conversion Systems

1. **Purpose.** This section is intended to develop standards for Solar Energy Conversion Systems (“SECS”), to facilitate economic opportunities for Gibson County, and assure that development and production of solar energy in Gibson County is safe and effective.

2. **Application.** This section applies to ground-mounted SECS. This section does not apply to roof-top or integrated solar installations on buildings or facilities and all such installations remain subject to applicable safety codes. Any solar energy system intended to be installed over, in, or on water systems, natural or otherwise, are regulated in the same manner as similar ground-mounted systems with any additional applicable review due to the water-based installation. No person may operate a SECS project within the boundaries of the County unless a permit has been approved, and financial assurances for reclamation have been posted, pursuant to this Ordinance. A separate permit will be required for non-adjoining parcels which are not part of the same Tier of project. Nothing in this Ordinance is intended to supersede any requirement of federal or state law, except that when permitted this Ordinance may impose stricter requirements, in whole or in part, than may be imposed by any other federal, state, or county authority.

3. **Solar Energy Conversion Systems Distinctions.** Only Photovoltaic and Thermal SECS may be installed in Gibson County. Concentrated Solar Power systems may not be installed in Gibson County. SECS projects are divided into three tiers:
 - a. SECS-1 (Tier 1) – Project covering greater than twenty (20) acres for production of electricity sold to utility transmission lines.
 - b. SECS-2 (Tier 2) – Project covering more than one (1) acre and up to twenty (20) acres situated on one or more landowner’s property generating electricity used primarily for on-site use.
 - c. SECS-3 (Tier 3) – Project covering one acre or less and owned by one landowner generating electricity exclusively behind the meter for single property owner.Acreage for SECS is measured from a permitted fence surrounding the total solar generation facilities including any substations, energy storage or electrical support buildings. Any solar energy generation facilities intended to be operated as an

integrated system shall be regulated according to the aggregate total acreage. Any subsequent phase of an approved project shall meet the criteria required of the total acreage of all phases.

4. Approval Process.

- a. All SECS Tier 1, Tier 2, and Tier 3 projects subject to this Ordinance (“Ordinance”) shall make an application to the Board of Commissioners or its appointee (“Administrator”) and shall comply with all requirements of this Ordinance.
- b. Tier 3 projects need submit only the following materials with its Permit application: Section 2.10(M)(5)(a), (b), (d).

- 5. Application for a Permit.** A completed application for a SECS Tier 1 or 2 Permit prepared by the Applicant shall be filed with for review by the Administrator. Assuming compliance with these application requirements, reasonably exercised by the Administrator a Permit (“Permit”) shall issue within forty-five (45) days after submittal of a complete application, with initial comments on completeness of application to be provided by the Administrator within twenty (20) days of receipt. If the Applicant is not the owner of the real property on which the Project (defined below) is sited, all property owners of the real property where the Project is to be located must be Co-Applicants, which may be in the form of an Affidavit of Consent signed by an officer of the Applicant.

If the Administrator does not within such forty-five (45) day period issue the Permit or denies the Permit, Applicant may file a written appeal with the Administrator from the later of ten (10) days from (a) expiration of the forty-five (45) day review period or (b) receipt of written notice of such denial. The Administrator shall respond in writing to such appeal within twenty (20) days thereafter. A failure of the Administrator to issue the Permit within such twenty (20) day appeal period shall afford Applicant a right to seek judicial review with a Court of competent jurisdiction in Gibson County, Indiana, with such Court being deemed to have subject matter jurisdiction.

A Permit shall remain in full force and effect for the life of the project set out in the Application (“Project”).

The application shall include the following items submitted in both hard copy and electronic format:

- a. Project Summary. An initial Project summary including a description of the Project stating the approximate total name plate generating capacity and the name plate generating capacity of blocks of solar panels, the total acreage included in the Project and the GIS coordinates of the general outline of the Project area, the potential equipment manufacturers and type of solar energy conversion system to be used, the approximate number of solar panel blocks, the size and maximum height of the solar panel blocks, and description of substations, power inverters, maintenance structures, storage yards, permanent solar resource monitoring

structures and equipment, and other buildings that are a direct functional part of the Project. If any part of the Project will include battery storage, the kinds of batteries to be used, the manufacturer, and the type of installation shall also be included.

- b. Applicant and Co-Applicants. A description of the Applicant, Owner and Operator and if applicable each of their intermediate and ultimate parent companies, listing experience in similar projects shall be included. A list of names, addresses, email addresses and phone numbers of the Applicants, Owners and Operators and all Co-Applicants (to the extent known) shall also be provided.
- c. Maps. A map or maps of the Project site that shows the topography (at 10-foot contours), political and natural features of the Project site. The map shall include the individual land parcels by state tax parcel number and clearly identify the property participating in the Project. If more than one map is submitted, all maps shall be drawn at the same scale when possible. All maps shall be submitted in hard copy and electronic format.
- d. Site Plan. These specific requirements regarding submission of site plans supersede those set out in Section 2.10(G). The Applicant shall submit 5 copies of a site plan at an appropriate scale showing the proposed location of the Project facilities; proposed access roads; substations; maintenance structures; storage yards; electrical cabling (outside the Project fence); ancillary equipment; and any other structures that are a direct functional part of the Project. Each block of solar panels should be shown on the site plan with notation as to whether the panels use tracking devices or are stagnant. In addition, the site plan shall show primary structures within one quarter mile of any Project; property lines, including identification of non-participating adjoining properties; setback lines; public roads; County-regulated drains, open ditches or tiles including private tiles (to the extent known) located in a public right of way; location of all above-ground public utility lines (and private lines to the extent they are shown on plats of record); location of all existing underground utility lines within the Project area; recognized historic or heritage sites as listed by the Indiana Department of Natural Resources as National Register of Historic Places ("NRHP") and State Register of Historic Places ("SRHP") sites; floodplains; and any wetlands based upon a delineation prepared in accordance with the applicable U.S. Army Corps of Engineer requirements and guidelines. This site plan must also be distributed for information only to emergency management agencies, fire departments serving any part of the Project site, the County Sheriff, and the chief executive body of any municipal government whose boundary is within two (2) miles of the Project site within five (5) days after filing of a Permit application.
- e. Natural Resource Impact Report. The Applicant shall submit a Natural Resources Impact Report for the proposed Project site. The Natural Resources Impact Report shall include a detailed description of the potential natural resource analysis as a result of the construction, operation, and maintenance of the SECS that includes identification and analysis of: (a) topography, geology, vegetation, soil types,

wetlands and waters, threatened and endangered species and critical habitat, as applicable; (b) plan for compliance with applicable air and water quality standards; and (c) plan for compliance with any site specific recommendations made by IDNR or IDEM. The report shall include a study area map with identification of any areas of importance such as bat habitat, flood zones, wetlands and watercourses evaluated in the report. Notwithstanding the above, actual permits need not be issued at the time of Permit issuance.

- f. **Cost Reimbursement.** For Tier I projects only, a filing fee in the amount of \$50,000 must be submitted to pay the County for all reasonable expenses incurred by the County regarding Permit review and issuance. The filing fee is intended to address expenses and professional fees actually incurred including but not limited to all electrical, structural, mechanical, transportation engineers, financial consultants, attorneys and other professionals.

6. Submittals. Prior to the issuance of a Permit, the following requirements shall be satisfied and the following items submitted:

- a. **Decommissioning Agreement.** Pursuant to Sections 6d. and 10, a Decommissioning Agreement to ensure that the Project is properly decommissioned shall be provided prior to the issuance of a Permit. The Decommissioning Agreement shall include financial assurance that the Project facilities are properly decommissioned upon the end of the Project life or abandonment consistent with this section. The Decommissioning Security (as defined in Section 10a.) must be provided at the start of construction. The obligations with respect to decommissioning shall include removal and proper disposal of all physical material pertaining to the Project improvements to a depth of four (4) feet beneath the soil surface, and restoration of the area occupied by the Project improvements such that it is suitable for an equivalent land use to what existed immediately before construction of such improvements. The Decommissioning Agreement must include proper disposal of all hazardous material and Operator must provide to the Administrator at the time of disposal a certification of disposal issued by the entity providing the disposal service and/or the receiving disposal facility. All disposal must comply with local, state and federal law, rules and regulations in effect at the time of decommissioning.
- b. **Road Use Agreement.** A Road Use Agreement approved by the County Commissioners including a form of financial assurance acceptable to the County Commissioners for the repair or replacement of all damaged roads, bridges, signage, or other transportation structures during construction.
- c. **Safety and Security Plan.** A Safety and Security Plan which must include adequate provisions for site security and safety. If the plan includes using Gibson County services, it should include signatures of the proper authorities indicating they are aware of their role and capable of performing it. Coordination with local emergency responders and area hospitals must be included.

- d. Glint and Glare Study. A glint and glare study, which provides that the Project will minimize glint and glare, shall be submitted.
- e. Economic Development Agreement. For any Project seeking tax abatement or other economic considerations for the Project from the County, the Applicant shall submit an Economic Development Agreement and a Decommissioning Agreement approved by the County Commissioners. The Economic Development Agreement must be developed in consultation with the Gibson County Economic Development Corporation and the County Council. The Economic Development Agreement shall include, as applicable, estimated property taxes and any tax abatement, any economic development payments, and overall cost and tax revenue impact on the County as well as the estimated current economic impact of the Project area in its current use.
- f. Additional Assurances. The Applicant shall provide a notarized statement acknowledging and affirming the following with respect to the Project:
 - 1) All duties and obligations of each of the Applicant, Owner, and Operator shall be binding upon successors in interest, and assigns. Written notice shall be given to the County Commissioners at least thirty (30) days after any transfer of any ownership interest in the Project. Any financial assurances imposed by the County shall remain in full force and effect upon any transfer, assignment, or conveyance of an ownership interest until the successor in interest delivers an accepted replacement obligation. The transfer of the interest of the Owner(s) shall be allowed without advance approval so long as the financial assurance posted by the Applicant or Operator covers the successors in interest of the Owner(s).
- g. Insurance Requirements. To the extent that such policies are available in the marketplace, the Owner or Operator of the Project shall maintain liability policies covering (1) bodily injury and property damage and (2) environmental contamination arising from construction, operation, maintenance, and decommissioning of the Project. Limits on the bodily injury and property damage policy shall be of at least \$2 million per occurrence and \$5 million in the aggregate with a deductible of no more than \$100,000 (a combination of general liability and umbrella/excess liability policies allowed to satisfy limits) and on the environmental contamination policy shall be of at least \$1 million per occurrence and \$2 million in the aggregate with a deductible of no more than \$100,000. All such policies shall provide the County and any municipality in which the Project is located with additional insured status and a certificate of insurance shall be provided to the County at the time of any required Administrative Fee, as set forth in i. below.
- h. Signage and Contact. The Applicant shall establish a twenty-four (24) hour toll-free phone number for the registering of complaints and concerns. This number shall be posted at every road intersection throughout the Project area before a Permit is issued and before any construction or earth moving can commence. If efforts to remedy legitimate complaints are not initiated within forty-eight (48)

hours, the County may address these complaints with any expenses incurred to be reimbursed by the Applicant.

- i. **Drainage Plan.** A Drainage Plan shall be approved by the Gibson County Drainage Board and including a form of financial assurance acceptable to the County for the repair or replacement of all damaged drains, ditches, and tiles (if in the public right of way) prior to the initiation of construction. The Drainage Plan shall state that any newly constructed access roads shall not impede the flow of water and will comply with all County ordinances related to drainage and the management of stormwater.
- j. **Administrative Fee.** Applicant shall pay an Administrative Fee in the amount of \$10,000 on the tenth anniversary of the Permit issuance and on each ten-year anniversary thereafter to the Administrator, and shall further submit an updated insurance certificate in the form set out in f. above.

7. Construction Standards. Prior to and during construction, the SECS Applicant, Operator, and Owner shall be responsible for:

- a. Implementing reasonable dust control measures during construction.
- b. Complying with existing septic and well regulations as required by the County Health Department and the Indiana Department of Health.
- c. Repairing all damages to County owned or regulated roadways, waterways, drainage ditches, field tiles, or any other infrastructures caused by the construction or maintenance of the SECS per the executed Road Use Agreement.
- d. Installing permanent, visible markers where directional boring is used. Markers shall be placed within the line of sight indicating directional changes and borings.

8. Development Standards.

- a. All installed equipment shall conform to applicable industry standards and the application shall include certificates of design compliance of the proposed equipment from nationally recognized third parties in the business of certifying compliance.
- b. All solar panel blocks shall be uniform in design and appearance.
- c. All electrical components of the Project shall conform to applicable local, state, and national codes, and relevant national and international standards.
- d. A visible warning sign concerning voltage must be placed at the base of all pad mounted transformers and substations.
- e. All solar panels for the Project must be fenced in with a fence not less than six (6) feet in height.
- f. The Administrator may only issue a permit upon a finding that the SECS Project shall not interfere with (i) television signals; (ii) microwave signals; (iii) agricultural global positioning systems; (iv) military defense radar; (v) radio reception; or (vi) weather and doppler radar.
- g. A screening plan shall be implemented which shall consist of opaque fencing, new vegetation, utilizing existing natural screening or a combination thereof. To the

extent that solar panels are established more than 200 feet from the foundation of an existing residence of a Non-Participating landowner, this standard shall not apply.

9. Setback and Height Restrictions.

- a. No part of the Project shall be construed in any required setback, dedicated public easement or dedicated public right-of-way without prior written authorization from the County Commissioners.
- b. No solar panel may be located less than twenty-five (25) feet on all sides from any Non-Participating landowner property line.
- c. No solar panel shall be located less than one hundred fifty (150) feet from the foundation of any existing residence of a Non-Participating landowner.
- d. No solar panel may exceed 25' in height at its highest extended rotation.
- e. Applicant shall give notice to the owner of any private certified landing strip if required by law. Setbacks will be determined based upon the agreement of the landing strip owner, Applicant and Administrator which will take into consideration the guidelines provided in a U.S. Department of Transportation FAA Advisory Circular dated February 24, 2014, as may be updated.

10. Post Construction and Continued Maintenance.

- a. Decommissioning Security. Pursuant to the Decommissioning Agreement, at the time of making application for a Permit, the Applicant shall deliver to the Administrator a pro forma performance or surety bond, letter of credit or other form of financial assurance that is acceptable to the County (the "Decommissioning Security") securing performance of the decommissioning obligations, the amount of which (in U.S. dollars) shall be equal to 25% of the Restoration Costs in the first five (5) years, 50% for the next five (5) years, and 100% at year ten (10) and beyond. The Restoration Costs shall consider and deduct up to 100% of the net salvage value of the Project. The Restoration Costs and Decommissioning Security shall be re-evaluated every five (5) years commencing with the five (5) years after the issuance of the initial Decommissioning Security. A new Decommissioning Security in the revised amount, if any, shall be provided within sixty (60) days of the approval of the updated Restoration Costs. As set out in Section 6a., the actual Decommissioning Security shall be posted at the time of start of construction of the Project.
- b. Waste Removal. All solid waste whether generated from supplies, equipment, parts, packaging, or operation or maintenance of the facility, including old parts and equipment, shall be removed from the site in a timely manner. All hazardous waste generated by the operation and maintenance of the facility, including but not limited to lubricating materials, shall be handled in a manner consistent with all local, state and federal rules and regulations.
- c. Modifications. Any physical modification to the Project that alters the mechanical load, mechanical load path, nameplate generating capacity, size or location or

major electrical components shall require a new improvement location permit and/or if there is more than a 2% increase in total acreage of the Project. Like-kind replacements that do not have the effects listed above do not require new permitting.

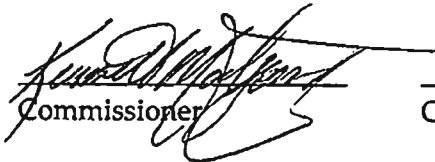
- d. **Complaints.** If, after construction, the Applicant receives a written complaint related to interference caused with local broadcast residential television, telecommunication, communication or microwave transmissions, the Applicant shall promptly resolve the complaint.
- e. **As-Built Plans.** The Applicant shall deliver to the Administrator and to all providers of emergency services serving the Project area a copy of the as-built site map. Upon request by the local fire department, the Applicant shall cooperate with the local fire department to develop or update the fire department's emergency response plan. Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.
- f. **Records of Ground Disturbance and Road Usage.** Within one hundred twenty (120) days of Project completion, the Applicant shall submit to the County Surveyor a site map detailing all ground disturbed through construction activity, surface and subsurface as-built infrastructure and all routes over which trucks and equipment traveled. The scale and format of the submitted map shall conform to the County Surveyor's specifications.
- g. **Liability for Drainage.** For a period of two (2) years following the completion of construction the Applicant shall be liable for all costs of repair to County drain tiles, regulated drains and ditches and other county regulated surface and subsurface structures and private tiles located in the public right-of-way within fifty (50) feet of the routes and disturbed ground.
- h. **Abandonment.** A SECS or any individual solar panel block constituting a portion of the Project is presumed at the end of its useful life and/or abandoned if the SECS or the individual solar panel block generates no electricity for a continuing period of twelve (12) months. This presumption may be rebutted by submitting to the Administrator for approval and within ninety (90) days of submission obtaining approval thereof of a plan outlining the steps and schedules for returning the SECS or individual solar panel block to service. Any SECS or individual solar panel block which pursuant to the terms hereof has either reached the end of its useful life and/or been abandoned pursuant to the terms hereof shall be subject to removal pursuant to the Decommissioning Agreement.
- i. **Unsafe Structures.** Any SECS or associated structure thereof declared to be unsafe by the Administrator by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment is hereby declared to be a public nuisance and shall be abated by repair or rehabilitation within twelve (12) months or be deemed abandoned and at the end of its useful life and subject to Decommissioning. Nothing herein prevents the Administrator issuing an immediate cease use order as to any structure that it determines is unsafe during the repair or rehabilitation period.

11. **Post Construction Modifications.** Any post-construction proposed material modifications, alterations, expansions, or changes of any type or size to the site plan must be approved by the Administrator. The Administrator shall have the authority and discretion, considering all relevant factors to determine whether the proposed post-construction change is material.
12. **No Preemption.** Nothing in this section is intended to preempt other applicable state and federal laws and regulations, except to the extent this section provides higher or more stringent standards.

PASSED ON SECOND READING AND ADOPTED BY THE BOARD OF COMMISSIONERS OF GIBSON COUNTY, INDIANA, ON THE 16TH DAY OF MARCH, 2021.


BOARD OF COMMISSIONERS OF GIBSON COUNTY, INDIANA


Commissioner


Commissioner

Commissioner

ATTEST:


Auditor