

Ordinance# 23-0509

FILED

MAY 31 2023

Cathy Johnson
COUNTY CLERK
VERMILION CO. IL.

SITING ORDINANCE

COMMERCIAL SOLAR ENERGY FACILITIES

Section 1 - Definitions.

"Commercial Solar Energy Facility" ("CSEF") means any device or assembly of devices that (i) is ground installed and (ii) uses solar energy from the sun for generating electricity for the primary purpose of wholesale or retail sale and not primarily for consumption on the property on which the device or devices reside.

"Facility owner" means (i) a person with a direct ownership interest in a commercial wind energy facility or a commercial solar energy facility, or both, regardless of whether the person is involved in acquiring the necessary rights, permits, and approvals or otherwise planning for the construction and operation of the facility, and (ii) at the time the facility is being developed, a person who is acting as a developer of the facility by acquiring the necessary rights, permits, and approvals or by planning for the construction and operation of the facility, regardless of whether the person will own or operate the facility.

"Ground Mount Solar Energy System" means a solar energy system that is directly installed into the ground and is not attached or affixed to an existing structure.

"Net Metering" means a billing arrangement that allows solar customers to get credit for excess electricity that they generate and deliver back to the grid so that they only pay for their net electricity usage at the end of the month.

"Nonparticipating property" means real property that is not a participating property.

"Nonparticipating residence" means a residence that is located on nonparticipating property and that is existing and occupied on the date that an application for a permit to develop a commercial solar energy facility is filed with the county.

"Occupied community building" means any one or more of the following buildings that is existing and occupied on the date that the application for a permit to develop the commercial solar energy facility is filed with the county: a school, place of worship, day care facility, public library, or community center.

"Participating property" means real property that is the subject of a written agreement between a facility owner and the owner of the real property that provides the facility owner an easement, option, lease, or license to use the real property for the purpose of constructing a commercial solar energy facility, or supporting facilities. "Participating property" also includes real property that is owned by a facility owner for the purpose of constructing a commercial solar energy facility, or supporting facilities.

"Participating Residence" means a residence that is located on the participating property and is existing and occupied on the date the application for a permit to develop the solar facility is filed with the county.

"Professional Engineer" means a qualified individual who is licensed as a professional engineer in the state of Illinois.

"Protected lands" means real property that is:

- (1) subject to a permanent conservation right consistent with the Real Property Conservation Rights Act; or
- (2) registered or designated as a nature preserve, buffer, or land and water reserve under the Illinois Natural Areas Preservation Act.

"Solar Energy" means radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

"Solar Energy System (SES)" means the components and subsystems required to convert solar energy into electric or thermal energy suitable for use. The area of the system includes all the land inside the perimeter of the system, which extends to any fencing.

"Solar Farm Energy System (SFES)" means the same as a "commercial solar energy facility" as defined above.

"Solar Panel" means a device for the direct conversion of solar energy into electricity. Structure Mount Solar Energy System. A solar energy system in which solar panels are mounted on top of a roof structure as either a flush mounted system or as modules fixed to frames which can be tilted toward the south at an optical angle.

"Supporting Facilities" means the transmission lines, substations, access roads, meteorological towers, storage containers, and equipment associated with the generation and storage of electricity by the commercial solar energy facility.

"Noxious Weeds" means any of several plants designated pursuant to the Illinois noxious Weed Law (505 ILCS 100/1 et. Seq.) and that are identified in 8 Illinois Administrative Code 220.

Section 2. Commercial Solar Energy Facility (CSEF).

- A. Purpose and Intent. The purpose of these regulations is to provide a uniform and comprehensive set of standards for the installation and use of CSEFs designed for commercial energy production. The intent of these regulations is to protect the public health, safety, and community welfare while allowing development of solar energy resources for commercial purposes. This ordinance shall apply to solar energy farms in the unincorporated areas of the County outside of the zoning jurisdiction of a municipality where that municipality exercises jurisdiction over the solar project.

B. The factors used to analyze and consider the application shall be this ordinance, relevant state and federal laws and regulations, and the below listed factors:

1. The existing uses and, where applicable, zoning of nearby property;
2. The extent to which property values are diminished;
3. The extent to which the destruction of property value promotes the health, safety, morals, or general welfare of the public;
4. The relative gain to the public as opposed to the hardship imposed upon the individual property owner;
5. The suitability of the subject property for the planned purposes;
6. The length of time the property has been vacant as currently utilized considered in the context of land development in the area;
7. The care with which the community has undertaken to plan its land-use development;
8. The community need for the use proposed by the applicant;
9. The impact on wildlife and wildlife habitat; and
10. The impact on drainage facilities and public property

C. Building Permit. Proposals to construct a CSEF shall undergo a public hearing pursuant to 55 ILCS 5/5-12020 and, if so approved, must obtain the required building permit(s), and shall be subject to the procedures and standards included in this ordinance and any conditions. It is the responsibility of the owner/operator to provide the County with proof of actual construction. Once a Building Permit has been issued to the Facility Owner, the Facility Owner shall have 2 years from the date of issuance to enter the CSEF into commercial operation.

D. Upon approval, the County Board may affix conditions to approval which are not inconsistent with this Ordinance, or any other law or regulation.

E. CSEFs are subject to the following requirements:

1. Height. Shall not exceed twenty feet at maximum tilt of the solar panel(s).
2. No CSEF shall be built on any lot less than 5 acres in size.

3. Setbacks. The Commercial Solar Energy Facility shall be sited as follows, with setback distances measured from the nearest edge of any component of the facility:

a. Occupied Community Buildings and Dwellings on Non-participating Properties: one hundred fifty (150) feet to the nearest point on the outside wall of the structure.

b. Nonparticipating residences: one hundred fifty (150) feet to the nearest point on the outside wall of the structure.

c. Boundary line of Participating Property: None.

d. Boundary lines of Nonparticipating Property: fifty (50) feet to the nearest point on the property line of the nonparticipating property.

e. Public Road Right of Ways: fifty (50) feet the nearest edge of the public road right-of-way.

4. Fencing. A locked fence of at least six (6) feet in height but no greater than twenty-five (25) feet shall enclose the CSEF.

5. Lighting. If lighting is provided at the project, lighting shall be shielded and downcast such that the light does not spill onto the adjacent parcel.

6. Noise. Noise levels measured at the property line shall comply with standards set out by the Illinois Pollution Control Board. Noise levels may be enforced by Vermilion County, or any other regulatory body.

7. Installation and Design. The CSEF shall be designed and located in order to prevent glare toward any inhabited buildings on adjacent properties as well as adjacent highways. Placement of the generator or noise producing electrical equipment shall be placed at the center of the project to the extent practical.

8. All wiring between solar panels and the solar farm facility substation shall be underground whenever possible.

9. Outdoor Storage. Only the outdoor storage of materials, vehicles, and equipment that directly support the operation and maintenance of the solar farm shall be allowed.

10. Proof an Agricultural Impact Mitigation Agreement (AIMA) has been executed with the Illinois Department of Agriculture. Failure comply with the Agricultural Mitigation Agreement and statue at 505 ILCs 147/15 et. seq. shall be a violation of this ordinance. Pursuant to 70 ILCS 405/22.02a an appropriate impact study shall be required as set out in

the statutory Agricultural Mitigation Agreement which is incorporated herein as part of this ordinance.

11. Building Codes. All state, and national construction codes shall be followed. For purposes of this ordinance, the County adopts the National Electric Code and International Building Code as amended from time to time. All building materials must comply with recognized industry standards.

12. Vegetation and Ground Cover and Weed Control. Any weed control or planting of vegetation shall prevent Palmer, Amaranthus, and Conyza weed species, and other weed species that, at the time of application, are resistant to agricultural herbicides that are commonly used in Illinois. Any weed control or planting of vegetation shall also be certified to be in compliance with the Noxious Weed Act, 505 ILCS 100/1 et. seq., to prevent importation of noxious weeds or harmful vegetation. No soil sterilant shall be permitted on a solar site.

Facility Owner shall install a Pollinator friendly habitat which shall be maintained in compliance with the Illinois Department of Natural Resources Solar Site Pollinator guidelines.

Facility Owner shall install a living buffer of evergreen trees that must be planted and maintained during the duration of the lifetime of the CSEF beginning with the commercial operation date. During the Siting Application process, the County shall determine the species of evergreens to be planted, the spacing and number of rows to be utilized. Upon decommissioning it shall be the landowners discretion whether the vegetation screening shall remain. Earth berms or other topographical features and existing wooded areas may be accepted in lieu or in combination of the above requirements if they conceal the use from public view and are maintained.

13. All drainage tiles shall be repaired or restored to same or better condition as when the project began. There will be an inspection for compliance by an independent inspector chosen by Vermilion County and paid for by the owner/operator. During construction or operation, any damage to drainage systems shall be repaired by the Facility Owner or Operator. Such repair shall be initiated within 30 days of Facility Owner or Operator being informed of such damage. All repairs shall be performed by a contractor with offices or facilities in Vermilion County, unless such contractor is unable to perform required repairs within the proscribed time period.

14. JULIE shall be contacted before digging or excavation begins.

15. Local drainage districts, if any, shall be contacted prior to any development on the project site to locate drainage district tiles.

16. Annual review and reporting.

a) The applicant, owner, and/or operator of an CSEF project shall submit to the Vermilion County Board Office on the first Monday of July of each year following

CSEF project approval a report regarding CSEF maintenance and operation. This report shall include:

- i) Any physical modifications to the CSEF and/or its infrastructure;
- ii) Complaints pertaining to setbacks, noise, appearance, safety, lighting, and use of any public roads, received by the applicant, owner and/or operator concerning the CSEF, and the resolution of such complaints;
- iii) Calls for emergency services, including the nature of the emergency and how it was resolved;
- iv) Status of liability insurance; and,
- v) Any other information that the county might reasonably request.

b) Within thirty days of the receipt of this annual report, the County Board Office and Wind and Solar Committee shall review the report and conduct an on-site field review of the CSEF project. The Board Office and Wind and Solar Committee shall compile a written report of the findings and within sixty days of the receipt of the report submit the report to the Vermilion County Board or any committee designated to oversee infrastructure issues.

c) The County Board shall charge a fee for this annual review in the amount of no more than five hundred dollars per CSEF project area. This fee shall be paid to the County Board by the CSEF applicant, owner, and/or operator at the time of annual report submission. Failure to provide the annual report and required fee shall be considered a cessation of operations, subject to the remedies provision herein.

d) The applicant, owner, and/or operator of an CSEF project shall provide the Vermilion County Board and their designees access to the CSEF project area for the purposes described in this ordinance. Failure to provide access shall be deemed a violation of this ordinance.

F. Safety. All CSEFs shall provide the following at all locked entrances:

- 1) A visible "High Voltage" warning sign;
- 2) Name(s) and phone number(s) for the electric utility provider;
- 3) Name(s) and phone number(s) for the site operator;

- 4) The facility's 911 address, GPS coordinates; and,
- 5) A Knox box with keys.
- 6) Evidence that the site plan has been submitted to the local fire protection district.

G. Application Process. The Application for a Siting Permit for a CSEF shall be submitted with thirty (30) paper copies and at least 1 electronic copy and shall include:

- 1) A written summary of the project including a general description of the project, including its nameplate generating capacity.
- 2) The name(s), address(s), and phone number(s) of the owner and/or CSEF operator.
- 3) A site plan of the CSEF site showing:
 - a) Boundaries of the site.
 - b) All proposed CSEF structures including, but not limited to, the project solar panels, substation, interconnect substation, and location and voltage of any overhead transmission lines
 - c) Property lines.
 - d) Setback lines.
 - e) The location of any known subsurface drainage tiles, and a statement describing attempts made to do tile surveys and to otherwise discover the location of drainage tile locations.
 - f) Identification of any flood zone areas within the project boundaries.
 - g) Location of all existing structures with their uses identified.
 - h) Wetland location, if any.
 - i) Septic systems.
 - j) Wells.
 - k) Existing easements, if any.
- 4) Proof of compliance with this solar ordinance and also proof of compliance with an erosion study by the Soil and Water Conservation District as defined under 70 ILCS 405/22.02a, and fully executed Agricultural Mitigation Agreement statute at 505 ILCS 147/15 et. seq.
- 5) A commercial solar energy facility owner shall provide:
 - (a) the results and recommendations from consultation with the Illinois Department of Natural Resources that are obtained through the Ecological Compliance Assessment Tool (EcoCAT) or a comparable successor tool; and

(b) the results of the United States Fish and Wildlife Service's Information for Planning and Consulting environmental review or a comparable successor tool that is consistent with (i) the "U.S. Fish and Wildlife Service's Guidelines", if any, and (ii) any applicable United States Fish and Wildlife Service solar wildlife guidelines that have been subject to public review.

(c) Proof of compliance where required by the County of the recommendations provided by the Illinois Department of Natural Resources in an EcoCAT natural resource review report under 17 Ill. Admin. Code Part 1075.

6) The county may require a facility owner to:

(a) demonstrate avoidance of protected lands as identified by the Illinois Department of Natural Resources and the Illinois Nature Preserve Commission; or

(b) consider the recommendations of the Illinois Department of Natural Resources for setbacks from protected lands, including areas identified by the Illinois Nature Preserve Commission.

7) The county may require that a facility owner provide evidence of consultation with the Illinois State Historic Preservation Office to assess potential impacts on State-registered historic sites under the Illinois State Agency Historic Resources Preservation Act.

8) Emergency plan. The site and emergency plan shall be submitted to the local fire protection district(s) and/or department(s) whose jurisdiction is included in whole or in part within the CSEF project area. Any specialized training necessary will be provided at the operator's expense and shall be in person with all local emergency response personnel.

9) All other information as may be requested by the Wind and Solar Committee.

10) At the sole discretion of the Wind and Solar Committee with the consent of, or at the direction of, the County Board Chairman, if an independent engineering or consulting report is required to resolve any disputes, it shall be the responsibility of the applicant to pay for such engineer or consultant, provided however that the County shall consult with the applicant and attempt to resolve any issue prior to incurring any costs.

10) During the public hearing process Applicant shall provide competent evidence that the CSEF will comply with all requirements of this Ordinance, all state and federal laws, rules and regulations.

11) Evidence of the financial ability of the Applicant and/ or Facility Owner to complete and operate the CSEF.

H. Decommissioning Plan. As part of the Application process of applying for a building permit, the CSEF project owner/operator shall submit a decommissioning plan to the Vermilion County Board Office and Wind and Solar Committee. The Vermilion County Board Office, the Wind and Solar Committee, or its designees shall review the plan for completeness and refer it to the Vermilion County Board or any committee(s) designated to oversee solar farm issues. The plan shall include:

- 1) A description of the plan to remove the CSEF equipment and restore the land to its previous use upon the end of the project's life.
- 2) Provisions for the removal of structures, debris, and associated equipment on the surface and to a level of not less than five feet below the surface, and the sequence in which removal is expected to occur;
- 3) Provisions for the restoration of the soil and vegetation;
- 4) An estimate of the decommissioning costs certified by a professional engineer in current dollars. The engineer providing this estimate shall, at the option of the County, be engaged under contract by the Vermilion County Engineer and all costs associated with this engagement shall be borne by the applicant;
- 5) A written financial plan approved to ensure that funds will be available for decommissioning and land restoration;
- 6) A provision that the terms of the decommissioning plan shall be binding upon the owner or operator and any of their successors, assigns, or heirs;
- 7) Upon review of the decommissioning plan, the Wind and Solar Committee, or its successor committee(s), of the Vermilion County Board may set an amount to be held in a bond, escrow or other acceptable form of funds approved by the Committee. The plan shall state that Vermilion County shall have access to the project and to the funds to effect or complete decommissioning one year after cessation of operations; and,
- 8) The applicant shall provide the county with a new estimate of the cost of decommissioning the CSEF project every five years under the same conditions as set forth in this Section above. Salvage value of structures, shall not be considered with in the cost estimate calculations, unless otherwise provided for by law. Upon receipt of this new estimate, the county may require, and the applicant, owner, and/or operator of the CSEF project shall provide, a new financial plan for decommissioning acceptable to the county. Failure to provide an acceptable financial plan shall be considered a cessation of operations.

- I. After an approved final inspection of all required information a certificate of compliance shall be issued and thereafter the Vermilion County Board shall vote for the issuance of a Building Permit.

Section 3. Indemnification and liability.

A. The applicant, owner, and/or operator of the CSEF project shall defend, indemnify, and hold harmless the County of Vermilion and its officials from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses, and liabilities whatsoever, including attorney's fees, without limitation, arising out of acts or omissions of the applicant, owner, and/or operator associated with the construction and/or operation of the CSEF project.

B. The applicant, owner, and/or operator of the CSEF project shall maintain a current general liability policy covering bodily injury and property damage with limits of at least \$5 million (\$5,000,000.00) dollars per occurrence and \$10 million (\$10,000,000.00) dollars in the aggregate. Evidence of liability coverage must be reported to the Vermilion County Board on an annual basis, and any loss of coverage must be reported within three working days of loss. Failure to maintain coverage shall be considered a cessation of operations.

C. Neither this provision, nor any other in this ordinance, is intended to place a duty upon the County to inspect or enforce any provision of this ordinance, or waive any statutory, or common law, immunity provided by law, including any privilege, immunity, or affirmative defense under the Local Immunity Act (745 ILCS 10/1-101 et seq).

Section 4. Recertification and Cessation of Operations.

If any CSEF provided for in this chapter has not been in operation and producing electricity for at least two hundred seventy consecutive days, it shall be removed. The Vermilion County Board shall notify the owner to remove the system. Within thirty days, the owner shall either submit evidence showing that the system has been operating and producing electricity or remove it. If the owner fails to or refuses to remove the solar energy system, the violation shall be referred to the Vermilion County State's Attorney for enforcement, and the County may call upon any decommissioning financial assurance to effectuate removal.

Any physical modification to the CSEF that alters the mechanical load, mechanical load path, or major electrical components, and/ or increases the nameplate capacity shall require re-certification pursuant to the requirements of this Ordinance. Like-kind replacements and modifications that are made in the ordinary course of operations, including expected repairs and warranty items, shall not require re-certification. Prior to making any physical modification (other than a like-kind replacement or other modifications made in the ordinary course of operations), the Applicant shall confer with a relevant third-party certifying entity to determine whether the physical modification requires re-certification. Re-certification includes filing a Siting Permit Application, and public

hearing to determine whether to approve the proposed CSEF changes. All requirements of this Ordinance shall apply to any re-certification request.

The Siting Permit shall be valid for a period of 30 years, thereafter, Facility Owner is required to apply and receive a new Siting Permit in order to continue operating said facility. If a new Siting Permit is not issued within the requisite time frame, the Facility Owner will decommission the Facility or allow the county to enter upon the premises to effectuate decommissioning.

Section 5. Penalties.

A failure to obtain applicable building permit(s) for the construction of a solar energy system or failure to comply with the requirements of a building permit or the provisions of this chapter or the requirements of the Agricultural Mitigation Agreement, 505 ILCS 147/15, shall be deemed a violation of this chapter. The state's attorney may bring an action to enforce compliance of the requirements of this chapter by filing an action in the circuit court for an injunction requiring conformance with this chapter or seek such other relief necessary to secure compliance with this chapter.

Any person who violates this chapter shall be fined not less than twenty-five dollars or more than five hundred dollars. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

Nothing herein shall prevent the county from seeking such other legal remedies available to prevent or remedy any violations of this chapter.

Section 6. Costs and Fees

A. Application Fees

Prior to processing any Application for a Commercial Solar Energy Facility, the Applicant must submit a certified check to the County for the Application Fee equal to \$5,000.00 per megawatt (mW) of proposed nameplate capacity, up to a maximum fee of \$250,000.00. These funds shall be placed in an FDIC insured account and will be used to cover the county's cost incurred in processing the Application.

Should the actual costs to the County exceed the submitted Application Fee, the Applicant shall be responsible for those additional costs and shall remit additional funds to the County within 15 days of receipt of a request from the County. No hearings on an Application shall be conducted nor final decisions rendered on an Application if there are Application fees due to the County.

Any unused amounts of the Application Fee shall be refunded to the Applicant within six months of the County Board rendering a final decision on the matter, unless any pending litigation, disputes or negotiations involving the County exist regarding the Commercial Solar Energy Facility, in which case any amounts owed to the Applicant shall be refunded within six months of the conclusion of the litigation, disputes or

negotiations. An Applicant may request any unused Application Fee be applied toward the Building Permit Fees for the Facility.

B. Building Permit Fees

Prior to the issuance of building permits, the Building Permit Applicant must deposit a Building Permit Fee equating to \$7,500.00 per megawatt (mW) of nameplate capacity. If the total nameplate capacity is less than 1 mW, the building permit fee shall be reduced pro rata.

C. All Costs to be Paid by Applicant or Owner

In addition to all fees noted above, the Applicant or Owner shall pay all costs incurred by the County, including but not limited to, those costs associated with all offices, boards and commissions of the County, and third-party costs incurred by the County. This includes, but is not limited to, the direct or indirect costs associated with the hearing, permitting, operations, inspections, decommissioning, litigation, disputes, and/ or negotiations.

Section 7. Hearing Facilitator

The County may engage the services of a hearing facilitator. The hearing facilitator shall be an independent contractor who shall conduct a hearing in accordance with all applicable rules of the board and the county but has no adjudicatory responsibility other than ruling on requests for continuances, procedural matters, admissibility of evidence and the propriety of any arguments.

The hearing facilitator shall be an attorney, licensed to practice in the State of Illinois. The Applicant shall reimburse the county for the fees and costs charged by the facilitator.

Section 8. Wind and Solar Committee.

The committee shall be appointed by the County Board Chair and shall consist of the representative of the

- A. Vermilion County Highway Engineer
- B. Vermilion County Health Department
- C. Vermilion County Emergency Management Director
- D. Such at-large community representatives or County employees as may be required and as may be appointed by the County Board Chair

The committee chair shall organize the times and meeting places of the committee. The chair shall be named by the County Board Chair from such representatives as may be appointed, and may be removed from the Chairpersonship at the discretion of the County Board Chair. All meetings shall be open to the public and shall be held at a public place with notice as required under the Open Meetings Act. In the absence or unavailability of the committee Chair, the County Board Chair may call a meeting of the committee for any purpose.

The committee shall be limited to the review of permit applications and matters under the governance of this ordinance.

The decision to grant or deny a permit application is within the sole discretion of the County Board.

Section 9. Severability.

If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity of that provision or application does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application.

Section 10. Effective Date.

This ordinance is effective upon passage by the Vermilion County Board

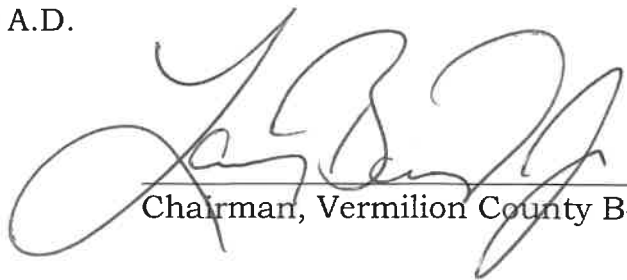
PRESENTED, APPROVED AND ORDAINED by the County Board of Vermilion County, Illinois at the May 24, 2023 A.D. Session.

DATED this 24th day of May 2023 A.D.

AYE 18 NAY 0 ABSENT 9

ATTEST:

Cathy Jenkins (LP)
Clerk of the County Board


Chairman, Vermilion County Board

Ordinance/Resolution

No. 23-0509

Approved by Wind & Solar Subcommittee on 05/19/23: Steve Fourez (Y) N A
Chairman

Adrian Greenwell (Y) N A

Curt Elmore (Y) N A

Russ Rudd (Y) N A

Harold Puzey (Y) N A

Chris Crawford (Y) N A