

**COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD
ON ELECTRIC GENERATION AND TRANSMISSION SITING**

In the Matter of:

**In the Matter of the Application of Dogwood Corners)
LLC for a Certificate of Construction for an)
Approximately 125 Megawatt Merchant Electric Solar) Case No. 2023-00246
Generating Facility in Christian County, Kentucky)
Pursuant to KRS 278.700 and 807 KAR 5:10)**

RESPONSE TO CONSULTANT’S REPORT

Dogwood Corners LLC (“Dogwood Corners”), by counsel, provides the following response to BBC Research & Consulting (“BBC”) report filed with the Siting Board on December 15, 2023.

Dogwood Corners appreciates the time and effort BBC has spent on reviewing information related to this project. In its Site Assessment Review, BBC acknowledged that the site for the Dogwood Corners project “appears to generally be well selected in terms of compatibility with the surrounding area and access to transmission infrastructure.”¹ BBC noted “that the proposed facility would not be incompatible with its surroundings,” particularly with the implementation of Dogwood Corners’s proposed setbacks and vegetative screening.² Further, the consulting firm expects that the facility will not adversely affect most adjacent property values, and vegetative screening around adjacent properties will further reduce any possibility of a negative impact to

¹ BBC Site Assessment Review for Song Sparrow Solar at Section B, Page 7.

² *Id.* at Section B, Page 3.

neighboring property values.³ BBC also referenced Christian Circuit Court Case No. 2022-CI-01010.⁴

BBC ultimately recommends approval of the certificate to construct the facility, subject to certain conditions. Dogwood Corners generally agrees with the content of the report and finds many of the mitigation measures to be reasonable, and likewise recommends approval of the certificate to construct the facility. Dogwood Corners, however, wishes to provide the following updates, comments, and recommendations to the Siting Board for consideration with its review of the report in conjunction with its Application.

I. Christian Circuit Court Case No. 2022-CI-01010

BBC recommends a mitigation measure that would require compliance with “setback requirements of any applicable county ordinance,” or “[i]f no applicable ordinance exists, Dogwood Corners should adhere to their proposed 500-foot setbacks for the project.”⁵ The Christian Circuit Court has dismissed Court Case No. 2022-CI-01010, signaling that Ordinance 22-004 is not applicable to this project.

On January 9, 2024, the Court entered the attached Memorandum Order dismissing Christian Circuit Court Case No. 2022-01010.⁶ As previously mentioned by Dogwood Corners, on November 28, 2023, the Christian County Fiscal Court voted to approve a new purported ordinance identified as Ordinance 23-05, which indicates that Ordinance 22-004 is repealed.⁷ Upon learning of Ordinance 23-05 and taking judicial notice thereof, the Court dismissed the

³ *Id.* at Section B, Page 4.

⁴ *Id.* at Section B, Page 7.

⁵ *See id.* at Page 7

⁶ The Memorandum Order is attached as Exhibit 1.

⁷ A copy of purported ordinance 23-05 is attached as Exhibit 2.

underlying action, holding that “[t]he repeal of the ordinance in question obviates the controversy cited as the basis for the Declaratory Judgment action and requires dismissal.”

The Court’s order further supports the fact that the Siting Board need not consider Ordinance 22-004 in granting a construction certificate, as discussed below. But it is important to note that the Court’s decision does not negate other reasons why the purported ordinance should not be considered by the Siting Board.

KRS 278.710(1)(e) requires the Siting Board to consider in its determination “[w]hether the proposed facility will meet all local planning and zoning requirements that existed on the date the application was filed” Based on Christian County’s own arguments, Dogwood Corners is in compliance with all planning and zoning requirements that existed as of the date the application was filed because there were no planning and zoning requirements in the unincorporated areas of Christian County as of the date the application was filed. As conceded by the Christian County Fiscal Court in court filings, “Christian County does not have any zoning ordinance in the unincorporated areas of the County.”⁸ In fact, the County maintains that Ordinance 22-004 is not a planning and zoning ordinance. It explicitly stated, “Christian County Fiscal Court did not adopt this ordinance pursuant to planning and zoning statues of KRS Chapter 100.”⁹ Because Christian County readily admits that it did not enact a planning and zoning ordinance, the required consideration found in KRS 278.710(1)(e) does not apply to Ordinance 22-004.

Moreover, the repeal of Ordinance 22-004 further supports the fact that the Siting Board should not consider Ordinance 22-004 when it evaluates Dogwood Corner’s application for a

⁸ Defendant’s Supplemental Brief in Support of the Validity of Ordinance No. 22-004, Case No. 2022-CI-01010, Christian Cir. Ct., Ky., (filed October 25, 2023) at 3. A copy of this Supplemental Brief was filed with the Siting Board in response to Staff’s Second Request for Information, Item 7.

⁹ Defendant’s Response to the Plaintiff’s Motion for Judgment on the Pleadings, Case No. 2022-CI-01010, Christian Cir. Ct., Ky., (filed August 15, 2023) at 3. A copy of this Response was filed with the Siting Board in response to Staff’s Second Request for Information, Item 7.

construction certificate. Kentucky law considers “the term repeal [to be] synonymous with abolish, rescind, and annul.”¹⁰ Consequently, when an ordinance repealed another ordinance, the repealed ordinance is “annulled, abrogated, and put [to] an end.”¹¹ Black’s Dictionary defines “annul” as the “act of nullifying or making void.”¹² Similarly, the former Kentucky Court of Appeals held that when an ordinance expires, the expiration is the equivalent of a repeal, and the County may not continue to pursue the enjoining of a property owner from constructing on his land.¹³ The Court in *Higdon* stated, “Where a suit is founded on an ordinance and, before it has been concluded, the ordinance is repealed by statute or ordinance which contains no clause saving rights accruing under the repealed ordinance, the suit must stop where the repeal finds it.”¹⁴

Kentucky courts have said that when an ordinance is a nullity can have no force in *any* judicial proceeding.¹⁵ When an ordinance is considered a nullity, no rights can arise from the ordinance and no rights can be affected by it.¹⁶

The Christian Circuit Court’s order dismissing its Case No. 22-CI-01010 confirms that the Siting Board should not give any weight to Ordinance 22-004. The Court held that “[t]he repeal of the ordinance in question obviates the controversy cited as the basis for the Declaratory Judgment action and requires dismissal.” In its Petition for Declaratory Judgment, Dogwood Corners specifically averred that Ordinance 22-004 was “invalid and has no legal effect.”¹⁷ The

¹⁰ *City of Owensboro v. Bd. of Trustees, City of Owensboro Emp. Pension Fund*, 190 S.W.2d 1005, 1008 (1945).

¹¹ *Id.* at 1009.

¹² BLACK’S LAW DICTIONARY, (11th Ed. 2019) An earlier version of Black’s Dictionary defines “similarly annul” as “To cancel; make void; destroy. To annul a judgment or judicial proceeding is to deprive it of all force and operation, either ab initio or prospectively as to future transactions.” BLACK’S LAW DICTIONARY, (2d Ed. 1910), *available at* <https://thelawdictionary.org/annul/>

¹³ *Higdon v. Campbell Cnty. Fiscal Court*, 374 S.W.2d 511, 513 (Ky. 1964).

¹⁴ *Id.* (holding “no law prohibited the trailer park activities.”).

¹⁵ *United Fuel & Gas Co. v. Commonwealth*, 166 S.W. 783, 784 (1914) (explaining “if the ordinance is not valid, it is a nullity, and, if it is a nullity, there is no law authorizing a fine to be imposed upon the defendant, for a void law is of no more effect after it is passed than if it had never been passed.”).

¹⁶ *See City of Owensboro*, 190 S.W.2d at 1008-09.

¹⁷ Petition for Declaratory Judgment ¶¶ 29, 35. A copy of this Petition is attached as Exhibit 3.

only rational reason why repealing of the ordinance would obviate the underlying controversy is if the ordinance's repeal served as a vehicle whereby the original ordinance would not have any force or effect in any proceeding, including this Siting Board case.

Because Ordinance 22-004 is not applicable to this project, Dogwood Corners specifically requests the Siting Board simplify BBC's recommended mitigation measure to only require Dogwood Corners to adhere to its proposed 500-foot setbacks for the project.

II. Noise Impacts

The BBC report recommends certain mitigation measures related to pile driving, including (1) limiting pile driving to Monday through Friday between 9 a.m. and 5 p.m., (2) methods to suppress noise generated during pile driving within 1,500 feet of noise receptors, and (3) ensuring the noise levels generated does not reach a hazardous level during construction or operation.

Dogwood Corners respectfully submits it is not necessary to have both time limitations for pile driving and additional noise-suppression methods. Based on previous construction of solar projects, Dogwood Corners believes that noise concerns resulting from pile driving activities are most effectively managed through limiting pile driving activities to certain hours during the day to avoid potentially impacting nearby receptors. To this end, Dogwood Corners proposes to limit pile driving activities to 9 a.m. to 5 p.m. Monday through Friday. However, if the pile-driving activity occurs within 500 feet of a noise-sensitive receptor, Dogwood Corners shall also implement a construction method that will suppress the noise generated during the pile-driving process. Dogwood Corners is not aware of any local ordinance or resolution that would limit noise during construction. In addition, Dogwood Corners is not aware of any state law or local ordinance that would limit construction noise for any particular land use. Dogwood Corners believes that these measures will adequately address possible noise concerns.

III. Transportation Impacts

BBC recommends implementation of ridesharing as part of a traffic management plan for the construction phase of the project. Generally, Dogwood Corners supports this concept, but cannot guarantee that ridesharing will be possible at all times and in all circumstances. Accordingly, Dogwood Corners requests that the Siting Board utilize its standard condition that ridesharing be implemented “when feasible.”

BBC recommends that “Dogwood Corners should commit to rectify any damage to public roads by fixing or fully compensating the appropriate transportation authorities for any damage or degradation to the existing road network that it causes or to which it materially contributes.” Dogwood Corners Solar is dedicated to being a good member of the community and not adding additional burden to Christian County and the Commonwealth. Dogwood Corners or its contractors will be required to obtain necessary transportation permits. Likewise, Dogwood Corners or its contractors would be liable for citations if the applicable permits were not acquired from the Kentucky Transportation Cabinet prior to any shipments within or into Kentucky. Those potential assessments associated with failing to comply with the permit requirements presumably encompass all concerns of the Kentucky Transportation Cabinet and other state or local agencies regulating transportation.

In recent cases, the Siting Board has commonly addressed this concern by requiring that a project “fix or pay for repairs for damage to roads and bridges resulting from any vehicle transport to the site. For damage resulting from vehicle transport in accordance with all permits, those permits will control.” Accordingly, Dogwood Corners requests that the Siting Board adopt this mitigation measure, as opposed to the one proposed by BBC.

IV. Conclusion

As mentioned above, Dogwood Corners appreciates review and analysis by BBC, and it respectfully requests that the Siting Board consider these comments in the Siting Board's approval of the certificate of construction for this project.

Respectfully submitted,



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ATTORNEYS FOR DOGWOOD CORNERS SOLAR LLC

Entered

22-CI-01010 01/09/2024

Paige Parker, Christian Circuit Clerk

NOT ORIGINAL

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PM KENTUCKY COURT OF JUSTICE--CHRISTIAN CIRCUIT COURT DIVISION 2

92767

MEMORANDUM ORDER DISMISSING

CASE NUMBER(S): 22-CI-01010

DOGWOOD CORNERS, LLC

PLAINTIFF,

VS.

CHRISTIAN COUNTY FISCAL COURT

DEFENDANT

This matter was originally filed as a Declaratory Judgment action pursuant to KRS 418.040, *et. seq.* and CR 57, claiming the existence of an actual, justifiable controversy between the parties.

The Court has considered the arguments of counsel, pleadings and exhibits presented by both sides. The Court is also aware of developments outside the record and takes judicial notice of the repeal of the ordinance that formed the basis for the original petition.

The repeal of the ordinance in question obviates the controversy cited as the basis for the Declaratory Judgment action and requires dismissal. Separate grounds for relief stated not and pending motions need not be addressed in light of the Court's ruling.

So ordered: This 8th day of January, 2024.

/s/John L. Atkins



Judge John Atkins, Division Two

Cc: counsel of record

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Entered

22-CI-01010 01/09/2024

Paige Parker, Christian Circuit Clerk

**COMMONWEALTH OF KENTUCKY
CHRISTIAN COUNTY FISCAL COURT**

ORDINANCE NO. 23-05

**AN ORDINANCE REPEALING CHRISTIAN COUNTY FISCAL
COURT ORDINANCE 22-04 AND ESTABLISHING LICENSING
REQUIREMENTS FOR SOLAR ENERGY SYSTEM
INSTALLATIONS IN CHRISTIAN COUNTY, KENTUCKY.**

WHEREAS, the Christian County Fiscal Court, in pursuance of the powers and duties vested in it by the Commonwealth of Kentucky, has previously adopted Ordinance 2022-04 addressing and establishing minimum setbacks, screening, and decommissioning requirements for Solar Energy System Installations ; and

WHEREAS, the Christian County Fiscal Court, upon thorough review and deliberation, has determined that it is in the best interest of the public to repeal Ordinance 2022-04 and replace it with a new ordinance to better address the contemporary needs and interests of both the county residents and solar energy systems as defined herein; and

WHEREAS, pursuant to KRS 67.083, the Christian Fiscal Court is granted the authority to undertake all necessary governmental actions for the welfare of the county, and specifically is endowed pursuant to KRS 67.083(3)(h) and KRS 67.083(3)(m) for the regulation of commerce for the protection and convenience of the public, and with the power to protect and conserve the county's natural resources, including but not limited to soil and wildlife, to safeguard the livelihoods and well-being of its residents.

WHEREAS, the new ordinance is envisioned to embody more effective measures for the protection and conservation of the county's natural resources, thus fulfilling the mandate as outlined in KRS 67.083(3)(h).

WHEREAS, KRS 278.718 became effective June 29, 2023, and further provides that an ordinance, permit, or license issued by a local government, and enacted under the provisions of home rule under KRS Chapter 67.080, 67.083, 67.850, 67.922, 67A.060, 67C.101, and 82.082, shall have primacy over the provisions, including setback requirements, set forth in KRS 278.700, 278.704, 278.706, 278.708, and any conflict between an order of the board and a local ordinance,

permit, or license shall be resolved in favor of the local government's ordinance, permit, or license;
and

WHEREAS, the Christian County Fiscal Court finds it necessary and appropriate to provide reasonable safeguards which mitigate potential nuisances such as soil erosion, water runoff and erosion, large scale loss of agricultural land, and impacts to local flora and fauna, among others, created by Large Scale Ground Mounted Solar Energy Systems as defined herein in order to protect adjoining properties and public rights-of-way; and

WHEREAS, the Christian County Fiscal Court desires to exercise its authority pursuant to this subsection; and

NOW THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF CHRISTIAN, COMMONWEALTH OF KENTUCKY:

1. DEFINITIONS:

BUILDING. Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, goods or materials of any kind or nature.

MERCHANT ELECTRIC GENERATING FACILITY means, except for a qualifying facility as defined in KRS 278.700(7), an electricity generating facility or facilities that, together with all associated structures and facilities:

- (a) Are capable of operating at an aggregate capacity of ten megawatts (10MW) or more;
and
- (b) Sell the electricity they produce in the wholesale market, at rates and charges not regulated by the Public Service Commission.

SOLAR ENERGY SYSTEM (SES). A device, including its components and subsystems, that collects solar energy for electricity generation, consumption, or transmission, or for thermal applications. SESs are in turn divided into three types depending on how the system is incorporated into the existing land use:

(1) **INTEGRATED SOLAR ENERGY SYSTEM (INTEGRATED SES).** An SES where the solar materials are incorporated into the building materials, such that the building and solar system are reasonably indistinguishable, or where the solar materials are used in place of traditional building components, such that the SES is structurally an integral part of the house, building, or other structure. An Integrated SES may be incorporated into, among other things, a building facade, skylight shingles, canopy, light, or parking meter.

(2) **ROOFTOP SOLAR ENERGY SYSTEM (ROOFTOP SES).** An SES that is structurally mounted to the roof of a house, building, or other structure and does not qualify as an Integrated SES.

(3) **GROUND MOUNTED SOLAR ENERGY SYSTEM (GROUND MOUNTED SES).** An SES that is structurally mounted to the ground and does not qualify as an Integrated SES. Ground Mounted SESs are subcategorized as follows:

(a) *Small Scale Ground Mounted Energy System (Small Scale SES)* which is a Ground Mounted SES with a footprint of less than 2,500 square feet.

(b) *Intermediate Scale Ground Mounted Energy System (Intermediate Scale SES)* which is a Ground Mounted SES with a footprint of between 2,501 square feet and forty (40) acres and which does not constitute a Merchant Electric Generating Facility as provided in KRS 278.700(2).

(c) *Large Scale Ground Mounted Solar Energy System (Large Scale SES)* means a Ground Mounted SES with a footprint of more than forty (40) acres. This term also includes any non-exempt SES that, irrespective of footprint size or configuration, constitutes a Merchant Electric Generating Facility as defined by the terms of KRS 278.700(2) and is otherwise subject to review and approval by the Kentucky State Board on Electric Generation and Transmission Siting.

DECOMMISSIONING PLAN FOR GROUND MOUNTED SES. A plan prepared by a licensed engineer that establishes the party responsible for the decommissioning, the anticipated life of the project, the estimated cost for removal of the SES facility, the costs for restoring the land to its original condition, and all other plan information required by this ordinance.

ENLARGEMENT. To increase the size of an SES footprint or relocate an SES footprint to an area of land not included as part of an original license's approval or any change which would exceed the scope (increased height or decreased setback or buffer) of the original license's approval. SES enlargement does not include the repair, modification, retrofitting, or enhancement of a licensed facility provided such repair, modification, retrofitting, or enhancement does not violate the terms of this ordinance or a condition of the license's approval.

EXEMPT SOLAR ENERGY SYSTEM (EXEMPT SES). An SES that is a facility of a municipally owned electric system or public utility regulated by the Kentucky Public Service Commission or Federal Energy Regulatory Commission, which is exempt from planning and zoning requirements under KRS 100.324.

NON-PARTICIPATING PROPERTY. Any property that is not a participating property.

PARTICIPATING PROPERTY. A property on which a Solar Energy System (SES), as regulated by the terms of this ordinance, is to be constructed in whole or part. This includes any property for which the owner(s) has provided their signature(s) on a written and recorded agreement, explicitly consenting to be a party to the licensure application for the construction of an SES. Such signature(s) shall constitute prima facie evidence of the owner(s)' consent and/or agreement to any terms set forth in the licensure application, including the waiver of any setback requirements from non-participating properties as subsequently defined herein.

PHYSICAL CONSTRUCTION (SES FACILITY). The excavation or movement of earth, erection of forms or structures, or similar activities undertaken in the construction of an SES Facility. This term does not include any activity or construction undertaken prior to the issuance of all required certificates, approvals and permits, if any, as required under KRS Chapter 278 and other applicable state statutes.

RESPONSIBLE ENTITY. The owner of the Solar Energy System and related improvements irrespective of land ownership by fee simple title, lease agreement, or other instrument. The responsible entity is the applicant under the terms of this ordinance.

SES FOOTPRINT. An area calculated by drawing a perimeter around the outermost SES panels

and any equipment necessary for the equipment to function, such as transformers and inverters. The footprint does not include perimeter fencing or visual buffers, nor transmission lines or portions thereof that are required to connect the SES to a utility or customer outside the SES perimeter.

SETBACK. The minimum distance established by this ordinance measured from the property line of a non-participating property or boundary of a public roadway or rail-line to the nearest portion of an SES Footprint or other regulated SES feature. The setback distance required by this ordinance is to be contained within the boundary of a participating property and is the minimum distance from a non-participating property or public roadway or rail-line boundary that an SES Footprint or other regulated SES feature is allowed to be constructed.

SITING BOARD REGULATED SES. An SES that constitutes a "merchant electric generating facility" under KRS 278.700(2), the construction and siting of which is subject to review and approval of the Kentucky State Board on Electric Generation and Transmission Siting. A merchant electric siting facility is an electricity generating facility or facilities that, together with all associated structures and facilities are capable of operating at an aggregate capacity of ten megawatts (10 MW) or more and sell the electricity produced in the wholesale market, at rates and charges not regulated by the Kentucky Public Service Commission.

2. **APPLICABILITY.** This ordinance and its requirements for licensure shall apply to the siting, construction, installation, enlargement, operation, maintenance, and decommissioning of Large Scale SES facilities in all unincorporated areas of Christian County, Kentucky. The requirements of this ordinance shall not apply to the following:

- (a) Integrated SES;
- (b) Rooftop SES;
- (c) Small-Scale SES;
- (d) Intermediate Scale SES; and
- (e) Large Scale SES where physical construction began prior to the effective date of this ordinance provided:
 - (1) Physical construction is completed within two (2) years of the effective date of this ordinance; and
 - (2) The SES footprint is not thereafter cumulatively enlarged by more than five (5) percent.

3. LICENSE REQUIRED AND RENEWAL LICENSE:

Prior to the commencement of physical construction or enlargement of a Large Scale Solar Energy System (SES), the responsible entity (applicant) must obtain a Christian County Solar Energy System License. Additionally, a renewal license shall be required concomitant with the updating of the decommissioning plan, as stipulated in Section 4(d) hereafter. All applications and supporting documents for licensure shall be submitted by the applicant to the Hopkinsville-Christian County Planning Commission (Planning Commission) for a determination of conformance with the requirements of this ordinance. A request for licensure shall contain the following:

- (a) An application for licensure that includes –
 - (1) The name of the applicant and owner(s) of participating property (if different);
 - (2) The street address and tax map parcel number of the property for which a license is sought to include all participating property;
 - (3) The current mailing address and phone number of the applicant and the owner(s) of participating property;
 - (4) A copy of deeds and lease agreements for participating property;
 - (5) A listing of the names, mailing addresses, and property addresses (including tax map parcel number) of all adjoining non-participating property owners to include all owners within 2,500 feet of the proposed SES footprint;
 - (6) A written description of the proposed facility that includes a statement of conformance with the requirements of this ordinance; and
 - (7) The signed statement of the applicant and all participating property owners attesting to the truthfulness and exactness of information supplied in the application.

- (b) Supplemental documents and exhibits that include –
 - (1) Twenty-four copies (24) of a site plan, drawn to a scale of no greater than 1" to 100', which illustrates:
 - a. A vicinity map denoting the location of the proposed facility;
 - b. Property lines of participating properties and adjacent nonparticipating

properties, public rights-of-way, and rail-lines within 2500 feet of the SES footprint (due to scale, this information may be provided on a separate sheet at a scale of no greater than 1' to 300');

- c. Required setbacks with plan notes detailing the minimum distance to be provided from the SES Footprint to the boundary of non-participating properties and public streets and rail-lines;
- d. Adjoining roads and points of proposed access to the facility;
- e. The proposed location of all buildings, panels, invertors, transformers, and other onsite supporting facilities with plan notes detailing the height of such features;
- f. The proposed location of perimeter fencing with plan notes detailing type, height, and setback;
- g. The proposed location of the vegetative buffer with plan notes detailing plant type, planting height and anticipated mature height, and opacity; and
- h. Any additional site plan depictions or accompanying descriptions which may be required to determine compliance with this ordinance

(2) A decommissioning plan and surety instrument.

- (c) A statement of the proposed Large Scale SES's conformance (or pending conformance) with the requirements of KRS 278.700 et seq. where the State Board of Electric Generation and Transmission Siting's approval is required.
- (d) **Fee Entitlement for Review and Application.** The Hopkinsville Christian County Planning Commission is hereby authorized to impose a fee for the review and processing of licensure applications. The amount of this fee shall be deemed reasonable and commensurate with the services provided. The specific fee schedule shall be determined and established by the Planning Commission at their discretion and formalized through a duly adopted resolution. This fee shall be payable upon submission of a licensure application and is non-refundable. Additionally, the Christian County Fiscal Court may establish a separate fee for the issuance of a license, which is in addition to any review fee specified herein.

Within sixty (60) days of its receipt of a complete licensure application, supplemental documents

and exhibits, and fee, the Planning Commission shall review and recommend that the application for licensure be 1) approved, 2) approved with conditions or required modifications, or 3) denied, with cause stated. Such recommendation shall be recorded in the minutes of the Planning Commission. Notification of the Planning Commission's recommendation shall be provided to the applicant and the Christian County Judge Executive.

Within thirty (30) days of receiving a recommendation from the Hopkinsville Christian County Planning Commission regarding a licensure application, the Christian County Judge Executive's Office shall:

1. Issue the requested license with or without conditions or modifications as deemed appropriate,
2. Deny the license request, providing the cause for denial in writing, or
3. Remand the matter back to the Planning Commission for additional review and findings. In such cases, the Christian County Judge Executive shall specify the reasons necessitating further review with particularity.

Should the matter be remanded, the Planning Commission is required to re-examine the application and submit a report to the Christian County Judge Executive within forty-five (45) days of the remand receipt. This report should address the specified reasons for remand and provide additional findings as requested.

When a license is issued, it shall remain in effect, unchanged, provided the applicant maintains compliance with the terms of this ordinance and the conditions of the original approval.

Upon the issuance of a Solar Energy System License by the Christian County Judge Executive's Office, it shall be recorded with the Christian County Clerk's Office to place notice upon all bona fide purchasers for value of the existence of said license.

In the event of a denial, the County Judge Executive will provide the decision in writing, which shall be sent via certified mail, with return receipt requested, to the applicant, all participating properties, and any non-participating properties included within the application. Furthermore, the denial will be published in accordance with the provisions of Chapter 424 of the Kentucky Revised Statutes.

Any aggrieved party by either the issuance or denial of a license shall have a period of thirty (30) days from the date of the recording of the license or the publication of the denial of said license to file an action with the Christian Circuit Court seeking judicial review.

4. **SPECIFIC REQUIREMENTS.**

The following standards shall apply to the siting, construction, installation, enlargement, operation, maintenance, and decommissioning of Large Scale SES:

- (a) **Setbacks.** The SES footprint shall be setback no less than 2,000 feet from any non-participating property line and any right-of-way for a publicly maintained roadway or rail-line.
- (b) **Perimeter Access and Screening.** Access to the site must be controlled by a fence of at least eight (8) feet in height with a vegetative landscape buffer provided between the fencing and the property line. The fence shall be equipped with screening to help shield the facilities and equipment from view. Screening shall consist of:
 - (1) An eight (8) foot tall fence and a double row of staggered evergreen trees (minimum five (5) feet in height at planting and maturing to a minimum of fifteen (15) feet in height);
 - (2) Evergreen trees shall be planted exterior to the fence and shall be setback no less than fifteen (15) feet from any property line;
 - (3) Screening shall achieve an opacity of 90% to a height of no less than eight (8) feet within three (3) years of planting;
 - (4) Screening shall be installed within 180 days of the start of physical construction and shall be maintained until the decommissioning of the SES is completed; and
 - (5) All unhealthy, dead, or noncompliant plantings shall be repaired or replaced within ninety (90) days of such occurrence.
- (c) **Lighting.** Lighting of a Ground Mounted SES shall be limited to the minimum necessary for safe operation, and shall be directed downward, incorporate full cut-off features, and incorporate motion sensors where feasible. Lighting shall be

designed to avoid light trespass. Nothing in this section is intended to preclude installation of lighting required by the Federal Aviation Administration.

- (d) Decommissioning Plan Required. The applicant shall be responsible for a decommissioning plan, prepared by a registered professional engineer at the expense of the applicant, and updated not less than once every five (5) years, containing the following:
- (1) The anticipated life of the project and defined conditions upon which decommissioning will be initiated;
 - (2) The estimated decommissioning costs, including removal of the Solar Energy System and related foundations, pads, underground collector lines and roads, transmission lines, and the revegetation and restoration of the property, including soils, to its original condition and all calculations supporting the decommissioning estimate;
 - (3) The manner in which the project will be decommissioned, including provision and a timetable (such timetable not to exceed five years) for the removal of all structures and foundations, and for the revegetation and restoration of the property to its original condition;
 - (4) The manner of SES component disposal including the estimated recycled value of components; and
 - (5) A copy of any contract containing specific agreements regarding decommissioning.
- (e) Surety Instrument Required. The applicant shall provide a surety instrument in an amount and form acceptable to the Christian County Judge Executive, upon recommendation of the Planning Commission, sufficient to cover the costs of decommissioning the SES in accordance with the approved plan in the event the applicant defaults in its decommissioning obligations. The surety instrument shall be updated and revised in conjunction with a resubmitted decommissioning plan

not less than once every five (5) years. A surety instrument shall be continuously maintained by applicant, their successors in interest and/or assigns, until such time as the Large Scale SES is decommissioned and all disturbed areas are reclaimed, revegetated, and restored. The form and content of surety shall be in accordance with the requirements of KRS 278.706(2)(m)5 and shall name Christian County Government as secondary beneficiary.

- (f) For projects with an SES Footprint located within an airport's approach zones or airport imaginary surfaces as defined by the United States Code of Federal Regulations or within one thousand (1,000) feet of an Accident Potential Zone (APZ 1 or APZ 2), the applicant must complete and provide the results of a glare analysis through a qualitative analysis of potential impact, field test demonstration, or geometric analysis of ocular impact in consultation with the Federal Aviation Administration Office of Airports, the Kentucky Airport Zoning Commission, and the United States Army, Fort Campbell Directorate of Public Works.

5. **DECOMMISSIONING REQUIRED.** The applicant shall begin decommissioning no later than twelve (12) months after a Large Scale SES has ceased to generate electricity or thermal energy. All structures and facilities associated with the SES shall be removed within six (6) months of the beginning of decommissioning. All materials shall be recycled or otherwise reused to the extent reasonably practicable and the disturbed areas shall be reclaimed, revegetated, and restored.

Failure of the applicant to decommission a Large Scale Solar Energy System (SES) in accordance with this Ordinance and the approved decommissioning plan shall be grounds for the County to invoke the surety instrument. The County shall be entitled to recover from the surety instrument proceeds that are necessary to complete the decommissioning of the facility. Furthermore, should the costs of decommissioning exceed the value of the surety instrument, the County shall be entitled to recover the excess amount necessary to complete the decommissioning process.

In the event of a failure to perform, default, or failure to extend a surety instrument, the County reserves the right to take all available legal and administrative actions necessary to compel the completion of the decommissioning by the applicant. This includes securing all necessary

easements and rights of entry, and/or to recoup any public funds expended by the County in the fulfillment of the applicant's obligation.

A failure to decommission a Large SES Facility as required herein is a violation of this ordinance and is subject to the enforcement and penalties as provided herein.

6. **LICENSE REVOCATION.** The Christian County Judge Executive may revoke a license, subject to a 90-day written notice to the applicant, upon the occurrence of one (1) or more of the following:

- (a) The applicant has 1) provided false or inaccurate information as part of the application for licensure; 2) the false or inaccurate information would result in the siting, construction, or operation of a Large SES Facility in violation of this ordinance; and 3) the applicant has failed to correct the violation through the resubmittal of an amended and approvable application and perform any necessary site modifications within the 90 day notification period;
- (b) The applicant has 1) failed to construct or maintain the Large Scale SES in accordance with this ordinance and the approved plan; and 2) the applicant has failed to correct the violation within the 90 day notification period;
- (c) The applicant has 1) failed to decommission the Large SES Facility in accordance with this Ordinance; and 2) the applicant has failed to correct the violation within the 90 day notification period;
- (d) The applicant has 1) failed to submit an updated decommissioning plan and accompanying revised surety instrument within the five (5) year period as required by Section 4(d); and 2) the applicant has failed to correct the violation within the 90 day notification period; or
- (e) The applicant has failed to transfer the license upon change of responsible entity in accordance with Section 7 of this ordinance.

Any license revocation issued under this section shall be recorded at the Christian County Clerk's Office. Within 90 days of the recording of a revocation of a license, the Large Scale SES shall cease operation and, within 12 months thereafter, be decommissioned in accordance with Section 5 of this ordinance.

7. **LICENSE TRANSFER; NOTIFICATION; REQUIRED EXHIBITS.** A change in or transfer of the responsible entity's ownership, as contained on a Large Scale SES application and accompanying license, shall require the issuance of an amended license which shall be so recorded at the Christian County Clerk's Office. No later than thirty (30) days following the sale or transfer of a Large SES Facility, the responsible entity that has or is assuming ownership shall provide written notification to the Christian County Judge Executive and shall submitted the following information:

- (a) The name and mailing address of the current, licensed responsible entity and license number;
- (b) The name and mailing address of the responsible entity assuming ownership with proof of ownership;
- (c) A statement that lease agreements for participating property, if any, are transferable with accompanying documentation;
- (d) A statement of conformance with this ordinance. If SES enlargement or change to the conditions of the original application (other than ownership) is to occur, a new application as provided in Section 3 is required; and
- (e) A revised surety instrument bearing the name of the new responsible entity.

Within sixty (60) days of receipt of notification, the Christian County Judge Executive shall 1) approve the issuance of the amended license; or 2) deny the issuance of the amended license with cause stated. In the review of the license transfer, the Judge Executive may refer the requested transfer to the Planning Commission for recommendation.

8. All other state and regulatory laws that are not specifically addressed by this ordinance remain in effect.

9. **Severability** If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the

act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

10. Any person found in violation of this ordinance shall be guilty of a misdemeanor and shall be fined not less than One Hundred (\$100.00) Dollars and not more than Five Hundred (\$500.00) Dollars. Each day of violation shall constitute a separate offense.

11. Ordinance 22-04 is hereby repealed and replaced, and this ordinance shall be in full force and effect from and after its adoption and approval as provided by law.

First reading of this ordinance approved on the 14 day of November, 2023.

Second reading of this ordinance approved on the 28 day of November, 2023.

Christian Fiscal Court

BY: 

Jerry Gilliam,
Christian County Judge Executive

ATTEST:


Melinda Humphries, Christian County Clerk

COMMONWEALTH OF KENTUCKY
CHRISTIAN CIRCUIT COURT
CIVIL ACTION NO. 22-CI-_____
(Electronically Filed)

DOGWOOD CORNERS LLC
v.
CHRISTIAN COUNTY FISCAL COURT,

PLAINTIFFS
DEFENDANT

PETITION FOR DECLARATORY JUDGMENT

Comes Plaintiff Dogwood Corners LLC, by and through counsel, and for its Petition for Declaratory Judgment in this civil action pursuant to KRS 418.040, et seq., states as follows:

The Parties

1. Plaintiff Dogwood Corners LLC (“Dogwood Corners”) is a limited liability company organized under the laws of Delaware and authorized to do business in Kentucky. Dogwood Corners’ principal place of business is 106 Isabella Street Suite 400, Pittsburgh, Pennsylvania 15212.

2. Defendant Christian County Fiscal Court is Christian County’s legislative body, as defined by KRS 100.111. Its principal place of business is 150 North Provident Way, Hopkinsville, Kentucky 42240.

Jurisdiction and Venue

3. This Court has subject matter jurisdiction over Dogwood Corners’ action seeking declaratory judgment against Defendant under KRS 418.040, et seq. and CR 57 as there is an actual, justifiable controversy between the parties.

4. Venue is proper in this court because all of the events giving rise to this action occurred in Christian County, Kentucky.

Pertinent Facts

5. Dogwood Corners seeks to construct a solar energy generating facility on real property located in Christian County.

6. Pursuant to KRS 67.083, a fiscal court is authorized to adopt ordinances related to “Planning, zoning, and subdivision control according to the provisions of KRS Chapter 100.”

7. On November 29, 2022, the Christian County Fiscal Court purported to adopt an Ordinance Relating to the Establishment Of Minimum Setback, Screening, and Decommissioning Requirements For Solar Energy System Installations in Christian County, Kentucky (“Purported Ordinance”). A draft copy of this Purported Ordinance is attached hereto as Exhibit A.

8. The Purported Ordinance attempts to regulate land use in Christian County for only Solar Energy Systems as defined in the Purported Ordinance.

9. Section 2 of the Purported Ordinance attempts to set minimum setback requirements for Solar Energy Systems.

10. Section 2 of the Purported Ordinance attempts to authorize the Fiscal Court to grant a deviation from the setback requirements if certain findings are made.

11. Section 3 of the Purported Ordinance attempts to require minimum site controls and landscape buffering for Solar Energy Systems.

12. Section 4 of the Purported Ordinance attempts to establish certain decommissioning requirements.

13. The Purported Ordinance is a zoning regulation, as defined in KRS 100.203, which includes regulations related to “[m]inimum or maximum areas or percentages of areas, courts,

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yards, or other open spaces or bodies of water which are to be left unoccupied, and minimum distance requirements between buildings or other structures.”

14. Pursuant to KRS 67.080, in order to adopt a valid zoning regulation, Christian County Fiscal Court must follow the procedure set forth in KRS 100.207.

15. KRS 100.207 states that, prior to the adoption of a zoning regulation by a legislative body, “the planning commission shall prepare the text and map of all zoning regulations and shall hold at least one (1) public hearing.” After the planning commission’s hearing, “the planning commission shall submit, along with their recommendation, a copy of the approved zoning regulation text” to the Fiscal Court.

16. Christian County’s planning commission—known as Community & Development Services (“CDS”)—is a joint planning commission comprised of members appointed by Christian County and municipalities within the County.

17. CDS did not hold a public hearing on the Purported Ordinance.

18. CDS did not make a recommendation to the Christian County Fiscal Court regarding the Purported Ordinance.

19. KRS 100.217 states that no zoning regulation may have legal effect until a board of adjustments is appointed.

20. Christian County Fiscal Court has not created a board of adjustments pursuant to KRS 100.217.

21. A board of adjustments is vital to the statutory scheme for planning and zoning. This board is solely authorized to grant variances, which are defined in KRS 100.111 as “a departure from dimensional terms of the zoning regulation pertaining to the height, width, length, or location of structures, and the size of yards and open spaces”

22. Under the statutory scheme of KRS Chapter 100, only a board of adjustments has the authority to grant variances.

23. Substantive provisions of the Purported Ordinance, including but not limited to the 2,000-foot setback of Solar Energy Systems to any residences and rights of way, have no rational relationship to the protection of health, safety, and welfare.

24. Substantive provisions of the Purported Ordinance, including but not limited to the 2,000-foot setback of Solar Energy Systems to residences and rights of way, can be established through less restrictive means and still address legitimate concerns of the Fiscal Court

25. Substantive provisions of the Purported Ordinance, including but not limited to the 2,000-foot setback of Solar Energy Systems to residences and rights of way, do not address issues raised by public comments presented at Fiscal Court meetings.

26. Christian County does not regulate any other component of land use for similar types of facilities.

COUNT I

27. Dogwood Corners adopts the preceding paragraphs as if fully restated herein.

28. The Purported Ordinance is invalid because the procedure required by KRS 67.080 and set forth in KRS Chapter 100 was not followed.

29. Accordingly, Dogwood Corners requests a judgment declaring that the Purported Ordinance is invalid and has no legal effect.

COUNT II

30. Dogwood Corner adopts the preceding paragraphs as if fully restated herein.

31. In order to preserve its rights and out of an abundance of caution, Dogwood Corners pleads Count II as an alternative action, in case the Circuit Court does not agree with the positions stated above.

32. The Purported Ordinance is arbitrary and capricious because there is no rational connection between action and purpose of authorizing legislation.

33. The Purported Ordinance is arbitrary and capricious because Christian County does not have similar land use restrictions for similar land uses.

34. The Purported Ordinance is unreasonable, arbitrary and oppressive, as its substantive provisions eliminate the viability of any Large Scale Ground Mounted Solar Energy System in Christian County, as defined by the Purported Ordinance.

35. Accordingly, if the Court does not determine that the Purported Ordinance is invalid because it fails to comply with KRS 67.080 and KRS Chapter 100, Dogwood Corners requests a judgment declaring that the Purported Ordinance is invalid and has no legal effect because it is in violation of Kentucky Constitution Section 2 and other Kentucky law as being arbitrary, capricious, unreasonable, or oppressive.

36. Dogwood Corners respectfully reserves the right to amend or supplement this pleading upon resolution by the Court of the Declaratory Judgment action contained herein.

WHEREFORE, Dogwood Corners requests (a) a judgment declaring that Purported Ordinance is invalid for failing to comply with the requirements of KRS 67.080 and KRS Chapter 100; (b) alternatively, a judgment that the Purported Ordinance is invalid as a violation of Kentucky law for being arbitrary, capricious, unreasonable, or oppressive; (c) a speedy hearing, as authorized by CR 57; and (d) all other equitable or legal relief to which Dogwood Corners is entitled.

Respectfully submitted,

BY: /s/M. Todd Osterloh
M. Todd Osterloh (KBA #90515)
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COUNSEL FOR PLAINTIFF

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**COMMONWEALTH OF KENTUCKY
CHRISTIAN COUNTY FISCAL COURT
ORDINANCE NO. 22-004**

**AN ORDINANCE RELATING TO THE ESTABLISHMENT OF MINIMUM SETBACK,
SCREENING, AND DECOMMISSIONING REQUIREMENTS FOR SOLAR ENERGY
SYSTEM INSTALLATIONS IN CHRISTIAN COUNTY, KENTUCKY**

WHEREAS, the Christian County Fiscal Court wishes to advance the use of solar energy by all of its citizens, businesses and industries; and

WHEREAS, properly designed land use standards can prepare communities for greater access to solar energy; and

WHEREAS, KRS 278.704 sets forth the minimum setback requirements of merchant electric generating facilities in the Commonwealth of Kentucky; and

WHEREAS, KRS 278.704(3), pursuant to Public Service Commission Staff Opinion 2019-006, authorizes the Fiscal Court to establish setback requirements from property boundaries, residential neighborhoods, schools, hospitals or nursing facilities by ordinance with said setbacks having primacy over the setback requirements set forth in subsection 2 and 5 of the same statute, and shall not be subject to waiver or modification via request for deviation by an applicant to the regulatory board which governs electric generating facilities; and

WHEREAS, the Christian County Fiscal Court desires to exercise its authority pursuant to this subsection; and

WHEREAS, it is the intention of the Christian County Fiscal Court that: these setback requirements shall only apply to solar energy systems (hereinafter "SES") that are governed by KRS 278.704; these setbacks shall not apply to any other type of merchant electric generating facility as defined in KRS 278.700(2), otherwise governed by KRS 278.704, that does not meet the definition of a solar energy system defined below; and, this ordinance shall not apply to any solar energy system that is otherwise exempt from the setback requirements of KRS 278.704;

NOW THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF CHRISTIAN, COMMONWEALTH OF KENTUCKY:

1. DEFINITIONS:

RESIDENCE. A home, abode or place where an individual is actually living at a specific point in time.

BUILDING. Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, goods or materials of any kind or nature.

MERCHANT ELECTRIC GENERATING FACILITY means, except for a qualifying facility as defined in KRS 278.700(7), an electricity generating facility or facilities that, together with all associated structures and facilities:

EXHIBIT A

- (a) Are capable of operating at an aggregate capacity of ten megawatts (10MW) or more; and
- (b) Sell the electricity they produce in the wholesale market, at rates and charges not regulated by the Public Service Commission.

SOLAR ENERGY SYSTEM (SES). A device, including its components and subsystems, that collects solar energy for electricity generation, consumption, or transmission, or for thermal applications. SESs are in turn divided into three types depending on how the system is incorporated into the existing land use:

- (1) **INTEGRATED SOLAR ENERGY SYSTEM (INTEGRATED SES).** An SES where the solar materials are incorporated into the building materials, such that the building and solar system are reasonably indistinguishable, or where the solar materials are used in place of traditional building components, such that the SES is structurally an integral part of the house, building, or other structure. An Integrated SES may be incorporated into, among other things, a building facade, skylight shingles, canopy, light, or parking meter.
- (2) **ROOFTOP SOLAR ENERGY SYSTEM (ROOFTOP SES).** An SES that is structurally mounted to the roof of a house, building, or other structure and does not qualify as an Integrated SES.
- (3) **GROUND MOUNTED SOLAR ENERGY SYSTEM. (GROUND MOUNTED SES).** An SES that is structurally mounted to the ground and does not qualify as an Integrated SES. Ground Mounted SESs are subcategorized as follows:
 - (a) *Small Scale Ground Mounted Energy System (Small Scale SES)* which is a Ground Mounted SES with a footprint of less than 2,500 square feet.
 - (b) *Intermediate Scale Ground Mounted Energy System (Intermediate Scale SES)* which is a Ground Mounted SES with a footprint of between 2,501 square feet and ten (10) acres.
 - (c) *Large Scale Ground Mounted Solar Energy System (Large Scale SES)* means a Ground Mounted SES with a footprint of more than ten (10) acres.

DECOMMISSIONING PLAN FOR GROUND MOUNTED SES. A plan prepared by a licensed engineer that establishes the party responsible for the decommissioning, the anticipated life of the project, the estimated cost for removal of the SES facility, the costs for restoring the land to its original condition, **and all** other plan information required by this section.

EXEMPT SOLAR ENERGY SYSTEM (EXEMPT SES). An SES that is a facility of a municipally owned electric system or public utility regulated by the Kentucky Public Service Commission or Federal Energy Regulatory Commission, which is exempt from planning and zoning requirements under KRS 100.324.

PHYSICAL CONSTRUCTION (SES FACILITY). The excavation or movement of earth, erection of forms or structures, or similar activities undertaken in the construction of an SES Facility. This term does not include any activity or construction undertaken prior to the

issuance of all required certificates, approvals and permits, if any, as required under KRS Chapter 278 and other applicable state statutes.

SES FOOTPRINT. An area calculated by drawing a perimeter around the outermost SES panels and any equipment necessary for the equipment to function, such as transformers and inverters. The footprint does not include perimeter fencing or visual buffers, nor transmission lines or portions thereof that are required to connect the SES to a utility or customer outside the SES perimeter.

SITING BOARD REGULATED SES. An SES that constitutes a "merchant electric generating facility" under KRS 278.700(2). the construction and siting of which is subject to review and approval of the Kentucky State Board on Electric Generation and Transmission Siting. A merchant electric siting facility is an electricity generating facility or facilities that, together with all associated structures and facilities are capable of operating at an aggregate capacity of ten megawatts (10 MW) or more and sell the electricity produced in the wholesale market, at rates and charges not regulated by the Kentucky Public Service Commission.

2. Christian County Fiscal Court hereby establishes the setback requirements for solar energy facilities, which are governed by KRS 278.704, as measured from the outer edge of the nearest solar panel, as follows:

Boundary line of any adjacent property (unless such setback has been reduced or waived, in writing, by the adjacent property owner or fiscal court has granted a deviation) 2000 feet

Any residence, building or structure or appurtenance thereto existing at the time of application for permits with the Kentucky Electric Generation and Transmission Siting Board 2000 feet

Schools 2000 feet

Churches 2000 feet

Hospitals 2000 feet

Nursing Facilities 2000 feet

Right-of-Ways for any publicly dedicated or maintained roadway or railway 2000 feet

Cemeteries 2000 feet

The fiscal court may grant a deviation in its discretion from the requirements of this subsection upon a finding that the proposed facility is designed to and, as located, would meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 at a distance closer than those provided in this subsection.

3. Access to the site must be controlled by a fence of at least eight feet in height with a vegetative landscape buffer provided between the fencing and the property line. The fence shall be equipped with screening to help shield the facilities and equipment from view. Screening shall consist of:

Excluding Small Scale Ground Mounted Energy Systems, perimeter screening shall be provided. Screening shall:

- (a) Consist of an eight (8) foot tall fence and a double row of staggered evergreen trees (minimum five (5) feet in height at planting and maturing to a minimum of fifteen (15) feet in height);
- (b) Evergreen trees shall be planted exterior to the fence and shall be setback no less than fifteen (15) feet from any property line;
- (c) Screening shall achieve an opacity of 90% to a height of no less than eight (8) feet within three (3) years of planting;
- (d) Screening shall be installed within 180 days of the start of physical construction and shall be maintained until the decommissioning of the SES is completed; and
- (e) All unhealthy, dead, or noncompliant plantings shall be repaired or replaced within ninety (90) days of such occurrence.

4. The property owner shall be responsible for a decommissioning plan, prepared by a registered professional engineer at the expense of the property owner, and updated not less than once every five (5) years, containing the following:

(A) The anticipated life of the project and defined conditions upon which decommissioning will be initiated;

(B) The estimated decommissioning costs, including removal of the Solar Energy System and related foundations, pads, underground collector lines and roads, transmission lines, and the revegetation and restoration of the property, including soils, to its original condition and all calculations supporting the decommissioning estimate;

(C) The manner in which the project will be decommissioned, including provision and a timetable (such timetable not to exceed five years) for the removal of all structures and foundations, and for the revegetation and restoration of the property to its original condition;

(D) The manner of SES component disposal including the estimated recycled value of components;

(E) A copy of any contract containing specific agreements regarding decommissioning; and

(F) A surety instrument in an amount and form acceptable to Christian Fiscal Court sufficient to cover the costs of decommissioning the SES in accordance with the approved plan in the event the property owner defaults in its decommissioning obligations. The surety instrument shall be updated and revised in conjunction with a resubmitted decommissioning plan not less than once every five (5) years.

5. All other state and regulatory laws that are not specifically addressed by this ordinance remain in effect.

6. The provisions of this Ordinance shall apply to all unincorporated areas within Christian County, Kentucky, and to the siting, construction, installation, and decommissioning of any new SES system on or after the effective date of this Ordinance. An SES in operation, or which has begun physical construction prior to this Ordinance's effective date, shall be considered to have legal nonconforming status in accordance with KRS 100.253.

7. Severability If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

8. Any person found in violation of this Ordinance shall be guilty of a misdemeanor and shall be fined not less than One Hundred (\$100.00) Dollars and not more than Five Hundred (\$500.00) Dollars. Each day of violation shall constitute a separate offense.

9. This ordinance shall be in full force and effect from and after its adoption and approval as provided by law.

First reading of this ordinance approved on the _____ day of November 2022.

Second reading of this ordinance approved on the ____ day of November 2022.

Steve Tribble
CHRISTIAN COUNTY JUDGE/EXECUTIVE

ATTEST:

Michael A. Kem, Christian County Clerk