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March 17, 2025

**VIA ELECTRONIC MAIL ONLY**

Kentucky State Board on Electric Generation and Transmission Siting  
Kentucky Public Service Commission  
Attn: Linda Bridwell  
211 Sower Boulevard; PO Box 615  
Frankfort, KY 40602  
[linda.bridwell@ky.gov](mailto:linda.bridwell@ky.gov)

Re: Electronic Application of Clover Creek Solar Project, LLC  
d/b/a New Frontiers Solar Park  
Case No. 2024-00253

Dear Ms. Bridwell:

The undersigned has been retained by Breckinridge Fiscal Court to represent its interest in the above-referenced proceeding. In that regard, attached you will find a copy of Breckinridge County's current ordinance associated with the development of solar energy projects within Breckinridge County. As you will note, pursuant to the ordinance, the setback lines are as follows:

• **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.

• **Setbacks.** The SES footprint shall be setback no less than 1,000 feet from any non-participating property line and 1,000 feet from any right-of-way for a publicly maintained roadway or rail-line, and no less than 2,000 feet from any church, school, hospital, residential building or any incorporated city limit.

It is the request of the County that any authorization given for the above-referenced project be conditioned upon compliance with the applicable Breckinridge County ordinances.

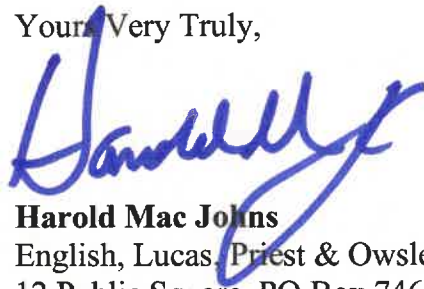
Linda Bridwell  
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Additionally, this correspondence will serve to advise the Siting Board that no permission or approval of the project has been forthcoming from the Breckinridge County Fiscal Court. This is contrary to the assertions by the applicant. Attached are the minutes of an October 28, 2024, where the Fiscal Court rejected an MOU regarding this project.

It is the position of a majority of the Fiscal Court these setback lines should be enforced pursuant to KRS 278.718. As you are aware, this statute grants primacy to all local ordinance setbacks. Contrary to applicant's implicit assertions, a local planning and zoning ordinance is not necessary for the primacy of a local ordinance to be effective.

In the event there are questions, please do not hesitate to contact the undersigned.

Yours Very Truly,



**Harold Mac Johns**

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12 Public Square, PO Box 746  
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HMJ/rs

Cc: Nikki Anthony-Armes, Breckinridge County Attorney, [nanthonvames@prosecutors.ky.gov](mailto:nanthonyarmes@prosecutors.ky.gov)  
Gary Greenwell, County Magistrate, [ggreenwell3rddistrict@gmail.com](mailto:ggreenwell3rddistrict@gmail.com)  
Gregory Dutton, Counsel for Clover Creek Solar Project, [gutton@fbtlaw.com](mailto:gutton@fbtlaw.com)  
Kathryn Eckert, Counsel for Clover Creek Solar Project, [keckert@fbtlaw.com](mailto:keckert@fbtlaw.com)  
Pierce Stevenson, Counsel for Clover Creek Solar Project, [pstevenson@fbtlaw.com](mailto:pstevenson@fbtlaw.com)

Attachments

**COMMONWEALTH OF KENTUCKY  
BRECKINRIDGE COUNTY FISCAL COURT**

ORDINANCE NO. 2025- 0121

**AN ORDINANCE REPEALING BRECKINRIDGE COUNTY  
FISCAL COURT ORDINANCE 2022-0321 FOR SOLAR  
ENERGY SYSTEM INSTALLATIONS IN BRECKINRIDGE  
COUNTY KENTUCKY.**

**WHEREAS**, the Breckinridge County Fiscal Court, in pursuance of the powers and duties vested in it by the Commonwealth of Kentucky, has previously adopted Ordinance 2022-0321 addressing and establishing minimum setbacks, screening, and decommissioning requirements for Solar Energy System Installations; and

**WHEREAS**, the Breckinridge County Fiscal Court, upon thorough review and deliberation, has determined that it is in the best interest of the public to repeal Ordinance 2022-0321 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 Breckinridge County Fiscal Court is granted the authority to undertake all necessary governmental actions

for the welfare of the county, and specifically is empowered by KRS 67.083(3)(h) to regulate the “Conservation, preservation and enhancement of natural resources including soils, water, air, vegetation and wildlife”, and by KRS 67.083(3)(m) for the “Regulation of commerce for the protection and convenience of the public”, to safeguard the livelihoods and well-being of its residents; and

**WHEREAS**, Breckinridge County has a thriving and vitally important agricultural economy which can be adversely impacted by removing pasture and croplands from production; and

**WHEREAS**, this is not intended to be a planning or zoning regulation; and

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

**WHEREAS**, KRS 278.718 became effective on 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 setbacks 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 Breckinridge 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 Breckinridge County Fiscal Court desires to exercise its authority pursuant to the above cited subsection(s); and

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

**SECTION I: 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:

- 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 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 the thermal applications. SESs are in turn divided into three types depending on how the system is incorporated into the existing land use:
    - **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 in, among other things, a building facade, skylight shingles, canopy, light, or parking meter.
    - **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, as defined above.

- **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, as defined above. Ground Mounted SESs are subcategorized as follows:

- ***Small Scale Ground Mounted Solar Energy System (SES).*** A ground mounted SES with a footprint of less than 2,500 square feet.
- ***Intermediate Scale Ground Mounted Solar Energy System (SES).*** A ground mounted SES with a footprint 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).
- ***Large Scale Ground Mounted Energy System (SES).*** 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 and paid for by the solar company that establishes the party responsible for the decommissioning, the anticipated life of the project, the estimated cost of 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 a part of the original site plan or any change which would exceed the scope (increased height or decreased setback or buffer) of the original site plan. 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 original site plan.
- **EXEMPT SOLAR ENERGY SYSTEM (EXEMPT SES).** An SES that is a facility of a municipality 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 as defined below.
- **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 in 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 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 company under the terms of the 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, boundary of a public roadway, rail-line or structure as designated in Section III A of this ordinance 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”.

## **SECTION II: APPLICABILITY:**

This ordinance and its requirements for site plan approval shall apply to the siting, construction, installation, enlargement, operation, maintenance, and decommissioning of Large Scale SES facilities in all unincorporated areas of Breckinridge County, Kentucky. The requirements of this ordinance shall not apply to the following:

- Integrated SES;
- Rooftop SES;
- Small-Scale SES
- Intermediate Scale SES provided it has a site plan approved by the fiscal court; and
- Large Scale SES where physical construction began prior to the effective date of this ordinance provided:
  - Physical construction is completed within two (2) years of the effective date of this ordinance; and

- The SES footprint is not thereafter cumulatively enlarged by more than five (5) percent.

### **SECTION III. 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 1,000 feet from any non-participating property line and 1,000 feet from any right-of-way for a publicly maintained roadway or rail-line, and no less than 2,000 feet from any church, school, hospital, residential building or any incorporated city limit.

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 and inward, 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 company shall be responsible for a decommissioning plan, prepared by a registered engineer at the expense of the company, and updated not less than once every three (3) years. The Decommissioning Plan shall include:

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 for, and a timetable (such timetable not to exceed six [6] months) 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.

6. Surety Instrument Required. The applicant shall provide a surety instrument in an amount and form acceptable to the Breckinridge County Judge and Fiscal Court, 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 shall be a financial institution or insurance company or a letter of credit, acceptable to the Breckinridge County Fiscal Court. The surety instrument shall be updated and revised in conjunction with a resubmitted decommissioning plan not less than once every three (3) years. A surety instrument shall be continuously maintained by the company and 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 Breckinridge County Fiscal Court as a beneficiary.

**E. Airport's Approach Zone or Airport Imaginary Surfaces.** For projects with a SES Footprint located within an airport's approach zone or airport imaginary surface 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 company 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 Knox Directorate of Public Works.

**F. Roads:** The company is responsible for maintaining all roadways used in the construction and decommissioning of the SES. It is the duty of the company to ensure that all applicable county and private roads are maintained in a condition as good as or better than when the project began.

**G. Site Plan:** A site plan detailing the information required in items A-F of this section shall be submitted to the Breckinridge County Fiscal Court prior to construction. At which point, the Breckinridge County Fiscal Court will vote on whether the plan complies with the terms of this ordinance as permitted in KRS 278.704(3). The Breckinridge County Fiscal Court will have a public hearing regarding the site plan at which adjoining property owners and other residents

of Breckinridge County may raise any concerns directly to the Fiscal Court and the Company.

H. **FISCAL COURT APPROVAL.** Prior to construction of a large scale SES, the company must have approval by a majority vote of the Breckinridge County Fiscal Court of the following:

1. Approval of a site plan complying with this ordinance.
2. Approval of a soil erosion plan showing compliance with all existing federal, state, and local environmental restrictions. Said plan is to be reviewed by NRCS to determine compliance.
3. Decommissioning Plan as described in Section IV.
4. Noise study outlining effects to adjoining property.
5. Property valuation study of participating properties and neighboring non-participating properties. This study is to be complete before any construction begins.
6. Any additional studies requested by the Breckinridge County Fiscal Court for review.
7. A majority vote of the Breckinridge County Fiscal Court can require more or less stringent setbacks to be determined on a case-by-case basis.

I. **OTHER USES.** Other uses within the SES projects, such as grazing or other agricultural purposes, are to be negotiated on a case-by-case basis between the landowner and the SES developer.



#### **SECTION IV. DECOMMISSIONING REQUIRED.**

A. The company 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 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.

B. Failure of the company 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 make a claim against the surety Company and instrument. The County shall be entitled to recover for 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 from the property owner and the project owner.

C. 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 company. This includes all necessary easements and

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

D. 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.

#### **SECTION V.**

All other state and regulatory laws that are not specifically addressed by this ordinance shall be complied with by the property owner, the project developer and project owner.

#### **SECTION VI.**

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.

#### **SECTION VII.**

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.

#### **SECTION VIII.**

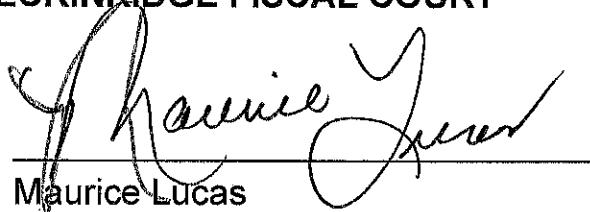
Ordinance 2022-0321 is hereby repealed and replaced, and this ordinance shall be in full force and effect from and after its adoption and approval as provided by law.

First reading of this ordinance approved on the  
21<sup>st</sup> day of January, 2025.

Second reading of this ordinance approved on the  
17<sup>th</sup> day of February, 2025.

**BRECKINRIDGE FISCAL COURT**

By:



Maurice Lucas

Breckinridge County Judge/Executive

**ATTEST:**



Kathina Bell

Breckinridge County Fiscal Court Clerk

**MINUTES**  
**BRECKINRIDGE COUNTY FISCAL COURT**  
**Special Called Meeting**  
**Monday, October 28, 2024**  
**9:00 A.M.**

**RE: Call to Order**

After leading in the Pledge of Allegiance and a word of prayer, Judge Lucas called to order the special called meeting of the Breckinridge County Fiscal Court at 9:00 a.m. at the Courthouse.

Present: Maurice Lucas, County Judge/Executive  
Jeremy Armstrong, Magistrate, District 1  
Shane Beavin, Magistrate, District 2  
Gary Greenwell, Magistrate, District 3  
David Albright, Magistrate, District 4  
Sam Moore, Magistrate, District 5  
Brandon Henning, Magistrate, District 6  
Nikki Anthony-Armes, County Attorney  
Billy Richardson, Sheriff

Staff: Kathina Bell, Fiscal Court Clerk  
Laura Fentress, County Treasurer

**RE: New Frontier Solar Park – Memorandum of Understanding**

Subsequent to lengthy discussion, Esquire Albright moved, seconded by Esquire Moore, to approve the condition that the MOU is updated so that the term lines up with the lease term and that if the interconnection facility is going to be moved from where it is displayed on the site plan that the facility will follow the setbacks agreed to in the MOU and authorize Judge-Executive, Maurice Lucas to sign on behalf of the court. Judge Lucas called for a vote on the motion, THREE MEMBERS PRESENT VOTING AYE; ESQUIRES ARMSTRONG, BEAVIN, GREENWELL AND HENNING VOTING NAY (3-4). Motion failed

**RE: Adjournment**

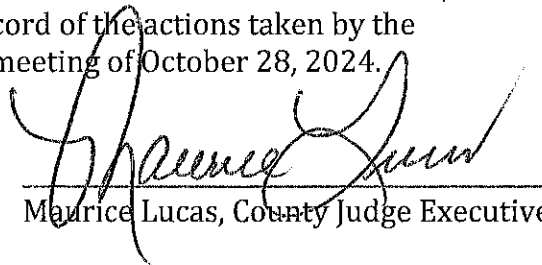
Esquire Greenwell moved, seconded by Esquire Henning, to adjourn this meeting at 10:26 a.m. with no further business to come before it. Judge Lucas called for a vote on the motion, ALL MEMBERS PRESENT VERBALLY VOTING AYE (7-0).

**Clerk Certification**

I, Kathina B. Bell, having been appointed to the office of Fiscal Court Clerk, do hereby certify that this is a true and accurate record of the actions taken by the Breckinridge County Fiscal Court at the meeting of October 28, 2024.



Kathina B. Bell, Fiscal Court Clerk



Maurice Lucas, County Judge Executive