

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

In the Matter of:

ELECTRONIC APPLICATION OF)	
CLOVER CREEK SOLAR PROJECT LLC)	
D/B/A NEW FRONTIERS SOLAR PARK)	
FOR A CERTIFICATE OF CONSTRUCTION)	
FOR AN APPROXIMATELY 100)	
MEGAWATT MERCHANT ELECTRIC)	Case No. 2024-00253
SOLAR GENERATING FACILITY AND)	
NONREGULATED ELECTRIC)	
TRANSMISSION LINE IN BRECKINRIDGE)	
COUNTY, KENTUCKY PURSUANT TO)	
KRS 278.700 AND 807 KAR 5:110)	

Applicant’s Post-Hearing Brief

Clover Creek Solar Project LLC d/b/a New Frontiers Solar Park (the “Applicant” or “New Frontiers”) files this post-hearing brief in support of its position following the hearing, pursuant to 807 KAR 5:110 Section 7 and paragraph 3 of the Siting Board’s March 24, 2025 Order. Specifically, this brief will discuss Applicant’s compliance with KRS 278.710 criteria for approval and will demonstrate Applicant’s legal position regarding the issues surrounding local ordinances and the inclusion of subdivided parcels in the final construction certificate approval. In support of its position, Applicant states as follows.

I. Facts

Applicant is seeking approval from the Siting Board for a certificate of construction for an approximately 100-megawatt (MW) merchant electric solar generating facility and nonregulated electric transmission line pursuant to KRS 278.704 and 278.714 (the “Project”). The Project will be located in entirety in unincorporated Breckinridge County, Kentucky. Applicant filed its application on November 1, 2024, and the application was accepted as administratively complete

as of November 4, 2024. The application included a site assessment report and other studies which addressed the criteria listed in KRS 278.706-.708.

At the time of filing the application, Breckinridge County Fiscal Court (the “Fiscal Court”) had enacted Ordinance 2022-0321 (“2022 Ordinance”) to address the siting and development of solar energy systems (“SES”) within the county. The 2022 Ordinance is attached hereto as Exhibit 1. Although the county had no planning and zoning commission, nor the authority to enact zoning ordinances or regulate land use, the Fiscal Court enacted the 2022 Ordinance. The 2022 Ordinance did not define an SES or the various types of SES referenced therein, nor did it provide any procedure for pursuing approval from the Fiscal Court to construct an SES. Thus, the 2022 Ordinance did not legally apply to the Project. Despite this, the Project as designed and presented to the Siting Board at the time of application filing either met or exceeded the setback and screening requirements contained in the 2022 Ordinance.¹

On February 17, 2025, over three months following the filing of the New Frontiers application, the Fiscal Court enacted Ordinance No. 2025-0121 (“2025 Ordinance”), again without the necessary authority to enact planning and zoning regulations. The 2025 Ordinance is attached hereto as Exhibit 2. Ultimately, the 2025 Ordinance repealed the 2022 Ordinance. The newly enacted 2025 Ordinance regulated land use by establishing minimum siting requirements for SES including, among others, setbacks, access, screening, and decommissioning; and established a process by which an applicant must submit a site plan for review and decision by the Fiscal Court. *Id.* These setbacks were far more restrictive than those contained in the 2022 Ordinance. *Id.*; *see also* Exhibit 1. The Project cannot remain both economically viable and meet or comply with the

¹ See Notice of Intent, para. 5; Application para. 13-14; Application, Exhibit D Certification of Compliance; Application, Exhibit I (Site Assessment Report) para. 13; Responses to First Request for Information, Response No. 14; Motion for Deviation from Setback Requirements, p. 2; Responses to Second Request for Information, Response No. 25.

screening or setback requirements in the subsequently-enacted 2025 Ordinance. Formal Hearing Video at 11:32:57.

A previous version of the Project layout included several parcels intended to be used for collection lines where a portion of the parcel that would not be utilized fell within the city limits of Hardinsburg. *See* Application, Exhibit B. Upon recognition that a portion of the parcel was in the city limits, these parcels were removed from the Project layout. *See* Responses to Second Request for Information, Response No. 31; *see also* Supplemental Response to Second Request for Information, Response No. 31. The parcels which were removed are parcels 59-8 and 59-15; the leases for parcels 59-4A and 59-4C were amended to exclude the area within city limits and are currently part of the Project footprint. *Id.* The portions within city limits were never intended to be used for above or below ground Project infrastructure. *See Id.*; *see also* Application, Exhibit B. These parcels are still subject to a lease agreement between each parcel's landowner and an affiliate entity of EDP Renewables North America LLC. Applicant may ultimately choose to subdivide these parcels so the portion of the parcel outside city limits can be leased back to the Project for use as underground collection lines. These parcels would only be used for underground collection lines. These parcels and their neighbors received all statutory notice required by KRS 278.706 to be considered part of the Project. *See* Application, Exhibit C. Applicant now seeks conditional approval of these parcels to be used for collection lines, conditioned on the portions of the parcels within city limits being subdivided and the remaining portion outside of city limits transferred back to the Applicant.

II. Legal Standard

Within one hundred eighty days of receipt of an application and upon evaluation of the record, including an evidentiary hearing, the Siting Board shall grant or deny a construction certificate based upon the criteria contained in KRS 278.710(1).

III. Argument

New Frontiers has satisfied the criteria for a construction certificate pursuant to KRS 278.710. The Siting Board's third-party consultant, BBC Research & Consulting ("BBC"), found that the Project's site is compatible with the surrounding area and access to transmission infrastructure, especially once New Frontiers' proposed setbacks and screening are implemented. *See* Review and Evaluation of Clover Creek Solar Project LLC d/b/a New Frontiers Solar Park Site Assessment Report (hereinafter "BBC Report") at Section B, pp. 3, 7; *see also* BBC Report Section C, pp. 17, 37. Further, BBC stated that the facility is unlikely to have measurable negative impacts on most adjacent property values, and vegetative screening around adjacent properties will further reduce any possibility of a negative impact to neighboring property values. BBC concluded that the Siting Board should approve the application based upon its review, subject to certain mitigation measures. BBC Report Section B, pp. 9-10. Ultimately, the Project compliments local surroundings and will generate economic benefit for the community without causing harm to adjacent properties. The Project therefore satisfies all criteria contained in KRS 278.710 for approval of its application for a construction certificate.

i. The 2022 Ordinance is Not Valid and Does Not Apply to the Project

KRS 278.710(1)(e) examines whether the proposed facility will meet all local planning and zoning requirements that existed on the date the application was filed. KRS 278.710(1)(g) elaborates further, examining whether the proposed facility complies with state setback

requirements unless a planning and zoning commission has enacted different setback requirements or a deviation is granted pursuant to KRS 278.704(4). As discussed in its Notice of Intent filed early in this matter, New Frontiers identified that Breckinridge County did not have a planning and zoning commission. Because the county had no planning and zoning commission, nor otherwise complied with the relevant statutory authority for land use planning, it did not have the authority to enact any ordinance regulating setbacks or other land use within the county. Despite its lack of authority to do so, the Fiscal Court did enact the 2022 Ordinance with the intent of regulating solar facilities within the county, and the 2022 Ordinance was in effect at the time the application was filed with the Siting Board.

The Fiscal Court did not have the authority to enact the 2022 Ordinance or the subsequent 2025 Ordinance. KRS 67.080 and 67.083 contain the statutory framework for the explicitly-provided powers of fiscal courts, including those powers to enact ordinances. In other words, if this power is not explicitly granted to a fiscal court through a legislative action by the General Assembly, the fiscal court is without authority to engage in such action. While a fiscal court may enact ordinances relating to “planning, zoning, and subdivision control,” these can only be enacted “according to the provisions of KRS Chapter 100.” *See* KRS 67.083(3)(k).

Before the fiscal court may enact any permanent land use regulations, its planning commission must prepare a comprehensive plan to serve as a guide for the zoning regulations. KRS 100.201. The plan must be detailed. KRS 100.187; KRS 100.191. It must be developed through public hearings, must be based upon research and analysis, and must contain a statement of goals and objectives. KRS 100.193. In addition, the plan must contain a land use plan element showing the most appropriate and feasible patterns for the general location, character and extent of the manner in which the county should use its public and private land. KRS 100.187. Only after

development of such a comprehensive plan may a fiscal court enact zoning regulations and again only in a certain manner. The zoning regulation must specify zones with uniform conditions throughout each zone. The regulation may specify the activity that may be carried on in the zone, the size, width, height, bulk, and location of structures in the zone, and the population density of the zone. KRS 100.201; KRS 100.203. Kentucky courts have upheld enactment of interim zoning regulations where a governmental body has adopted a comprehensive plan's goals and objectives and land use element. *See* KRS 100.201; *see also* *City of Lakeside Park v. Quinn*, 672 S.W.2d 666, 668 (Ky. 1984). However, regardless of whether the regulations are interim or permanent, KRS Chapter 100 requirements cannot be disregarded when enacting ordinances that involve land use planning, and the Fiscal Court was required to comply with the chapter when passing either Ordinance. Both Ordinances are *de facto* zoning ordinances with the underlying goal of regulating setbacks, screening, and decommissioning requirements specific to solar energy systems. Kentucky law recognizes that these actions constitute land use planning and zoning. *See* KRS 100.203(1). The requirements are inherent land use actions which must be regulated by KRS Chapter 100 and are routinely recognized as preventing a fiscal court from engaging in planning and zoning through any process that differs from the process established by the KRS Chapter 100 framework. The Fiscal Court did not comply with any of the KRS Chapter 100 requirements when passing either Ordinance.

KRS 278.704 and KRS 278.710 both contemplate that a solar facility would only be required to comply with local planning and zoning setback and decommissioning requirements in lieu of state requirements if these were established by a planning and zoning commission. KRS 278.704 describes the hierarchy and priorities established by the General Assembly for setback requirements of electric generation and transmission siting and demonstrates that primacy may

only be invoked by the planning and zoning commission for the county with jurisdiction over the location of the proposed solar facility. KRS 278.704(3). This is again highlighted in the language of the construction statute, KRS 278.718, which recognizes the rights of local governments as these exist and does not create or expand any additional rights.

In other words, the already-established powers of local government (to only enact zoning regulations through compliance with KRS 67.083(k) and KRS Chapter 100) and the state (to require compliance with state setback decommissioning requirements if none are established by a local planning and zoning commission) cannot be expanded by the final sentence of KRS 278.718. Rather, this merely emphasizes that when a local planning and zoning commission establishes setback and decommissioning requirements applicable to a solar facility, that these would have primacy over the state-level requirements. Because no planning and zoning commission properly enacted the 2022 Ordinance or the subsequently-enacted 2025 Ordinance, these should not apply to Applicant and Applicant should not be required to comply with these local ordinances.

Second, interpretation of the 2022 Ordinance was nearly impossible to discern any applicable definition of a solar energy system (SES) and how any definition may apply to the Project. Beyond that, there was no discernable procedure for review of an SES pursuant to the 2022 Ordinance for any local permitting approval. This impossibility rendered the 2022 Ordinance ineffective and inapplicable to the Project, in addition to Applicant's position above that the Fiscal Court lacked authority to enact the 2022 Ordinance. Because of Applicant's position regarding the validity of the 2022 Ordinance, New Frontiers filed a Motion with the Siting Board to deviate from the state statutory setbacks. Since no local planning and zoning commission established setbacks in Breckinridge County, KRS 278.704(4) allows for the Applicant to seek deviation from the state setbacks of 2,000 feet from any residential neighborhood, school, hospital or nursing home facility

once those criteria listed in subpart (4) are met. Applicant defers to the argument in its Motion in support of deviating from the state setbacks in the proposed Project.

Even if the Siting Board determines that the 2022 Ordinance should apply to the Project because it was in effect at the time of filing, with which Applicant respectfully disagrees, the 2022 Ordinance has now been repealed by the Fiscal Court and no longer has any effect. In February 2025, well after the filing of the application, the Fiscal Court enacted the 2025 Ordinance, which repealed the 2022 Ordinance and replaced those siting requirements with significantly more restrictive land use regulations.

Evidence in the record, including testimony from the March 20, 2025 evidentiary hearing, demonstrates that the Project, as designed, meets or exceeds those setback and screening requirements that were designated in the 2022 Ordinance.² KRS 278.710(1)(e) indicates that the standard that an applicant must demonstrate is whether the proposed facility will meet all local planning and zoning requirements that existed on the date the application was filed. While Applicant remains steadfast in its position that no planning and zoning existed with which it must comply, it notes that the 2022 Ordinance was in effect on November 4, 2024, and has demonstrated the Project's ability to adhere to the 2022 Ordinance's setback and screening requirements. *Id.*

Finally, the Applicant should not be forced to comply with the subsequent 2025 Ordinance enacted well after the filing of the application. Applicant's position is that this too is an invalid ordinance for those reasons discussed at length previously. Furthermore, principles of equity and fairness in this case provide that the Applicant must be able to depend on the law at the time of filing its application, which would be any applicable law existing on November 4, 2024. *See* KRS 278.710(1)(e). Testimony from the Applicant at the hearing detailed the investment in the Project

² *See supra*, footnote 1.

to date and whether the setbacks in the 2022 Ordinance were met in the filed site design. *See* Formal Hearing Video at 11:32:57. The Project could not comply with those requirements in the 2025 Ordinance, and should not be required to do so. Compliance with any requirements from the 2025 Ordinance should therefore not be a consideration by the Siting Board in whether the Applicant has met those criteria in KRS 278.710(1).

ii. Clarification Regarding Changes to Collection Parcels

Early in the Siting Board process, the Project layout included several collection parcels a portion of which fell within the city limits of Hardinsburg. Application, Exhibit B; Responses to Second Request for Information, Response No. 31; Supplemental Response to Second Request for Information, Response No. 31. These are not parcels to be used for Project infrastructure, but would allow for collection easements to connect Project infrastructure to the point of interconnect. To avoid any issues related to the city, these parcels were removed from the Project layout. *See* Supplemental Response to Second Request for Information. These parcels remain under control of an affiliate entity of EDP Renewables North America LLC via lease agreements with the relevant landowners. Applicant may choose to subdivide these parcels to include only those portions of the parcel that are outside the city limits. Once subdivision is achieved, these can again be used for collection within the Project footprint. As part of the approvals sought in its application for a construction certificate, Applicant is seeking conditional approval for the subdivided parcels to be included in the Project once subdivision is achieved.³

³ The Siting Board has granted a similar request to include a parcel for collection line purposes. *See In the Matter of the Electronic Application of Hummingbird Energy LLC for a Certificate of Construction for an Approximately 200 Megawatt Merchant Electric Solar Generating Facility and Nonregulated Electric Transmission Line in Fleming County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110, Case No. 2022-00272, Brief in Support of Post-Hearing Positions at pp. 1-2.*

IV. Conclusion

WHEREFORE, for the foregoing reasons, New Frontiers respectfully requests that the Siting Board make a determination that it satisfied the necessary criteria for approval and grant a construction certificate for its merchant generating solar electricity facility and transmission line in Breckinridge County.

Dated this 27th day of March 2025.

Respectfully submitted,

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EXHIBIT 1

BRECKINRIDGE COUNTY FISCAL COURT

ORDINANCE: 2022

AN ORDINANCE REGULATING SOLAR ENERGY SYSTEMS AND SOLAR PANEL INSTALLATION.

WHEREAS, the Breckinridge County Fiscal Court has determined it to be in the public interest to regulate Solar Energy Systems and Solar Panel Installation.

NOW THEREFORE, BE IT ORDAINED BY THE BRECKINRIDGE COUNTY FISCAL COURT THAT THE FOLLOWING WILL BE

4.3.7. Solar Energy Systems (SES) –

4.3.7.1 Permitted – Level 1 Solar Energy Systems that comply with the requirements of the Section 4.3.7. shall be allowed in all zoning districts. Level 2 and 3 SES, as set forth below, shall be a conditional use in all Agricultural or Commercial/Heavy Industrial Zones. Those seeking a permit for Level 3 SES must be granted approval by a majority vote of Breckinridge County Fiscal Court.

4.3.7.2 Design Standards – a Solar Energy System (SES) is the components and subsystems required to convert solar energy into electric energy suitable for use or placement on the electrical grid, including transmission lines, transformers and substations. The area of the system includes all the land inside the perimeter of the system, which extends to any fencing, and areas required to connect to the electrical grid, including transmission lines, transformers and substations. For the purposes of these zoning regulations, solar energy systems are divided into three (3) classes.

4.3.7.2.a Level 1 Solar Energy System – Any ground mounted system not included in a Level 1 SES and meets the following area restrictions:

1. The area of the SES shall not exceed five (5) acres in size.
2. An SES of any size up to five (5) acres shall require a site plan Approved by the Breckinridge County Fiscal Court.

4.3.7.2.b Level 2 Solar Energy – Any system that does not satisfy the parameters for a Level 1 or Level 2 SES. Each Level 3 SES shall require a site plan approved by the Breckinridge County Fiscal Court.

4.3.7.3 Requirements – Solar Energy Systems (SES) shall comply with the following criteria:

4.3.7.3.a The height of any ground mounted SES shall not exceed twenty-five (25) feet as measured from the highest natural grade below each solar panel (excludes utility poles, substations and antennas constructed for the project).

4.3.7.3.b Setback requirements for Level 3 SES shall be as follows:

1. All components of the SES shall be at least fifty (50) feet from the perimeter property lines of the project area and at least three hundred (300) feet from any residential structure, nursing home, church, or school; interconnection facilities may be located within the setback lines, and
2. No interior property line setbacks shall be required if the project spans multiple contiguous properties.
3. The Breckinridge County Fiscal Court may require more or less stringent setback lines, to be determined on a case by case basis.

4.3.7.3.c All Level 3 SES shall be screened with a seven (7) foot tall fence and to the extent reasonably practicable, a visual buffer that provides reasonable screening to reduce the view of the SES from residential dwelling units on adjacent lots (including those lots located across a public right of way). A vegetation screening plan to reduce the view of the SES from residential dwelling units on adjacent lots will be submitted as part of the site plan for approval of the Breckinridge County Fiscal Court. The existing natural tree growth and natural land forms along the SES perimeter may create a sufficient buffer and shall be preserved when reasonably practicable. When no alternative vegetation screening plan is approved by the Breckinridge County Fiscal Court, a double row of staggered evergreen trees will be planted 15' on center from adjacent non participating residential dwellings including the outdoor living space immediately near residential dwellings. Parcel boundaries with no proximity to residential dwellings shall not require screening. The proposed evergreen trees shall be placed on the exterior of security fencing. The use of barbed wire or sharp pointed fences shall be prohibited in or along any boundary adjoining residential properties. The Breckinridge County Fiscal Court may require additional screening and/or visual buffers on a case-by-case basis.

4.3.7.3.d There shall be no signs permitted except those displaying emergency information, owner contact information, warning or safety instructions or signs that required by a federal, state or local agency. Such signs shall not exceed five (5) square feet in area.

4.3.7.3.e Excessive lighting shall be prohibited except that required by federal or state regulations.

4.3.7.3.f Upon application to the Breckinridge County Fiscal Court, a Level 3 SES shall provide a soil erosion plan. A Level 3 SES shall comply with all existing federal, state, and local environmental restrictions.

4.3.7.3.g Decommissioning of Level 3 SES shall be as follows:

(1) The developer shall post a Surety Bond or other form of Security acceptable to the Breckinridge County Fiscal Court, for the abandonment of the site and in the event the Commission must remove the facility. Abandonment shall be when the SES ceases to transfer energy on a continuous basis for twelve (12) months. The surety bond or other form of security shall be one hundred (100) percent of a reasonable estimate submitted for the decommissioning of the project to be re-calculated every five (5) years during the project life. The cost of decommissioning will include a reasonable reduction for the scrap value of the components left on the property.

(2) A decommissioning plan shall be submitted at the time of application by the developer responsible for decommissioning and must include the following:

(a) Defined conditions upon which the decommissioning will be initiated. i.e. there has been no power production for twelve (12) months, the land lease has ended, or succession of use of abandoned facility, etc.

(b) Removal of all non-utility owned equipment, conduit, structures, fencing, roads, and foundations to the depth of three (3) feet,

(c) Restoration of the property to substantially similar physical condition that existed immediately prior to construction of the SES,

(d) The time frame for completion of decommissioning activities,

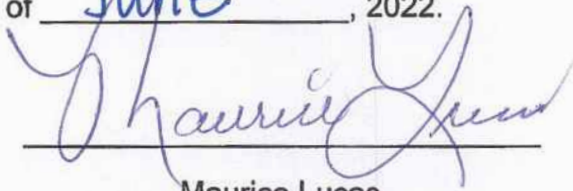
(e) The party currently responsible for decommissioning, and

(f) Plans for updating the decommissioning plan.

4.3.7.3.h 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.

Given a first reading on the 21st day of March, 2022.

Approved by a majority vote of the Breckinridge County Fiscal Court
this 27th day of June, 2022.

A handwritten signature in blue ink, appearing to read "Maurice Lucas", written over a horizontal line.

Maurice Lucas

Breckinridge County Judge Executive

A handwritten signature in blue ink, appearing to read "Kathina Bell", written over a horizontal line.

Breckinridge County Fiscal Court Clerk

Breckinridge County, Kentucky

Kathina Bell

EXHIBIT 2

**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.

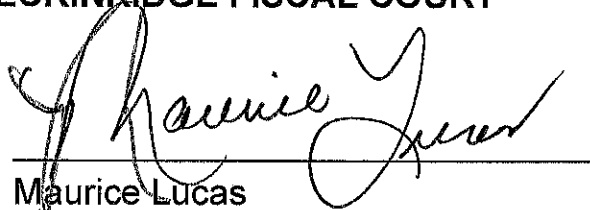
Ordinance 2022-0321 is hereby repealed and replaced, and this ordinance shall be in full force and effect from and after its adoption and approval as provided by law.

First reading of this ordinance approved on the
21st day of January, 2025.

Second reading of this ordinance approved on the
17th day of February, 2025.

BRECKINRIDGE FISCAL COURT

By:



Maurice Lucas

Breckinridge County Judge/Executive

ATTEST:



Kathina Bell

Breckinridge County Fiscal Court Clerk