

Docket No. SP-11723, Sub 0

EXHIBIT B

to Rebuttal Testimony of Cullen Morris

2019 SOLAR ORDINANCE

Solar Ordinance for Cleveland County, North Carolina

- **Sec. 12-160. - Solar electric power generation.**

The following development standards shall apply to the construction of any solar facility designed to generate electricity for a commercial purpose. Any solar facility on properties less than ten (10) acres, and or any solar facility containing battery storage shall be prohibited:

- (a) A site plan, signed and sealed by a professional engineer licensed pursuant to GS § 89C shall be prepared in accordance with section 12-33(a). The site plan shall show the location of any structures within one hundred (100) feet of the property line, and it shall also demonstrate compliance with the other standards in this section.
- (b) A landscape plan, signed and sealed by a professional landscape architect licensed pursuant to GS § 89A shall be prepared demonstrating compliance with this chapter.
- (c) Natural woodland buffering shall be installed between the security fence and adjacent nonparticipating property and the road right-of-way, prior to the operation of any solar equipment. Natural Woodland Buffering shall be planted at a depth of one hundred (100) feet consisting of species native to Cleveland County with a mixture of ornamental evergreen trees.
 - (1) The aforementioned natural woodland buffer area shall consist of a maximum seventy five (75) percent native pine trees.
 - (2) Trees within the natural area shall be installed at a minimum of one (1) tree per one hundred (100) square feet. Use of existing vegetation is encouraged.
 - (3) In addition to the above mentioned density requirements ornamental evergreen trees shall be installed within the natural woodland buffer one (1) tree per three hundred (300) square feet.
 - (4) Ornamental evergreen trees shall be installed at six (6) feet planted height.
 - (5) Reference Nonnative Invasive Plants of Southern Forest by the United States Department of Agriculture for examples of species.
- (d) Security fencing shall be installed around the perimeter of the solar facility. The fencing shall be a minimum of six (6) feet in height, chain link or other fencing sufficient to ensure no public access, and equipped with a gate and locking mechanism.
- (e) Setbacks shall be measured from the security fencing:
 - (1) One hundred (100) feet from any nonparticipating property;

(2) Two hundred (200) feet from any street right-of-way, habitable dwelling, or residentially zoned property.

(3) Five Hundred (500) feet from the right-of-way of any arterial street; and

(4) One thousand (1,000) feet from the right-of-way of a NCDOT Scenic Byway.

(f) *Maintenance.* Natural woodland buffer, fencing, gates and warning signs shall be maintained in good appearance and safe operating condition. The site shall be compliant with the adopted ordinance and all approved permits until the facility is decommissioned pursuant to subsection (i) below.

(g) *Emergency Access.* Current contact information for the facility owner and lessee if applicable, shall be posted at a visible location at each gate accessing the facility including:

(1) Name,

(2) Contact phone number,

(3) Address,

(4) Emergency contact phone number.

Facility owner shall further file an annual statement by February 1 of each year with the Cleveland County Planning Department containing the information listed in subsections (1) through (4) above.

(h) *Federal, state, and local requirements.* Following issuance of a conditional use or zoning permit and prior to issuance of a building permit for construction of a new solar facility, the applicant shall supply documentation to the Cleveland County Planning Department that all necessary federal, state, and local approvals have been obtained and notifications have been made pursuant to applicable federal and state requirements for building a new solar facility. At a minimum, these shall include:

(1) A boundary survey signed and sealed by a professional surveyor licensed in North Carolina showing compliance with the standards of this chapter submitted to the planning department;

(2) A site plan showing emergency access shall be submitted to and approved by the Cleveland County Emergency Management;

(3) Official documentation demonstrating compliance with any permitting required from the North Carolina Department of Environmental Quality (NCDEQ);

(4) Official documentation demonstrating compliance with any permitting required from the National Environmental Policy Act (NEPA);

(5) Official documentation demonstrating compliance with the Endangered Species Act (ESA).

(i) *Decommission.*

(1) A decommissioning plan shall be signed and sealed by a professional engineer licensed pursuant to GS § 89C and submitted to the Cleveland County Planning Department prior to the issuance of a zoning permit or conditional use permit (example provided at the end of this Section 12-160): the decommissioning plan must be signed and notarized by both the owner/operator of the solar facility and the land owner. However, nothing about the issuance of a conditional use or zoning permit, including a decommissioning plan, relieves the landowner of the obligation to remove the equipment as outlined in the Conditional Use or Zoning permit.

(2) The decommissioning plan must be renewed, signed, and notarized by the facility owner/operator and the land owner every five (5) years from the time the permit is issued, or upon any change of the solar facility ownership or land ownership.

(3) An estimated net cost of decommissioning, inclusive of salvage proceeds, is required and shall be prepared by a professional engineer, licensed pursuant to GS § 89C. The estimated net cost shall be revised on each decommissioning plan renewal every five (5) years and should account for inflation, deflation, and depreciation.

(4) Decommissioning shall include, but not necessarily be limited to the removal and disposal of solar panels, buildings, cabling, electrical components, roads, fencing, and any other associated facilities down to thirty-six (36) inches below grade. Further, the land shall be reasonably rehabilitated unless an agreement is reached with the land owner to leave as is.

(5) Prior to the issuance of any building permits or electrical permits, a surety bond naming Cleveland County as beneficiary shall be posted for one-hundred and twenty-five (125) percent of the estimated net cost of decommissioning established within the approved decommissioning plan, or twenty-five (25) percent of the estimated decommissioning cost excluding salvage value, whichever is greater. The surety bond shall be renewed every five (5) years at the same time the decommissioning plan is renewed.

(6) The Cleveland County Planning Department shall perform a revalidation inspection at minimum once every five (5) years from the date of the issuance of a permit to ensure that the solar facility remains in compliance with all standards of this chapter and the surety bond is valid.

(7) A copy of the sales contract for electricity, with any information made confidential by state or federal law redacted, shall be submitted to the Cleveland County Planning Department prior to obtaining a building permit, naming the buyer of electricity, the seller of electricity, and the beginning and end dates of the contract.

(8) If the owner/operator of the solar facility fails to ensure the removal of the equipment within six (6) months after commercial power production ceases for a period of twelve (12) continuous months, the landowner shall be in violation of the conditional use or zoning permit, and be subject to the penalties set forth in section 12-94.

(9) Each day that the violation continues after notification to the landowner by the administrator, shall be considered a separate offense for purposes of penalties and remedies.

(j) Enforcement by injunction, abatement and liens.

(1) In addition to any other remedies or enforcement methods allowed by any law, if a violation continues under section 12-94, the violation may be enforced by an order of abatement issued by the general court of justice for failure of the landowner to correct the unlawful condition of the property. Upon issuance of an abatement order by the general court of justice, a landowner must comply with the order within the time limit specified. If the landowner fails to do so, the county may take steps necessary to correct the condition of the property. The cost to correct the condition shall be a lien on the property in the nature of a mechanic or material man lien.

(2) The equipment which remains shall be deemed abandoned and salvaged for the cost of decommissioning.

(3) Should the salvage value exceed the cost of decommissioning, the balance shall be placed with the office of the clerk of court for abandoned funds.

Example of the Decommissioning Plan

Decommission Plan for Big Bright Solar ("Facility"), located at _____.

Prepared and Submitted by _____, the owner of Big Bright Solar

This decommissioning plan is presented as required by Subsection 12-160(f) of the Cleveland County Code.

Decommissioning will occur as a result of any of the following conditions:

1. The land lease ends;
2. The system does not produce power for 12 months; or
3. The system is damaged and will not be repaired or replaced

The owner of the Facility, as provided for in its lease with the landowner, will do the following as a minimum to decommission the project.

1. Remove all non-utility owned equipment, conduits, structures, fencing, and foundations to a depth of at least three feet below grade.
2. Remove all graveled areas and access roads unless the owner of the leased real estate requests in writing for it to stay in place.
3. Restore the land to a condition reasonably similar to its condition before SES development, including replacement of top soil removed or eroded.
4. Revegetate any cleared areas with warm season grasses that are native to the Piedmont region, unless requested in writing by the owner of the real estate to not revegetate due to plans for agricultural planting.

All said removal and decommissioning shall occur within 12 months of the facility ceasing to produce power for sale.

The facility owner, currently _____, is responsible for this decommissioning. Nothing in this plan relieves any obligation that the real estate property owner may have to remove the facility as outlined in the conditional use permit in the event the operator of the facility does not fulfill this obligation.

The owner of the Facility will provide the Cleveland County Planning Department and the Register of Deeds with an updated signed decommissioning plan within 30 days of change in the facility owner.

This plan may be modified from time to time and a copy of any modified plans will be provided to the Cleveland County Planning Department and filed with the Register of Deeds by the party responsible for decommissioning.

Facility Owner Signature: _____ Date: ____

Landowner (if different) Signature: _____ Date: ____

(Ord. of 4-5-16(1); Ord. of 4-12-19(1))