

# COUNTY OF WASHINGTON

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CURTIS POTTER  
COUNTY ATTORNEY

### RESOLUTION APPROVING WASHINGTON COUNTY SOLAR ORDINANCE

**WHEREAS**, pursuant to NCGS § 153A-121 (General ordinance making power), subsection (a): "A County may by ordinance define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the county; and may define and abate nuisances."; and

**WHEREAS**, the Washington County Board of Commissioners has previously adopted a county wide zoning ordinance pursuant to NCGS § 153A Article 18 Part 3 (Zoning) and/or other applicable law; and

**WHEREAS**, from time to time it is necessary and/or desirable to amend portions of said zoning ordinance in order to protect the health, safety, and welfare of its citizens and to adequately address changes in zoning practices and development planning; and

**WHEREAS**, the Washington County Planning Board has met, given reasonable consideration to, and has recommended in writing, that said zoning ordinance be amended by adding thereto as Article 13, an instrument entitled Washington County Solar Energy Development Ordinance ("SORD"), a copy of which is attached hereto and incorporated herein by reference; and

**WHEREAS**, notice has been properly given and a public hearing has been duly held pursuant to NCGS § 153A-323 (Procedure for adopting, amending, or repealing ordinances under this Article and Chapter 160A, Article 19), regarding the proposed amendment; and

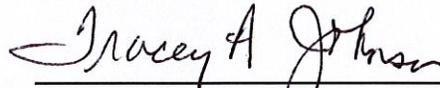
**WHEREAS**, the Washington County Board of Commissioners has considered the recommendation of the Washington County Planning Board, has carefully considered all viewpoints expressed during the public hearing, if any, and has conducted such reviews, analysis, and investigations of this matter as it deems necessary and proper; and

WHEREAS, the Washington County Board of Commissioners has determined the following:

1. Adoption of the proposed ordinance into the zoning ordinance as Article 13 thereof is consistent with Washington County's adopted comprehensive plan(s); and
2. Is reasonable in light of recent and progressive changes in the solar energy industry leading to greater impacts upon communities in and around eastern North Carolina; and
3. Is in the public interest to protect and protects the health, safety, and welfare of its citizens.

NOW THEREFORE BE IT ORDAINED by the Washington County Board of Commissioners that the Washington County Zoning Ordinance is hereby amended to include the Washington County Solar Energy Development Ordinance ("SORD") attached to this resolution and incorporated herein by reference as Article 13 thereof.

ADOPTED this the 7<sup>th</sup> day of July 2014.



Tracey A. Johnson, Chair

Washington County Board of Commissioners

ATTEST:



Julie J. Bennett, CMC, NCCCC  
Clerk to the Board



## Article 13:

### Washington County Solar Energy Development Ordinance (“SORD”)

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#### 1. TITLE

This Ordinance, in addition to being adopted as Article 13 of the Zoning Ordinance of Washington County, shall be known as the “Washington County Solar Energy Development Ordinance”, and is sometimes referred to hereinafter as the “**SORD**”.

#### 2. PURPOSE

The purpose of this SORD is to protect public health and safety by establishing specific and reasonable standards for permitting as a special use, the construction, installation, and operation of commercial energy systems (solar farms) in Washington County.

#### 3. AUTHORITY

This SORD is adopted pursuant to the authority and provisions of NCGS § 153A-121 (General ordinance-making power), NCGS § 153A-340 (Grant of power), and other applicable law, provided however, nothing herein shall be interpreted to conflict with or supersede any provision of NCGS § 153A-144 (Limitations on regulating solar collectors).

#### 4. JURISDICTION

This SORD shall apply to all unincorporated areas of Washington County excluding the extraterritorial jurisdiction of any municipality, unless such municipality adopts this SORD within its jurisdiction as permitted by law.

#### 5. DEFINITIONS

Except as expressly limited herein, the terms, provisions, and definitions provided for under Article 11 (Definitions) of the Zoning Ordinance of Washington County are incorporated herein by reference and apply to this SORD except to the extent of any direct conflict with any specific definitions provided for the following terms, which shall have the following specifically ascribed meanings:

- A. **“Abandonment”** – means if a Solar Farm generates no electricity for a continuous twelve (12) month period, or if any Solar Energy System falls into a state of disrepair for such period, then in either event, such Solar Farm shall be deemed abandoned.
- B. **“Solar Collector”** – means any component, device, structure or any portions thereof for which the primary purpose is the transformation of solar radiant energy into thermal, mechanical, chemical or electrical energy.
- C. **“Solar Energy System”** – means the Solar Collector components and all subsystems thereof including without limitation all equipment, conduits, and any accessory supporting structures or buildings required to convert solar radiant energy into thermal, mechanical, chemical, or electrical energy.
- D. **“Solar Farm”** – except as expressly limited below, means any use of land where a series of one or more Solar Energy Systems or Solar Collectors are placed in an area on a parcel of land for the purpose of generating photovoltaic power, and collectively has a nameplate generation capacity of at least 15 kilowatts (kW) direct current (DC) or more when operating at maximum efficiency. The term Solar Farm is also sometimes referred to as a solar power plant or solar photovoltaic farm.
  - 1. Notwithstanding the foregoing, the term “Solar Farm” shall not include any non-commercial Solar Energy Systems, nor be construed so as to prohibit installation of a Solar Collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and/or cooling, passive heating, or generating electricity for a residential property (meaning property where the predominant use is for residential purposes), for a non-solar business (meaning a business not engaged in selling solar energy), or for agricultural farming purposes.

**6. GENERAL REGULATIONS**

- A. Solar Farms may be allowed in the Residential and Commercial/Industrial Zoning Districts only as a special use, and subject to compliance with all applicable rules, regulations, and laws including without limitation the requirements of this SORD and Article 5 (Special Use Permits) of the Zoning Ordinance of Washington County.
- B. This SORD shall be supplemental to, and shall not abridge any other applicable local, state, or federal rules, regulations, or laws, including without limitation any more restrictive provisions of the Zoning Ordinance of Washington County related to Special Use Permits than set forth within this SORD.
- C. A valid Special Use Permit, Building Permit, Electrical Permit, and ongoing compliance with this SORD is a mandatory requirements for all Solar Farms.

**7. PERMIT REQUIREMENTS & PROCEDURES: (GROUND MOUNTED AND ROOF TOP)**

- A. A completed Special Use Permit application, including a complete engineered site plan, both complying with all applicable rules, regulations, and laws including without limitation the requirements of this SORD and Article 5 (Special Use Permits) of the Zoning Ordinance of Washington County, shall be submitted to the Planning Department for preliminary review before being submitted to the Washington County Planning Board to take official action thereon in accordance with applicable law.
- B. Before final submission of an application and site plan for official review and action, applicants are encouraged to work closely together with the Planning Department to more fully understand the requirements of this SORD and other applicable laws, to revise their application as deemed necessary or desirable prior to final submission, and to include any and all additional information as part of each application which may assist the Washington County Planning Board in taking official action thereon in accordance with applicable law.
- C. The Washington County Planning Board will conduct a public hearing prior to consideration of any application submitted for a Special Use Permit for a Solar Farm. The record of the public hearing shall be maintained as part of any Solar Farm Special Use Permit.
- D. Upon approval of any Solar Farm Special Use Permit application and site plan, the Washington County Planning Board may approve and authorize the issuance of a Special Use Permit, and also if applicable, any building and/or electrical permits issuance of which was pending approval of any such Special Use Permit.
- E. Solar panel materials shall be UL listed as hereafter amended. Documentation of compliance shall be provided with the seal and signature of a design professional licensed in North Carolina.

- F. Upon completion of site construction, a certified as-built plan by an engineer shall be submitted to the Planning Department and filed with the Register of Deeds. This as-built plan shall receive approval by the permitting staff prior to final inspection and prior to issuance of any Certificate of Occupancy and/or the notice to proceed to any Utility provider.

**8. APPLICATION REQUIREMENTS:**

All applications and plans shall include all the following:

- A. Name of the project, names and addresses of the owner(s), and the engineers and surveyors.
- B. Date, scale and accurate North arrow.
- C. Boundaries and actual dimensions and shape of parcel, including total acreage, with bearings and distances.
- D. Site plan showing streets, circulations, driveways, service buildings, easements, arrangement of solar panels and streets; also fencing, gates and vegetative buffer.
- E. Horizontal and vertical (elevation) to scale drawings with dimensions that show the location of the solar panels and system on the property.
- F. Vicinity map showing the location and surrounding land use.
- G. Names and addresses of adjoining property owners.
- H. Elevation certificate.
- I. Land contours.
- J. North Carolina Utilities Commission Permit.
- K. Other State or Federal Permits.
- L. Other features and designs as deemed reasonably necessary from time to time by the Washington County Planning Board.
- M. A Decommissioning Plan in compliance with this SORD.

**9. SETBACKS & SCREENING**

- A. A minimum setback distance of seventy five (75) feet from all property boundaries shall be required except for: (i) any shared internal boundary existing between two or more property boundaries of adjoining parcels which are part of a single Solar Farm project as shown on the site plan, or (ii) property boundaries where the applicable adjoining owner(s) agree to lessen such distance by executing a signed written waiver of this requirement, provided no such waiver shall act to permit less than a required minimum twenty five (25) foot setback.
- B. Power inverters and other sound producing equipment shall be no less than one hundred (100) feet from any dwelling unit at the time of construction/installation.
- C. All Solar Energy Systems shall be completely enclosed with a minimum of six (6) feet high chain link or security fencing as measured from the natural grade of the fencing perimeter.

D. Solar Farms shall be constructed with evergreen vegetative screening whenever natural forest vegetation does not otherwise continuously obscure Solar Energy System perimeters from adjacent parcels.

1. Unless buffered at all times by natural forest vegetation meeting the minimum spacing and height requirements, and having a substantially similar obscuring effect of a vegetative buffer installed pursuant to this section, a continuous evergreen vegetative buffer shall be installed and maintained at all times around the perimeter of the exterior of the fencing and gates that are required around the perimeter of all Solar Energy Systems, including without limitation between such Solar Energy Systems and adjacent residential or commercial/industrial areas and/or public highways or streets. Nothing contained herein shall be construed to require any such buffer to block reasonable access to any Solar Farm.
2. The evergreen vegetative buffer shall be composed of evergreen trees or shrubs of a type which at planting shall be a minimum of four (4) feet in height. The evergreen trees or shrubs shall be spaced no more than ten (10) feet apart, from the base of the plant to the base of the next plant. At maturity, required vegetative screening shall be no less than fifteen (15) feet tall, regardless of line-of-sight.
3. Failure to continuously maintain the foregoing visual buffers shall constitute a violation of this SORD for which a Special Use Permit previously granted may be revoked by the Washington County Planning Board.

**10. HEIGHT LIMITATIONS**

The height of Solar Energy System solar panels shall be measured from the highest natural grade below each solar panel to the top of that panel. Panel height shall not exceed fifteen (15) feet. Poles and wires reasonably necessary to connect to public electric utilities shall not be subject to this requirement.

**11. AVIATION NOTIFICATION**

Experience and research has shown there are legitimate concerns regarding the possibility for Solar Farms to cause a glare hazard for pilots and/or air traffic controllers. To address these concerns, all applications submitted pursuant to this Ordinance for approval of any Solar Farm permit shall include a detailed map analysis highlighting all airport operations and/or designated flight paths within five (5) nautical miles of the outermost proposed boundaries of any proposed Solar Farm, and for all such airport operations or designated flight paths actually located therein, shall additionally include:

- A. A certified true copy of a Notice of Intent to Construct a Solar Farm (containing at a minimum, the Solar Farm's exact proposed location, type(s) of solar technology/devices to be used, and overall size including total acreage and surface areas of all panels or other reflective devices);

- B. A Full Report of potential Aviation Glare Hazards (AGH) arising from the proposed Solar Farm on all such airport operations and/or designated flight paths using the most recent version of the Department of Energy's Sandia National Laboratories recently developed glare hazard assessment tool (or any other assessment tool required or otherwise recommended by the FAA) in accordance with its user manual, and applying the same evaluation standards required and otherwise recommended by the FAA for evaluating AGH of off-airport solar projects, it being the intent of this Ordinance to require all applicants to utilize the most recent and thorough evaluation techniques of measuring AGH then available and required or otherwise recommended by the FAA, as modified from time to time; and
- C. Proof of said Notice and Full Report being actually delivered not less than ninety (90) days prior to the submission of any application for a Solar Farm permit made hereunder to all the following: The local Airport District Office (ADO) of the FAA with oversight over Washington County, NC for any airport operated under FAA regulations as part of the National Plan of Integrated Airport Systems (NPIAS)(including without limitation the Plymouth Municipal Airport); The airport management for all NPIAS and non-NPIAS airport(s); and The NC Commanders' Council for affected military airport or low altitude flight paths in said area.
- D. Changes in proposed Solar Farm design standards prior to any permit approved under this Ordinance shall require proof of re-delivery of an updated Notice and Full Report in accordance with the foregoing provisions.

**12. DECOMMISSIONING, ABANDONMENT, HAZARD ABATEMENT**

- A. A signed and notarized Decommissioning Plan shall be submitted to the Planning Department as part of every Special Use Permit application and shall be in a form suitable to be recorded with the Register of Deeds. The Decommissioning Plan shall include at a minimum all the following provisions and requirements:
  - 1. Initiation upon "Abandonment" of a Solar Farm as defined in this SORD;
  - 2. Any additional conditions which may be defined or established from time to time by the Washington County Planning Board upon which decommissioning will be initiated (i.e., end of lease, condition of a potential public safety hazard, etc.)
  - 3. Complete removal of all non-utility owned equipment conduits, structures, fencing, roads and foundations; and restoration of property to condition prior to development of the Solar Farm, unless the landowner request in writing that the access roads or other land surface areas not be restored.
  - 4. The timeframe for completion of removal and decommissioning activities shall be from sixty (60) to one hundred eighty (180) days unless otherwise extended by Washington County within its sole discretion for good cause shown.
  - 5. A signed statement from the party responsible for completing the Decommissioning Plan acknowledging such responsibility.

6. The terms and/or amounts of any proposed surety or performance bond, or certified funds which an applicant proposes to provide in satisfaction of the following paragraph.

B. To ensure the full completion of decommissioning requirements, and/or to facilitate the mitigation and abatement of public nuisances or health hazards caused by debris or hazardous materials occurring in the event of partial or complete destruction of any Solar Farm or Solar Energy Systems by natural or man-made causes, Washington County requires the placement of a surety/performance bond or certified check meeting certain terms and in certain amounts as determined by the Washington County Planning Board in conjunction with the Planning Department to ensure such decommissioning or removal of hazardous materials is completed expeditiously, and at no cost to County.

C. Upon any failure to initiate or complete any Decommissioning Plan, the Building Inspector may take action as authorized by law including without limitation NCGS §153A-366 (Unsafe buildings condemned).

**13. CONFLICT OF LAWS & SEVERABILITY CLAUSES**

A. Whenever the regulations of this SORD conflict with each other, or with the requirements of the Zoning Ordinance of Washington County, or with any other statute, the more restrictive regulation shall apply.

B. Should any section or provision of this SORD be determined by a court of competent jurisdiction to be unconstitutional or invalid, such determination or decision shall not affect the validity of the SORD as a whole, or of any part thereof, other than the part so declared to be unconstitutional or invalid.

**14. GRANDFATHER PROVISION**

Any Solar Farms not permitted by this SORD, which is in lawful operation at the time of the adoption of this SORD is hereby exempted from the provisions of this SORD.

**15. RECORD KEEPING**

The Washington County Planning Department shall maintain a record of all Solar Farm Special Use Permits and copies shall be furnished upon request to any interested person.

**16. VIOLATIONS**

Upon the finding of any inappropriate or illegal activities on the part of any person which would violate the provisions of this SORD, the Planning Director or their designee shall notify in writing the person(s) responsible for such actions indicating the followings:

- A. The nature of the violation(s).
- B. The action(s) necessary to correct the violation(s).
- C. The date by which corrective action(s) should be taken and completed.
- D. Action(s) which will take place if such corrective action is not taken.
- E. When such corrective action has not been taken or is deemed inadequate based upon the conditions listed in this SORD, an order for the discontinuance of the use or occupation of any land, building or structure or any illegal additions, alterations or structural changes thereto may be issued.
- F. Any other action authorized by this SORD to ensure compliance with, or to prevent violation of any provision.
- G. Any person violating any provision of this SORD shall be guilty of a misdemeanor and upon conviction shall be punished for each offense, not more than fifty dollars (\$50.00) or imprisonment not to exceed thirty (30) days. Each day such violation continues shall be deemed to be a separate offense.

Adopted by the Washington County Board of Commissioners, this 7<sup>th</sup> day of July, 2014.

Tracey A. Johnson  
Tracey A. Johnson, Chair

Attest:

Julie J. Bennett  
Julie J. Bennett, Clerk to the Board



"Approved by the Washington County Board of Commissioners at their meeting held July 7"

Julie J. Bennett, CMC, NCCCE  
Clerk to the Board