

CHAPTER 09B

Solar Energy System (SES)

Section 09B.01 Purpose and Intent

1. Purposes:

- a) To ensure that the development and production of solar-generated electricity in Steuben County is safe and effective.
- b) To support and facilitate economic opportunities for local residents that are consistent with public health, safety, and general welfare; and
- c) To promote the effective and efficient generation of solar energy.

2. **Intent:** It is the intent of the Solar Energy Systems (SES) ordinance to provide the basic siting regulations to properly allow commercial and utility (SES) placement throughout Steuben County. Siting is subject to applicable restrictions. These regulations are intended to preserve the health and safety of the citizens of Steuben County, Indiana.

Section 09B.02 Applicability:

The provisions of this ordinance are applicable to those zoning districts that allow Solar Energy Systems (SES) uses requiring Board of Zoning Appeals approval and governs the siting of SES's that generate more than 20kw of electricity. All Solar Energy Systems (SES's) will require Special Exception approval regardless of zoning district.

Section 09B.03 Compliance Required:

No applicant shall construct, operate, locate, or enlarge a Solar Energy System (SES) within Steuben County without first obtaining Development Plan approval and must fully comply with the provision of this ordinance.

Section 09B.04 Conflict with other Ordinances:

Nothing in this ordinance shall preempt other applicable state and federal laws or regulations. This ordinance and the regulations contained within shall not interfere with abrogate or annul any other ordinance, rule or regulation, statute or other provision of law. In the event that any provision of the regulations contained within this ordinance impose restrictions different from any other ordinance, rule of regulation, statute or other provision of law, then the provisions that are more restrictive and/or impose a higher standard shall governs SES's.

Section 09B.05 Severability Clause:

Should any section, subsection, paragraph, subparagraph, clause, word, or provision of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 09B.06 Approval Agency:

The Board of Zoning Appeals shall review any SES plan or its modification.

Section 09B.07 Setbacks:

- (1) A SES facility shall be at least two hundred (200) feet from a non-participating, pre-existing dwelling or fifty (50) feet off property line, including road right-of way, whichever is greater.
- (2) A SES facility shall meet the minimum setback standards of the applicable zoning district with no component of the SES facility being less than fifty (50) feet from the side and rear property lines.
- (3) Any pieces of equipment (such as inverters) that create a potentially objectionable sound level during normal operation shall meet the setbacks in this section to a non-participating, pre-existing dwelling.
- (4) Setbacks requirements exclude driveways, perimeter fencing, visual buffers, poles, and wires necessary to connect the facility to an electric utility or between properties.

Section 09B.08 Height Restrictions:

No part of a solar panel or other equipment associated with the SES facility shall be over twelve (12) feet tall as measured from the average ground level directly below the panel to the top of each panel at its maximum tilt in the vertical position.

Section 09B.09 Maximum Vibrations:

Any item that could create vibrations as part of a SES facility shall be located centrally within the SES facility to reduce any potential impacts on non-participating properties.

Section 09B.10 Interference with Reception:

A SES facility shall be constructed and operated so that it does not interfere with television, microwave, GPS, Military defense radar, navigational or radio reception in neighboring areas.

Section 09B.11 Glare:

A SES facility at no time shall create glare on any non-participating property line or right-of-way.

Section 09B.12 Equipment:

All components of the SES facility shall be new, commercially available equipment. Used, experimental, or proto-type equipment still in testing shall require a waiver approved by the Board of Zoning Appeals.

Section 09B.13 Fencing:

Any substation shall be completely enclosed with perimeter fencing and locked gates that are at least six (6) feet in height.

Section 09B.14 Emergency Contact Signage:

A standard metal road sign shall include the owner's name, facility's name, emergency contact phone number and the physical site address and shall be posted at the entrance to the facility. The sign shall be posted just outside of the public road right-of-way.

Section 09B.15 Appearance:

A SES facility, including all accessory buildings, shall, to the extent possible, use materials and colors that will blend them into the surrounding built environment.

Section 09B.16 Waste Management:

All solid waste whether generated from supplies, equipment, parts, packaging, operation, or maintenance of the facility (including old parts and equipment) shall be removed from the site in a timely manner consistent with industry standards. All hazardous waste generated by the operation and maintenance of the facility, including but not limited to, lubricating materials, cleaning materials, or such shall be handled in a manner consistent with all local, state, and federal rules and regulations and shall not be allowed to seep into the ground or come in contact with any open water.

Section 09B.17 Visual Buffer:

The need for a visual buffer (from non-participating, pre-existing residences) shall be determined by the Design Review Committee. If the Design Review Committee determines a buffer is needed, the Committee will determine the species of plantings and required height.

Section 09B.18 Electric Wires:

The electric collection system shall be located underground, except for transformers, inverters, substations, and controls. The collection system is required to the above ground if it is located in a public right-of-way or county drainage easement (Drainage Board approval required). The transmission system shall be located above ground. All electrical components of the SES facility shall conform to applicable local state, and federal electrical code requirements.

Section 09B.19 Drainage Infrastructure:

All damages including, but not limited to, waterways, drainage ditches, field tiles, and/or any other infrastructures caused by the construction or maintenance of the SES facility, must be completely repaired to original or better condition, and so as not to impede the flow of water. All repairs must be completed in a reasonable amount of time as agreed upon between the county and the applicant, owner and/or operator.

Section 09B.20 Liability Insurance:

The owner or operator of the SES facility shall maintain a current general liability policy covering bodily injury and property damage and name Steuben County as an additional insured with limits of at least two million dollars per occurrence and four million dollars in aggregate with a deductible of no more than five thousand dollars.

Section 09B.21 Development Plan Approval:

The following items must be agreed upon by the Board of Zoning Appeals:

1. Road Usage/Repair agreement
2. Decommissioning agreement
3. Traffic Management Plan
4. Storm Water Control Calculations
5. Visual Buffer (detailed plans)
6. Erosion Control Plan
7. Site Plan (setbacks, layout and safety requirement)
8. Panel Placement (to avoid glare at non-participating, pre-existing residences and ROW's)

9. Contact information (owner/operating agrees to notify DCD if ownership changes or operator information changes)

Section 09B.22 Public Notice Requirement:

Public notice shall be sent to all property owners within a 200-foot radius from all points of the participating property if BZA approval is required.

Section 09B.23 Decommissioning/Removal:

1. **Restoration:** Within twelve (12) months after the expiration, surrender or termination of this Lease, whether as to the entire Property or only as to part thereof, Solar Company shall **(i)** remove from the Property (or such part thereof, as applicable) any Solar Power Facilities owned, installed or constructed by Solar Company thereon, except for any roads, and **(ii)** leave the surface of the Property (or such part thereof, as applicable) free from debris; provided, however, that with regard to any Solar Power Facilities located beneath the surface of the land (including footings and foundations), Solar Company shall be required to remove the same to the greater of **(A)** thirty-six (36) inches below the surface of the land or **(B)** the depth (if any) required by applicable Law; and Solar Company shall have a continuing easement to enter the Property for such purpose during such twelve (12) month period. Nothing contained in this Section shall be construed as precluding Solar Company, in its sole discretion, from taking any of the actions contemplated by clauses **(i)** or **(ii)** of this Section at any time during the Term.
2. **Restoration Fund:** Beginning no later than thirty (30) days after Commencement of Construction, Solar Company shall post a bond, cash, a letter of credit, corporate guarantee or equivalent security at Solar Company's sole discretion (the "Restoration Fund") in the amount of Ten Thousand Dollars (\$10,000) per megawatt of nameplate capacity (MWAC) to be installed on the Property per the Site Plan, which Restoration Fund shall cover Solar Company's obligation under Restoration hereof. Beginning on the tenth (10th) anniversary of the Operations Date, the amount of the Restoration Fund shall be reset every ten (10) years to an amount determined by the completion (on or before the tenth (10th) anniversary and each subsequent 10th anniversary) of a decommissioning study (including the deduction of salvage value) by an independent, qualified engineer selected to the mutual satisfaction of Solar Company and Landowner. The Restoration Fund may, at Solar Company's discretion, **(i)** be for an amount larger than that required under this Section, **(ii)** include other lands on which Solar Systems are located in the Project, so long as the Restoration Fund is in the amount of at least Ten Thousand Dollars (\$10,000.00) per megawatt of nameplate capacity (MWAC) to be installed on all lands so included or such amount as determined by subsequent decommissioning studies required herein and/or **(iii)** be in favor of additional parties; provided, however, that in such event, each covered party shall be entitled to make a claim against the Restoration Fund only up to the amount described in the first sentence of this Section, regardless of any claims made or not made against the Restoration Fund by any other covered party. Landowner shall be entitled to apply the proceeds of the Restoration Fund against **(i)** any sums due from Solar Company hereunder that are outstanding at the time of expiration or termination of this Lease or **(ii)** remedy any damage to the Property that Solar Company is obligated to remedy at the time of such expiration or termination pursuant to the terms of this Lease and in connection therewith shall be entitled to apply salvage value of the Solar Power Facilities located on the Property for their removal. As used herein the "Operations Date" shall mean the date the Project first produces electricity for sale.
3. **Permit Restoration Fund:** Solar Company shall not be obligated to fund the Restoration Fund if the State of Indiana or applicable siting board or any applicable county permit imposes a bonding or financial security arrangement as part of the condition of the permit with respect to the Project which covers decommissioning costs, then such Restoration Fund shall be deemed to be satisfied by the bond or financial security arrangement supplied pursuant to the such permit. Solar Company shall comply

with all decommissioning requirements that are contained in the permit that is ultimately issued for the Project.

4. Section 09B.24 Definitions:

PARTICIPATING PROPERTY: A property in which land is leased (by a signed contract) by the SES owner in order to facilitate the SES development.

KILOWATT (kW): A unit of electrical power equal to 1,000 watts.

MEGAWATT (MW): A unit of electrical power equal to 1,000 kW.

SOLAR ENERGY FACILITY LARGE: Any free-standing solar array or solar arrays that have a combined nameplate power rated capacity of more than 10MW (megawatts) of peak generating capacity.

SOLAR ENERGY FACILITY MEDIUM: Any free-standing solar array or solar arrays that have a combined nameplate power rated capacity of greater than 20kW or less than or equal to 10MW (megawatts) of peak generating capacity.