COMMERCIAL SOLAR ENERGY FACILITY (CSEF) and COMMERCIAL ENERGY STORAGE SYSTEM (CESS) CRITERIA AND CONDITIONS FOR A CONDITIONAL USE APPLICATION[1]

A. Intent.

The criteria and conditions herein outline the requirements of an application for a conditional use permit ("**CUP**") for a proposed Commercial Solar Energy Facility ("**CSEF**") and/or Commercial Energy Storage System ("**CESS**"). These criteria and conditions are not intended to regulate the installation of individual private solar energy conversion systems using less than one acre and that produce electricity primarily for electrical service to the property on which the solar energy conversion equipment is located.

B. Definitions. The following definitions shall be used in the interpretation of this article:

1. **Zoning Code** means the Zoning Regulations of Stafford County/Hudson Kansas dated April 22, 1998, as amended.

2. **Abandonment** means the CSEF or CESS has not, for twelve (12) continuous months (i) generated electric energy and delivered such energy to the utility grid, (ii) been decommissioned in accordance with the land agreements with participating landowners, and (iii) such cessation of operations is not attributable to an event beyond the reasonable control of Facility Owner.

3. **Animal Confinement Facility** means any structure, lot, pen, building, or enclosed area, whether indoor or outdoor, used for the keeping, feeding, housing, or raising of livestock or poultry in which animals are confined, restrained, or held in enclosed conditions and where vegetative ground cover is not maintained. The term includes, but is not limited to, feedlots, poultry houses, swine barns, dairy barns used for concentrated housing, and similar high-density animal production operations.

4. **Commercial Solar Energy Facility (CSEF)** means any device or assembly of devices and Supporting Facilities that is ground installed, has a nameplate capacity of at least one megawatt, and uses solar energy to generate electricity for the primary purpose of wholesale or retail sale. "Commercial Solar Energy Facility" includes a solar energy conversion facility pursuing a repower on or after July 1, 2025.

5. **Commercial Energy Storage System (CESS)** means commercial or utility-scale electrochemical, mechanical, electrostatic or gravitational devices and Supporting Facilities that charges or collects energy from the electrical grid or any electric generation facility stores the energy and discharges such stored energy at a later time to provide electricity or other electrical grid services.

[1] See Section 4-101(C) in the A-1 Agricultural District for a CSEF as a Conditional Use.

6. **Facility Owner** means the entity that owns the assets and equipment that comprise the CSEF and/or CESS.

7. **Governing Body** means the Stafford County Board of Zoning Appeals.

8. **Non-Participating Property** means real property that is not owned by the Facility Owner and is not owned by a person or entity who has entered into a lease, easement, option agreement, waiver, or other contract for the development, construction, and/or operation of the CSEF and/or CESS.

9. **Non-Participating Residence** means a primary dwelling that is located on nonparticipating property and that is existing and occupied on the date that an application for an CUP to develop a commercial solar energy facility or energy storage system is filed with the county.

10. **Participating Property** means real property that either is owned by the Facility Owner or is owned by a person or entity that is subject to a lease, easement, option agreement, waiver, or other contract for the development, construction, or operation of the CSEF and/or CESS with the Facility Owner or an affiliate of the Facility Owner regardless of whether the CSEF and/or CESS or any part thereof will be constructed on the property.

11. **Participating Residence** means a primary dwelling that is located on Participating Property and that is existing and occupied on the date that an application for a CUP to develop a CSEF/CESS is filed with the county.

12. **Supporting Facility** means the transmission lines, collection lines, substations, switchyards, access roads, meteorological towers, solar monitoring stations, storage containers, operations and maintenance buildings, storage yards and equipment associated with the generation or storage of electricity by the CSEF or CESS.

C. **CUP Area & Signature Requirements**.

The CSEF/CESS CUP application shall encompass the entire perimeter of the proposed CSEF/CESS, including any fencing, and all Supporting Facilities. One application, with the signature(s) of the owners of record of the Participating Property, shall be required for all the land area located within the perimeter of the CUP. The signature of an agent of an owner of Participating Property shall be sufficient if accompanied by proof of the agent's authority to sign on their behalf.

With respect to a CSEF/CESS CUP application, a notice of the Board of Zoning Appeals hearing shall be provided to all the owners of record of real property located within 1,000 feet of the CSEF/CESS boundaries (see Section 11-100D1 of the Zoning Code and K.S.A. 19-2960). This notice requirement does not alter or define the area with respect to which a valid protest petition can impose a supermajority voting requirement.

D. **Design Requirements for CSEF/CESS CUP**. The CSEF/CESS shall be subject to the following design requirements without regard to whether such requirements are specifically listed in any resolution approving a CUP:

1. Safety Fencing. The entire CSEF/CESS perimeter shall be enclosed with a secure fence, and all gates to fences shall be equipped with locks and shall always remain locked except for those times when the Facility Owner, its contractor or agents, are using the gates for ingress or egress ("**Safety Fence**"). Notwithstanding the preceding sentence, overhead transmission lines, collector lines, and access roads may be located outside the Safety Fence area. Safety Fencing located near the intersection of county or township roads shall comply with the line of sight and other traffic safety requirements of the county or township.

2. Setbacks. All CSEF/CESS equipment shall abide by the following setbacks:

   a. The Safety Fence shall be setback at least 50 feet from any surveyed property line, abutting a public road.

   b. The Safety Fence shall be set back at least 100 feet from the nearest portion of any existing Participating Residence at the time of application. Additionally, the Safety Fence shall be set back at least 50 feet from the nearest portion of any existing non-residential building(s) on Participating Property at the time of application. The Participating Property owners may waive these setback requirements.

   c. The Safety Fence shall be set back 50 feet from the nearest point of the Non-Participating Property line, and 400 feet from the nearest portion of any Non-Participating Residence existing at the time of application. Additionally, the Safety Fence shall be set back 200 feet from the nearest portion of any existing non-residential building(s) on Non-Participating Property at the time of application. The Non-Participating Property owners may waive these setbacks.

   d. For other public structures such as schools, churches, community facilities, etc., the Safety Fence shall be set back 300 feet from the nearest portion of any existing public structure at the time of application.

   e. For cemeteries, the Safety Fence shall be set back 100 feet from the nearest portion of any existing cemetery at the time of application.

   f. For private airstrips, the Safety Fence shall be set back 300 feet from the nearest point on either side of centerline of any existing private airstrip and 1,000 feet from the nearest point on either end of the runway or property line (whichever is less) of any existing private air strip at the time of application.

   g. The Safety fence shall be set back 500 feet from any portion of any Non-Participating Animal Confinement Facility existing at the time of application. The Non-Participating Property owners may waive these setbacks.

3. Signage. CSEF/CESS shall have warning signs (a) displaying the dangers associated with the site, (b) identifying the Facility Owner or operator of the CSEF/CESS, and (c) providing a 24-hour emergency contact phone number.

4. Electrical Connections. Reasonable efforts shall be made to place all electrical cables, collector lines, and utility connections underground.

5. Safe Installation. The CSEF/CESS shall be installed under the supervision of a Kansas licensed engineer and a certified electrician.

6. Visual Buffer. The CSEF and/or CESS site should be designed to include visual buffers for adjacent Non-Participating Residences. Visual screening may be in the form of vegetative landscaping, opaque fencing, or a combination of both. Vegetative landscaping shall be planted at a minimum of three feet tall with an expected minimum height of eight feet at maturity. Earth berms and other topographical features may be relied on as a visual buffer in lieu or in combination with the above options. The owner of the adjacent Non-Participating Residence may waive this requirement.

7. Impervious Surface. A CSEF shall comply with federal, state, and local stormwater management, erosion, and sediment control provisions and impervious surface coverage requirements. For purposes of compliance with such regulations, a CSEF shall be considered previous if it maintains sheet flow and allows for water to infiltrate under and around the panels through a pervious surface and into the subsoil.

8. Lighting. To reduce light pollution, the lighting of a ground-mounted CSEF/CESS component must be: (i) limited to the minimum reasonably necessary for its safe operation; and (ii) directed downward and / or shielded to prevent any direct lighting of adjoining property or any roadway right-of-way.

9. Sound. Modeled cumulative broadband sound pressure levels from the CSEF/CESS shall not exceed sixty decibels (60 dBA) (A-weighted), as measured from the nearest Non-Participating Residence to the CSEF/CESS.

10. Tree Removal. The removal of trees or natural vegetation for a CSEF/CESS shall be limited to only what is necessary for the construction, operation and maintenance of the CSEF/CESS.

11. Road Requirements:

    a. The Applicant shall construct the minimum number of access roads necessary;

    b. Access roads shall be constructed to allow farming equipment to cross; and

    c. Where an access road crosses a stream or drainage way, it shall be designed and constructed to ensure that runoff from the upper portions of the

watershed can readily flow to the lower portions and otherwise comply with applicable state, local, and federal laws.

12. CESS Technical Requirements. A CESS must be sited, operated, maintained, and decommissioned in compliance with the NFPA 855, NFPA 70, and UL 9540A.

E. Contents of CSEF/CESS Development Plan.

Every application for a CUP for a CSEF/CESS shall be accompanied by a complete development plan containing all elements described in these criteria and conditions. No application for a CUP may be set for hearing, and no public hearing shall be held, unless the applicant has filed a complete development plan. A CUP shall be valid only for construction in conformity with an approved development plan.

Detailed technical data, statistics, and supplementary information required to support the main text are to be included as appendices. All sources of information are to be referenced and must be current.

Information presented as maps, diagrams, or plans is preferred.

Close consultation with the Zoning Administrator during preparation of the development plan is highly recommended. More than one draft may be required before it is considered suitable for presentation to the Board of Zoning Appeals.

A development plan shall, at a minimum, contain the following information, and shall be supplemented with such additional information as may be requested by the Board of Zoning Appeals or by the Zoning Administrator at the direction of the Board of Zoning Appeals:

1. A general introduction to the project, including:

   a. a description of the anticipated timeline of construction;

   b. whether the project will be or may be built in phases and the nature and timing of those phases;

   c. the total acreage included in the project;

   d. description detailing the reasons for the choice of this location over alternative locations;

   e. the names and current addresses of all people who have provided easements, leases, licenses or other permission with respect to property in connection with the project together with a legal description of the land; and

   f. Name, address, and phone number of the applicant, and for any contact person, shall be disclosed along with an overview of the company providing relevant information regarding qualifications and experience in commercial solar energy development and environmental management.

2. Such documents as may show compliance with the design requirements set forth in Section D above.

3. Environmental guidelines and industry standards of practice that will be followed, if approved.

4. A desktop archaeological survey, to be provided by a qualified third-party, determining recommendations for the treatment of any significant archaeological sites that are identified, if applicable.

5. A desktop site characterization of existing wildlife, endangered species, wetlands, and other biologically sensitive areas within the site, to be provided by a qualified third-party.

6. A glint and glare analysis prepared by a qualified third-party consultant.

7. A sound study prepared by a qualified third-party consultant.

8. A map showing the locations of the following:

    a. Existing buildings, structures, homes within ½ mile of the project boundary.

    b. Electrical transmission lines and facilities, utilities, utility easements, underground pipelines, and underground utilities within the project boundary.

    c. Property lines for each property under separate ownership included within the proposed CSEF and/or CESS boundaries with key identifying each owner;

    d. Location of all collectors, substations connecting power lines, transmission lines, and other structures to be used as part of the operation.

The boundary of the project shall be the Participating Properties on which the CSEF and/or CESS is proposed to be constructed. The specific siting of individual components and the CSEF and/or CESS, including solar panels, supporting structures, storage units, and all other aspects that entail a complete CSEF and/or CESS, may be included conceptually within the development plan, so long as new lands are not added to the original boundary of the project and the relocation otherwise complies with these requirements.

9. General Construction Document Requirements:

    a. A general description of major components of the CSEF/CESS and on-site facilities, including solar panel/array specifications, transmission lines, and accessory facilities such as control rooms, transformers, substations, maintenance facilities, underground infrastructure, and interior access roads.

b. A description and general schedule of major construction activities for the CSEF/CESS.

c. A vegetation management plan describing short-term and long-term property management practices that shall provide and maintain native and non-noxious perennial vegetation, including the promotion of pollinators.

d. The volume and designated route for traffic generated during the construction phase, including oversized and heavy equipment.

e. Applicant shall submit a plan to control dust on access roads, especially during construction.

10. Fire Safety Plan.

a. The Development Plan shall include a preliminary Fire Safety Plan identifying the potential fire risk associated with the project, including both prescribed burning and non-prescribed burning (natural or accidental). This shall address fire originating within the site, fire escaping from the site, and the potential effects of fire originating from outside the site. "Prescribed Burning" is defined as the controlled application of fire to naturally occurring or naturalized vegetative fuels under specified environmental (weather) conditions in accordance with a written prescription that is designed to confine the fire to a predetermined area and to accomplish planned land management objectives; and conforms to the standards established by Kansas State University Research and Extension.

The preliminary Fire Safety Plan shall identify potential fire risks, address all provisions for fire mitigation, fire and emergency medical response to be provided by the applicant both during construction and during operation of the project. The final Fire Safety Plan shall identify what equipment not presently owned by the public fire department or other first responders that may be needed to respond to emergencies at the project, both during construction and during operation of the project.

Prescribed burning or range burning is a common practice in this area. The preliminary Fire Safety Plan shall show how panels and equipment are protected from fire within the site and from fire originating from outside the site, including prescribed burning.

A final Fire Response Plan and Emergency Response Plan is required to be filed prior to the start of construction and updated with the county annually.

F. <u>Prerequisites to Construction Under an Approved CUP</u>.

1. <u>Zoning Permit</u>. No construction under an approved CUP may commence until a Zoning Permit (as defined in the Zoning Code) is approved by the Zoning Administrator after the requirements of this subsection F have been satisfied.

Unless an alternate timeline is determined as a condition attached to the approved CUP, which may be approved on a case-by-case basis, the conditions in the CUP and the requirements of this subsection F must be satisfied and construction must begin within two years after the CUP is approved. This two-year period may be extended up to six months upon written request by the applicant and approval by the Governing Body.

2. Road Agreement.

   a. A road agreement by which the Facility Owner of the CSEF/CESS assumes financial responsibility for infrastructure improvements needed for construction and repair for infrastructure damages caused by construction must be approved by the Governing Body before any Construction Permit is approved for construction to begin.

   b. The road agreement shall include transportation routes used for construction, which shall be coordinated with the supervisor of the Stafford County Road and Bridge Department, in association with the appropriate Township Board, as applicable.

   c. Such agreement shall address the capacity of roads, bridges, and culverts over which equipment for the CSEF/CESS will travel during the construction phase to withstand the expected traffic and whether the roads need to be inspected prior to their use for hauling goods and materials for a CSEF or CESS project.

3. The Facility Owner shall provide sufficient evidence to the Governing Body that an interconnection agreement with the applicable utility has been fully executed. Such evidence must be submitted prior to the commencement of construction. Acceptable evidence may include a copy of the executed interconnection agreement, a certification from the utility confirming execution of the agreement, or any other documentation deemed sufficient by the Governing Body.

4. If the construction schedule has changed, an updated description and general schedule of major construction activities for the panels, transmission lines, and accessory structures related to CSEF/CESS shall be provided to the Zoning Administrator prior to Zoning Permit issuance.

5. Soil Erosion, Sediment Control, and Storm Water Runoff Plan.

   a. Applicant shall submit a Soil Erosion, Sediment Control, and Storm Water Runoff Plan, which shall identify effects of the CSEF/CESS on surface water and surface water runoff, along with any mitigation measures, and address erosion-prone areas and what types of erosion control measures will be used during each phase of the project. It shall identify plans for:

      i. Grading.

ii. Revegetation to ensure slope stability.

iii. Construction and drainage of access roads and areas where solar equipment is located.

iv. Restoring the site after temporary project activities.

v. Design features to maintain downstream water quality.

b. The Soil Erosion, Sediment Control and Storm Water Runoff Plan shall also set out the proposed practices (which shall, unless disapproved, become part of the CUP approval) regarding:

i. Disposal or storage of excavated materials.

ii. Protecting exposed soil.

iii. Stabilizing restored material and removal of silt fences or barriers when the area is stabilized.

iv. Redirection of natural drainage and stormwater detention.

v. Maintenance of erosion controls throughout the life of the project.

G. <u>Construction Requirements</u>.

1. <u>Site Clearance</u>:

a. Applicant shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation, and maintenance of the project.

b. On cultivated land, applicant shall minimize compaction of the land during all phases of the CSEF's and/or CESS's life. Compaction shall be confined to as small an area as practical.

c. During site clearance and construction, silt fences and other temporary erosion controls shall be installed in compliance with Kansas NPDES construction stormwater general permit and associated stormwater pollution prevention plan.

2. Prior to the start of, and continuously throughout construction and site restoration, applicant shall designate a field representative responsible for overseeing compliance with the conditions of the CUP. Such representative shall be accessible by telephone during normal business hours. Address, phone number, and emergency phone number shall be provided to the Zoning Administrator and 911 Emergency service and shall be available to residents, officials, and other interested

persons. Applicant is required to notify the Zoning Administrator and 911 emergency service of any change of the designated representative.

3. Cleanup.

Applicant shall remove all waste and scrap that is the product of construction, operation, restoration, occupation, and maintenance from the site and properly dispose of it in on-site roll-off waste dumpsters, which shall be covered during non-work hours. Waste or other litter produced by site personnel shall be contained in the roll-off waste dumpsters by the end of each day, and dumpsters shall be promptly removed for final disposal once full.

4. Applicant shall inform all employees, contractors, and others involved in the construction of the CSEF/CESS of the conditions of the CUP.

H. Decommissioning / Restoration / Abandonment / Decommissioning Security.

1. Decommissioning Plan. Applicant shall submit a decommissioning plan prepared by a licensed Kansas engineering firm familiar with decommissioning of CSEF and/or CESS facilities, as applicable, engaged by applicant ("**Decommissioning Plan**") with the application for a CSEF/CESS CUP. Compliance with the Decommissioning Plan shall be a condition of the CUP, whether or not explicitly listed in any document reflecting the approval. The Decommissioning Plan shall describe the manner in which the CSEF/CESS improvements will be dismantled and removed from the site within 18 months after Abandonment of the project or the end of useful life of the CSEF/CESS, and shall require the removal of all above-ground components of the CSEF/CESS. Subsurface installations and access roads shall be removed in accordance with the project agreements. The site shall be restored as nearly as practical to its condition at the time the CSEF/CESS CUP was granted, subject to any agreements with the owners of the Participating Property to restore to different standards.

2. Decommissioning Plan Revisions. The Decommissioning Plan must be revised every five years (each, a "**Revised Plan**"). Each Revised Plan shall be prepared by a licensed Kansas engineering firm familiar with decommissioning of CSEF and/or CESS facilities. The Governing Body may request one additional update within any five-year period.

3. Decommissioning Security. Prior to the commencement of construction, the Facility Owner shall post decommissioning security ("**Decommissioning Security**") in an amount equal to twenty-five percent (25%) of the estimated cost to decommission the CSEF/CESS, as determined by the Decommissioning Plan, without deduction for any estimated salvage value ("**Decommissioning Cost**"). The Decommissioning Security shall be provided in the form of a bond, deposit, escrow account, irrevocable letter of credit, parent guaranty, or some combination thereof, which in any case shall be in form and substance satisfactory to the Governing Body. The purpose of the Decommissioning Security is to ensure

removal of all improvements subject to the CUP (i) at the end of the project's life, or (ii) in the event of CSEF/CESS Abandonment, and (in either instance) the failure of the Facility Owner to comply with its decommissioning and restoration obligations under the real property agreements with the owners of the Participating Property. The Facility Owner shall increase the Decommissioning Security in accordance with the following schedule, based on the most recent estimate of the future anticipated cost to decommission the CSEF/CESS, as determined by the then-current Decommissioning Plan or any Revised Plan:

Anniversary of Commencement of Construction	**Minimum Decommissioning Security**
Commencement of Construction – 5th Anniversary	25% of Decommissioning Cost
5th Anniversary and thereafter	100% of Decommissioning Cost

The Decommissioning Security shall not be revocable without 30 days' advance notice to Stafford County. Nothing in the Decommissioning Plan, Decommissioning Security or otherwise shall impose any liability or duty whatsoever on Stafford County or any of its agencies, including, but not limited to, any liability to undertake decommissioning activities.

I. Assignment of CUP.

If the CUP is assigned to a new entity, the new entity shall be responsible for all obligations under the CUP, the Zoning Permit, and the Zoning Ordinance, including the Decommissioning Security obligations contained herein. The new entity shall provide replacement Decommissioning Security, that meets the requirements set forth in Section H herein, before the existing Decommissioning Security can be terminated or released. Notification of such assignment shall be provided to the Zoning Administrator within 30 calendar days after such assignment occurs.

J. Variance.

Variances are available to a CSEF/CESS through the Board of Zoning Appeals with respect to the requirements herein to the full extent authorized by Section 10-107C of the Zoning Code.

K. CSEF and CESS Joint Applications

The application for a CUP for a CSEF and a CESS may be combined in a single proceeding with a single application and single development plan, provided the application and development plan satisfy the requirements for both a CSEF and a CESS.