

5. Ordinance Regulating the Application for, and the Operation and Maintenance of, Solar Energy Systems (SES) in Benson County, North Dakota

DEFINITIONS

Abandonment - will mean to give up, discontinue, and withdraw from any solar energy facility or system that ceases to produce energy on a continuous basis for 12 months. Any facility or system that ceases to produce energy on a continuous basis for 12 months will be considered abandoned.

Alternate Energy - will mean any energy generated or produced from solar or wind.

Alternate Energy Construction Permit (AECP) - Permit needed for construction.

Ancillary Solar Equipment - will mean any accessory part or device of a solar energy system that does not require direct access to sunlight, such as batteries, electric meters, converters or water heater tanks.

Building - will mean any structure having a roof supported by columns or walls and designated or intended for the shelter, support, enclosure or protection of persons, animals, or chattels.

Building-mounted SES - will mean a solar energy system affixed to a permanent principal or accessory building (i.e., roof or wall).

Decommissioning Plan - will mean a document that details the planned shut down and/or removal of a solar energy facility or system from operation or usage.

Dike - will mean a bank, usually but not limited to, earth construction to control or confine water or undesirable runoff. The height of which must be not less than (2) feet and of a size to be able to contain all runoff originating on the solar energy site.

Electric Line – A set of conductors used to transmit and/or distribute electrical energy within the solar energy system or with outside transmission lines.

Gate - a door or other device attached to a fence which, when opened, provides a means of ingress and egress of persons and things for which it was intended, and which, when closed, forms a continuous barrier as a part of the fence to which it is attached.

Ground-mounted SES - will mean a freestanding solar energy system that is NOT attached to and is separate from any building on the parcel of land on which the solar energy system is located.

Improved Area - will mean any area containing solar panels, electrical inverters, storage buildings and access roads.

Non-Participating Property - A parcel of real estate that is not a participating parcel.

Occupied Structure - A building in which people live, work or frequent.

Participating Property - A parcel of real estate on which participation agreement or contract has been executed.

Public - will mean belonging or open to, enjoyed and used by and/or maintained for the public generally, but not limited to, a facility the control of which is wholly or partially exercised by some government agencies.

Public Road - will mean any road, highway or section line which is now or hereafter designated and maintained by Benson County, or organized townships, as part of the county or township road system, whether primary or secondary, hard-surfaced, or other dependable road. Setbacks will be measured from the road right-of-way.

Permittee - An individual, group of individuals, corporations, partnerships, joint venture, owners, or any other business entity, or combination thereof, that leases or owns the solar energy system(s) and the associated improvements, and all subsequent assignees and/or transferees of these rights, and that submits Conditional Use and Alternate Energy Construction Permits, develops a solar energy system, and subsequently operates such a facility.

Personal-Scale SES - will mean a solar energy system that is an accessory to the principal use on the site. The total surface area of all solar collector surfaces within a Personal-scale SES shall NOT exceed 1,000 square feet. The sale and distribution of excess available energy, if permitted, to an authorized public utility for distribution shall be incidental to this type of system and NOT its primary purpose. Sale of excess energy to anything other than an authorized public utility shall be prohibited.

Recreation - areas designated for the refreshment of body and mind through forms of play, amusement, or relaxation. The recreational experience may be active, such as boating, fishing, swimming, hunting or hiking, or be passive, such as enjoying the natural beauty of the shoreline or area wildlife.

Residence - will mean a building used as a dwelling for one or more families or persons.

Residential Area - will mean an area zoned for residential use.

Shooting Range - Is defined as an area, for the discharge of weapons for sport under controlled conditions where the object of the shootings is an inanimate object such as, but not limited to paper, metal, or wooden targets.

Site Plan - A detailed plan for making improvements to parcel(s) of land for the purpose of building and development as provided in this ordinance.

Solar Collector Surface - will refer to any part of a solar energy system that absorbs solar energy for use in the system's transformation process. The collector surface does not include frames, supports and mounting hardware.

Solar Energy - will mean radiant energy received from the sun that can be collected in the form of heat or light by a solar energy system

Solar Energy System (SES) - will mean a system (including solar collectors and ancillary equipment) either affixed to a permanent principal or accessory building or functioning as a freestanding structure, that collects, stores, and distributes solar energy for heating or cooling, or generating electricity. Solar energy systems include both systems for private use as well as those specifically for generating and selling power.

Utility-scale SES - will mean a solar energy system that meets one or more of the following:

1. Is primarily used for generating electricity for commercial sale and distribution on the electrical grid.
2. Has a manufacturers rating of greater than 20 Kilowatts (KW).
3. The total surface area of all solar collector surfaces exceeds 1,000 square feet.
4. Is not an accessory use or structure.
5. Occupies an area larger than 2 acres.

Variance - A relaxation of the terms of these regulations where such variance will not be to the contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, the literal enforcement of these regulations would result in unnecessary and undue hardship.

Waterfowl Rest Area - Those areas declared by proclamation of the Governor of North Dakota to be "Waterfowl Rest Areas" as of the date of an application for a Conditional Use Permit for a solar energy system.

Wildlife Management Area - An established area set forth by a state or federal agency for the protection of wildlife.

5.1 PURPOSE

The purposes and objectives for which this ordinance was established are as follows:

To preserve the dignity and aesthetic quality of the environment in Benson County.

To preserve the physical integrity of land near residential areas.

To preserve and protect the health and welfare of the citizens of Benson County.

To protect and enhance the economic viability and interests of the citizens and residents of Benson County who have made substantial financial investments in homes, businesses, and industry in Benson County.

To facilitate the construction, installation, and operation of solar energy systems in Benson County in a manner that minimizes the adverse impacts to agricultural, commercial, and residential lands. This ordinance is not intended to abridge safety, health or environmental requirements contained in other applicable codes, standards, or ordinances. The provisions of this ordinance shall not be deemed to nullify any provisions of Local, State or Federal Law.

5.2 REGULATORY FRAMEWORK

1. Zoning

Solar energy systems constructed within Benson County are subject to the Restriction and conditions of this ordinance.

2. Principal of Accessory Use

A different existing use or an existing structure on the same parcel will not preclude the installation of a solar energy system or a part of such a system on the parcel. Solar energy systems that are constructed and installed in accordance with the provisions of this code shall not be deemed to constitute expansion of a non-conforming use or structure.

3. Applicability

The requirements of this code shall apply to all solar energy systems within the county, outside of the Extra-Territorial Areas and city limits that are constructed after the effective date of this code. No additions or expansions of an existing solar energy system will be allowed without issuance of a new Alternate Energy Construction Permit pursuant to this ordinance. Modifications or alterations to any solar energy system(s), approved when issuing the Alternate Energy Construction Permit, may be completed through a Change Order, upon approval. Setbacks still apply.

Modifications or alterations to a solar energy system approved when issuing the Alternate Energy Construction Permit will require an amendment, approved by the Planning and Zoning Board, to the Alternate Energy Construction Permit for the solar energy system(s) and/or location(s) that are affected.

4. Archaeology Resource Surveys

Unless the project is under the purview of the North Dakota Public Service Commission (PSC), and an Archaeological Resource Survey is being prepared as a part of that process, the applicant will work with the State Historic Preservation Office (SHPO) at the State Historical Society of North Dakota at the beginning of the planning process for the solar energy system to determine whether an archaeological survey is recommended for any part of the proposed project. If recommended, the applicant will contact a qualified archaeologist to complete such survey's and shall submit the results to the Planning and Zoning Board and the SHPO. The SHPO will make recommendations for the treatment of any significant archaeological sites which are identified. Any issues in the implementation of these recommendations will be resolved by the County Commissioners in consultation with SHPO. All information provided/submitted under this provision is subject to North Dakota Century Code 55-02-07.1. In addition, if any archaeological sites

or human remains are found during construction, the applicant shall follow standard operating procedures as established by the SHPO and in accordance with the NDCC Section 23-06-27 and associated North Dakota Administrative Code 40-02-03.

5.3 STANDARDS FOR PERSONAL-SCALE SOLAR ENERGY SYSTEMS

Personal-scale solar energy systems may be permitted as an accessory use or structure in all zoning districts, subject to the following standards:

A. Ground-mounted Personal-Scale Solar Energy Systems

Ground-mounted, Personal-scale solar energy systems will be subject to the following standards:

1. **Setbacks:** Within city limits, ground-mounted solar energy systems will be located only in the rear or side yard and will correspond with the setbacks for the city in which it will be located. All Personal-scale solar energy systems located outside of city limits will correspond with the setbacks established for the county or those for the Extra-Territorial Area (ETA).
2. **Height:** Ground-mounted solar energy systems will NOT exceed twenty (20) feet in height, measured from the ground at the base of such equipment to the highest point of the system.
3. **Attachment:** Solar energy systems will be permanently and safely attached to the ground.
4. **Visual Impact:** The solar energy system will not have a significant adverse visual impact on the natural features or neighborhood character of the surrounding area and will be located to minimize glare on adjacent properties and roadways.
5. **Compliance with Additional Codes:** Solar energy systems and the installation and use thereof, will comply with the County/State construction code, the electrical code and other applicable County and State codes. Installation of a solar energy system will not commence until all necessary permits have been issued.

B. Building-mounted Personal-Scale Solar Energy Systems

Building-mounted, Personal-scale solar energy systems will be subject to the following standards:

1. **Height:** Solar energy systems that are mounted on the roof of a building will not project more than five (5) feet above the highest point of the roof and, in any circumstances, will NOT exceed the maximum building height limitation for the zoning jurisdiction in which it is located, and will NOT project beyond the eaves of the roof.
2. **Weight:** Solar energy systems mounted on the roof of a building will be only of such weight as can safely be supported by the roof. Proof thereof, in the form of certification by a professional engineer or another qualified person, must be submitted to the Planning and Zoning Board along with the permit application.
3. **Attachment:** Solar energy systems that are roof-mounted, wall-mounted or are otherwise attached to a building or structure must be permanently and safely attached to the building or structure. Proof of the safety and reliability of the means of such

attachment will be submitted to the Planning Zoning Board along with the permit application.

4. **Wall-Mounted Solar Energy Systems:** Solar energy systems that are wall-mounted will NOT exceed the height of the building wall to which they are attached.
5. **Visual Impact:** All solar energy systems must not have any significant adverse visual impact on the natural features or neighborhood character of the surrounding area and will be located to minimize glare on adjacent properties and roadways. Solar energy systems that are visible from the street or road must be either composed of building-integrated components (such as solar shingles) that are not readily evident, or be designed and mounted to match the shape, proportions, and slope of the roof.

Compliance with Additional Codes: Solar energy systems, and the installation and use thereof, will comply with all State and Local construction codes, the electrical code and other applicable State and Local codes. Installation of a solar energy system will NOT commence until all necessary permits have been issued and copies of each are on file with the Planning and Zoning Board.

C. Ancillary Solar Equipment

Where feasible, ancillary solar equipment will be located inside of a building or be screened from public view. All ancillary solar equipment such as, but not limited to, water tanks, supports, batteries and plumbing will be screened to the maximum extent possible without compromising the effectiveness of the solar collectors. When solar storage batteries are included as part of the solar collector system, they must be placed in a secure container or enclosure meeting the requirements of State, County, Township or City Codes and when no longer in use will be disposed of in accordance with applicable laws and regulations.

D. Application Requirements for Personal-scale Solar Energy Systems:

An application will include the following:

1. Photographs of the property's existing conditions.
2. Renderings or catalog cuts of the proposed solar energy system.
3. Plot/Sketch plan (to scale) to indicate where the solar energy system is to be installed on the property (or if building mounted, the system's location on the permanent building), including property setbacks and the total solar collector surface area.
4. Elevations showing the height of the solar energy system.
 - a. For ground-mounted solar systems, the height of the system above ground.
 - b. For pitched roof-mounted solar systems, the elevation must show the highest finished height of the system and the height of the finished roof surface on which it is mounted.
 - c. For flat roof-mounted solar energy systems, the elevations will show the highest finished height of the system and the highest point of the roof, including any parapets on the building.

5. Description of the screening to be provided for ground or building-mounted solar energy equipment.
6. Proof of notification and date of delivery of airport notification of solar systems location and a copy of the Benson Regional Airport Board Letter of Approval, if required.
7. Other certifications may be required.

E. Fees for Personal-scale Solar Energy Systems

The Solar Energy Facility fee will be \$1/watt and prorated accordingly. The appropriate fee amount of seventy-five (75) percent (non-refundable) of the total project amount must accompany the Conditional Use Permit Application. The remaining twenty-five (25) percent will be due and payable upon approval of the Alternate Energy Construction Permit. The fee payment must be payable to Benson County.

F. Exclusions from Zoning Permit for Personal-scale Solar

Energy Systems The following situations do not require a Zoning Permit but must still comply with all other standards of this Ordinance:

1. The total installation consists of only one (1) building-mounted solar energy system with a total solar collector surface area of less than eight (8) square feet.
2. The total installation consists of only one (1) ground-mounted and/or portable solar energy system with a height of less than six (6) feet and a solar collector surface of less than eight (8) square feet.
3. Repair and replacement of existing solar energy equipment, provided there is no expansion of the size or coverage area of the solar energy system.
4. Installations specifically for agricultural use.

5.4 STANDARDS FOR UTILITY-SCALE SES

All Utility-scale solar energy systems will be located outside of city limits and the Extra-Territorial Area (ETA), which extends, from organized cities located in Benson County, out to one (1) mile.

A. Ground-mounted Utility-scale Solar Energy Systems

1. **Permits:** All applications for Utility-scale solar energy systems will be required to submit both a Conditional Use Permit as well as an Alternate Energy Construction Permit and have them approved prior to the start of any construction.
2. **Fees:** The solar energy system fee will be \$1000/MW and prorated accordingly. The appropriate Fee amount of seventy-five (75) percent (non-refundable) of the total project amount must accompany a Conditional Use Permit Application. The remaining twenty-five (25) percent will be due and payable upon approval of the Alternate Energy Construction Permit. The fee payment must be payable to Benson County.
3. **Setbacks:**

- a. **Public Roads:** Utility-scale solar energy systems will be set back at least one hundred fifty (150) feet from all public roads, highway rights-of-way and section lines.
 - b. **Adjacent Non-Participating Property Lines:** Utility-scale solar energy systems will be set back at least one hundred fifty (150) feet from the adjacent non-participating property line.
 - c. **Buildings and Structures:** Utility-scale solar energy systems will be set back at least five hundred (500) feet from any building or structure. For an established shooting range, the Utility-scale solar energy systems must be located at least 5,280 feet from the shooting position, as measured down-range.
4. **Height:** Utility-scale ground-mounted solar energy systems will have a maximum height of twenty (20) feet above ground.
5. **Electrical Interconnections:** All electrical interconnection or distribution lines will comply with all applicable Federal, State and Local codes and standard commercial utility requirements. Electric solar system components must have an Underwriters Laboratory (UL) listing. Power and communications lines running between banks of solar panels and to nearby electrical sub-stations or interconnections with buildings will be buried underground to a minimum depth of two (2) feet within the Utility-scale solar energy system(s) perimeter fence and to a minimum depth of four (4) feet outside the Utility-scale solar energy system(s) perimeter fence. All county road crossings must be bored and sleeved. If it is necessary to bore county roadways or bury electrical cable outside of the solar energy system boundary, a Utility Permit will also need to be submitted for approval prior to applying for an Alternate Energy Construction Permit.
6. **Minimum Lot Area:** Minimum lot area for a Utility-scale solar energy system will be twenty (20) acres.
7. **Fences:** Any security or perimeter fence placed at a Utility-scale solar energy system will be constructed from metal chain-link material, will be a minimum of six (6) feet in height and not exceed eight (8) feet in height. Electric fencing will not be permitted.
8. **Lighting:** Lighting will be limited to that required for safety and operational purposes, except for lighting that is required by the FCC and/or FAA, and will be directed downward and shielded so that no glare extends substantially beyond the boundaries of the solar energy system or facility.
9. **Waste:** Any solid or liquid waste or any hazardous waste generated by the project will be properly disposed of.
10. **Sound Pressure Level:** No Utility-scale solar energy system shall exceed forty-five (45) dBA as measured at the property line.
11. **Roads:** Any material damages to a public road located within Benson County resulting from the construction, maintenance or operation of a Utility-scale solar energy system or facility will be repaired at the applicant's expense. The applicant shall abide by all Federal, State or County requirements regarding the use of and/or repair of the roadways.
12. **Signage:** Signs will comply with the requirements may be described In the Benson County Zoning Ordinance. Further, Utility-scale solar energy system installations will not be used for displaying any advertising except for reasonable identification of the

manufacturer or operator of the solar energy system. An information sign will be posted and maintained at the entrance(s), which lists the name and phone number of the operator.

- a. **Warning Signage:** Signs warning of the high voltage associated with the solar farm will be posted at every entrance to the facility and at the base of all pads mounted transformers and substations. A sign that provides emergency contact information, such as phone number, will be posted near the entrance and at any operations and/or maintenance buildings

13. Landscaping:

- a. **Vegetation:** Topsoil's will not be removed during development, unless part of a remediation effort. Soils will be planted to, and maintained in, perennial vegetation using approved NRCS seeds to prevent erosion, manage runoff and build soil. A Watershed Assessment must be completed and approved by the Benson County Soil Conservation District, and paid for by the developer, prior to the start of construction. It is required that any vegetation or crops planted must be in compliance with all federal and state laws protecting endangered species, including pollinators such as bees. Dead or diseased vegetation will be removed and must be replanted at the next appropriate planting time until such time that it is considered established. Established vegetation must be maintained and if unable to do so must be replanted. No land assets, i.e., topsoil, trees and lumber, etc. will be removed from the premises without the written approval of the landowner. A copy of this permission letter must be attached to the Conditional Use Permit application.
- b. **Runoff:** Each owner, operator, or maintainer of a solar energy system to which this Ordinance applies must regulate and control erosion and sediment runoff. If the topography of the site indicates this may be a problem, it is required that dikes be installed to control runoff. A plan for runoff, containment and reclamation, along with dike-engineered blueprints, if required, must be included with the Conditional Use Permit application.
- c. **Weed Control:** Applicant will keep all areas within the solar facility neat, clean and free of refuse or waste and unsightly, hazardous or unsanitary conditions. Benson County has a Noxious Weed Ordinance, which will be followed. Only approved and labeled chemicals for weed control will be applied and no sterilant will be used. All plants or grasses present on site will be maintained by the facility operator and will not exceed twelve (12) inches in height.

14. **Airport Authority Review:** For consideration of potential impacts to low-altitude airport flight paths, within 5 miles of the reference point of All Benson County Airport (s), notification of intent to construct a solar farm will be sent to the Appropriate County Airport Authority for their review of applicable requirements and approval before the Planning and Zoning Board's acceptance. Notification will include location of the solar facility or site (i.e. map, coordinates, address, and structure placement), the type of solar technology being used and the area of the system (e.g., 20 acres). A copy of all Benson County Airport Authority(s) approval letter must be included with the Conditional Use Permit application.

B. Building-mounted Utility-scale Solar Energy Systems

Utility-Scale building-mounted solar energy systems will be subject to the following standards:

1. **Height:** Solar energy systems that are mounted on the roof of a building will not project more than five (5) feet above the highest point of the roof and, in any circumstances, will NOT exceed the maximum building height limitation for the zoning jurisdiction in which it is located, and will NOT project beyond the eaves of the roof.
2. **Weight:** Solar energy systems mounted on the roof of a building will be only of such weight as can safely be supported by the roof. Proof thereof, in the form of certification by a professional engineer or other qualified person, must be submitted to the Planning and Zoning Board along with the Conditional Use Permit application.
3. **Attachment:** Solar energy systems that are roof-mounted, wall-mounted or are otherwise attached to a building or structure must be permanently and safely attached to the building or structure. Proof of the safety and reliability of the means of such attachment will be submitted to the Planning and Zoning Board along with the Conditional Use Permit application.
4. **Wall-Mounted Solar Energy Systems:** Solar energy systems that are wall-mounted will NOT exceed the height of the building wall to which they are attached.
5. **Visual Impact:** All solar energy systems must not have any significant adverse visual impact on the natural features or neighborhood character of the surrounding area and will be located to minimize glare on adjacent properties and roadways. Solar energy systems that are visible from the street or road must be either composed of building-integrated components (such as solar shingles) that are not readily evident, or be designed and mounted to match the shape, proportions, and slope of the roof.
6. **Compliance with Additional Codes:** Solar energy systems, and the installation and use thereof, will comply with all State and Local construction codes, the electrical code and other applicable State and Local codes. Installation of a solar energy system will NOT commence until all necessary permits have been issued and copies of each are on file with the Planning and Zoning Board.
7. **Airport Authority Review:** For consideration of potential impacts to low-altitude airport flight paths, within 5 miles of the reference point of all Benson County Airports, notification of intent to construct a solar farm will be sent to the Benson County Airport Authority(s) for their review of applicable requirements and approval before the Planning and Zoning Board's acceptance. Notification will include location of the solar facility or site (i.e. map, coordinates, address, and structure placement), the type of solar technology being used and the area of the system (e.g. 20 acres). A copy of the affected Benson County Airport Authority approval letter must be included with the Conditional Use Permit application.

5.5 ANCILLARY SOLAR EQUIPMENT

Where feasible, ancillary solar equipment will be located inside a building or be screened from public view. All ancillary solar equipment such as, but not limited to, water tanks, supports, batteries and plumbing will be screened to the maximum extent possible without

compromising the effectiveness of the solar collectors. When solar storage batteries are included as part of the solar collector system, they must be placed in a secure container or enclosure. Meeting the requirements of the State and Local Building Codes and when no longer in use must be disposed of in accordance with all applicable laws and regulations.

5.6 UTILITY-SCALE SOLAR ENERGY SYSTEM APPLICATION

1. Application and Pre-Construction Requirements

The Planning and Zoning Board must receive the following items prior to giving approval to construct a Utility-Scale solar energy system:

- A. The Conditional Use Permit Application and the non-refundable 75 percent fee must be received and approved prior to Planning and Zoning Board accepting a request for an Alternate Energy Construction Permit.
- B. **Utility Permit Application and appropriate payment must be submitted to County Commission** if county roadways will need to be bored or electrical lines buried outside of the solar energy system(s) site. The completed application must be received and approved prior to Planning and Zoning Board accepting a request for an Alternate Energy Construction Permit.
- C. Prior to the start of any construction, the applicant will conduct a pre- construction meeting with the Planning and Zoning Board to coordinate field monitoring of the construction activities. The pre-construction meeting shall be open to the public and all interested parties and shall address staging, schedules, complaints, emergency plans and other pertinent issues.
- D. Prior to final inspection, proof that a permit issued by the state, in accordance with all applicable state laws, has been issued will be required to be submitted to the Planning and Zoning Board.

2. The following items must accompany all applications for a Conditional Use Permit:

- A. **Fees** The appropriate fee amount of seventy-five (75) percent (non- refundable) of the total project amount must accompany the Conditional Use Permit Application. The remaining twenty-five (25) percent will be due and payable upon approval of the Alternate Energy Construction Permit. The fee payment must be payable to Benson County.
- B. **Twelve (12) copies of the Site Plan** which conforms to the standards of this Ordinance and the Planning and Zoning Board and includes:
 1. Setbacks, designated panel area, location of property lines, buildings and road rights-of-way.
 2. Existing structures (if any) on subject property.
 3. All existing and proposed underground and above ground utilities.
 4. To scale, detailed plot map. The Planning and Zoning Board will review the site plan to insure conformity with the requirements of this Ordinance. The Planning and Zoning Board may grant a variance to these requirements based upon good cause, if shown. Applications for such Variance will be made to the Planning and Zoning Board through

the Zoning Administrator. Completed and notarized Variance request form(s) must accompany the permit, if needed. Appeals of a Planning and Zoning Board decision must be made to the Benson County Commissioners.

C. Twelve (12) copies of a Map (to scale) showing:

1. A USGS Topographical Map (to scale) of the solar energy system and all adjoining properties along the solar energy system perimeter and internal boundaries, which show all existing features, including property boundaries, structures, improvements, roads, utility lines, restricted areas, public facilities and natural features.
2. The detailed map (to scale) must also show the location of all proposed improvements for the solar energy system, including electrical lines (both buried and above-ground) and roads. All pertinent facilities, utility connections, structures and ingress and egress points must have associated Global positioning System (GPS) positions identified.
3. Locations of recreational properties, game, and fish wetlands and conservation lands and all PLOTS lands within or adjacent to the solar energy systems internal boundaries and external perimeter.
4. Ingress and egress routes from the site as proposed during construction and operations thereafter indicating:
 - a. Locations of all roadways
 - b. Widths and lengths of roadways
 - c. Proposed roadway surface and cover

D. Twelve (12) copies showing Contact Information and Legal Description(s) of the Solar Energy System(s):

1. Name of solar energy facility.
2. Name and address of solar energy system owner.
3. Name and address of the solar energy system current operator.
4. Names of property owners and legal descriptions identified as participating or non-participating landowners, located within the solar energy system perimeter.
5. Name, dimensions and location of any parks, public land, Historic resources, churches, multi-use trails, or areas of Recreational significance, as available from public documents, within two thousand six-hundred and forty (2,640) feet of a proposed solar energy system location.

E. Twelve (12) copies of the following must also be provided:

1. **Product Description:** A description of the proposed technology to include type of solar panel and system, fixed mounted verses solar tracking, number and size of each panel, angles of orientation, etc.
2. **Owner Agreement(s):** A notarized affidavit or evidence of an agreement between the property owner and the facility's owner or operator confirming the owner or operator has permission of the property owner to apply for the necessary permits for construction and operation of the solar energy system and the removal of vegetation, if necessary.

3. **Documents to Provide Proof of Easement with Adjacent Property and Easement Owners:** Evidence of covenants, easements or similar documentation with abutting property owners to allow the crossing of their property with any part of the solar energy system, to include but not limited to output and utility lines.
4. **Airport Notification Proof:** Proof of delivery of notification and date of delivery to all affected airports and owners and the Benson County Airport Authority(s), of location and product glare test results or proof of non-applicability of all affected airports, public or private, (identified by their FAA Identification Numbers). A Letter of Approval from the Benson County Airport Authority(s) is also required.
5. **Storm Water Pollution Prevention Plan (SWPPP):** Watershed Assessment Plan for drainage disposal and erosion control approved by the Benson County Soil Conservation District Office, all costs of which will be incurred by the applicant.
6. **Avian and Wildlife Impact Documentation:** The applicant will have a third party, who is a qualified professional, conduct an analysis to identify and assess any potential impacts on wildlife and endangered species. The applicant will respond appropriately to minimize, eliminate or mitigate adverse impacts identified in the analysis. The applicant will identify and evaluate the significance of any net effects or concerns that will remain after mitigation efforts, to include effects on pollinators.
7. **Operation and Maintenance Plan:** A plan for the operation and maintenance of the Utility-scale system, which will include measures for maintaining safe access to the installation, storm water controls, weight, and safety limitations on buildings, as well as general procedures of operational maintenance of the installation.
8. **Emergency Plan:** The owner/operator of the solar energy system will cooperate with local emergency services in developing an Emergency Response Plan and/or Emergency Operation Plan must be submitted with the application. All means of shutting down the solar energy system will be clearly marked. The owner/operator will identify a responsible person for public inquiries throughout the life of the installation. An information sign will be posted and maintained at the entrance(s), which lists the name and phone number of the operator.
9. **Complete Decommissioning Plan:** The Decommissioning Plan must contain the following information that provides for the removal and reclamation of the facility or site(s) within 9 months:
 - a. All solar energy system components, aboveground improvements and outside storage.
 - b. All foundations, pads, and underground electric wires removed to a depth of four feet.
 - c. Restoring the site to its original, pre-construction, condition, unless prior arrangement has been made in writing, with a notarized signature from the current landowner.
 - d. Hazardous material(s) from the property must be disposed of in accordance with Federal, State and Local Laws.
 - e. The removal of all access roads or driveways by the applicant, unless the property owner(s) requests, in writing, a desire to maintain any access roads or driveways. The Township or County will not be assumed to take ownership of any access road or driveways.

- f. On-site buildings may remain if a notarized Bill of Sale is provided to the Planning and Zoning Board from the landowner, showing a change in ownership. If the State of North Dakota enacts a law with regards to the decommissioning of a solar energy system, the strictest requirements will prevail.

10. **Road Use Agreement:** The applicant, permittee or current owner and the county, will enter into a road use agreement governing the use, improvement, maintenance and repair of county, township and public roads to be used by the applicant, permittee or current owner to transport equipment or materials during the project construction. The road use agreement will require the applicant, permittee or current owner to provide the county with a letter of credit, bond or other form of financial security for road repair in the event repairs are not completed by the applicant, permittee, or current owner per the terms of the agreement.

F. **Other Required Documents:**

1. Any other relevant studies, reports, certificates, and approval as may be reasonably required by the Planning and Zoning Board.
2. Prior to final inspection, proof that a permit issued by the State in accordance with all applicable State Laws has been issued will be required.
3. The applicant will construct no new or additional solar energy system(s) in Benson County until the Planning and Zoning Board and the County Commissioners have approved this Conditional Use Permit.
4. **The following items must accompany all applications for an Alternate Energy Construction Permit:**
 - A. **A copy of the site plan with the name, address, and registration number** of the professional surveyor involved in preparing the site plan and the final blueprint to scale.
 - B. Name, dimensions, and locations of any above-ground utility easements, as available from public documents, within 2,640 feet of all proposed solar energy system components.
 - C. A copy of the SWPPP approved by the Benson County Soil Conservation District Office.
 - D. **Proof of financial surety for decommissioning: the applicant or** current owner of a solar energy system must provide a form of surety that can be assessed by the County Commissioners and is agreeable to the County Commissioners. This is to cover the cost of decommissioning in the event Benson County must remove the installation. The form of surety for decommissioning will be one hundred twenty- five (125) percent of the estimated removal and restoration costs. A professional engineer or contractor who has expertise in the removal of a solar energy system will prepare a cost estimate for the decommissioning of the system. The County Commissioners reserves the right to hire their own engineer to determine cost estimates and facts of decommissioning on an annual basis. The form of surety must be in place before and construction can begin. The decommissioning cost estimate shall explicitly detail the cost before considering any project salvage value of the solar energy system. The amount shall include a mechanism for calculating and providing increased removal

costs due to inflation. The County Commissioners have the right to revisit decommissioning costs annually to determine the inflation calculated costs.

- E. The owner/operator of the solar energy system must show proof of the form of surety to the County Commissioners annually, or within 30 days of a transfer of ownership after construction has begun. Any form of surety required by the state would be credited towards the Benson County surety amount, if the amount is greater.
- F. **A copy of the approved Water Acquisition, Reclamation and Disposal Plan.**
- G. Remaining Application Fee due: Upon final approval of the Alternate Energy Construction Permit requirements, the remaining twenty-five (25) percent of the total application fee will be due and payable to Benson County. The receipt of which will be required prior to the Alternate Energy Construction Permit being issued.
- H. Utility Permit- All county roadways will need to be bored for all electrical lines buried between the solar energy facilities or sites. Prior to the start of construction, a completed application must be received and approved for each occurrence/incident by the County Road Superintendent and the County Commissioners. Proof of all Utility Permits approved by the County Commissioners prior to the start of construction. Failure to do so may be considered grounds of revocation of the Alternative Energy Construction Permit due to non-compliance.
- I. **A copy of the State Historical Preservation Officer (SHPO) report of approval** must be submitted, in addition to any other relevant studies, reports or certificates for approval as maybe reasonably required by the Planning and Zoning Board.
- J. The applicant will have a third party, who is a qualified professional, and approved by the Planning and Zoning Board to conduct an analysis to identify and assess any potential impacts on the natural environment including wetlands and other fragile ecosystems, historical or cultural sites, antiquities, and adjacent agricultural uses such as rotating crops. The applicant will respond appropriately to minimize, eliminate or mitigate adverse impacts identified in the analysis. The applicant will identify and evaluate the significance of any effects or concerns that will remain after mitigation efforts. In addition, a water usage or impact study must be completed that will indicate any impact that the solar energy system will have on township resources.
- K. Routes of ingress and egress from all sites as proposed during Construction and thereafter, indicating:
 - 1. Proposed road surface and cover.
 - 2. Dust control.
 - 3. Width and length of access route(s).
 - 4. Road maintenance progress or schedule for proposed land.

Upon a determination of compliance with the Alternative Energy Construction Permit (AECP) and any additional requirements stipulated in the approved Conditional Use Permit, construction of the project may proceed. If the Planning and Zoning Board finds that the conditions or restrictions set forth in the AECP are not being compiled with, the County Commissioners may revoke the AECP after a public hearing. If substantial construction has not been instituted within three years of the date of approval of the AECP, the permit shall be null and void without further action of the Planning and Zoning Board or the County Commissioners.

- L. Upon a determination of compliance with the Alternative Energy Construction Permit (AECPP) any additional requirements stipulated in the approved Conditional Use Permit, construction of the project may proceed. If the Planning and Zoning Board finds that the conditions or restrictions set forth in the AECPP are not being complied with the Planning and Zoning Board may revoke the Alternative Energy Construction Permit after a public hearing. If substantial construction has not been instituted within three years of the date of approval of the AECPP, the permit shall be null and void.

1. Review and Inspections

The Planning and Zoning Board, Zoning Administrator(s) or designee will review the Site Plan and inspect the solar energy system and any facilities to insure conformity with the requirements of this ordinance. Inspections will occur during construction and may occur periodically during operations.

2. Variances

The Planning and Zoning Board may grant a variance to these requirements based upon good cause, if shown. Applicants for such variance must be made to the Planning and Zoning Board through the Zoning Administrator(s). Completed and notarized variance request forms must accompany the Conditional Use Permit, if needed.

3. Appeals

Appeals of a Planning and Zoning Board decision must be made to the County Commissioners.

5.7 PUBLIC HEARINGS

Upon receipt of the Conditional Use Permit, the Planning and Zoning Board, and any experts it may retain, will review the application, and hold a public hearing on the application giving notice of which shall be published a least two (2) weeks prior to the hearing in the official newspaper of the county. The notice shall include the time, date and place of the hearing, description of the property to be affected and the time and place for the public inspection of the documents prior to the hearing.

1. **Deliberation and Decision:** The Planning and Zoning Board, following the public hearing for the Conditional Use Permit, will make a recommendation to the County Commissioners for the approval or denial, modification, and/or imposition of conditions on the application.
2. **Remaining Application Fee Due:** Upon final approval of the Alternate Energy Construction Permit, the remaining twenty-five (25) percent of the total application fee will be due and payable to Benson County. The receipt of which will be required prior to the Alternate Energy Construction Permit being issued.

5.8 DEMONSTRATION OF CONSTRUCTION COMPLIANCE

The Application issued pursuant to Section 17.6 will be required upon the applicant(s) or current owner(s), final demonstration of compliance with the requirements of the Conditional Use Permit following completion of the solar energy system. Within ninety (90) days from the start and within ninety (90) days of completion of the solar energy system(s) construction, the applicant, permittee or current owner, must submit to the Planning and Zoning Board all updated and final USGS Maps (to scale), surveys, or blueprints, if available, providing all the information pursuant to Section 17.6 and demonstrating actual compliance with the requirements and conditions set forth for the Conditional Use Permit and Alternate Energy Construction Permit.

5.9 LIABILITY INSURANCE

The applicant, permittee, or current owner and/or operator of the solar energy system will defend, indemnify, and hold harmless Benson County and its officials from and against all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including attorney's fees, without limitation, arising out of unlawful acts or missions of the applicant, permittee, current owner and/or operator associated with the construction and/or operation of the solar energy system.

The current owner and/or operator of the solar energy system will maintain a current general liability policy covering bodily injury and property damage and name Benson County, its employees, officers, agents, and contractors as additional insured with limits of at least two million (\$2,000,000) dollars per occurrence and five million (\$5,000,000) dollars in aggregate with a deductible of no more than five thousand (\$5,000) dollars.

Any loss of coverage, an expired insurance certificate or failure to maintain the minimum coverage amount will be considered grounds for revocation of the solar energy system(s) application(s) and permit(s). Certificates evidencing required insurance must be provided to Benson County upon approval of the Alternate Energy Construction Permit and prior to commencement of any construction. A letter indicating continued annual coverage must be submitted to the Benson County Auditor annually.

5.10 RESTORATION OF PROPERTY

Decommissioning Plan and Bonding Requirements:

The solar energy system project will develop a Decommissioning Plan in accordance with NDCC 49-02-27 and NDAC 69-09-09 and this plan must and be submitted as a part of the solar energy system application. The bond must be submitted upon approval of the Conditional Use Permit and prior to construction. Within nine (9) months of termination of operations or abandonment of the solar energy system, leases, or easements for a solar energy system in the county, the permittees, or current owner(s) and/or operators will, at its expense, comply with the following decommissioning requirements:

- A. Dismantling and removal of all solar panels and support structures, distribution and or collection cables and transformers and overhead cables.
- B. Removal of all underground cables to a depth of twenty-four (24) inches and backfill all trenches.
- C. Removal of all foundations, buildings, and ancillary equipment to a depth of four (4) feet.
- D. Removal of surface road materials and restoration of the roads and Solar facility sites to substantially the same physical condition that existed immediately before construction of the commercial solar energy system, unless prior arrangement has been made in writing, with a notarized signature from the current landowner, to keep the roadways in place.
- E. All sites must be restored and reclaimed to the same general topography that existed prior to the beginning of construction of the solar energy system. Areas disturbed by the construction of the solar energy system and decommissioning activities must be graded, top soiled and seeded according to the Natural Resources Conservation Services Technical Guide recommendations and other agency recommendations, unless the landowner requests, in writing, that the land surface areas be left in its current state. An established stand is required within three (3) years. If not established, re-seeding is required.

5.11 ABANDONMENT

Any Utility-scale solar energy system that ceases to produce energy on a continuous basis for 12 months will be considered abandoned unless the current responsible party (or parties) with ownership interest in the solar energy system provides substantial evidence, (updated every 6 months after a 12-month period of no energy production), to the Planning and Zoning Board of the intent to maintain and reinstate the operation of that solar energy system. Upon determination of abandonment, the Planning & Zoning Board will notify the party (or parties) responsible of such determination and the responsible party or parties must respond within 30 days. If the responsible party (or parties) fails to comply, the Planning and Zoning Board may remove the solar energy system, sell any removable materials, make use of the funds provided by the financial surety agreement, initiate judicial proceedings or take any other steps legally authorized against the responsible parties to recover the costs required to remove the solar energy system and restore the site to a non-hazardous, pre-development condition.

5.12 TRANSFER OF OWNERSHIP

Prior to any change in ownership or assignment of a controlling interest of any entity owning a solar energy system or facility permitted in Benson County, including any assignment or transfer of a controlling interest to any corporation, partnership or other entity controlled by or a subsidiary or affiliate of the solar energy system or facility permitted in Benson County, notification shall be made to the Planning and Zoning Board requesting transfer of the solar energy system's Conditional Use Permit and Alternate Energy Construction Permit. Such transfer will be conditioned upon explicit agreement by the new applicant to comply with the requirements and conditions of this ordinance, as

amended, and the original solar energy system Conditional Use Permit. The application will also include the new applicant's agent and contact information. A change of ownership that results in inability, unwillingness, or failure to abide by the conditions of this ordinance can be a basis for revocation of the solar energy system(s) Conditional Use Permit. (This limitation will apply to all transfers by operation of law and any transfers by trustee in bankruptcy, receivers, administrators, executors, and legatees).

5.13 PREEMPTION

The regulations for solar energy systems must follow county and state regulations and the government with the greater or stronger regulation will apply to the project.

5.14 SEVERABILITY

The provisions of this Ordinance are hereby declared to be severable and if any provision, section or part of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, such decision will only affect those particular provisions, section or part involved in such decision and will not affect or invalidate the remainder of such Ordinance, which will continue in full force and effect.

5.15 ENFORCEMENT AND PENALTIES

Any person, firm or corporation violating any of the provisions of this Ordinance will be subject to the following penalties:

- A. Violations of this Ordinance will be a Class B Misdemeanor, punishable upon conviction by a fine not to exceed \$1,000.00 or by imprisonment for a period not to exceed 30 days, or by both. Each day the violation exists will constitute a separate offense. In addition, to the forgoing penalties, anyone convicted of violating this Ordinance under this provision will be assessed the costs of prosecuting, including all attorney fees that have been, or will be, incurred.
- B. The Zoning Administrator, as designated by the County Commissioners will enforce this Ordinance.
- C. Benson County will have the right to petition the District Court for an injunction prohibiting the continuing violation of this Ordinance. Anyone found to be in violation of this Ordinance and enjoined by said Court will be assessed the cost and attorney fees incurred by Benson County in seeking said injunction.