Cumberland County Energy Facilities Policy

Siting of Energy Facilities

Adopted and Effective August 13, 2024

Purpose: The purpose of the Energy Facility Policy is to provide guidance for the siting, development, operations, and decommissioning of energy generating facilities in Cumberland County that require a conditional use permit. The policy will be reviewed every 6 months for changes related to industry and technology changes as well as new or pending legislation.

Definitions: As used in this article, unless the context requires a different meaning:

"Energy facility" means a solar energy facility, wind energy facility, or energy storage facility.

"Energy storage facility" a system that absorbs, stores, and discharges electricity. "Energy storage facility" does not include fossil fuel storage or power-to-gas storage that directly uses fossil fuel inputs.

"Solar energy facility" means a system that captures and converts solar energy into electricity, for the purpose of sale or for use in locations other than solely the solar energy facility property. "Solar energy facility" includes related equipment and facilities such as: photovoltaic solar panels; solar inverters; access roads; distribution, collection, and feeder lines; wires and cables; conduit; footings; foundations; towers; poles; crossarms; guy lines and anchors; substations; interconnection or switching facilities; circuit breakers and transformers; overhead and underground control; communications and radio relay systems and telecommunications equipment; utility lines and installations; generation tie lines; solar monitoring stations; and accessory equipment and structures.

“Small scale energy facility” means an energy producing facility that totals 5 megawatts or less.

“Large scale energy facility” means an energy producing facility that totals more than 5 megawatts.

"Wind energy facility" means a system that captures and converts wind into electricity, for the purpose of sale or for use in locations other than solely the wind energy facility property. "Wind energy facility" includes related equipment and facilities such as: wind towers; wind turbines; access roads; distribution, collection, and feeder lines; wires and cables; conduit; footings; foundations; towers; poles; crossarms; guy lines and anchors; substations; interconnection or

switching facilities; circuit breakers and transformers; overhead and underground control; communications and radio relay systems and telecommunications equipment; monitoring and recording equipment and facilities; erosion control facilities; utility lines and installations; generation tie lines; ancillary buildings; wind monitoring stations; and accessory equipment and structures.

"Aircraft detection lighting system" means a sensor-based system designed to detect aircraft as they approach a wind energy facility and that automatically activates obstruction lights until they are no longer needed.

"Applicant" means an applicant for a conditional use permit.

"Community-based organization" means a workforce development and training organization, labor union, local governmental entity, Virginia-recognized or federally recognized tribe located in the Commonwealth, environmental advocacy organization, or an organization that represents the interests of underserved communities.

"Construction" means any substantial action taken constituting the placement, erection, expansion, or repowering of an energy facility.

"Dark sky-friendly lighting solution" means a light fixture that is designed to minimize the amount of light that escapes upward into the sky.

"Host locality" means locality in which all or part of a proposed energy facility will be located.

"Independent power producer" or "IPP" means a person that is not an electric utility but owns or operates facilities to generate electric power.

"Light intensity dimming solution technology" means obstruction lighting that provides a means of tailoring the intensity level of lights according to surrounding visibility.

"Light-mitigating technology" means an aircraft detection lighting system, a light intensity dimming solution technology, or a comparable solution that reduces the impact of nighttime lighting while maintaining night conspicuity sufficient to assist aircraft in identifying and avoiding collision with the wind energy facilities.

"Maximum blade tip height" means the nominal hub height plus the nominal blade length of a wind turbine, as listed in the wind turbine specifications provided by the wind turbine manufacturer. If not listed in the wind turbine specifications, maximum blade tip height means the actual hub height plus the actual blade length.

"Nameplate capacity" means the designed full-load sustained generating output of an energy facility. Nameplate capacity shall be determined by reference to the sustained output of an energy facility even if components of the energy facility are located on different parcels, whether contiguous or noncontiguous.

"Nonparticipating property" means a property that is adjacent to an energy facility and that is not a participating property.

"Occupied community building" means a school, place of worship, day-care facility, public library, community center, or other similar building that the applicant knows or reasonably should know is used on a regular basis as a gathering place for community members.

"Participating property" means real property that either is owned by an applicant or that is the subject of an agreement that provides for the payment by an applicant to a landowner of monetary compensation related to an energy facility regardless of whether any part of that energy facility is constructed on the property.

"Repowering" means, with respect to an energy facility, replacement of all or substantially all of the energy facility for the purpose of extending its life. Repowering does not include repairs related to the ongoing operations that do not increase the capacity or energy output of the energy facility.

Negotiations and Siting Agreements

A. Any applicant for the construction of an energy facility shall give to the host locality written notice of the applicant's intent to locate in such locality and request a meeting. Such applicant shall meet, discuss, and negotiate a siting agreement with such locality.
B. The siting agreement may include terms and conditions, including (i) mitigation of any impacts of such energy facility; (ii) financial compensation to the host locality to address capital needs set out in the (a) capital improvement plan adopted by the host locality, (b) current fiscal budget of the host locality, or (c) fiscal fund balance policy adopted by the host locality; or (iii) assistance by the applicant in the deployment of broadband, as defined in § 56-585.1:9. The siting agreement shall continue in effect until it is amended, revoked, or suspended.
C. Within 90 days following a meeting described in subsection A the electric utility or IPP shall file for approval with each host locality. A local governing body with which an application is filed shall approve or deny the application within 120 days after receiving

the completed application. The applicant and locality may jointly agree to extend this deadline by up to 120 days. If DEQ is able to provide a preliminary review of the application, the approval time period will be extended to accommodate the review.

D. At least 30 days prior to submitting an application to Cumberland County, an electric utility or IPP shall hold a public meeting. At least 30 days before such a meeting, the electric utility or IPP shall notify the Planning and Zoning Administrator that a public meeting will be held of the time, date, location, and purpose of the meeting and provide a copy of the site plan. At least 14 days before the meeting, the electric utility or IPP shall publish notice of the meeting in a newspaper of general circulation in the host locality or in a comparable digital alternative. The notice shall include a copy of the site plan or the website address where the site plan is available for review. In addition, the electric utility or IPP shall place notices of the meeting, including the date, time, and location, on the subject property where visible from the road or highway. The notices shall be no smaller than 3 feet by 3 feet.

Energy Facility Application Deadlines

Day 1	Written Notice Provide to Host Locality by Energy Facility Applicant.
30 Days	Applicant notifies County of public meeting time, date, location.
60 Days	Applicant to hold public meeting within 60 days of notification to County.
90 Days	Applicant must have a completed application submitted to the County. Conditional Use Process Public Hearings Siting Agreement Negotiation
210 Days	County shall approve or deny application. Extension of up to 120 days may be jointly agreed upon

Site Plan:

A site plan for an energy facility shall meet general requirements established by Cumberland County. The site plan shall include (i) the location and a description of the energy facility; (ii) a description of the anticipated effects of the energy facility on the environment, natural resources, and solid waste disposal capacity, which may include records of consultation with relevant state, tribal, and federal agencies; and (iii) additional information required or requested by Cumberland County. The site plan and its details can be changed as part of the application process as long as changes occur within the originally determined footprint.

Application Requirements:

A. An application for a Conditional Use Permit shall contain:
   1. The complete name, address, and telephone number of the applicant;
   2. The applicant's financial statements or past two years of annual reports;
   3. The planned date for the start of construction and the expected duration of construction;
   4. A description of the energy facility, including a site plan;
   5. A description of the expected use of the energy facility;
   6. Expected public benefits of the proposed energy facility;
   7. The expected direct impacts of the proposed energy facility on the environment and natural resources and how the applicant intends to address and mitigate these impacts;
   8. Information on the effects of the proposed energy facility on public health and safety;
   9. A description of the portion of the community where the energy facility will be located;
   10. A statement and reasonable evidence that the proposed energy facility will not commence commercial operation until it complies with applicable state and federal environmental laws;
   11. A summary of the community outreach and education efforts undertaken by the electric utility or independent power producer, including a description of the public meetings and meetings with elected officials;

12. Evidence of consultation, before submission of the application, with the Department of Environmental Quality and the Department of Energy and other relevant state and federal agencies before submitting the application;
13. Interconnection queue information for the applicable regional transmission entity;
14. If the proposed site of the energy facility is undeveloped land, a description of feasible alternative developed locations, including vacant industrial property and brownfields, and an explanation of why they were not chosen;
15. If the energy facility is reasonably expected to have an impact on television signals, microwave signals, impacts to FAA or DOD related flight paths, agricultural global position systems, military defense radar, radio reception, or weather and Doppler radar, a plan to minimize and mitigate that impact.
16. A stormwater assessment and a plan to minimize, mitigate, and repair any drainage impacts at the expense of the electric utility or IPP. The applicant shall make reasonable efforts to consult with relevant local officials before submitting the application and shall include evidence of those efforts in its application;
17. A fire response plan and an emergency response plan;
18. Project must be in compliance/substantial accord with the County's Comprehensive Plan.
19. A preliminary decommissioning plan that is consistent with agreements reached between the applicant and landowners of participating properties and that ensures that landowners provide input as to either the desired return of all participating properties to a useful condition similar to that which existed before construction or to a state of what their future intended use will be, including removal of above-surface facilities and infrastructure that have no ongoing purpose.

    The preliminary decommissioning plan shall include financial assurance in the form of a bond. The amount of the financial assurance shall not be less than the estimated cost of decommissioning the energy facility, as calculated by a third party with expertise in decommissioning, hired by the applicant. Decommissioning bond shall be required prior to operation.

    A final decommissioning plan shall be updated and submitted to the County prior to the issuance of the land disturbance permit. At the County's discretion, a third-party review of the decommissioning plan may be completed, at the applicant's expense. Every 5 years the decommissioning plan is to be reviewed for potential changes,

including but not limited to increases in costs associated with decommissioning, changes in technology, and size and scope of the project. If it is determined that there is increase in decommissioning, the bond shall be adjusted accordingly.

The Project shall be decommissioned within twelve (12) months of cessation of operations. Decommissioning shall begin (i) if the solar energy facility is inactive completely or substantially discontinuing the delivery of electricity to an electrical grid for a continuous twelve (12) month period; (ii) if the project is declared unsafe and the applicant, owners, or operator has not completed the repair or removal of the facility to remedy such unsafe aspects; or if neither (i) or (ii) apply, at a time selected by the applicant, owner, or operator.

Generally: The plan shall identify the anticipated life of the facility, the estimated overall cost of decommissioning the facility in current dollars, and the methodology for determining such estimate, and the manner in which the plan will be executed.

B. Within 60 days after receipt of an application, the Planning and Zoning Administrator shall determine whether the application is complete. If the PZA determines that the application is incomplete, the PZA shall advise the applicant in writing of the information necessary to make the application complete.

Requirements for Consideration:

A. Upon filing an application with Cumberland County, the applicant shall provide notice of the opportunity to comment on the application in a form and manner prescribed by the County. The notice shall be published in a newspaper of general circulation and a comparable digital alternative. The notice shall be written in plain, nontechnical, and easily understood terms and shall contain a title that includes the name of the applicant, the proposed location, and the words "NOTICE OF INTENT TO CONSTRUCT _____ FACILITY", with the words "WIND ENERGY", "SOLAR ENERGY", or "ENERGY STORAGE", as applicable, entered in the blank space. The County shall further prescribe the format and contents of the notice.

B. The County may assess reasonable application fees to the applicant to cover the administrative costs in processing the application, including costs for consultants to assist the County in evaluating issues raised by the application. The County may retain

consultants to assist in evaluating issues raised by the application and may require the applicant to pay the cost of the services.

C. The County shall approve the application and issue a certificate or deny the application not later than one year after a complete application is filed.

D. In evaluating the application, the County shall consider impact of the proposed facility on local land use. The County may condition its approval of the application on the applicant taking additional reasonable action related to the impacts of the proposed energy facility, including (i) establishing and maintaining for the life of the facility vegetative ground cover except for an application for an energy facility that is proposed to be located entirely on brownfield land; (ii) providing for community improvements in the host locality; and (iii) making a good-faith effort to maintain and provide proper care of the property where the energy facility is proposed to be located during construction and operation of the facility.

E. Cumberland County will consider distance separation as part of any new application for energy producing facilities. Large scale utility solar projects will not be considered if proposed to be located within 1 aerial miles of a previously approved large scale energy project unless an existing approved project is considering expansion. Energy projects of any size will not be considered if proposed to be located with 1 aerial mile of an identified village within the County's Comprehensive Plan.

F. The County will consider the following items as it relates to an application:
   1. The public benefits of the proposed energy facility justify its construction. Public benefits include expected tax revenue paid by the energy facility, payments to owners of participating property, community benefits agreements, and local job creation;
   2. The energy facility complies with all applicable state and federal environmental laws;
   3. The applicant has considered and addressed impacts to the environment and natural resources, including sensitive habitats and waterways, wetlands and floodplains, wildlife corridors, parks, historic and cultural sites, and threatened or endangered species;
   4. The proposed energy facility will not unreasonably diminish farmland, including prime farmland and, to the extent that evidence of such farmland is available in the evidentiary record, farmland dedicated to the cultivation of specialty crops; and
   5. The proposed energy facility does not present an unreasonable threat to public health or safety.

Development Standards for Energy (Solar or Solar Plus Energy Storage) Facilities

A. Setbacks – a minimum of a one hundred (100) foot setback from fencing around the energy producing equipment to the property line and any public rights of way shall be provided around the perimeter of the project where it is adjacent to non-participating property owners at the time of approval. A minimum five hundred (500) foot setback shall be maintained from the fence line to any adjoining or adjacent residential dwellings that exist at the time of approval. A one hundred (100) foot setback shall be maintained from energy generating equipment to the edge of all perennial streams and connected wetland within the project area.

B. Landscaping and Buffering – within the one hundred (100) foot setback, there shall be maintained at least a fifty (50) foot buffer of vegetation and timber, preferably existing with the intent to obscure from view the project. All buffer areas will be properly maintained including appropriate thinning, trimming, seeding or other modifications. Along existing public right of way where there is existing timber, there shall be a fifty (50) foot buffer maintained. Due consideration will be given to using pollinator habitats where appropriate. A performance bond reflecting the estimated costs of anticipated landscaping maintenance shall be posted prior to construction to ensure buffer landscaping is adequately maintained for the life of the project.

C. Fencing - Fencing for the solar energy facility complies with the latest version of the National Electric Code as of the effective date of the amendatory act that added this section or any applicable successor standard approved by the County. Solar panels must be enclosed by a security fence with a minimum height of six (6) feet. Fencing shall be installed on the interior of the vegetative buffer and must be screened from ground level view of non-participating properties. All fencing must be properly maintained while the facility is in operation. Fencing shall be removed at decommissioning.

D. Height - Solar panel components do not exceed a maximum height of 15 feet above ground when the arrays are at full tilt.

E. The energy storage facility complies with the most recent version of NFPA 855 "Standard for the Installation of Stationary Energy Storage Systems" or any applicable successor standard adopted by the County as reasonable and consistent with the purposes of this subdivision;

F. Sound - The solar energy facility does not generate a maximum sound in excess of 50 average hourly decibels as modeled at the nearest adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute and will be monitored and reported back to the County for the first 2 years of operation;

G. The solar energy facility will implement dark sky-friendly lighting solutions; and

H. Glare – a glint and glare study shall be conducted and provided by a qualified firm that demonstrates that the panels will be sited, designed, an installed to eliminate glint and glare effects on nearby residences, vehicular traffic, commercial areas, and other sensitive viewing locations. Solar panels shall be non-reflective type.

I. Construction – a traffic management plan and mitigation measures shall be developed by the applicant and submitted to VDOT and Cumberland County for review. The plan shall address traffic control measures, pre and post construction road evaluation, and any necessary localized repairs. Site plans shall include lay down, parking, and staging areas. Heavy construction activities hall be permitted on all days except Saturday and Sunday between 8 am and 6 pm.

J. Signage – no signage shall be allowed on the fencing, structures, or buildings of the facility except for on 32 square foot sign at the main ingress/egress area which shall list the required warnings, facility name, address and relevant contact information. Any signage required by state or federal agencies, any industrial code or standard, or any commercial insurance or safety standards shall be exempt from this requirement.

K. Lighting – During operation, the facility shall utilize no more lighting than necessary to ensure safe operation and maintenance.

L. Wildlife Corridors – the application should include clearly identified and dedicated wildlife corridors that seek to promote wildlife migration and habitat. The application should also include clearly demonstrated correspondence with the Department of Wildlife Resources and their input and feedback to the placement and location of these wildlife corridors.

M. Vegetation – the application shall include a comprehensive and detailed vegetative management plan with the intended effect to revegetate the project area with ground cover. The plan will be used to ensure that the applicant will maintain ground cover in good condition throughout the operation of the project. The plan may include a soil analysis, optimal seed types, fertilizer rates, and liming rates to be used for temporary and permanent stabilization. Where grubbing is not required, existing stumps shall

remain in place. The applicant shall consider the implementation of pollinator habitats in the vegetative management plan where appropriate.

N. Erosion and Sediment Control and Stormwater Management – an E&S plan must be submitted to the County and approved by the Soil and Water Conservation District for projects 5 MW or less and to DEQ for project more than 5 MW. The erosion and sediment control plan shall be prepared in accordance with the Virginia Erosion and Sediment Control Handbook.

   During construction the applicant, at their expense, must ensure that all Erosion and Sediment Control facilities will be inspected by a qualified third-party inspector: (i) at least every four calendar days and within 24 hours following any runoff producing storm event. Any discrepancies should be noted and corrective action should be taken to ensure facilities are operating properly. Corrective measures include regularly cleaning out sediment basins and traps, stabilizing eroded banks or spillway structures, cleaning inlets and outlets and repairing damaged silt fence shall be prioritized. Runoff at stormwater outfalls will also be observed just as often for characteristics listed in the land disturbance permit (clarity, solids, etc.) A record of the amount of rainfall at the Project during land disturbing activities. A record of major land disturbing activities, including dates when clearing, grading and excavating occurred in each Phase. Dates when construction activities are either temporarily or permanently ceased in the Phase should be recorded along with stabilization areas.

   A Stormwater Management Plan must be submitted to the Virginia Department of Environmental Quality (VDEQ) and approved by VDEQ prior to any land disturbance The Applicant will obtain approval of a Stormwater Pollution Prevention Plan (“SWPPP”).

   The Applicant and its contractor will have operational day-to-day control of the Project and must implement the SWPPP measures. The Applicant will cause the active up-to-date SWPPP to be made publicly available either electronically or at a location viewable not less than once per month upon request by the public. The Applicant and its contractors will ensure that the applicable subcontractors are trained on appropriate best management practices and requirements in the SWPPP.

O. Wind - The applicant/owner shall ensure that the solar arrays are designed to withstand 120 mph wind speeds.

P. Panels - All panels will use anti reflective coatings. Exterior surfaces of the collectors

and related equipment shall have a non-reflective finish and solar panels shall be designed and installed to limit glare to a degree that no after image would occur. Projects shall comply with generally accepted national environmental protection and product safety standards for the use of solar panels and battery technologies for solar photovoltaic (electric energy) projects. Such existing product certifications and standards include the National Sanitation Foundation/American National Standards Institute No. 457, International Electro technical Commission No. 61215-2, Institute of Electrical and Electronics Engineers Standard 1547, and Underwriters Laboratories No. 61730-2. A site development plan shall reference the specific safety and environmental standards met. The County may require proof of this provision at its discretion before, during, and after the installation of the photo-voltaic panels.

Q. Access - The applicant, owners and/or operator will allow designated county officials access within 24 hours of a request to the facility for inspection purposes, provided such inspectors will be subject to the applicant, owners' and/or operator's safety requirements and protocols while within the facility, for verification of compliance with the requirements of the conditions. During construction of the Project, the County and its assigns and designees shall have access to the site for inspections and to assure compliance with the conditions.

   Emergency Access: The applicant/owner/operator shall provide emergency access, including but not limited to include unobstructed access utilizing fire lane marking and a Knox Corporation key box or padlock for emergency access via the locked gate, prior to the issuance of a Certificate of Occupancy. The required emergency access and sufficiency of said access shall be subject to the review and approval of the Fire Marshal.

Development Standards for a Wind Energy Facility

A. The following minimum setback requirements, with setback distances measured from the nearest edge of the perimeter fencing of the facility: (i) for occupied community buildings and dwellings on nonparticipating properties, a minimum of 300 feet from the nearest point on the outer wall; (ii) for a public road right-of-way, a minimum of 50 feet measured from the nearest edge of a public road right-of-way; and (iii) for nonparticipating parties, a minimum of 50 feet measured from the nearest shared property line;

B. Each wind tower is sited such that any occupied community building or nonparticipating residence will not experience more than 30 hours per year of shadow flicker under planned operating conditions as indicated by industry standard computer modeling;
C. Each wind tower blade tip does not exceed the height allowed under a Determination of No Hazard to Air Navigation by the Federal Aviation Administration under 14 C.F.R. Part 77;
D. The wind energy facility does not generate a maximum sound in excess of 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute;
E. The wind energy facility is equipped with a functioning light-mitigating technology. To allow proper conspicuity of a wind turbine at night during construction, a turbine may be lighted with temporary lighting until the permanent lighting configuration, including the light-mitigating technology, is implemented. The Commission may approve a temporary exemption from the requirements of this subdivision if installation of appropriate light-mitigating technology is not feasible. A request for a temporary exemption shall be in writing and state (i) the purpose of the exemption, (ii) the proposed length of the exemption, (iii) a description of the light-mitigating technologies submitted to the Federal Aviation Administration, (iv) the technical or economic reason a light-mitigating technology is not feasible, and (v) any other relevant information requested by the Commission;
F. The wind energy facility meets any standards concerning radar interference, lighting, subject to subdivision e, or other relevant issues as determined by the County; and
G. The wind energy facility complies with any more stringent requirements adopted by the County. Before adopting such requirements, the County shall determine that the requirements are necessary for compliance with state or federal environmental regulations.

Development Standards For an Energy Storage Facility:

The following minimum setback requirements, with setback distances measured from the nearest edge of the perimeter fencing of the facility: (i) for occupied community buildings and dwellings on nonparticipating properties, a minimum of 300 feet from the nearest point on the outer wall; (ii) for a public road right-of-way, a minimum of 100 feet measured from the nearest

edge of a public road right-of-way; and (iii) for nonparticipating parties, a minimum of 100 feet measured from the nearest shared property line;

The energy storage facility does not generate a maximum sound in excess of 50 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute;

The energy storage facility will implement dark sky-friendly lighting solutions; and

The certificate shall identify the location of the energy facility and its nameplate capacity.

If construction of an energy facility is not commenced within five years after the date that a CUP is issued or within five years after any applicable appeals are exhausted, whichever is later, the certificate is invalid. The electric utility or IPP may seek a new certificate for the proposed energy facility. The County may extend the five-year period at the request of the applicant and upon a showing of good cause without requiring a new contested case proceeding.

Insurance Requirements

The applicant, prior to the issuance of a building permit, shall provide to the County Administrator, or designee, a Certificate of Insurance providing General Liability Insurance which shall include, at a minimum, the following information: (I) the name of the insurance company, policy number and expiration date; and (ii) the coverage and limits on coverage and including the amount of deductibles or self-insured retentions with a minimum limit of Five Million Dollars ($5,000,000) per occurrence and Ten Million Dollars ($10,000,000) aggregate, combined single limit, for bodily injury (including death) or property damage and Environmental Impairment insurance with minimum limits of Five Million Dollars ($5,000,000) per occurrence.

Notwithstanding the foregoing if the project is developed by or sold to a public utility company that is self-insured, such self-insurance may be utilized to satisfy the liability insurance requirement(s) of this section. If the project is subsequently sold to an entity that is not adequately self-insured as determined by the zoning administrator, then the liability insurance requirement(s) shall apply. The applicant/owner shall maintain insurance for the duration of the use. The level of insurance coverage shall be reviewed every 5 years and adjusted accordingly.

Completion Report

Before commencing commercial operations, an applicant shall file a completion report certifying compliance with the requirements and conditions of the County's conditional use permit.

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