



MEMORANDUM Environmental Division

To: Jay Leipzig, Director,
Sean Pendley, AICP, Deputy Director
Planning, Housing, & Community Development, Johnson County, KS

From: Darren Coffey, AICP, Director of Strategic Partnerships/Owner
Michael Zehner, AICP, ENV SP, Environmental Programs Director
Lindsay Edwards, Environmental Planner - Clean Energy Specialist

Date: November 23, 2021

Subject: Revisions to Recommended Comprehensive Plan and Zoning
Regulation Amendments for Solar Facilities in Response to November
16, 2021 Planning Commission Public Hearing

OVERVIEW/BACKGROUND

Following the close of the November 16, 2021, Public Hearing, the Johnson County Planning Commission approved several motions recommending revisions to the draft Comprehensive Plan and Zoning Regulation amendments for solar facilities; these recommended revisions are as follows:

1. To reduce the conditional use permit term for a Utility-Scale ("US") Solar Facility from twenty-five (25) years to twenty (20) years;
2. To increase the required distance of a US Solar Facility from any city limit from one and one-half (1.5) miles to two (2) miles; and
3. To reduce the maximum allowable Project Area from two thousand (2,000) to one thousand (1,000) acres.

Following these actions, members of the Planning Commission and Johnson County staff discussed the following additional considerations, ultimately agreeing to consider additional recommendations on these points at a meeting of the Planning Commission to be held on December 14, 2021:

- A. Whether the maximum Project Extent of four (4) square miles (2,560 acres) should be reduced, consistent with the reduction of maximum Project Area; or, whether the Project Extent regulation could be eliminated entirely; and
- B. Whether the potential for properties to be surrounded on two or more sides by a US Solar Facility should be considered in the regulations.

ANALYSIS AND RECOMMENDATIONS

With respect to the additional considerations A and B noted above, please consider the following:

A. Whether the maximum Project Extent of four (4) square miles (2,560 acres) should be reduced, consistent with the reduction of maximum Project Area; or, whether the Project Extent regulation could be eliminated entirely.

As stated in the draft Comprehensive Plan policies, the intent of the Project Extent regulation was to account for the potential of multiple non-abutting (i.e., non-contiguous) tracts from being included within a single permit application for a project, and, while maximum Project Area is limited, to establish limits on the area to which a project could spread. In conjunction with the Project Extent regulation, the draft regulations also include a provision prohibiting non-abutting portions of the Project Area (those areas disconnected from the balance of the Project Area) from being located greater than one-half (0.5) mile from the balance of the Project Area.

The suggestion to change the Project Extent limits or to eliminate the regulation entirely are based upon the recommendation that the maximum project area be reduced from two thousand (2,000) to one thousand (1,000) acres, and recognition of the one-half (0.5) mile restriction on disconnected portions of projects.

Based upon the recommendation made by the Planning Commission, the area of individual projects could be no greater than one thousand (1,000) acres, and no disconnected portions of projects could be located more than one-half (0.5) mile from the balance of the Project Area. Regardless, the Berkley Group would recommend that the maximum Project Extent regulation be retained, with no reduction of the four (4) square mile (2,560 acre limit). The Berkley Group is of the opinion that the regulation establishes a predictable and reasonable maximum limit for projects that incorporate disconnected areas, and notes that increasing this limit was previously considered in association with a maximum Project Area of 2,000 acres but that a waiver option was instead provided.

The Berkley Group has not identified a comparable regulation similar to the proposed Project Extent regulation being used in practice.

B. Whether the potential for properties to be surrounded on two or more sides by a US Solar Facility should be considered in the regulations.

During the November 16, 2021 Planning Commission meeting, members of the Commission expressed concerns that properties not included in a project (i.e. non-participating properties) could potentially be significantly surrounded by a project, generally on two or more sides. Members of the Planning Commission and Johnson County staff suggested that language could be added prohibiting the Project Area from abutting more than 50% of the exterior property line of non-participating properties or prohibiting the Project Area from abutting more than two (2) sides of a non-participating property.

Despite the concern being warranted, The Berkley Group is concerned that there are unintended consequences by simply prohibiting Project Area from abutting more than two (2) sides or 50% of the exterior property line of non-participating properties, and that application of the regulation could have a cascading effect, restricting the use of some properties, but not others, raising questions of reasonableness. Therefore, The Berkley Group would recommend that where a project abuts a non-participating property on more than two (2) sides or for more than 50% of the exterior boundary of a property (excluding road frontage), that the applicable minimum setback requirement shall be increased by an additional fifty (50) feet and additional screening beyond minimum requirements shall be provided. For example, if a project abuts a non-participating property along 60% of the exterior property line of the non-participating property, the setback from that particular dwelling (pursuant to Subsection 6(B)(14)(d)(3)(c) of the draft regulations) shall be increased from 250' to 300'.

Beyond setbacks and buffers, as well as limits on project size, The Berkley Group has not identified a comparable regulation restricting the incorporation of properties within a project to avoid non-participating properties from being surrounded to some degree.