

MCCOOK CITY COUNCIL

REGULAR MEETING

**Monday, October 9, 2023
5:15 PM - City Council Chambers**

Open Meetings Act Announcement.

Items

1. Approve the minutes of the September 11, 2023 regular Planning Commission meeting.
2. Presentation from Marvin Planning Consultants regarding their analysis of the McCook Solar, LLC, Special Exception Application in Sections 11, 12, 13, 24, T3R30, Red Willow County, Nebraska.

Adjournment.

**CITY MANAGER'S REPORT
OCTOBER 9, 2023 PLANNING COMMISSION MEETING**

ITEM: 1.

RECOMMENDATION:

Approve the minutes of the September 11, 2023 regular meeting.

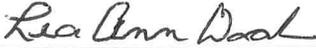
BACKGROUND:

Receive and approve the minutes.

FISCAL

IMPACT: None.

APPROVALS:



Lea Ann Doak, City Clerk

October 4, 2023

McCook Planning Commission
September 11, 2023
5:15 P.M. Central

A MEETING OF THE PLANNING COMMISSION OF THE CITY OF MCCOOK, NEBRASKA convened in open, regular, and public session at 5:15 o'clock P.M. in the City Council Chambers.

Present: Chair Vosburg; Vice Chair Hilker; Commissioners Davidson, Dueland, Friehe, Lyons, McDowell, Mockry.

Absent: Commissioners Bradley, Stevens.

City Officials present: City Manager Schneider, City Attorney Mustion, City Clerk Doak, Assistant City Manager Koetter.

Notice of the meeting was given in advance thereof by publication in the McCook Daily Gazette on September 7, 2023, the designated method of giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to all members of the Planning Commission. Availability of the agenda was communicated in the advance notice. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

Chair Vosburg announced that a copy of the Open Meetings Act was posted by the entrance to the Council Chambers and available for public review.

1. Approve the minutes of the August 14, 2023 regular Planning Commission meeting.

Motion to approve the minutes of the August 14, 2023 regular Planning Commission meeting. This motion, made by Vosburg and seconded by Friehe, passed.

Bradley: ABSENT, Davidson: YEA, Dueland: YEA, Friehe: YEA, Hilker: YEA, Lyons: YEA, McDowell: YEA, Mockry: YEA, Stevens: ABSENT, Vosburg: YEA
YEA: 8, NAY: 0, ABSENT: 2

2. Public Hearings and Regular Agenda.

2.A. Public Hearing - Regarding the Amendment to the Redevelopment Plan for the Elevate Wellness Redevelopment Project as to its conformity with the general plan for the development of the City as a whole.

Motion to recess as a Planning Commission and convene a public hearing for the purpose of receiving public comment regarding the Amendment to the Redevelopment Plan for the Elevate Wellness Redevelopment Project as to its conformity with the general plan for the development of the City as a whole, with the City Attorney to act as hearing officer. This motion, made by Vosburg and seconded by McDowell, passed.

Bradley: ABSENT, Davidson: YEA, Dueland: YEA, Friehe: YEA, Hilker: YEA, Lyons: YEA, McDowell: YEA, Mockry: YEA, Stevens: ABSENT, Vosburg: YEA
YEA: 8, NAY: 0, ABSENT: 2

The City Attorney received into evidence Exhibit #1 - City Manager's Report prepared for the September 11, 2023 Planning Commission meeting (2 pages), Exhibit #2 - Notice of Hearing published (1 page); Exhibit #3 - listing of Public Entities who received Notice of Public Hearing (1 page); Exhibit #4 - copies of letter to Public Entities receiving Notice of Public Hearing (5 pages); Exhibit #5 - Amendment to the Redevelopment Plan of the City of McCook, Nebraska - Elevate Wellness Redevelopment Project (12 pages); and Exhibit #6 - proposed Resolution No. PC 2023-06 (2 pages).

City Attorney Mustion accepted Exhibits #1 - #6 into evidence, took comment from staff before taking comment from the public.

City Manager Schneider reviewed the information included in Exhibit #1.

Commissioner Dueland asked where the city was at on the total allowable percentage of blighted designation. The current percentage is just over 30%.

Emily Young, applicant, was present to address questions from the Commission. She stated that with the addition of five new staff members, they have outgrown their current location, with no room for the expansion.

With no one else present to comment, motion to adjourn the public hearing and to reconvene as a Planning Commission. This motion, made by Vosburg and seconded by Mockry, passed.

Bradley: ABSENT, Davidson: YEA, Dueland: YEA, Friehe: YEA, Hilker: YEA, Lyons: YEA, McDowell: YEA, Mockry: YEA, Stevens: ABSENT, Vosburg: YEA
YEA: 8, NAY: 0, ABSENT: 2

2.B. Approve Resolution No. PC 2023-06 making a recommendation to the Community Development Agency and the City Council of the City of McCook, Nebraska, with respect to the Redevelopment Plan Amendment for the City of McCook, Nebraska, including the Elevate Wellness Redevelopment Project.

Motion to approve Resolution No. PC 2023-06 making a recommendation to the Community Development Agency and the City Council of the City of McCook, Nebraska, with respect to the Redevelopment Plan Amendment for the City of McCook, Nebraska, including the Elevate Wellness Redevelopment Project. This motion, made by Vosburg and seconded by McDowell, passed.

Bradley: ABSENT, Davidson: YEA, Dueland: YEA, Friehe: YEA, Hilker: YEA, Lyons: YEA, McDowell: YEA, Mockry: YEA, Stevens: ABSENT, Vosburg: YEA
YEA: 8, NAY: 0, ABSENT: 2

City Manager Schneider informed the Commission that a meeting is tentatively planned for October.

Adjournment.

With no further business, Chair Vosburg declared the Planning Commission meeting adjourned at 5:39 P.M.

Lea Ann Doak, City Clerk-Treasurer
Recording Secretary

**CITY MANAGER'S REPORT
OCTOBER 9, 2023 JOINT PLANNING COMMISSION MEETING AND CITY COUNCIL
MEETING**

ITEM NO. 2-Presentation from Marvin Planning Consultants regarding their analysis of the McCook Solar, LLC, Special Exception Application in Sections 11, 12, 13, 24 T3R30, Red Willow County, Nebraska.

BACKGROUND:

Per request, Marvin Planning Consultants analyzed a special exception application filed by McCook Solar, LLC to determine the application's compliance with the City of McCook's zoning ordinance. In particular, the analysis focused on the application as it relates to Article 7 (Agricultural District) and Article 24 (Special Exceptions) of McCook's zoning ordinance. Marvin Planning Consultants analysis also focuses on McCook's Comprehensive Plan to assure the application lines up with the stated goals and objectives for the current and future development of the McCook area.

Marvin Planning Consultants completed its review and submitted a memo dated September 26, 2023. The memo is attached to this report for review. Also included with this report is McCook Solar, LLC's Land Use Action Request application. Article 7 and Article 24 of McCook's zoning ordinance are attached to this report. A copy of McCook's Comprehensive Plan is not attached to this report due to its size, however, the Comprehensive Plan can be accessed on the City of McCook's website by clicking on *Departments*, and then clicking on *Building and Zoning*. A link to a PDF of the McCook Comprehensive Plan will be located on the left side of the computer screen.

At the joint meeting of the Planning Commission and City Council to be held on October 9, 2023, Marvin Planning Consultants will be available to explain their memo and answer questions related to their findings.

APPROVALS:



October 4, 2023

Nathan A. Schneider, City Manager



October 4, 2023

Lea Ann Doak, City Clerk



October 4, 2023

Tera Koetter, Assistant City Manager



Memo

To: Nate Schneider, City Manager, City of McCook, Nebraska
From: John C. Shepard, AICP; Senior Planner, Marvin Planning Consultants, Inc.
Date: September 26, 2023
Re: McCook Solar, LLC, Special Exception Application in Sections 11, 12, 13, 24 T3R30, Red Willow County

Executive Summary

An application for Special Exception approval has been submitted to the City of McCook for the McCook Solar LLC solar electric generating facility, to be located in the Agricultural zoning district of McCook's Extra-Territorial Jurisdiction (ETJ). There is a question if the 65MW Solar Generating Facility is in conformance with "Net Metering" per Nebraska State Statutes §70-2001 to 2005 (August 30, 2009, as amended)? If the application is accepted, it would be subject to review and recommendation of the McCook Planning Commission (with or without conditions), and approval (with or without conditions) by the McCook City Council.

Review Procedure

The property in question is located in the Extra-Territorial Jurisdiction (ETJ) of the City of McCook, and the Zoning Ordinance for the City of McCook applies. Article 24 provides for Special Exceptions to the Zoning Ordinance. The City has the option to delegate the authority to hear requests to the Planning Commission for their recommendation after a public hearing. The City Council makes the final determination after their public hearing. Article 24 states required conditions for granting special exceptions.

Notice shall be given at least ten days in advance of each public hearing. The owner of the property for which special exception is sought or his agent shall be notified by certified mail. Notice shall also be posted on the property at least ten days prior to each public hearing.

Discussion

Applicant 39 North LLC has submitted a Land Use Action Request for a Special Exception to the City of McCook, on behalf of Birch Creek Development LLC, of St. Louis, Missouri, for the McCook Solar LLC project. The narrative describes the project as "up to a 65 MW AC solar electric generating facility to be located on approximately 551 acres of land, including but not limited to solar panels, racking, trackers, inverters, a short overhead transmission line from the project substation to the McCook Substation, battery energy storage system, access roads, laydown yard, transformer, junction boxes, substation, operations and maintenance building, and the AC electrical current collection system." A site plan is attached to the application, at an overall scale of 1"=430' and detail views of 1"=150'.

The site is located northwest of the City of McCook, adjacent to the city limits extending into the City's Extra-Territorial Jurisdiction (ETJ). The property is zoned Agricultural District (AG).

Marvin Planning Consultants, Inc.
382 North 4th Street
P.O. Box 410
David City, NE 68632
P: 402.367.5031
C: 402.606.6405



Participating Property Owners

Grantor	Section	Township	Range	Zoning
Harold B. & Lori S. Pearson	Tract in SE ¼ S11	3	30	AG
Pearson’s Pheasant Run Ltd	Pt E ½ S11 W ½ S12	3	30	AG
Masonic Temple	NW ¼ S13	3	30	AG
Palic Revocable Trusts	Pt SW ¼ S13	3	30	AG
CCJH, LLC	Pt SE ¼ S13 Pt NE ¼ S24	3	30	AG (adjacent to city limits)

The *McCook, Nebraska, Comprehensive Plan 2013-2013* includes goals and objectives for the development of the McCook area and designates Future Land Use types and areas for the city and the extra-territorial planning area. Compatibility with existing and future land use plans in the McCook Comprehensive Plan is Criteria I for granting a Special Exception. There are two general questions concerning “compatibility”, whether a solar farm is compatible with the goals and objectives of the plan in general, and whether a solar farm is compatible with the future land use plan at the proposed location.

Goal 4: Public Facilities & Utilities, Action Step 6 states “Promote the use of alternate energy systems available through the provisions of the Nebraska Net Metering, State Statutes §70-2001.”

The Energy Element (Section 7) states:

The McCook Planning Commission chose to guide the use of Net Metering by residences and businesses as Special Exception Uses in the City of McCook Zoning Regulations. This insures that net metering users will be follow established parameters of the law and work within NPPD and MPPD guidelines.

Local Zoning Regulations will be able to control the placement of individual energy systems to limit their impact on adjacent property and the visual character of residential, commercial and industrial areas.

Energy Conservation Policies (Section 7) also include:

Promote the expanded use of solar and geothermal exchange energy systems for applications throughout the McCook Two-Mile Planning Jurisdiction.

The Future Land Use Map designates portions of the site as: Multifamily, Parks and Recreation (waterways), Single-Family Residential, Industrial, and Vacant/Agricultural. The Comprehensive Plan states “Future residential development in and around the City of McCook should be a high priority to the Community, during the 10-year planning period.” Adjacent land uses on the Future Land Use Map include:

- Public/Quasi-Public (McCook Substation, inside city limits on US Highway 83)
- Commercial (strip along both sides of US Highway 83)
- Industrial west of Commercial strip
- Parks/Recreation along intermittent creek
- Multifamily, south adjacent to city limits
- Single-Family Residential, south and west of Multifamily
- Agricultural extends to ETJ planning area boundary.



Applicant states the project is sited in accordance with industry standards, and the project supports Economic Development goals and actions to provide diversified business and employment activities.

Zoning Standards

Provisions for Special Exceptions—in the AG zoning district, 704.16 is the closest listed use to the application. The same language is also included in other zoning districts.

Section 704. Special Exceptions. After the provisions of this ordinance relating to special exceptions have been fulfilled, the City Council may permit as special exceptions in Agricultural Districts (AG) **not contiguous to the city limits** [emphasis added]:

16. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and/or Wind sources in conformance with “Net Metering” per Nebraska State Statutes §70-2001 to 2005 (August 30, 2009, as amended). Individual or “Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Section 2117 of this Ordinance.

Section 2117 regulates Small and Commercial Wind Energy Conversion Systems. An “Alternative energy system” is not specifically defined in Article 3 Definitions of the Zoning Ordinance. There is a definition of the term “Net Metering”:

Net Metering. A utility policy for consumers in which a property owner utilizes one or a combination of alternative energy sources including Wind, Solar, Geothermal, Biomass, or Methane, to generate a portion or all of their electrical energy needs for their home or business. If the property owner is able to generate more power than needed for the home or business, the local utility company is required by Nebraska Law to purchase the “extra” or excess electrical power from the property owner.

Neither definition mentions “battery energy storage system”. Section 705 does states:

Prohibited Uses and Structures. All other uses and structures which are not specifically permitted or not permissible as special exceptions shall be prohibited from Agricultural Districts (AG)

Setbacks: In the AG zoning district, 707(A) Minimum Yard Standards also applies.

- Front Yard: 40’ from existing road way right-of-way line – should be measured from edge of easement
- Rear Yard: 50’ from property line
- Side Yard 20’ from property line

The Zoning Administrator will need to make a determination of which setbacks apply along each parcel line. Applicant states that criteria for the Special Exception (Criteria G) Required yards and other open space does not apply. However, yard setbacks are required for every structure. Applicant also states (D. Project Description) that “The Project proposes a minimum of 10-foot setbacks or more from property lines to perimeter fencing with any solar panels located a minimum of 20 foot from fence lines to minimize visual impact of the Project from roads and nearby houses.”



Is the proposed use allowed in this zoning district?

The first question is: Is this 65MW Solar Generating Facility “in conformance with “Net Metering” per Nebraska State Statutes §70-2001 to 2005 (August 30, 2009, as amended)”? The listed Special Exception use references Nebraska State Statutes §70-2001 to 2005, which includes this reference:

§70-2002(7)(f) Has a rated capacity at or below twenty-five kilowatts;

A straight-forward reading of §70-2002 would disqualify a 65 MW facility as not at or below 25kw rated capacity. The goals of the current Comprehensive Plan also specifically endorse “Net Metering.” Secondly, the language in the introduction of Section 704 “not contiguous to the city limits” should be considered. The Zoning Administrator will need to make a determination prior to scheduling a public hearing.

Issues on Review

- The Application appears to be signed by a representative of Birch Creek Development LLC, of St. Louis, Missouri; however, the narrative says McCook Solar LLC is the applicant; Clarify which entity is the Applicant of record—the City may wish to require proof of signature authority for the Applicant.
- City will need a site plan at scale sufficient to confirm all structures meet setbacks, sealed by a Nebraska PE or registered surveyor.
- Identify planned location of battery energy storage system and conformance with zoning requirements.
- Appears to be junk/junkyard on (Pearson’s) W ½ S12 at Rd 718 (outside solar field)?
- Solar field crosses property line (Pearson’s Pheasant Run Ltd) between tracts described as Parcel 1 (S11) and Parcel 2 (S12). These tracts may need to be combined, or the common property line relocated.
- The Comprehensive Plan’s Future Land Use Map should be amended to more clearly align the proposed use with the City’s land use policy, as required by Section 2402.5(l) of the Zoning Ordinance.
- Specific Zoning Requirements
 - ◇ Section 2102 Fences – Fences max. 7’ high, except 3½’ in Front Yard (*Depends on AG or RL*)
 - ⇒ Cattle fence is similar to chain link.
 - ⇒ Fences not allowed in corner sight triangle.
 - ⇒ Higher fences only allowed in commercial/industrial districts
 - ⇒ Separate fence permit may be required.
Applicant states (D. Project Description) that “The Project proposes a minimum of 10-foot setbacks or more from property lines to perimeter fencing... The proposed fence would be approximately 7’ high.”
 - ◇ Section 2111 Off-Street Parking – Off-street motor vehicle parking and loading
 - ⇒ Zoning Administrator will need to determine type of use for Minimum Off-Street Parking
 - ⇒ Suggest Manufacturing, Industrial Uses standard of 1 space for every 2 employees on the largest shift and 2 off-street loading spaces (applies to permanent operations).
 - ⇒ While not specified in the Zoning Ordinance, at least one additional ADA Van-accessible space with an improved surface and signage would be required to meet Federal standards at the permanent offices.

- ◇ Section 2112 Sign Regulations
 - ⇒ 2112.6(A)1. States “Number of Signs: Each business is entitled to display two permanent signs.”
 - ⇒ 2112.6(A)2. Will need to determine type of use for sign size table
 - ⇒ Suggest Office, research, development, manufacturing and industrial warehousing options.
- ◇ Section 2114. Salvage or Junk Yark
 - ⇒ The southeast portion of tract on Road 718 (portion of Pt E ½ S11, PEARSONS PHEASANT RUN LIMITED PARTNERSHIP) appears on aerial maps that it may meet the definition of a Salvage or Junk Yard. Records should be reviewed to see if there is a pre-existing “special permit” on file.
 - ⇒ Section 2208 provides that “non-conforming...junk yard which is non-conforming...shall be discontinued or made to conform...within three years.
 - ⇒ If no special permit is on file, clean up of the site should be a condition of approval.
- Potential Environmental Impacts
 - ◇ As the project boundaries include areas identified in Zone A Flood Hazard Area, documentation of work in the floodplain (ie floodplain development permit) should be completed for each impacted parcel with mapped floodplain (in the southeast and northwest portion of the site), even if only to document no adverse impact.
 - ◇ Applicant should more specifically address the “National Wetlands Inventory Features” on the site plan (ditches?), over which the northwestern-most solar panels are to be built.
 - ◇ Screening and buffering is a criteria for the Special Exception (Criteria E). No screening is proposed. Buffering is proposed as minimum yard setbacks.
 - ◇ Project Decommissioning: Applicant states that they will follow State of Nebraska requirements for a decommissioning plan at the end of the tenth year of commercial operation, and at that time post financial security. It is common for municipalities to require decommissioning plans including financial security for renewable energy projects at startup. For example, the City of Hastings, Nebraska, adopted specific requirements by ordinance in 2018.

Special Exception Criteria

Article 24 Special Exceptions, section 2402.5 states:

Before any special exception shall be issued, the City Council shall make written findings certifying compliance with the specific rules governing individual special exceptions and that satisfactory provisions and arrangements have been made concerning the following where applicable:

- A. ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
- B. off-street parking and loading areas where required, with particular attention to the items in A above, and the economic, noise, glare or odor effects of the special exception on adjoining properties and properties generally in the district;
- C. refuse and service area, with particular reference to the items in A and B above;
- D. utilities, with reference to locations, availability, and compatibility;
- E. screening and buffering with reference to type, dimensions, and character;



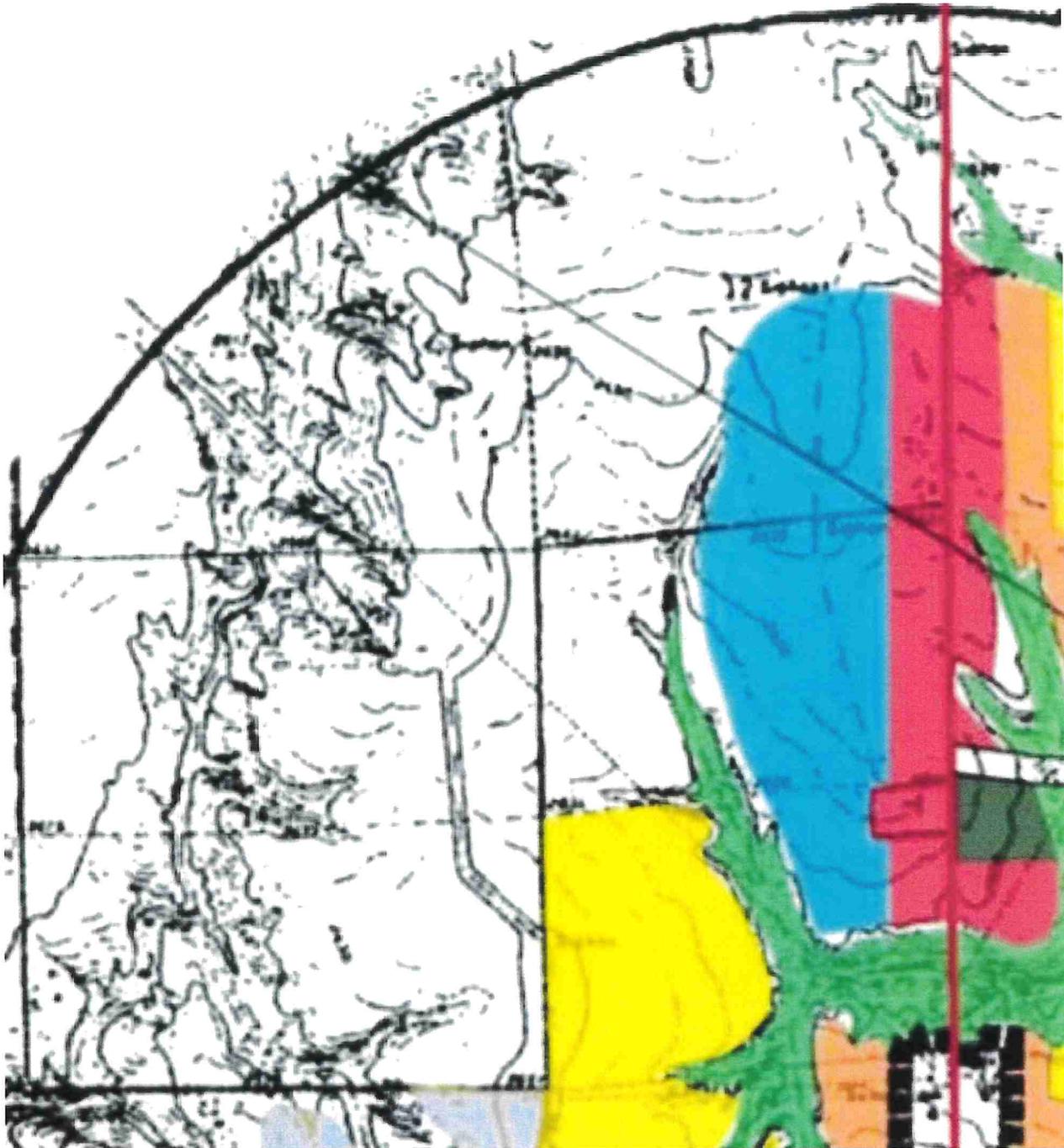
- F. signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district;
- G. required yards and other open space;
- H. general compatibility with adjacent properties and other property in the district.
- I. compatibility with the existing and future land use plans in the McCook Comprehensive Plan.

Recommendations

Should the Planning Commission recommend approval and the City Council make findings certifying compliance, the following items are recommended for consideration as conditions of approval.

- I. Concurrent amendment of the Future Land Use Plan may be necessary to meet Criteria I, compatibility with the existing and future land use plans in the McCook Comprehensive Plan.
- II. Require a site plan prior to construction, at scale sufficient to confirm all structures meet setbacks, sealed by a Nebraska PE or registered surveyor (Criteria A, B, C, D, E, G).
 - Identify planned location of battery energy storage system on site plan.
 - Show detail for fences—or specify requirement for separate fence permits.
 - Show detail for signage—or specify requirement for separate sign permits.
- III. As the proposed use is substantially similar to a manufacturing or industrial use, the site plan meets the minimum off-street parking and loading requirements in Section 2111 (Criteria B).
- IV. Require exterior lighting to be downcast with opaque or translucent shielding, so as to not cast glare off the site (Criteria B).
- V. Require cleanup of any Salvage or Junk Yard use on portion of Pt E ½ S11, PEARSONS PHEASANT RUN LIMITED PARTNERSHIP tract within three years, if not legal non-conforming.
- VI. A decommissioning plan shall be required prior to construction. Decommissioning must occur if not in use for 12 consecutive months. The City should reserve the right to require the posting of a bond, letter of credit, or establishment of escrow to ensure proper decommissioning.
- VII. Any modifications to the Site Plan for the Project must be approved by the Zoning Administrator for consistency with the Special Exception approval, prior to construction.

Note: These recommendations are only the opinions of MPC. The Planning Commission and City Council should select any which they are comfortable enforcing. In addition, these conditions do not imply MPC's acceptance of this application are only provided for consideration as critical items of interest. Finally, both the Planning Commission and/or City Council may chose to not approve said Special Exception.



- LEGEND**
- VACANT / AGRICULTURE
 - PARKS/RECREATION
 - PUBLIC/QUASI PUBLIC
 - SINGLE FAMILY RESIDENTIAL
 - MULTIFAMILY RESIDENTIAL
 - MOBILE HOME RESIDENTIAL
 - LARGE LOT RESIDENTIAL
 - COMMERCIAL
 - INDUSTRIAL
 - 100 YEAR FLOODPLAIN
 - WELLHEAD PROTECTION AREA
 - CORPORATE LIMIT LINE
 - HIGHWAY CORRIDOR
 - RAILWAY CORRIDOR

Future Land Use Map detail – Planning Jurisdiction, McCook, Nebraska

ARTICLE 7

AGRICULTURAL DISTRICT (AG)

Article 7 - Agricultural District (AG)

Section 701. Intent. The intent of an Agricultural District (AG) is to protect agricultural lands from incompatible land uses in order to preserve land best suited to agricultural uses and land in which the natural environment should be continued, and to limit residential, commercial and industrial development to those areas where they are best suited for reasons of practicality and municipal fiscal integrity.

It is further intended that building permits are not required for normal livestock fences and land and water conservation measures such as those recommended by the Soil Conservation Service.

Although this district is intended to provide for the agricultural use of land, it is recognized that certain areas within the district may have the capability in terms of proximity to urban development and accessibility to facilities, services, and utilities of accommodating residential expansion in the future through orderly annexation consistent with the adopted Comprehensive Plan.

Section 702. Permitted Principal Uses and Structures. The following principal uses and structures shall be permitted in Agricultural Districts (AG):

1. General farming and ranching activities, excluding any expansion of existing or development of livestock confinement facilities/operations in excess of (10) animals.
2. Single family farm or ranch dwellings, and non-farm single family dwellings.
3. Individual mobile homes under the prescribed conditions of Section 2109 of this Ordinance.
4. Public parks and public recreation areas, including but not limited to playgrounds, golf courses campgrounds and rest areas.
5. Railroad track right-of-way.
6. Public facilities, utility substations and distribution systems.
7. Churches, places of worship and cemeteries.
8. Public and parochial, nursery, primary, intermediate and secondary schools.
9. Publicly owned Detention Facilities.

Section 703. Permitted Accessory Uses and Structures. The following accessory uses and structures shall be permitted in Agricultural Districts (AG):

1. Roadside stands.
2. Home occupations, under the prescribed conditions of Section 2116 of this Ordinance.
3. Mobile homes under the prescribed conditions of Section 2109 of this Ordinance.
4. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this district.

Section 704. Special Exceptions. After the provisions of this ordinance relating to special exceptions have been fulfilled, the City Council may permit as special exceptions in Agricultural Districts (AG) not contiguous to the city limits:

1. Sanitary sewage disposal and water systems, including agricultural irrigation wells, in conformance with the requirements of the Nebraska Departments of Environmental Quality (NEDEQ) and Health and Human Services (NEDHHS).
2. Mobile home parks, under the prescribed conditions of Section 2110 of this Ordinance.
3. Airports.
4. Bed and breakfast establishments.
5. Fairgrounds, race tracks and amusement parks.
6. Private golf courses, country clubs and golf driving ranges.
7. Amphitheaters, stadiums, drive-in movies, arenas and field houses.
8. Private or commercially owned go-cart tracks, riding stables, playing fields, athletic fields, bowling, swimming pools, automobile parking.
9. The following uses must be located one mile or further from the nearest occupied residential (excluding residence of owner or operator) structure or public school as measured from the nearest edge of the lot lines:
 - A. Commercial auction yards and barns.
 - B. Commercial production and husbandry of poultry, fish and small animals.
 - C. Feed mills, packing plants, fertilizer plants and anhydrous ammonia storage tank facilities or plants.
10. Kennels.
11. Veterinarian services.
12. Telecommunication Towers, under the prescribed conditions of Article 30.
13. Sales, service, and storage of mobile homes, campers, boats, motor vehicles, motorized equipment and accessories for such vehicles, not including salvage junk yards.
14. Commercial uses (excluding retail stores) including, but not limited to the following: lumber yards, nurseries, yard equipment, transportation centers, service garages, wholesale operations, household equipment and appliances repair, rental establishments, car washes and truck washes.
15. Mining, storage and sales of gravel and sand.
16. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and/or Wind sources in conformance with "Net Metering" per Nebraska State Statutes §70-2001 to 2005 (August 30, 2009, as amended). Individual or "Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Section 2117 of this Ordinance.

17. Commercial Wind Energy Conversion Systems (CWECS) utilizing a single or multiple tower applications, or "Wind Farm" held in single ownership or in an association of multiple owners, in conformance with the provisions of Section 2117 of this Ordinance.
18. Rural subdivisions, in which all dwellings within the subdivision utilize a shared or "community style" water well or sanitary sewer lagoon in accordance with all restrictions of the Nebraska Department of Environmental Quality (NEDEQ) and the Department of Health and Human Services. In which case, minimum lot sizes may be reduced to one (1) acre in area.

Section 705. Prohibited Uses and Structures. All other uses and structures which are not specifically permitted or not permissible as special exceptions shall be prohibited from Agricultural Districts (AG).

Section 706. Minimum Lot Requirements. The minimum lot area and lot area per dwelling unit shall be three (3) acres, except that the minimum lot area and lot area per dwelling unit shall be two (2) acres for a single family dwelling erected prior to July 1, 2004, with a minimum lot width or road frontage of two hundred (200') feet.

Section 707. Minimum Yard Requirements.

(A) Front Yard: There shall be a minimum front yard of not less than a depth of forty (40) feet, measured from the existing road way right-of-way line.

Rear Yard: There shall be a minimum rear yard of not less than a depth of fifty (50) feet, measured from the property line.

Side Yard: Each side yard shall not be less than twenty (20) feet measured from the property line.

Any accessory use structures, which are not a continuous part of the principal structure, may be located in the rear yard with a side and rear yard of not less than twenty (20') feet.

(B) Residential platted lots in existence as of the effective date of this 2013 update shall have Minimum Yard Requirements as follows:

Front Yard: There shall be a minimum front yard of not less than a depth of twenty-five (25) feet, measured from the existing road way right-of-way line.

Rear Yard: There shall be a minimum rear yard of not less than a depth of twenty-five (25) feet, measured from the property line.

Side Yard: Each side yard shall not be less than ten (10) feet measured from the property line.

Section 708. Maximum Height. No limitation, except when located within the designated approach path or zones of the McCook Ben Nelson Regional Airport, all Agricultural District (AG) properties shall be in conformance with the provisions of Article 26 of this Ordinance.

Section 709. Parking Regulations. Parking within the Agricultural District (AG) shall be in conformance with the provisions of Section 2111 of this Ordinance.

Section 710. Fence Regulations. Fences, walls and hedges within the Agricultural District (AG) shall be in conformance with the provisions of Section 2102 of this Ordinance.

Section 711. Sign Regulations. Signs within the Agricultural District (AG) shall be in conformance with the provisions of Section 2112 of this Ordinance.

ARTICLE 24

SPECIAL EXCEPTIONS

Article 24 - Special Exceptions

Section 2401. Special Exceptions. As the zoning ordinance is established at the present time, the McCook City Council has been given the authority to hear and decide requests for special exceptions. This is consistent with State Law; however, the City also has the option to delegating this power to the Planning Commission through the Zoning Ordinance.

Section 2402. Conditions for Granting Special Exceptions. A special exception shall not be granted by the City Council unless and until:

1. A written application for a special exception is submitted indicating the section of this ordinance under which the special exception is sought and stating the grounds on which it is requested;
2. Notice shall be given at least ten (10) days in advance of public hearing. The owner of the property for which special exception is sought or his agent shall be notified by certified mail. Notice of such hearings shall be posted on the property for which special exception is sought at least ten (10) days prior to the public hearing;
3. The public hearing shall be held. Any party may appear in person, or agent or attorney;
4. The City Council shall make a finding that is empowered under the section of this Ordinance described in the application to grant the special exception, and that the granting of the special exception will not adversely affect the public interest;
5. Before any special exception shall be issued, the City Council shall make written findings certifying compliance with the specific rules governing individual special exceptions and that satisfactory provisions and arrangements have been made concerning the following where applicable:
 - A. ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
 - B. off-street parking and loading areas where required, with particular attention to the items in A above, and the economic, noise, glare or odor effects of the special exception on adjoining properties and properties generally in the district;
 - C. refuse and service area, with particular reference to the items in A and B above;
 - D. utilities, with reference to locations, availability, and compatibility;
 - E. screening and buffering with reference to type, dimensions, and character;
 - F. signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district;
 - G. required yards and other open space;
 - H. general compatibility with adjacent properties and other property in the district.
 - I. compatibility with the existing and future land use plans in the McCook Comprehensive Plan.



July 14, 2023

Nate Schneider
McCook City Manager
505 West C. Street
McCook, NE 69001

Via email

RE: McCook Solar, LLC Land Use Action Request application

Dear Mr. Schneider,

On behalf of Birch Creek Development, LLC, I am pleased to submit the McCook Solar, LLC Land Use Action Request application via electronic delivery today. A hard copy of the application and the permit fee of \$75 is being overnighted to your attention.

Upon your review of this application, the Project respectfully requests to be included on the agenda for the August 14, 2023 meeting of the Planning Commission and the agenda for the City Council on August 21, 2023.

We can provide additional copies of this application for both the Planning Commission and the City Council at your request.

Thank you for your consideration of this application and request for hearings.

Sincerely,

A handwritten signature in black ink that reads "Jennifer A. Dean".

Jennifer A. Dean
Principal
dean@39northllc.com
913-219-5004

cc: Brice Barton, 39North
Thadd Barker, Birch Creek
Joe Arb, Birch Creek

Kansas Office 785.443.3434
Denver Office 720.732.3154

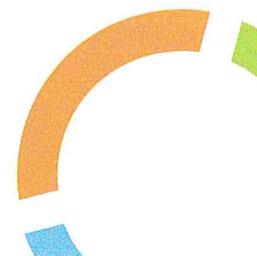


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I. INTRODUCTION AND PURPOSE

The following pages specify in detail the application of McCook Solar, LLC (“Project Company” or “Applicant”) for up to 65 megawatts (“MW”) alternating current (“AC”) of nameplate rating utility scale solar project in the jurisdiction of the City of McCook, Red Willow County, Nebraska (“Project”). The Project Company is a wholly owned subsidiary of Birch Creek Development, LLC. The Applicant respectfully submits this Land Use Action Request Application (“Application”) and requests approval by the McCook City Council of a Land Use Action Permit (“Permit”) for the Project as follows.

The proposed Project would fully comply with the McCook Code of Ordinances, Article 24 – Special Exceptions, Ordinances No. 2016-2929, passed and approved May 2, 2016 (“Zoning Ordinance”), the McCook, Nebraska Comprehensive Plan 2013-2023 (See Section V.J.), and all other applicable local, state, and federal laws and regulations.

Please see **Attachment 1 – Application for a Land Use Action Request**

A. PURPOSE

The Project consists of up to a 65MW AC solar electric generating facility to be located on approximately 551 acres of land including but not limited to, solar panels, racking, trackers, inverters, a short overhead transmission line from the project substation to the McCook Substation, battery energy storage system, access roads, laydown yard, transformer, junction boxes, substation, operations and maintenance building, and the AC electrical current collection system. See **Attachment 2 – Site Plan**.

B. APPLICANT ABILITY TO APPLY FOR LAND USE ACTION REQUEST

Each of the Project’s agreements with landowners authorizes the Project Company to seek and obtain the required permits and approvals for the Project on the landowner’s behalf. Each landowner has authorized the Project Company to seek the necessary permitting on his/her/its respective property by signing an Authorization to Include Certain Property in an Application for Special Permit for a Large Solar Facility (“Authorizations”). The Project Company is therefore acting as applicant for the participating landowners for this Application.

The ownership and contact information for the landowners is included as **Attachment 3 – Landowner Contact Information**. The signed landowner Authorizations are included in **Attachment 4 – Landowner Authorizations**.

II. DESCRIPTION OF PROJECT

A. PROJECT AREA

The proposed Project is located generally west of Highway 83, generally east of Road 383 and north of 717, on approximately 551 acres consisting of 5 landowners outside the city limits of the City of McCook but within the City’s Extra Territorial Jurisdiction (“ETJ”). See **Attachment 3 – Landowner Contact Information**. The acreages are based on the current iteration of the Site Plan (See **Attachment 2 – Site**

Plan) and may be slightly modified when the final design is determined. The final design will be approximate to, and less than, the acreage provided in this Application. **Figure 1 – Regional Project Location Map** depicts the regional Project location within the state, **Figure 2 – Geographical Location Map** shows the local Project location within a more focused geographical area, and **Figure 3 – Project Location Map** depicts the Project location with an aerial photography base map.

The area northwest of the City of McCook has characteristics that make it suitable for solar energy development. The relatively flat topography of the region, combined with its abundant sunshine, creates ideal conditions for solar panel installation. It's worth noting that while there are valleys and drainages in the area, they do not significantly hinder the feasibility of solar energy development or construction. The Applicant has designed the Project to minimize potential impacts to these valleys, drainages, and other sensitive areas by not installing underground facilities in areas that have the potential for erosion (See **Attachment 2 – Site Plan**). Moreover, the agricultural land use in the region provides additional benefits for solar development. The land used for crops is typically not heavily wooded, which means there are fewer shading issues that can impact the efficiency of solar panels. Additionally, the open fields provide ample space for utility-scale solar projects. Overall, the combination of the area's sunny climate, flat topography, and open agricultural land use make it an ideal location for solar energy development.

If approved, this would be the first utility scale solar project in Red Willow County.

B. PROJECT SITING

The layout and siting of the proposed Project has been designed based on the following considerations:

- Location of interconnection facilities;
- Land under voluntary long-term lease or easement from property owners;
- Location of the Project facilities (solar array, interconnection location, access roads);
- Public road access to the Project;
- Construction and ongoing operations;
- Zoning Ordinance;
- City of McCook Comprehensive Plan 2013-2023;
- Nebraska Game & Parks Commission Solar Guidelines (2022).

The proposed Project is situated on 6 parcels of land that are owned by 5 owners. The Project Company possesses signed landowner agreements for the parcels under lease (See **Attachment 3 – Landowner Contact Information**). These agreements allow the proposed Project to host all equipment necessary to apply for the Land Use Action permit, build and operate the Project, including but not limited to, solar panels, racking, trackers, inverters, a short overhead transmission line from the project substation to the McCook Substation, battery energy storage system, access roads, laydown yard, transformer, junction boxes, substation, operations and maintenance building, and the AC electrical current collection system.

Figure 1

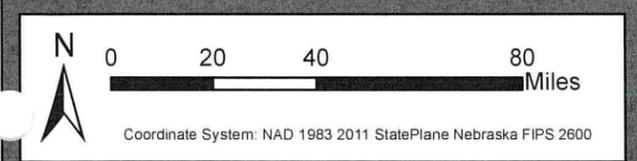
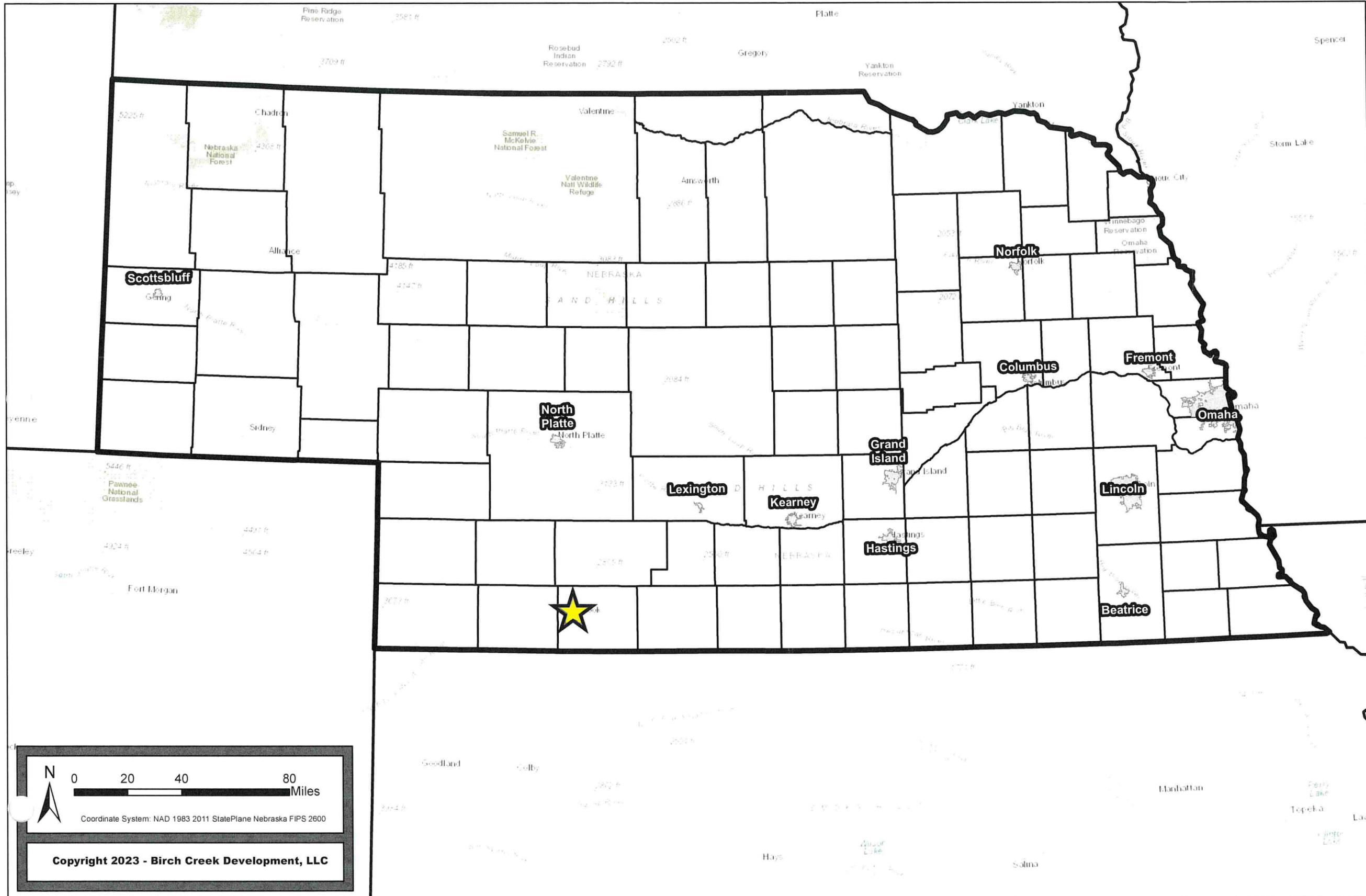
Regional Project Location Map

McCook Solar, LLC

Figure 1 - Regional Project Location Map

Legend

-  Project Location
-  State Boundary
-  County Boundary
-  Urban Areas



Copyright 2023 - Birch Creek Development, LLC

Created By: Thadd Barker

Date: 6/8/2023

Service Layer Credits: Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, © OpenStreetMap contributors, and the GIS User Community

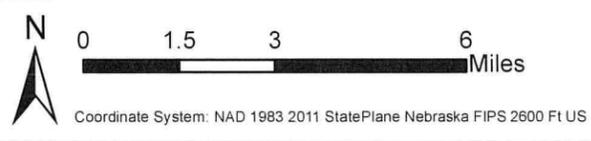
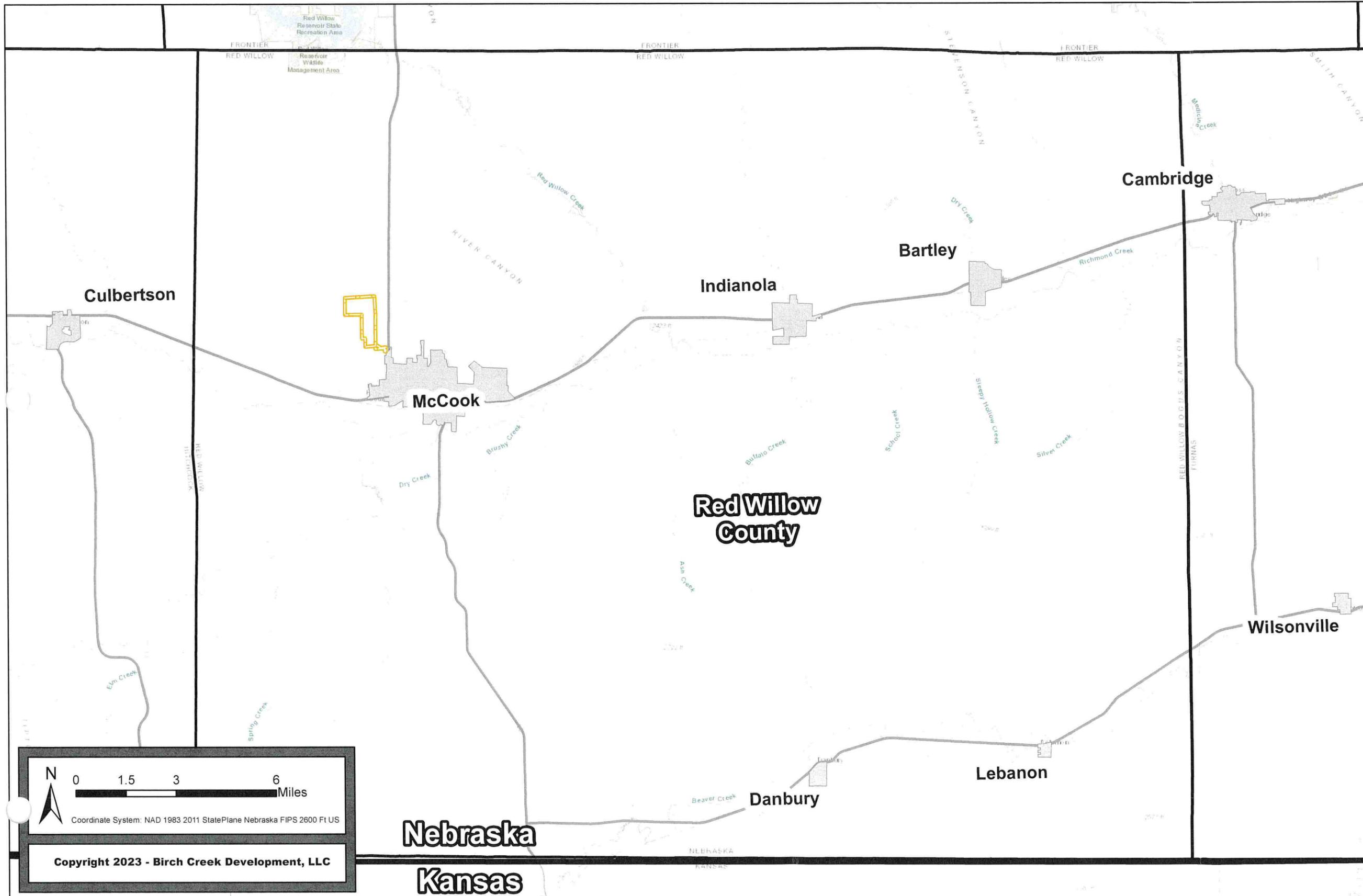
Figure 2
Geographical Location Map

McCook Solar, LLC

Figure 2 - Geographical Location Map

Legend

-  Project Area
-  State Boundary
-  County Boundary
-  Urban Areas
-  Highways



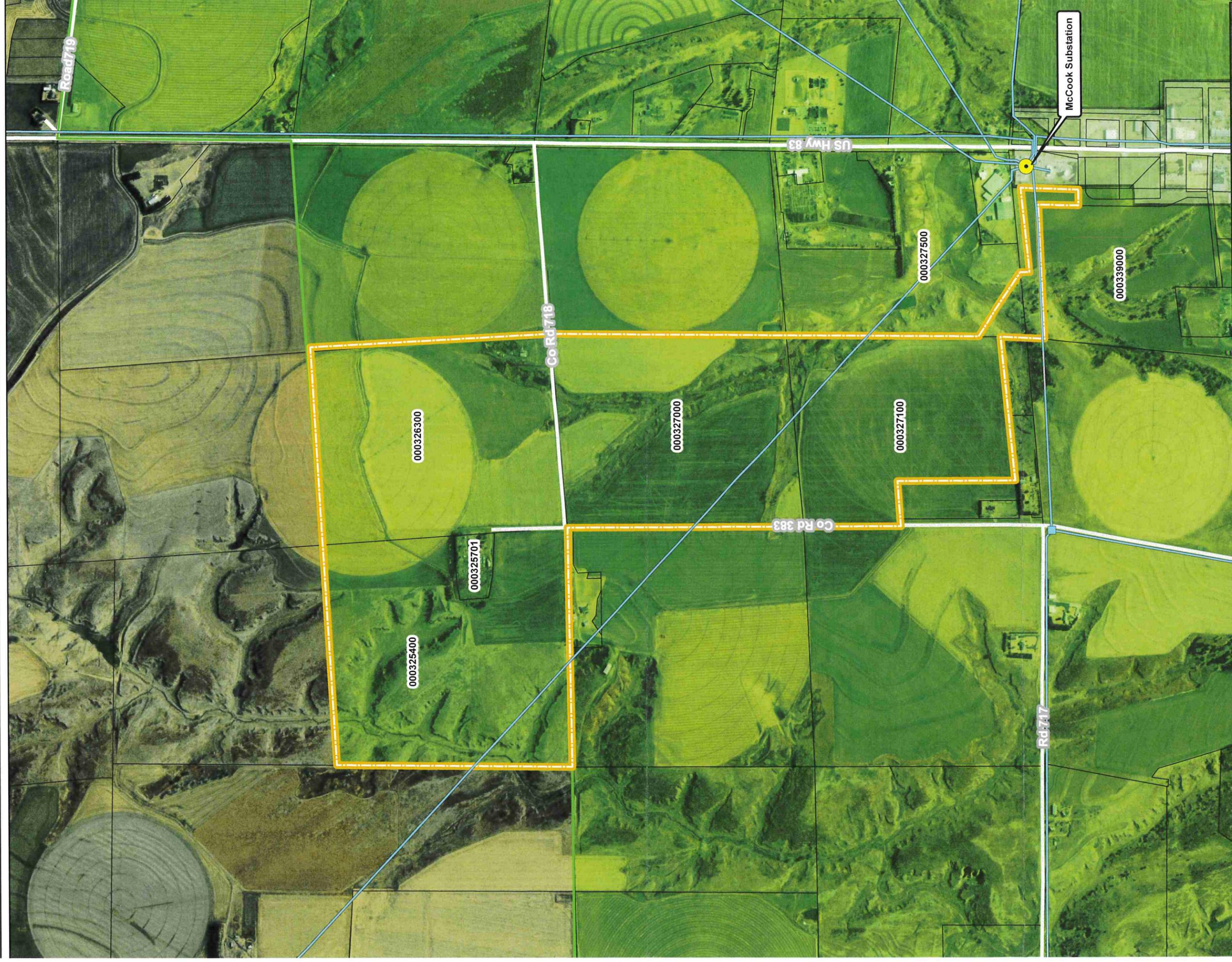
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Date: 6/8/2023

Service Layer Credits: Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, © OpenStreetMap contributors, and the GIS User Community

Figure 3
Project Location Map

McCoc... Solar LLC
Figure 3 - Project Location Map



0 0.1 0.2 0.4 Miles

Coordinate System: NAD 1983 2011 StatePlane Nebraska FIPS 2600 F1 US

Copyright 2023 - Birch Creek Development, LLC

Legend

- Point of Interconnection
- Project Area
- McCook ETJ
- Parcels
- Substations
- Transmission Lines
- Highways
- Urban Areas

Created By: Thadd Barker
 Date: 6/8/2023
 Service Layer Credits: Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

C. COMPATIBILITY WITH THE NEBRASKA GAME AND PARKS COMMISSION GUIDANCE FOR UTILITY-SCALE PHOTOVOLTAIC SOLAR ENERGY PROJECTS

The Project has been sited in conformance with the Nebraska Game and Parks Commission Guidance for Utility-Scale Photovoltaic Solar Energy Projects (December 2022). The Project is in previously disturbed areas to avoid potential impacts to protected species, rare plant communities and areas of wildlife concentration. Siting in previously disturbed areas minimizes fragmentation to intact habitats. Ground disturbance will be minimized to the extent possible. Restoration of ground disturbance will occur as soon as possible after construction is complete. Restoration will be completed with native vegetation and in accordance with existing landowner agreements. Collection lines will be buried to minimize electrocution risk to avian species.

D. PROJECT DESCRIPTION

The Applicant is proposing to construct, install, operate, and maintain up to a 56MW AC solar photovoltaic (PV) facility known as the McCook Solar Project to be located within the ETJ of the City of McCook in Red Willow County, Nebraska (See **Figure 3**). The project site is rural, disturbed, and undeveloped property zoned General Agriculture in Red Willow County. It is outside of the "Flood Hazard Overlay" zone as well as the "Transitional Agriculture" zone. It is also outside of the "Wellhead Protection Overlay" district. The Project is outside the 10-mile Approach Zone, the 3-mile Turning Zone, Private Airport Protection Overlay district, and both the Airport Operational Zone and Airport Transition Zone.

The power generated by the proposed Project will be transmitted to the electrical grid maintained by the Southwest Power Pool via Nebraska Public Power District's (NPPD) McCook Substation, as shown in **Figure 3**. The proposed Project will be connected to the distribution grid, thereby providing clean, renewable energy to local homes and businesses in the area in and around McCook and Red Willow County.

The proposed Project will create other environmental, social, and economic benefits. These benefits include new local jobs during construction, long-term maintenance jobs, annual pollution reductions, and substantial contributions towards meeting the renewable energy goals of some of Nebraska's public power utilities. NPPD has set a goal of achieving 10 percent of its energy production from renewable and alternative energy sources (McCook, Nebraska Comprehensive Plan 2013-2023). The Applicant is seeking a recommendation of approval from the McCook Planning Commission and an approval from the City of McCook's City Council for a Land Use Action Request to be valid throughout the useful life of the proposed Project in accordance with the Zoning Ordinance.

Facilities within the Project footprint necessary for the photovoltaic system include access roads to facilitate the temporary construction and long-term maintenance of the solar array and panels with woven mesh fencing, racking system, trackers, inverters, collection system, temporary parking, an equipment laydown staging area to be used during construction and routine maintenance, operations and maintenance building, and additional chain-link fencing that surrounds the substation within the site boundary. As shown in **Attachment 2 – Site Plan**, all weather access roads will run north to south and east to west through the Project site.

The Project proposes a minimum of 10-foot setbacks or more from property lines to perimeter fencing with any solar panels located a minimum of 20 foot from fence lines to minimize visual impact of the

Project from roads and nearby houses. Furthermore, the Project will include a woven mesh “cattle fence” with wood posts that surrounds the solar array to increase consistency with neighboring properties. The proposed fence would be approximately 7 feet high. There will be a continuous fence installed around the perimeter of the entire solar array to prevent the public or unauthorized members from unauthorized entry to the site. The Applicant will also consider wildlife friendly strategies in the fence design and will consult with state and federal wildlife agencies regarding best practices.

Modifications to the Site Plan for the Project may be necessary as the Project advances to ensure the highest standards of safety, efficiency, and effectiveness. Technology advancements and unforeseen site-specific conditions during development may influence modifications to the Site Plan. The Project Company is committed to working with the Project’s development, engineering, and procurement partners to identify potential changes and adjust the Site Plan accordingly. The Applicant will provide the final design when applying for building permits. The preliminary Site Plan is included in **Attachment 2 – Site Plan**, and the Applicant will keep stakeholders and decision makers informed of any changes that may arise.

III. PROJECT CONSTRUCTION AND OPERATION

A. PROJECT CONSTRUCTION

Even though there is some topographical relief in the area, the conditions are optimal for a utility scale solar project due to the topography on the site where most Project facilities are sited while avoiding the more excessive slopes around the edges of the Project. This will result in minimal site preparation and ground disturbance which will expedite the construction process. Most of the construction will occur during approximately a 6- to 8-month period with minimal construction occurring both before and after the 6-month period. Relatively few pieces of large construction equipment are anticipated for construction, which will minimize traffic disturbances. Most of the construction traffic will consist of small commercial use trucks and trailers and personal vehicles for construction staff traveling to and from the Project. The Project Company plans to prepare a Stormwater Pollution Prevention Plan (SWPPP) to be followed during construction of the Project. Lastly, the Project has been designed to minimize grading and soil hauling, which will minimize dust caused during construction. The Project will meet state mandated fire codes.

B. PROJECT OPERATIONS

During the operation period of the Project, the solar modules will likely be washed as needed with an electronic cleaning system. This cleaning system dramatically reduces the amount of water needed to clean the modules. The information and figures contained in this Application are estimates based on field analyses and site visits performed to date and may change based on the final design of the solar PV system and associated facilities. The Project will provide training to local Emergency Medical Services staff to respond to potential emergencies. The Project will also provide funding to the local Fire Department through increased taxes.

C. PERMANENT OPERATIONAL STAFFING

Approximately 1-2 employees will be needed to provide regular maintenance for the Project and will not have any impact on public utilities or schools.

D. PROJECT DECOMMISSIONING

The Project is anticipated to have an expected useful life of at least 40 years. Once the expected useful life of the solar PV facility is over, it would either be refurbished and repowered or disassembled and decommissioned. If refurbishing and repowering the solar PV facility is elected, the Project would obtain all required agreements with the landowner and all required permit approvals.

If the Project is not refurbished or repowered, Nebraska Revised Statutes section 70-1014.02(2)(a)(iii) provides that the developer / owner shall provide the Nebraska Power Review Board with a decommissioning plan that includes a decommissioning estimate and, from the end of the tenth year of commercial operation forward, shall post financial security with the Board in an amount equal to the net decommissioning cost in the estimate to ensure funds are available to decommission the Project if the developer / owner does not do so. The City of McCook can also impose its own decommissioning requirements, in which case the State of Nebraska requirements do not apply.

E. PROJECT PROPERTY TAXES

Per section 77-6203 of the Nebraska Revised Statutes, qualifying renewable energy facilities are required to pay a per MW nameplate capacity and real property tax. These revenues would flow to the applicable taxing entities in the same proportion as real property tax revenues flow. If a Nebraska utility purchases the Project, the utility is exempt from the Nameplate Capacity Tax and property tax per section 77-6203 of the Nebraska Revised Statutes. Please see **Attachment 5 – Property Tax Benefits from Solar Energy Facilities in Nebraska** for more detail and an example of the potential property tax revenues from the Project.

IV. MCCOOK SPECIAL EXCEPTION CONSIDERATIONS

The Applicant considered the Special Exception requirements in the Zoning Ordinance when siting and designing the Project.

(A) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe

Project staff will obey all local, state, and federal laws as well as generally established industry standard safety procedures. No one other than those specifically trained in the construction, maintenance, or dismantling of the Project will be allowed to participate in those activities. Project staff will obey traffic laws and industry safety standards, including parking any vehicles and trailers in a safe and orderly way.

After construction, Project staff will perform regular and emergency maintenance as needed. Only minimal maintenance vehicles, such as pickups and small trailers typical to the area, will be required during operations. No heavy haul trucks will be used except for the rare occasion where equipment may need to be repaired or replaced.

Project staff will obey all local, state, and federal laws as well as generally established industry standard safety procedures.

Project staff will take precautions against fire and casualties by obeying all local, state, and federal laws as well as generally established industry standard safety procedures. In addition, any vehicles that are performing installation, construction or maintenance for the Project will have a fire extinguisher in the vehicle.

(B) Off-street parking and loading areas where required, with particular attention to the items in (A) above, the economic, noise, glare or odor effects of the special exception or change of zone on adjoining properties and the properties generally in the district or the area

Off-street parking and loading areas will be provided off Road 718 at a temporary construction staging and office site. Limited permanent off-street parking will be provided via improving the existing driveway at the intersection of Road 718 and Road 383 at an Operations and Maintenance facility. The temporary and permanent parking locations were chosen with consideration for ease of access off Roads 718 and 383 as well as proximity to residences to limit potential effects during construction.

(C) The location of refuse and service areas, with particular reference to the items in (A) and (B) above

During construction, refuse and service areas will be provided at the temporary construction site. The Project will contract with a local refuse and service provider to maintain a clean and orderly construction site. A refuse service will also be available at the Operations and Maintenance facility.

(D) Utilities, with reference to locations, availability, and compatibility

Existing utilities in the area will provide the Operations and Maintenance Building with the services necessary to operate the Project efficiently and safely. Power and water are available and accessible near the proposed Operations and Maintenance Building location.

(E) Screening and buffering with reference to type, dimensions, and character

The facility will utilize cattle fencing with wood posts surrounding the solar array consistent with existing fencing within the region as a means of integrating with minimal visual impact. No additional screening is proposed.

(F) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district

The Project will have exterior lighting for emergency operations and maintenance use only. Exterior lighting will be on only when in use and only on rare occasions when maintenance would need to occur at night. Limited and rare use of exterior lighting at night would reduce potential impacts to local traffic.

Once installed, the solar array would operate with minimal noise, as the only moving part is the motor to move the solar panels a few inches every several minutes to follow the sun throughout the day. Operation of the proposed Project would not result in detrimental or toxic health effects to people residing or working in the vicinity. The large distance from public roadways and nearby properties would minimize the aesthetic views of the solar array.

(G) Required yards and other open space

Yards and other open spaces are not required for the Project.

(H) General compatibility with adjacent properties and other properties in the district

The facility will utilize cattle fencing with wood posts consistent with existing fencing within the region as a means of integrating with minimal visual impact. The solar array would operate with minimal noise, as the only moving part is the motor to move the solar panels a few inches every several minutes to follow the sun throughout the day. Once constructed, the only traffic required for operations and maintenance would be minimal and vehicles would consist of those already typical for the area.

(I) The Project proposed in this application will not affect the landowners' ability to use, lease, or sell their property.

The Project has signed long-term lease agreements with 4 landowners. There are no prohibitions in the agreements that restrict the landowners' ability to lease or sell their property other than preserving the rights of the Project to develop, construct, and operate a utility scale solar project.

(J) Compatibility with existing and future land use plan in the McCook Comprehensive Plan

The Project Company has sited the Project in accordance with industry standard setbacks and the Zoning Ordinance which was developed to provide safety to both Project staff, landowners, and other citizens. In addition, the siting of the Project allows for the continuation of the existing land use of the surrounding area as well as providing opportunity for additional development and permitted uses.

The Project will not create additional needs for long-term housing in the area. This project supports the Section Economic Development - Action Step 3 to provide diversified business and employment activities. The Public Power Districts in Nebraska have set a goal of achieving 10 percent of their energy production from renewable and alternative energy sources (McCook, Nebraska Comprehensive Plan 2013-2023).

A. ADDITIONAL REQUESTS

The Applicant is not requesting modifications or variances to the existing Zoning Ordinance.

Attachment 1

Application for Land Use Action Request

CITY OF McCOOK

LAND USE ACTION REQUEST FORM

This request is for a:
(Check all that apply)

- Zone Change
- Special Exception
- Administrative Permit (Personal Wireless Facility)
- Special Exception (Personal Wireless Facility)
- Minor Subdivision
- Major Subdivision
- Planned Development(Includes Zone Change)

Name of Project: McCook Solar LLC

Description of Project: See Application text

Project sponsor or developer:

Name: Birch Creek Development LLC

Address: 2650 Locust Street, Suite 100, St. Louis, MO 63103

Phone number: 213-471-8690

Fax number: _____

E-mail Address: norqual@birchcreekdev.com

Land owner or owners:

Name: See Application Attachment 3

Address: _____

Phone number: _____

Fax number: _____

E-Mail Address: _____

Authorization of the land use action by land owner:

I hereby certify that I own and/or control the following land where the land use action is being requested. (Attach evidence of ownership or control. e.g. power of attorney, deed, or purchase agreement)

Chris Norqual/
Authorized Representative
Printed Name: _____

Printed Name: _____

DocuSigned by:
Chris Norqual
902002CA113E41B
Signature: _____

Signature: _____

7/14/2023
Date: _____

Address and physical location of the Proposed Land Use Action: _____
See Application text

Property Description (Of the parent parcel for subdivisions): _____
See Application text

Required Information:

See Attached sheets for required information for:

- _____ Subdivisions
- _____ Zone Changes and special exceptions
- _____ Planned developments

FEE PAID: \$ _____ (See attached schedule of fees)

Fee, complete application, and required attachments accepted by:

Printed name

Signature

Date

REQUIRED ATTACHMENTS:

For Zone Changes and Special Exceptions:

(For Zone Changes or Amendments see Article 27 of the Zoning Ordinance; for Special Exceptions see Article 24 Special Exceptions)

X Include a description of the reason for the request for a change of zone:
See Application text

X Include a description of any special exception requested including the section of the zoning ordinance under which it is requested: (Example: Special exception to construct multi-family dwellings in (RM) Residential Medium Density area comprised of single family dwellings.)
See Application text

X Include a site plan (minimum 17" X 11") and a letter of explanation showing and explaining the following special exception requirements:

- (A) ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
- (B) off-street parking and loading areas where required, with particular attention to the items in (A) above, the economic, noise, glare or odor effects of the special exception or change of zone on adjoining properties and the properties generally in the district or the area;
- (C) the location of refuse and service areas, with particular reference to the items in (A) and (B) above;
- (D) utilities, with reference to locations, availability, and compatibility;
- (E) screening and buffering with reference to type, dimensions, and character;
- (F) signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;

(G) required yards and other open space;

(H) general compatibility with adjacent properties and other properties in the district;

(I) compatibility with existing and future land use plan in the McCook Comprehensive Plan.

X Explain how the project complies with the Comprehensive Plan: _____

See Application text

FINDINGS AND DETERMINATIONS OF MCCOOK CITY COUNCIL

CASE NO. _____

SIGNED: _____
Mayor

DATE _____

ATTEST: _____
City Clerk

SPECIAL EXCEPTION CONSIDERATIONS:

YES

NO

1. The proposed special exception use would satisfactorily provide for:

a) ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;

b) off street parking and loading areas where required, with particular attention to the items in a) above, and the economic, noise, glare, or odor effects of the special exception on adjoining properties and properties generally in the district;

c) refuse and service areas, with particular attention to the items in a) and b) above;

d) utilities, with reference to locations, availability and compatibility;

e) screening and buffering with reference to type, dimensions and character;

f) signs, if any, and proposed exterior lighting with reference to glare, traffic safety and economic effect and comparability and harmony with properties in the district;

g) required yard and other open space;

h) general compatibility with adjacent properties and other property in the district.

i) Compatibility with existing and future land use plan in the McCook Comprehensive Plan.

2. The specific rules governing special exceptions have been complied with.

CITY COUNCIL FINDINGS AND DECISION:

The McCook City Council hereby determines that the special exception will _____, will not _____ adversely affect the public interest. The special exception herein requested is _____, is not _____ hereby granted subject to the stipulations noted below, if any.

THIS _____ DAY OF _____, 2018.

Attachment 2

Site Plan

MCCOOK SOLAR, LLC

MCCOOK, NE 69001
40.235, -100.661

OWNER
BIRCH CREEK

NOT FOR CONSTRUCTION

PROJECT
MCCOOK SOLAR, LLC
MCCOOK, NE 69001
40.235, -100.661

ENGINEER
MKS 
matt@mksolarops.com (303) 884-5598
SEAL

THIS DRAWING AND ALL INFORMATION HEREIN IS THE PROPERTY OF MK SOLAR OPERATIONS, LLC. ANY REPRODUCTION, MODIFICATION OR USE OF THIS DRAWING FOR OTHER THAN THE INTENDED PROJECT WITHOUT PRIOR WRITTEN AUTHORIZATION FROM MK SOLAR OPERATIONS, LLC IS STRICTLY FORBIDDEN.

REVISIONS		
#	DESCRIPTION	DATE
A	PRELIMINARY DESIGN	05/04/2023

GENERAL NOTES

SCOPE OF WORK

THE INSTALLATION OF A SOLAR PHOTOVOLTAIC (PV) PLANT INCLUDING PV MODULES, GRID-INTERACTIVE INVERTERS & SINGLE AXIS TRACKERS TO SUPPLY POWER DIRECTLY TO THE LOCAL ELECTRIC UTILITY GRID.

PROJECT LOCATION

MCCOOK, NE 69001
40.235, -100.661

INTERCONNECTION

THE PV SYSTEM SHALL OPERATE IN PARALLEL WITH THE ELECTRIC UTILITY SERVICE PROVIDER. THE INVERTERS PROVIDE ANTI-ISLANDING PROTECTION AS WELL AS HARMONIC LIMITS THAT COMPLY WITH UL 1741, IEEE 1547, AND IEEE 591.

OPERATION

PERMISSION TO OPERATE THE PV SYSTEM IS NOT AUTHORIZED UNTIL FINAL INSPECTIONS AND APPROVALS ARE OBTAINED FROM THE AUTHORITY HAVING JURISDICTION AND THE ELECTRIC UTILITY SERVICE PROVIDER.

CODE ENFORCED

NATIONAL ELECTRIC CODE, 2020 EDITION

AUTHORITY HAVING JURISDICTION

CITY OF MCCOOK

ELECTRIC UTILITY SERVICE PROVIDER

NEBRASKA PUBLIC POWER DISTRICT

NATURE OF ENGINEERING DRAWINGS AS SHOWN

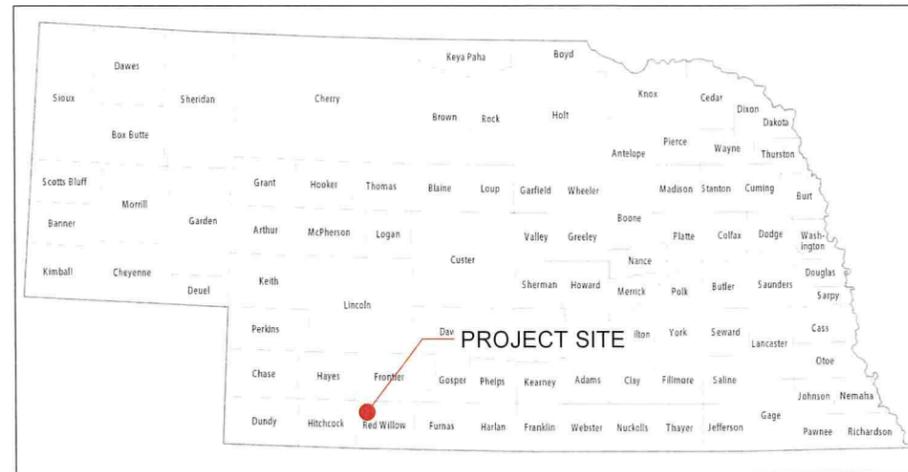
WITH THE EXCEPTION OF THOSE COMMITTED DESIGN CONSTRAINTS NOTED IMMEDIATELY BELOW, THE SITE PLANS DEPICTED IN THIS ENGINEERING PACKAGE ARE INDICATIVE BASED UPON THE ASSUMED PROJECT DETAILS SHOWN ON SHEET E-001 AND ARE SUBJECT TO CHANGE. GIVEN THE RATE AT WHICH SOLAR EQUIPMENT IS PROGRESSING, IT IS HIGHLY LIKELY THAT THE FINAL TECHNOLOGY SELECTIONS WILL DIFFER FROM WHAT IS SHOWN WITHIN THIS DRAWING PACKAGE. AS TECHNOLOGY IS CHANGED, THE RESULTING SITE PLANS WILL CHANGE.

THESE PLANS ARE BEING PRESENTED TO SUPPORT THE LAND USE PERMITTING PROCESS AS REPRESENTATIVE OF WHAT THE COUNTY CAN EXPECT TO SEE IN THE FINAL CONSTRUCTION PLANS. THIS ENGINEERING SHOULD NOT BE RELIED UPON TO REFLECT THE EXACT LOCATION OF ANY SITE IMPROVEMENTS IN THE FINAL DESIGN.

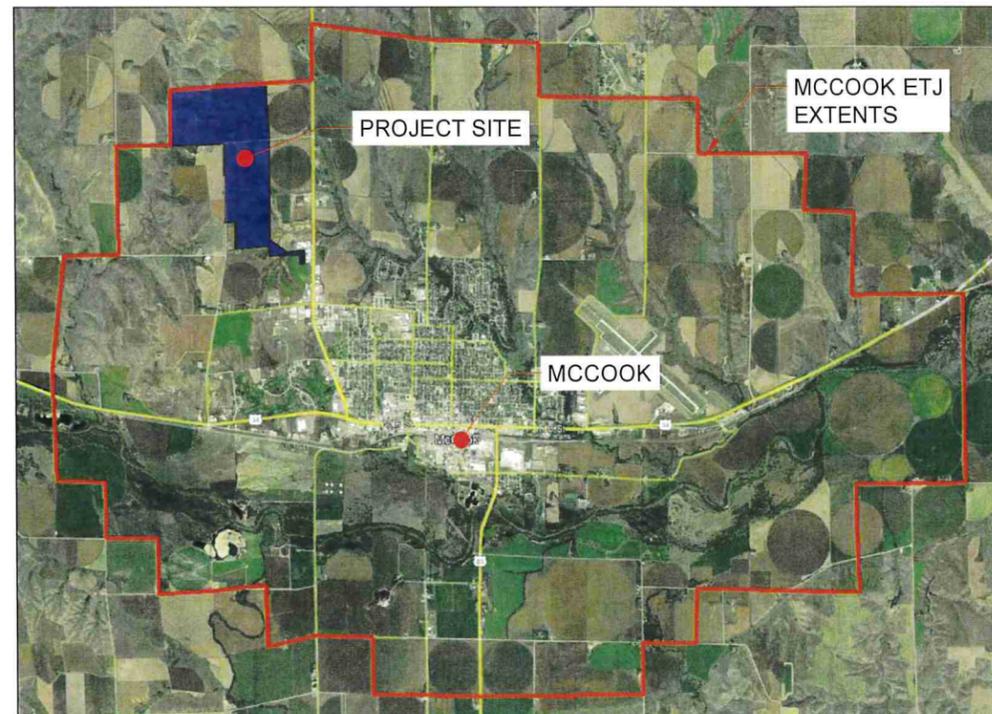
COMMITTED DESIGN CONSTRAINTS

- WHERE NO CITY OR COUNTY ZONING REQUIREMENTS EXIST: 10' SETBACK FROM PROPERTY LINE TO FENCE.
- PANELS TO BE SET BACK AT LEAST 20' FROM FENCE LINES
- INTERIOR SITE ROADS SET BACK AT LEAST 10' FROM FENCES

COUNTY MAP



VICINITY MAP



PROJECT DETAILS

SYSTEM SUMMARY

DC SYSTEM SIZE	76,269,600 W
AC SYSTEM SIZE	56.0 MW / 64.8 MVA
POI DC / AC RATIO	1.328
DC VOLTAGE	1,500 V
POCC / POI VOLTAGE	115 KV

PV MODULES

MANUFACTURER	RENALT ENERGY
MODEL	RE PE 660G2G
DC POWER @ STC	660 W
MODULES PER STRING	30
TOTAL STRING QTY	3,852
TOTAL MODULE QTY	115,560

INVERTER / PCS

MANUFACTURER	SUNGROW
MODEL	SG3600UD-MV
AC POWER RATING	3,600 KVA
TOTAL INVERTERS	18

RACKING

MANUFACTURER	ATI
MODEL / TYPE	V3
PITCH	20°-0.66°
INTER-ROW SPACING	12'-2.80"
GCR	39.00%
MAX TRACKER ROTATION	±52°
AZIMUTH	180°

SITE ATTRIBUTES

FENCED AREA	281.59 ACRES
LENGTH OF FENCE	32,521 FEET

MCCOOK SOLAR, LLC
MCCOOK, NE 69001

SHEET TITLE
COVER SHEET

SHEET NO.
E-001

OWNER



NOT FOR CONSTRUCTION

PROJECT
MCCOOK SOLAR, LLC
 MCCOOK, NE 69001
 40.235, -100.661

ENGINEER
 (303) 884-5598
 matt@mksolarops.com
 SEAL

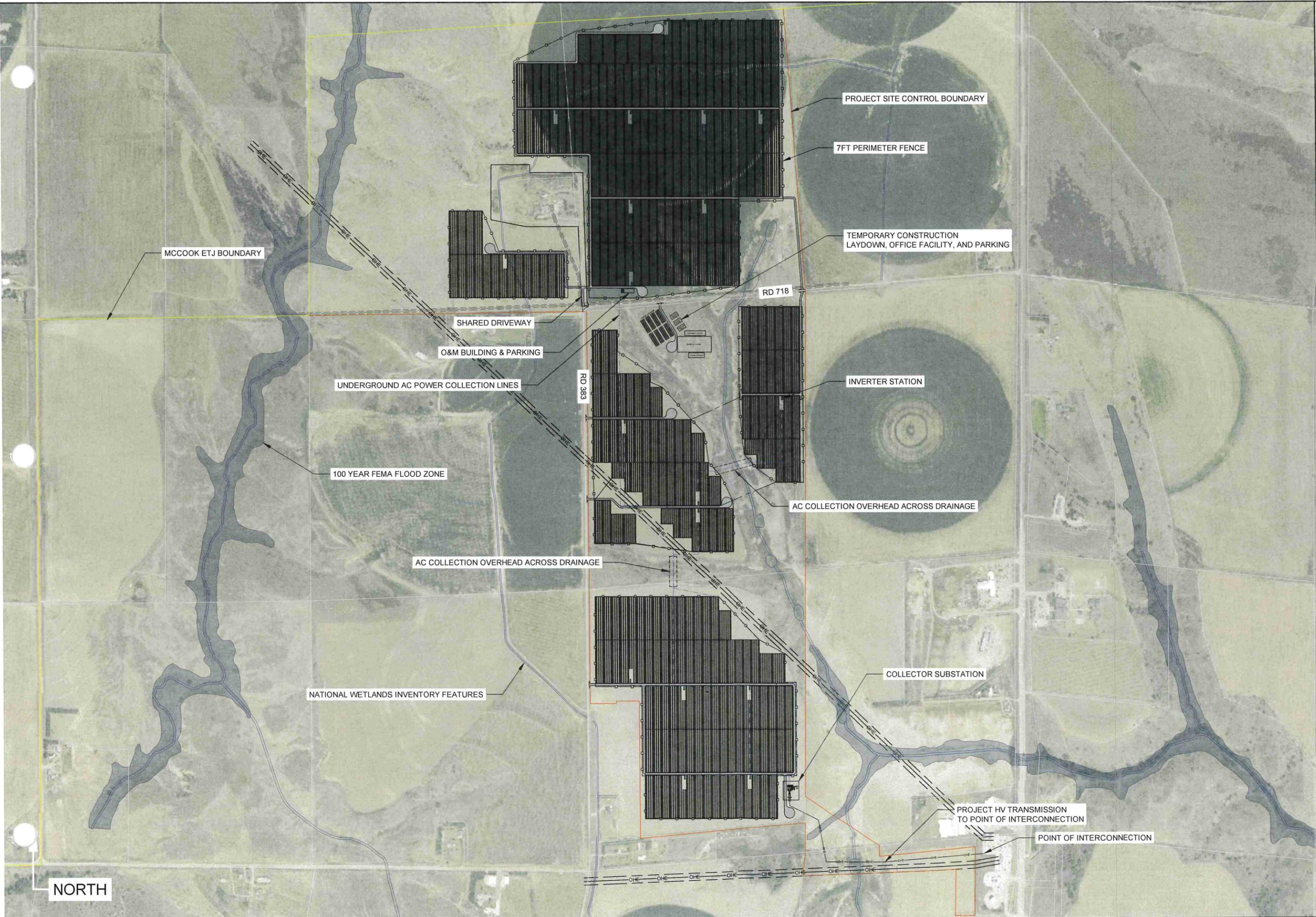
THIS DRAWING AND ALL INFORMATION HEREIN IS THE PROPERTY OF MK SOLAR OPERATIONS, LLC. ANY REPRODUCTION, MODIFICATION OR USE OF THIS DRAWING FOR OTHER THAN THE INTENDED PROJECT WITHOUT PRIOR WRITTEN AUTHORIZATION FROM MK SOLAR OPERATIONS, LLC IS STRICTLY FORBIDDEN.

REVISIONS		
#	DESCRIPTION	DATE
A	PRELIMINARY DESIGN	05/04/2023

MCCOOK SOLAR, LLC
 MCCOOK, NE 69001

SHEET TITLE
OVERALL SITE PLAN

SHEET NO.
E-101
 SCALE: 1"=430'





OWNER
 BIRCH CREEK

NOT FOR CONSTRUCTION

PROJECT
MCCOOK SOLAR, LLC
 MCCOOK, NE 69001
 40.235, -100.661

ENGINEER

 matt@mksolarops.com (303) 884-5598
 SEAL

THIS DRAWING AND ALL INFORMATION HEREIN IS THE PROPERTY OF MKS SOLAR OPERATIONS, LLC. ANY REPRODUCTION, MODIFICATION OR USE OF THIS DRAWING FOR OTHER THAN THE INTENDED PROJECT WITHOUT PRIOR WRITTEN AUTHORIZATION FROM MKS SOLAR OPERATIONS, LLC IS STRICTLY FORBIDDEN.

REVISIONS

#	DESCRIPTION	DATE
A	PRELIMINARY DESIGN	05/04/2023

MCCOOK SOLAR, LLC
 MCCOOK, NE 69001

SHEET TITLE
**OVERALL SITE PLAN
 DETAIL VIEW 1**

SHEET NO.
E-102
 SCALE: 1"=150'

OWNER



NOT FOR CONSTRUCTION

PROJECT

MCCOOK SOLAR, LLC
MCCOOK, NE 69001
40.235, -100.661

ENGINEER



matt@mksolarops.com (303) 884-5598
SEAL

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REVISIONS

#	DESCRIPTION	DATE
A	PRELIMINARY DESIGN	05/04/2023

MCCOOK SOLAR, LLC
MCCOOK, NE 69001

SHEET TITLE

**OVERALL SITE PLAN
DETAIL VIEW 2**

SHEET NO.

E-103

SCALE: 1"=150'



NORTH

OWNER



NOT FOR CONSTRUCTION

PROJECT

MCCOOK SOLAR, LLC
MCCOOK, NE 69001
40.235, -100.661

ENGINEER



matt@mksolarops.com (303) 884-5598
SEAL

THIS DRAWING AND ALL INFORMATION HEREIN IS THE PROPERTY OF MKS SOLAR OPERATIONS, LLC. ANY REPRODUCTION, MODIFICATION OR USE OF THIS DRAWING FOR OTHER THAN THE INTENDED PROJECT WITHOUT PRIOR WRITTEN AUTHORIZATION FROM MKS SOLAR OPERATIONS, LLC IS STRICTLY FORBIDDEN.

REVISIONS

#	DESCRIPTION	DATE
A	PRELIMINARY DESIGN	05/04/2023

MCCOOK SOLAR, LLC
MCCOOK, NE 69001

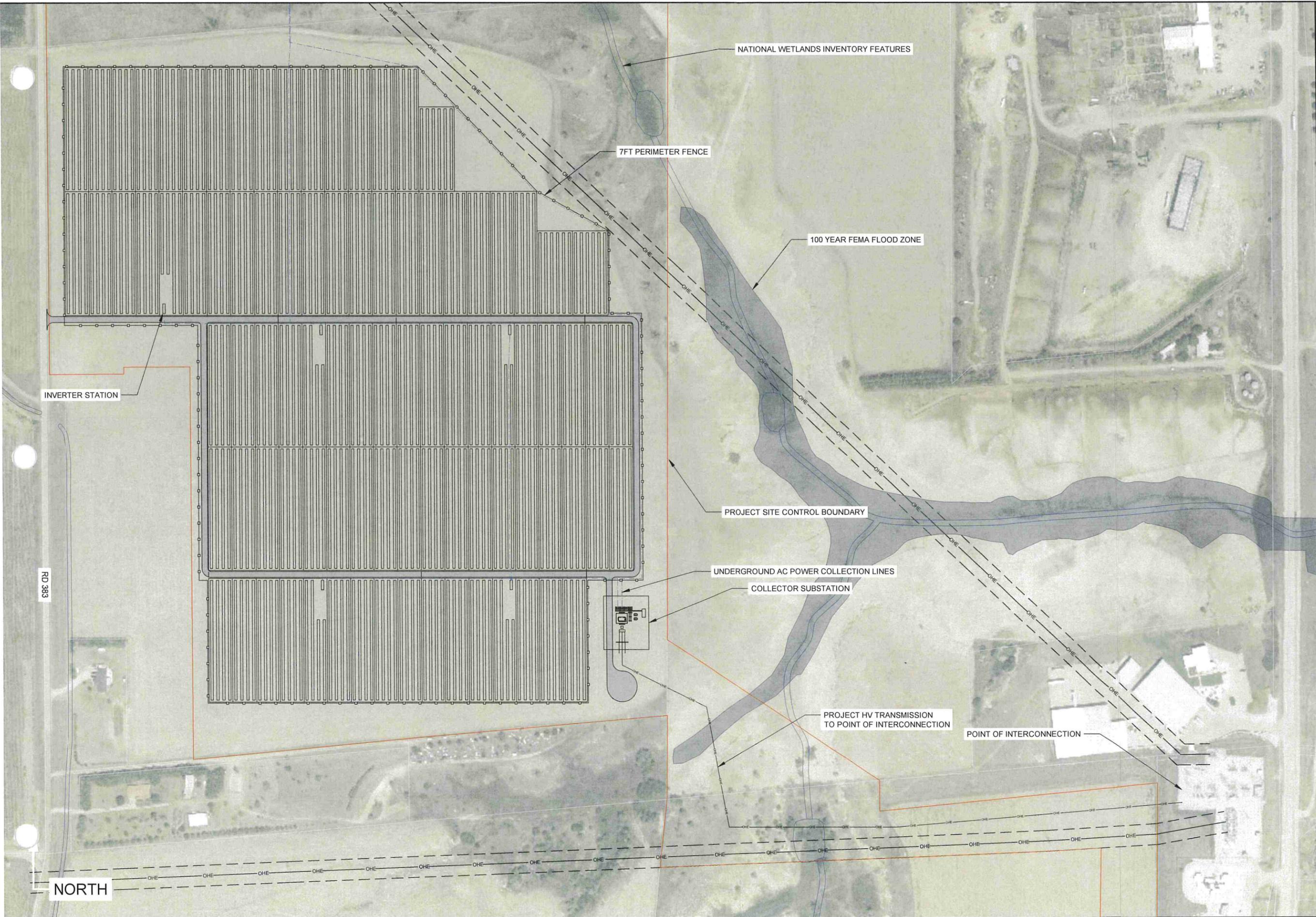
SHEET TITLE

**OVERALL SITE PLAN
DETAIL VIEW 3**

SHEET NO.

E-104

SCALE: 1"=150'



INVERTER STATION

RD 383

NORTH

NATIONAL WETLANDS INVENTORY FEATURES

7FT PERIMETER FENCE

100 YEAR FEMA FLOOD ZONE

PROJECT SITE CONTROL BOUNDARY

UNDERGROUND AC POWER COLLECTION LINES

COLLECTOR SUBSTATION

PROJECT HV TRANSMISSION TO POINT OF INTERCONNECTION

POINT OF INTERCONNECTION

Attachment 3
Landowner Contact Information

Attachment 3

Landowner Contact Information

Grantor	Contact	Phone	Email	Address	City	State	Zip Code
CCJH, LLC	Curtis Swanhorst	308.340.5292	curtswanhorst@gmail.com	#9 Mashie Drive	McCook	NE	69001
Harold B. & Lori S. Pearson	Harold Pearson	308.340.1789	hbpearson78@gmail.com	71817 RD 383	McCook	NE	69001
John E. Palic Revocable Trust dated May 23, 2014 MeLinda R. Palic Revocable Trust dated May 23, 2014	John Palic	308.340.6873	jpalic81@gmail.com	38272 Finch Trail	McCook	NE	69001
Masonic Temple Craft, Inc.	Greg Wolford	308.340.6049	greg@wdesignea.com	P. O. Box 962	McCook	NE	69001
Pearson's Pheasant Run Limited Partnership	Harold Pearson	308.340.1789	hbpearson78@gmail.com	71817 RD 383	McCook	NE	69001

Attachment 4
Landowner Authorizations

**AUTHORIZATION TO INCLUDE CERTAIN PROPERTY IN AN APPLICATION FOR
A LAND USE ACTION REQUEST FOR A SOLAR FACILITY**

The undersigned owner of the following real estate located in Red Willow County,
Nebraska:

Parcel 1: A tract of land in the Southeast Quarter (SE¼) of Section Eleven (11), Township Three (3) North, Range Thirty (30) West of the 6th P.M., more particularly described as follows: Referring to the southeast corner of said Section 11, thence on Azimuth (assumed) 355°40' along the east section line a distance of 835.72 feet to the point of beginning; thence on Azimuth 271°48' a distance of 465.83 feet to a point; thence on Azimuth 279°20' a distance of 265.57 feet to a point on the easterly right of way line of Lateral 38.4; thence on Azimuth 355°16' along said right of way a distance of 328.58 feet to a point; thence on Azimuth 78°44' along the southerly right of way line of Lateral 38.4 a distance of 211.61 feet to a point; thence on Azimuth 86°12' a distance of 513.48 feet to a point on the east section line; thence on Azimuth 175°40' along the east section line a distance of 461.85 feet to the point of beginning.

(approximately 6.9 acres), hereby acknowledges and understands and agrees that its signature below authorizes McCook Solar, LLC, or its authorized representatives, to submit by any means to the City of McCook, Nebraska, any necessary filing or document to apply for, pursue, obtain and perfect a Special Exception for a Land Use Action Request using solar energy.

Date: June 07, 2023.

Harold B. Pearson

Harold B. Pearson

Lori S. Pearson

Lori S. Pearson

Date: 06/07/2023

**AUTHORIZATION TO INCLUDE CERTAIN PROPERTY IN AN APPLICATION FOR
A LAND USE ACTION REQUEST FOR A SOLAR FACILITY**

The undersigned owner of the following real estate located in Red Willow County,
Nebraska:

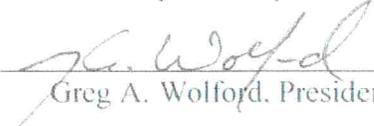
Township 3 North, Range 30 West, of the 6th P.M., County of Red Willow, State of
Nebraska
Section 13: NW¼

Containing 132.81 acres according to the Red Willow County Assessor's Office

(approximately 133 acres), hereby acknowledges and understands and agrees that its signature
below authorizes McCook Solar, LLC, or its authorized representatives, to submit by any means
to the City of McCook, Nebraska, any necessary filing or document to apply for, pursue, obtain
and perfect a Special Exception for a Land Use Action Request using solar energy.

Date: May 18, 2023.

MASONIC TEMPLE CRAFT, INC.,
a Nebraska non profit corporation

By: 
Greg A. Wolford, President

Date: 18 May 23

**AUTHORIZATION TO INCLUDE CERTAIN PROPERTY IN AN APPLICATION FOR
A LAND USE ACTION REQUEST FOR A SOLAR FACILITY**

The undersigned owner of the following real estate located in Red Willow County,
Nebraska:

Parcel 1: Township 3 North, Range 30 West of the 6th Meridian, County of Red Willow,
State of Nebraska
Section 11: E½

LESS AND EXCEPT

A tract of land in the Southeast Quarter (SE¼) of Section Eleven (11), Township Three (3) North, Range Thirty (30) West of the 6th P.M., more particularly described as follows: Referring to the southeast corner of said Section 11, thence on Azimuth (assumed) 355°40' along the east section line a distance of 835.72 feet to the point of beginning; thence on Azimuth 271°48' a distance of 465.83 feet to a point; thence on Azimuth 279°20' a distance of 265.57 feet to a point on the easterly right of way line of Lateral 38.4; thence on Azimuth 355°16' along said right of way a distance 328.58 feet to a point; thence on Azimuth 78°44' along the southerly right of way line of Lateral 38.4 a distance of 211.61 feet to a point; thence on Azimuth 86°12' a distance of 513.48 feet to a point on the east section line; thence on Azimuth 175°40' along the east section line a distance of 461.85 feet to the point of beginning.

Containing 287.41 acres according to the Red Willow County Assessor's Office

Parcel 2: Township 3 North, Range 30 West of the 6th Meridian, County of Red Willow,
State of Nebraska
Section 12: W½

Containing 282.32 acres according to the Red Willow County Assessor's Office

Parcel 3: Township 3 North, Range 30, West of the 6th Meridian, County of Red Willow,
State of Nebraska
Section 1: S½

LESS AND EXCEPT

A strip of land lying across the eastern part of the Southeast Quarter of Section 1, Township 3 North, Range 30, West of the 6th P.M., Red Willow County, Nebraska, described as follows: Beginning at the southeast corner of said Section 1; thence northerly on the East line of the Southeast Quarter of said Section 1 a distance of 2,706.6 feet to the northeast corner of said Southeast Quarter; thence westerly on the North line of said Southeast Quarter a distance of 67.5 feet; thence southerly a

distance of 2,706.6 feet to a point on the South line of said Southeast Quarter; thence easterly on said South line a distance of 42.3 feet to the point of beginning. Containing 3.35 acres, more or less, which includes 2.05 acres, more or less, previously occupied as a public highway. (Exception 1, Bk 71-42)

AND LESS AND EXCEPT

Pearson's Country Terrace Subdivision Filing No. 1, being a part of the SE $\frac{1}{4}$ of Section 1, Township 3 North, Range 30, West of the 6th P.M., Red Willow County, Nebraska, described as follows: Beginning at the Northeast corner of the Southeast Quarter (SE $\frac{1}{4}$) of said Section 1; thence westerly S 85°53'07" W, a distance of 62.50 feet to the True Point of Beginning; thence southerly S 01°05'53" E, a distance of 1300.00 feet to a point; thence westerly S 88°54'07" W, a distance of 780.00 feet to a point, thence northerly N 01°05'53" W a distance of 1258.89 feet to a point; thence easterly N 85°53'07" E, a distance of 781.08 feet to the True Point of Beginning. (Exception 2, Bk 94-508)

AND LESS AND EXCEPT

A tract of land in the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section One (1), Township Three (3) North, Range Thirty (30), West of the 6th P.M., Red Willow County, Nebraska, more particularly described as follows: Referring to the east quarter corner of said Section 1; thence S 88°53' W, 843.6 feet to the true point of beginning; thence S 01°06' E, 490.0 feet to a point; thence S 88°54' W, 470.0 feet to a point; thence N 03°23' W, 464.8 feet to a point on the north line of the SE $\frac{1}{4}$ of Section 1; thence N 88°53' E, 489.4 feet to the point of beginning, containing 5.25 acres, more or less. (Exception 3, Bk 107-447)

AND LESS AND EXCEPT

A tract of land in the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section One (1), Township Three (3) North, Range Thirty (30) West of the 6th P.M., more particularly described as follows: Referring to the southeast corner of said Section 1; thence N 00°34'00" W, 1405.91 feet; thence S 88°54'07" W, 680.42 feet to the true point of beginning; continue on this line of S 88°54'07" W, a distance of 150.00 feet; thence N 01°05'53" W, a distance of 160.00 feet; thence S 88°54'07" W, a distance of 300.00 feet; thence S 01°05'53" E, a distance of 320.00 feet; thence N 88°54'07" E, a distance of 450.00 feet; thence N 01°05'53" W, a distance of 160.00 feet to the point of beginning. Containing 2.75 acres, more or less. (Exception 4, Bk 109-259)

Containing 254.42 acres according to the Red Willow County Assessor's Office

Parcel 4: Township 3 North, Range 30, West of the 6th Meridian, County of Red Willow,
State of Nebraska
Section 2: SE $\frac{1}{4}$

Containing 171.71 acres according to the Red Willow County Assessor's Office (approximately 996 acres), hereby acknowledges and understands and agrees that its signature below authorizes McCook Solar, LLC, or its authorized representatives, to submit by any means to the City of McCook, Nebraska, any necessary filing or document to apply for, pursue, obtain and perfect a Special Exception for a Land Use Action Request using solar energy.

Date: 05/22/2023

PEARSON'S PHEASANT RUN LIMITED PARTNERSHIP,
a Nebraska limited partnership

By: George E Pearson
George E. Pearson, General Partner

Date: 05/22/2023

**AUTHORIZATION TO INCLUDE CERTAIN PROPERTY IN AN APPLICATION FOR
A LAND USE ACTION REQUEST FOR A SOLAR FACILITY**

The undersigned owner of the following real estate located in Red Willow County,
Nebraska:

Parcel 1: Township 3 North, Range 30 West, of the 6th Meridian, Red Willow, Nebraska

Section 13: SE¼

LESS AND EXCEPT

A tract described as follows: Referring to the Southeast Corner of the SE¼ of said Section 13; thence bearing S84°24'W in the South line of said SE¼ a distance of 77.8 feet to the West right-of-way line of US Highway 83, which point is the Point of Beginning; thence continuing on bearing S84°24'W, a distance of 1,000.0 feet to a point; thence bearing N00°28'E, a distance of 400.0 feet to a point; thence bearing N84°24'E, a distance of 1,000.0 feet to said right-of-way line; thence bearing S00°28'W in said right-of-way line, a distance of 400.0 feet to the point of beginning, containing 9.13 acres, more or less.

AND LESS AND EXCEPT

The real estate conveyed to the State of Nebraska by Warranty Deed dated November 8, 1948, recorded January 5, 1949, in Book 71, Page 144, and more particularly described as follows: A strip of land lying across the eastern part of the Southeast Quarter of Section 13, Township 3 North, Range 30 West of the 6th P.M., Red Willow County, Nebraska, described as follows: Beginning at the Southeast corner of said Section 13; thence Northerly on the East line of the Southeast Quarter of said Section 13 a distance of 2,686.2 feet to the Northeast corner of said Southeast Quarter; thence Westerly on the North line of said Southeast Quarter a distance of 39.8 feet; thence Southerly a distance of 1,374 feet to a point 43.9 feet Westerly from said East line; thence Westerly 90 degrees right a distance of 30.00 feet to a point 73.9 feet Westerly from said East line; thence Southerly a distance of 1,312.2 feet to a point on the South line of said Southeast Quarter; thence Easterly on said South line a distance of 77.8 feet to the point of beginning, containing 3.60 acres, more or less, which includes 2.04 acres, more or less, previously occupied as a Public Highway.

AND LESS AND EXCEPT

The real estate conveyed to the State of Nebraska by Warranty Deed dated July 29, 1993, recorded October 18, 1993, in Book 122, Page 92, and more particularly described as follows: A tract of land located in part of the Southeast Quarter of Section 13, Township 3 North, Range 30 West of the Sixth Principal Meridian, Red

Willow County, Nebraska, described as follows: Referring to the Southeast corner of said quarter section; thence Northerly a distance of 399.89 feet along the East line of said quarter section to the Point of Beginning; thence Northerly deflecting 00 degrees, 00 minutes, 00 seconds a distance of 1333.20 feet along said line to a point on the property line of the Grantor(s); thence Westerly deflecting 096 degrees, 00 minutes, 30 seconds left, a distance of 92.48 feet along said line; thence Southerly deflecting 083 degrees, 54 minutes, 42 seconds left, a distance of 364.38 feet; thence Southerly deflecting 005 degrees, 17 minutes, 08 seconds left, a distance of 200.57 feet to a point on the Westerly existing Highway 83 right of way line; thence Southerly deflecting 005 degrees, 21 minutes, 29 seconds right, a distance of 200.03 feet along said right of way line; thence Southerly deflecting 014 degrees, 56 minutes, 37 seconds right, a distance of 205.60 feet; thence Southerly deflecting 024 degrees, 58 minutes, 05 seconds left, a distance of 304.59 feet to a point on the Westerly existing Highway 83 right of way line; thence Southerly deflecting 010 degrees, 01 minutes, 27 seconds right, a distance of 68.65 feet along said right of way line to a point on the property line of the Grantor(s); thence Easterly deflecting 096 degrees, 02 minutes, 05 seconds left, a distance of 76.73 feet along said line to a point on the East line of said quarter section to the Point of Beginning containing 2.79 acres, more or less, which includes 1.99 acres, more or less previously occupied as Public Highway.

AND LESS AND EXCEPT

The real estate conveyed to the State of Nebraska by Warranty Deed dated July 29, 1993, recorded October 18, 1993, in Book 122, Page 92, and more particularly described as follows: A tract of land located in part of the Southeast Quarter of Section 13, Township 3 North, Range 30 West of the Sixth Principal Meridian, Red Willow County, Nebraska, described as follows: Beginning at the Northeast corner of said quarter section; thence Southerly a distance of 55.28 feet along the East line of said quarter section to a point on the property line of the Grantor(s); thence Westerly deflecting 084 degrees, 07 minutes, 46 seconds right, a distance of 85.59 feet along said line; thence Northerly deflecting 095 degrees, 59 minutes, 02 seconds right, a distance of 55.29 feet to a point on the North line of said quarter section; thence Easterly deflecting 084 degrees, 00 minutes, 58 seconds right, a distance of 85.48 feet along said line to the Northeast corner of said quarter section to the POINT OF BEGINNING containing 0.11 acres, more or less, which includes 0.05 acres, more or less previously occupied as Public Highway.

AND LESS AND EXCEPT

The real estate conveyed to the State of Nebraska by Warranty Deed dated July 29, 1993, recorded October 18, 1993, in Book 122, Page 94, and more particularly described as follows: A tract of land located in part of the Southeast Quarter of Section 13, Township 3 North, Range 30 West of the Sixth Principal Meridian, Red Willow County, Nebraska, described as follows: Referring to the Northeast corner of said quarter section; thence Southerly a distance of 55.28 feet along the East line

of said quarter section to the POINT OF BEGINNING; thence Southerly deflecting 000 degrees, 00 minutes, 00 seconds a distance of 929.60 feet along said line to a point on the property line of the Grantor(s); thence Westerly deflecting 083 degrees, 59 minutes, 30 seconds right, a distance of 92.48 feet along said line; thence Northerly deflecting 096 degrees, 25 minutes, 45 seconds right, a distance of 930.55 feet to a point on the property line of the Grantor(s); thence Easterly deflecting 083 degrees, 42 minutes, 31 seconds right, a distance of 85.59 feet along said line to a point on the East line of said quarter section to the POINT OF BEGINNING containing 1.89 acres, more or less, which includes 1.41 acres, more or less previously occupied as Public Highway.

AND LESS AND EXCEPT

The real estate conveyed to the State of Nebraska by Warranty Deed dated July 29, 1993, recorded October 18, 1993, in Book 122, Page 96, and more particularly described as follows: A tract of land located in the Northeast Quarter of Section 13, Township 3 North, Range 30 West of the Sixth Principal Meridian, Red Willow County, Nebraska, more particularly described as follows: Beginning at the Southeast corner of said Northeast Quarter of Section 13; thence Westerly a distance of 70.85 feet along the South line of said Northeast Quarter of Section 13; thence Northerly deflecting 95 degrees, 46 minutes, 46 seconds right, a distance of 804.96 feet; thence Northerly deflecting 02 degrees, 17 minutes, 26 seconds right, a distance of 200.16 feet; thence Northerly deflecting 02 degrees, 17 minutes, 26 seconds left, a distance of 339.83 feet; thence Easterly deflecting 84 degrees, 26 minutes, 49 seconds right, a distance of 66.15 feet to a point on the East line, of said Northeast Quarter of Section 13; thence Southerly deflecting 95 degrees, 41 minutes, 44 seconds right, a distance of 1344.06 feet along said East line of the Northeast Quarter of Section 13 to the Point of Beginning containing 2.15 acres, more or less, which includes 1.28 acres, more or less previously occupied as Public Highway.

AND LESS AND EXCEPT

The real estate conveyed to Gayle Ruggles and Barbara J. Ruggles, husband and wife, and Arthur Ruggles by Trustee's Deed dated and recorded December 31, 2012, as Instrument No. 2012-02434, and more particularly described as follows: Part of the Southeast Quarter of Section 13, Township 3 North, Range 30, West of the 6th P.M., Red Willow County, Nebraska, more particularly described as follows: Referring to the East Quarter corner of said Section 13, thence S 00°00'00" E (assumed and all bearings relative to) along the east section line a distance of 55.28 feet to a point; thence S 84°07'56" W a distance of 85.59 feet to the Northeast corner of an existing 30 acre tract, also on the west right-of-way line of HWY 83 which is the point of beginning, thence continuing S 84°07'56" W along the north line of said existing 30 acre tract a distance of 279.45 feet to a point; thence S 06°22'27" E a distance of 212.47 feet to a point; thence S 84°30'32" W a distance of 120.32 feet to a point; thence S 05°50'07" E a distance of 306.00 feet to a point;

thence N 84°50'04" E a distance of 340.59 feet to a point on west R.O.W. line of HWY 83; thence N 00°25'14" E along said R.O.W. line a distance of 525.00 feet to the Point of Beginning.

AND LESS AND EXCEPT

The real estate conveyed to CCJH, LLC by two Trustee's Deeds dated August 24, 2021, and recorded August 25, 2021, as Instrument Nos. 2021-01505 and 2021-01506, and more particularly described as follows: That portion of the Southeast ¼ of Section 13, Township 3 North, Range 30 West of the 6th P.M., Red Willow County, Nebraska, and more particularly described as follows: Commencing at the E1/4 corner of said Section 13; thence S00°28'41"W (assumed and all bearings used in this description are relative to) on the East line of said Southeast ¼, a distance of 581.01 feet; Thence S85°19'03"W a distance of 89.39 feet to the Point of Beginning being the Southeast corner of Tract 1 surveyed by Gerhard H. Dicenta L.S. No. 514, dated December 13, 2012 and on the West right-of-way of Highway 83; Thence continuing S85°19'03"W on the South line of said Tract 1 a distance of 340.59 feet to the Southwest corner of said Tract 1; Thence S18°30'46"W a distance of 51.01 feet; Thence S07°38'28"W a distance of 69.05 feet; Thence S86°43'51"W a distance of 260.83 feet; Thence S09°39'55"W a distance of 688.82 feet; Thence N85°14'19"E a distance of 318.79 feet; Thence N56°36'44"E a distance of 245.91 feet; Thence N34°27'18"E a distance of 63.10 feet; Thence N54°31'48"E a distance of 119.55 feet; Thence N25°12'39"E a distance of 183.57 feet to a point on said West right-of-way; Thence N00°58'26"E on said West right-of-way a distance of 389.31 feet to the Point of Beginning.

Containing 87.98 acres according to the Red Willow County Assessor's Office

Parcel 2: A portion of Bish Addition in the City of McCook, more particularly described as follows: Beginning at the Northeast corner of Block 2, of said Bish Addition; thence N89°42'00"W (all bearings used in this description are relative to the North line of said Block 2 assumed to be N89°42'00"W) on the North line of Block 2, a distance of 345.39 feet; thence N00°21'15"E, a distance of 70.03 feet to the Southwest corner of Block 16, Four Corners Addition to McCook; thence S89°42'00"E on the South line of Block 16, a distance of 345.72 feet to a point on the west right-of-way line of U.S. Highway 83, and East line of said Bish Addition; thence S00°37'51"W on said East line, a distance of 70.03 feet to the point of beginning

Containing 0.56 acres according to the Red Willow County Assessor's Office

Parcel 3: Part of the NE¼ of Section 24, Township 3 North, Range 30 West of the 6th P.M., in Red Willow County, Nebraska, more particularly described as follows: Beginning at the North ¼ corner of said Section 24, thence N84°36'45"E (assumed and all bearings used in this description are relative to) on the North line of said NE¼, a distance of 721.98 feet to the Northeast corner of that parcel described in Instrument No. 2016-00601 of the records of said Red Willow County.

Thence on the West and South lines of said parcel for the following two (2) courses:

Thence $S00^{\circ}28'19''W$, a distance of 92.47 feet;

Thence $N84^{\circ}35'18''E$, a distance of 947.92 feet to a point on the West line of Block 16, Four Corners Addition as recorded in Book 94, Page 506 of said records;

Thence $S00^{\circ}33'32''W$ on the West line of said Block 16 and the extension, a distance of 732.44 feet to a point on the North line of Block 2, Bish Addition as recorded in Instrument No. 2017-01517 of said records; Thence on the Northerly, Westerly and Southerly lines of Blocks 1 and 2, of said Bish Addition for the following four (4) courses;

Thence $N89^{\circ}29'23''W$, a distance of 21.92 feet;

Thence on the arc of a curve to the left having a central angle of $89^{\circ}41'08''$, a radius of 100.00 feet and an arc length of 156.53 feet;

Thence $S00^{\circ}49'30''W$ on the forward tangent to the last mentioned curve, a distance of 758.05 feet;

Thence $S89^{\circ}28'16''E$, a distance of 125.01 feet;

Thence $S00^{\circ}33'43''W$ across a perpetual easement and on the West line of a tract described in Book 105, Page 337 of said records, a distance of 310.02 feet to a point on the North line of Block 1 of A.M. Bishop Addition recorded in Instrument No. 2012-00202 of said records; Thence on the North, West and South lines of said Block 1 for the following three (3) courses;

Thence $N89^{\circ}26'21''W$, a distance of 32.16 feet;

Thence $S01^{\circ}07'53''W$, a distance of 227.63 feet;

Thence $S88^{\circ}54'56''E$, a distance of 399.39 feet;

Thence $S03^{\circ}26'53''W$, a distance of 60.05 feet to a point on the North line of Block 17 of said Four Corners Addition; Thence $N88^{\circ}54'56''W$ on the North line of said Block 17 and the extension, a distance of 396.90 feet; Thence $S01^{\circ}08'00''W$ on the West line of a tract described in Instrument No. 2009-0499 in said records, a distance of 420.29 feet to a point on the North Right-of-Way of Drive 716; Thence $S83^{\circ}35'47''W$ on said Right-of-Way, a distance of 60.56 feet to a point being the Southeast corner of Block 2 of said A.M. Bishop Addition; Thence on the East, North and West lines of said Block 2 for the following three (3) courses:

Thence N01°08'00"E, a distance of 419.97 feet;

Thence S83°23'41"W, a distance of 525.03 feet;

Thence S01°07'50"W, a distance of 419.95 feet to a point on the North Right-of-Way line of said Drive 716 and the Southeast corner of Block 3, of said A.M. Bishop Addition;

Thence S83°23'53"W on said North Right-of-Way, a distance of 605.60 feet to the Southeast corner of Lashley-Tucker Subdivision as recorded in Instrument No. 2019-00051 of said records; Thence on the East, North and West lines of said Lashley-Tucker Subdivision for the following five (5) courses;

Thence N01°06'40"E, a distance of 943.03 feet;

Thence S83°25'09"W, a distance 560.56 feet;

Thence S01°05'41"W, a distance of 462.91 feet;

Thence S06°35'54"E, a distance of 307.14 feet;

Thence S83°42'28"W, a distance of 153.49 feet to a point on the West line of said NE¼;

Thence N05°32'58"E on said West line, a distance of 2597.74 feet to the N¼ corner of said Section 24 and the Point of Beginning.

Parcel #000339000 containing 78.23 acres according to the Red Willow County Assessor's Office

Parcel #000690200 containing 3.41 acres according to the Red Willow County Assessor's Office

Parcel #000455100 containing 1.30 acres according to the Red Willow County Assessor's Office

Parcel #000455002 containing 5.20 acres according to the Red Willow County Assessor's Office

Parcel #000905001 containing 0.69 acres according to the Red Willow County Assessor's Office

A total of 88.83 acres according to the Red Willow County Assessor's Office

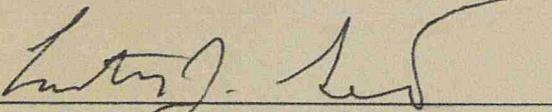
Parcel #000905001 containing 0.69 acres according to the Red Willow County Assessor's Office

A total of 88.83 acres according to the Red Willow County Assessor's Office

(approximately 178 acres), hereby acknowledges and understands and agrees that its signature below authorizes McCook Solar, LLC, or its authorized representatives, to submit by any means to the City of McCook, Nebraska, any necessary filing or document to apply for, pursue, obtain and perfect a Special Exception for a Land Use Action Request using solar energy.

Date: May 31, 2023.

CCJH, LLC,
a Nebraska limited liability company

By: 
Curtis J. Swanhorst, President

Date: 5-31-23

**AUTHORIZATION TO INCLUDE CERTAIN PROPERTY IN AN APPLICATION FOR
A LAND USE ACTION REQUEST FOR A SOLAR FACILITY**

The undersigned owner of the following real estate located in Red Willow County,
Nebraska:

Township 3 North, Range 30 West, of the 6th Meridian, Red Willow, Nebraska
Section 13: SW¼

LESS AND EXCEPT

A tract of land located in the SW¼ of Section 13, Township 3 North, Range 30 West of the 6th P.M., Red Willow County, Nebraska, more particularly described as follows: Commencing at the SW corner of said SW¼, thence Easterly on the south line of said SW¼ 89.3 feet to the Point of Beginning, said point being the East line of Bureau of Reclamation Right-of-Way, thence continuing on said South line 2030.5 feet to the SE corner of said SW¼, thence Northerly on the East line of said SW¼ 280.01 feet, thence Westerly, parallel to the south line of said SW¼ 2032.6 feet to the East Bureau of Reclamation R.O.W., thence Southerly along Bureau R.O.W. 280.0 feet to the Point of Beginning.

AND LESS AND EXCEPT

Tracts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of Malord Field Subdivision, being a part of the SW¼ of Section 13, Township 3 North, Range 30 West of the 6th P.M., Red Willow County, Nebraska, more particularly described as follows: Considering the West Line of the SW¼ of said Section 13 as bearing N 00°00'00" E and with all bearings contained herein relative thereto: Commencing at the S.W. Corner of said Section 13; thence easterly along the South Line of the said SW¼ N 84°52'00" E 89.30 feet to a point on the East right-of-way line of the Bureau of Reclamation Canal; thence leaving the said South Line of the SW¼ and continuing northerly along the said East right-of-way line N 00°00'00" E 200.00 feet to a point, said point being the True Point of Beginning; thence continuing northerly along said right-of-way line extended north N 00°00'00" E 1335.90 feet to a point; thence easterly N 90°00'00" E 200.00 feet to a point; thence northerly N 00°00'00" E 22.89 feet to a point; thence easterly N 90°00'00" E 224.00 feet to a point; thence southerly S 00°00'00" W 1320.70 feet to a point; thence southwesterly S 84°52'00" W 425.70 feet to a point, said point being the True Point of Beginning. Containing 12.935 acres, more or less.

Approximately 107.28 acres

(approximately 108 acres), hereby acknowledges and understands and agrees that its signature below authorizes McCook Solar, LLC, or its authorized representatives, to submit by any means

to the City of McCook, Nebraska, any necessary filing or document to apply for, pursue, obtain and perfect a Special Exception for a Land Use Action Request using solar energy.

Date: May 30, 2023.

JOHN E. PALIC REVOCABLE TRUST,
PURSUANT TO A WRITTEN TRUST
AGREEMENT DATED MAY 23, 2014

By: John E. Palic Trustee
John E. Palic, Trustee

Date: 5/30/23

MELINDA R. PALIC REVOCABLE TRUST,
PURSUANT TO A WRITTEN TRUST
AGREEMENT DATED MAY 23, 2014

By: Melinda R. Palic
Melinda R. Palic, Trustee

Date: 5/30/23

Attachment 5

Property Tax Benefits from Solar Energy Facilities in
Nebraska

David C. Levy

1700 Farnam Street
Suite 1500
Omaha, NE 68102-2068
Tel: 402.344.0500
Fax: 402.344.0588
Direct: 402.636.8310
dlevy@bairdholm.com
www.bairdholm.com
Also admitted in California, Iowa

Property Tax Benefits from Solar Energy Facilities in Nebraska

In Nebraska, renewable energy facilities pay two forms of property tax:

- (1) Tax on the facility's "nameplate" or energy-producing capacity at a rate of \$3,518 per alternating current megawatt ("MWac") (flat excise tax, set by statute).
- (2) Tax on real property improvements (including foundations, roads, operation and maintenance buildings, leasehold values). Because the tax on real property improvements depends on local valuation and levy rate, it will vary by improvement type, year and location.

To estimate property tax revenue, a good rule of thumb is that a solar energy facility will generate approximately \$4,000 annually in new property tax revenue per MW of nameplate capacity. To demonstrate, we estimate below the annual property tax revenue for a hypothetical solar energy facility with up to a 56 MWac nameplate capacity.

- Nameplate Capacity Tax = $\$3,518 \times 56 \text{ MW} = \$197,008$ per year.
- Real Property Tax = approximately $\$482 \times 56 \text{ MW} =$ approximately \$26,992 per year.
- Total Property Tax = \$197,008 nameplate capacity tax + approximately \$26,992 real property tax = approximately \$224,000 per year.

Property tax allocation to schools and other local taxing jurisdictions follows local levy. Local school district(s) in which project improvements exist receive the largest share of property tax revenue – typically around two-thirds. Below is a sample allocation of the revenue from the same hypothetical 56 MW solar energy facility based on the real tax levy for the CCJH, LLC property near McCook, Nebraska.

If a Nebraska utility purchases the project, the utility is exempt from the Nameplate Capacity Tax and property tax per section 77-6203 of the Nebraska Revised Statutes.

Taxing Entity	Levy Rate	Annual Tax Received (approx.)
Red Willow County	0.307765	\$44,428
School District #17	1.075944	\$155,323
Mid-Plains Community College... ..	0.078170	\$11,284
Educational Service Unit #15	0.014995	\$2,165
High Plains Historical Society	0.001693	\$245
Natural Resource District.....	0.035110	\$5,069
Western Fire District.....	0.038000	\$5,489
APPROXIMATE TOTAL	1.573351.....	\$224,000

Relevant Statutes

77-6202(2) Nameplate capacity means the capacity of a renewable energy generation facility to generate electricity as measured in megawatts, including fractions of a megawatt. Nameplate capacity shall be determined based on the facility's alternating current capacity. *(Tax is on nameplate of facility, not generation.)*

77-6203(1) The owner of a renewable energy generation facility annually shall pay a nameplate capacity tax equal to the total nameplate capacity of the commissioned renewable energy generation facility multiplied by a tax rate of three thousand five hundred eighteen dollars per megawatt. *(Tax is on direct current nameplate of facility, not generation.)*

(4) The presence of one or more renewable energy generation facilities or supporting infrastructure shall not be a factor in the assessment, determination of actual value, or classification under section 77-201 of the real property underlying or adjacent to such facilities or infrastructure. *(No impact from the facility on underlying or surrounding property taxes.)*

(5)(a) The Department of Revenue shall collect the tax due under this section.

(6)(b) The owner of a renewable energy generation facility is liable for the taxes under this section with respect to the facility, whether or not the owner of the facility is the owner of the land on which the facility is situated. *(Owner of the facility pays the facility property taxes.)*

77-6204(1) The county treasurer shall distribute all revenue received from the Department of Revenue pursuant to section 77-6203 to local taxing entities which, but for such personal property tax exemption, would have received distribution of personal property tax revenue from depreciable personal property used directly in the generation of electricity using wind, solar, biomass, or landfill gas as the fuel source. *(County Treasurer distributes the Nameplate Capacity Tax to the taxing entities in the same proportion as real property taxes.)*

(4) The Department of Revenue shall not retain any revenue collected pursuant to sections 77-6201 to 77-6204. *(Department of Revenue conveys Nameplate Capacity Tax revenue to the County Treasurer without reduction or discount.)*