

AN ORDINANCE AMENDING ORDINANCE NO 02 OF 2016 KNOWN AS THE
SUBDIVISION AND LAND DEVELOPMENT ORDINANCE OF MCKEAN COUNTY, TO
PROVIDE FOR THE REGULATION OF SOLAR, WIND, DATA CENTER, AND OTHER
SIMILAR COMMERCIAL/ INDUSTRIAL FACILITIES.

The following sections of the SALDO are amended as indicated below and the remaining language of the SALDO shall remain unchanged. Deletions are indicated by words being struck through and additions are indicated by words being underlined:

Chapter 2 DEFINITIONS:

Section 2-2

Land Development- Any of the following activities:

1. The improvement of (1) or two (2) or more contiguous lots, tracts or parcels of land for any purpose involving:
 - i. A group of two (2) or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure. This section expressly includes wind, solar, and data center facilities and other similar commercial/ industrial facilities; or...

Chapter 5 REGULATIONS GOVERNING LAND DEVELOPMENTS:

Section 5-1

1. A Land Development is defined as A.) the improvement of one (1) lot or two (2) or more contiguous lots, tracts, or parcels of land for any purpose involving a group of two (2) or more residential or non-residential buildings, whether proposed initially or cumulatively, or a single non-residential building on a lot or lots regardless of the number or occupants or tenure. This section expressly includes wind, solar, and data center facilities and other similar commercial/ industrial facilities; or...

Section 5-2

Non-Residential Land Developments are those Land Developments where the principle proposed use or uses are non-residential, including additions to existing buildings where the newly added square footage is at least half of the existing floor space. Such non-residential uses

include but are not limited to wind, solar, and data center facilities and other commercial industrial facilities such as shopping centers...

Section 5-4

The applicant shall apply for approval of a proposed Land Development in accordance with the following procedure:

1. Meet and Consult with the Planning Commission Staff (Optional).
2. Submit a Preliminary Plan with all required documents outlined in Section 3-2.
3. ~~Submit a Final Plan with any changes, if any*~~
4. For Non-Residential Land Developments, the Preliminary Plan Shall also include the following:
 - a. A Tree Removal Plan in compliance with Section 7-7.1.
 - b. Fire Protection Plan in compliance with Section 7-7.2.
 - c. A Noise Mitigation Plan in compliance with Section 7-7.4.
 - d. A Liability Insurance Plan or Declaration in compliance with Section 7-7.5.
 - e. A Decommissioning Plan in compliance with Section 8-11.
 - f. An Orphan Well Plan in compliance with Section 8-12.
 - g. Proof of an escrow account in compliance with Section 8-14.
5. Submit a Final Plan with changes, if any.*

Chapter 7 CONSTRUCTION REQUIREMENTS

Section 7-7 Existing Natural Conditions

~~In wooded areas or where other natural conditions exist, in such a manner that their presence adds to the desirability of a subdivision or land development, the Planning Commission may require that the developer preserve as much of the original trees and natural conditions as is economically feasible and require that a minimum of grading be done other than the grading and excavating which is required for construction of improvements in accordance with the improvement standards included herein.~~

On any Non-residential Subdivision or Non-Residential Land Development involving more than 10 acres, developers shall comply with the following:

1. Removal of Trees:
 - A. Disturbance of woodlands and hedgerows.
 - i. No more than 50% of a wooded area may be cleared from the date of this Ordinance. Example: If a developer purchases a 1,000 acre parcel that is entirely

wooded, no more than 500 acres may be cleared of trees. Example: If a developer purchases a 1,000 acre parcel of which only 750 acres are wooded, then the developer may only clear 93.75 acres of the wooded area.

- ii. If the developer can satisfy the Engineer that the wooded area contains invasive species, the acreage or area containing such invasive species may be netted out of this percentage when reasonably possible.
- iii. Woodlands and other natural vegetation that remain undisturbed shall interconnect with woodlands or wooded areas of adjacent properties, where they exist, to preserve continuous woodland corridors and allow for the normal movement, dispersion, and migration of wildlife. The applicant shall account for the impacts, in terms of functions and values to wildlife, of separating, dividing, or encroaching on wildlife travel corridors or extensive habitat areas.

B. For areas to be cleared of trees, prior to any construction of any Land Development, the developer shall stake, on the lot containing the proposed development, the location of any building foundation, roadway, basin, driveway and any utility easements to be constructed and cleared in the course of said construction. Following the placement of such stakes, the developer shall conduct an inventory, in writing, of trees greater than or equal to six inches in caliper located on the lot, and no less than 10 feet from the areas staked for construction (hereinafter called the "protection area"). The written inventory on the protection area shall be promptly filed with the Planning Commission prior to the issuance of any approvals or permits. The County may perform an on-site inspection to confirm the accuracy of any inventory. No permits or approvals shall be issued until an accurate written inventory is completed, as determined by the County.

C. Following the construction, at a time determined by the County, a post-construction inventory of the protection area may be conducted. For each tree materially damaged (as determined by the County in its sole discretion) or removed within the protection area, the developer shall plant and replace trees on the lot as follows:

<u>Caliper of Tree Damaged or Removed (inches)</u>	<u>Minimum Number and Minimum Caliper of Tree to be Replanted as Replacement Tree (inches)</u>
<u>6 to 12</u>	<u>1 - 5 to 5 1/2, or 3 - 3 1/2</u>
<u>12 to 24</u>	<u>1 - 6 to 6 1/2, or 4 - 3 1/2</u>
<u>Greater than 24</u>	<u>2 - 6 to 6 1/2, or 5 - 3 1/2</u>

The developer shall replace any trees damaged during construction with replacement trees of the same type.

D. The provisions of this section shall not apply to persons owning or working in orchards or nurseries, or to any person who owns and occupies a premises whereon a tree to be removed is growing, nor to members of his immediate family, servants and employees, when such removal is not as a result of a subdivision or land development, nor do they apply to entities involved in

logging or the sale of wood products as their primary occupation on land that they own primarily for that purpose.

2. Fire Protection

- i. The Developer shall, together with the initial Land Development Proposal, submit a plan for fire protection adequate to protect woodlands on the parcel or parcels to be developed and on adjacent parcels. Such plan shall include, but not be limited to:

- a. Capacity of Fire Protection Services

- i. An assessment shall be conducted to determine the impact of the land use change on fire protection services. The assessment shall be conducted by a person with qualifications acceptable to the COUNTY.
- ii. The assessment shall be conducted at the expense of the developer.
- iii. The assessment shall address the following:

Dispatching. Are the current system and staff able to handle the increased call volume and/or unique firefighting challenges likely to be generated by the buildout resulting from the land use change?

Fire station locations. In order to maintain an acceptable level of fire department and emergency response times within the response area, are current fire stations distributed and designed to service changing demands resulting from the land use changes and development?

Fire service resources. Are there adequate fire apparatus and staffing to meet the increased service demands likely to be generated by the buildout?

Special services. Will the development introduce a need for special services not currently within the capability of the fire department, especially forest firefighting and/ or low water supply operations?

Mitigation. Where the assessment determines that the existing fire department cannot maintain its current level of service delivery while also providing services to the proposed development, the

relevant fire departments and the developer shall jointly determine how to mitigate the impact on the delivery of fire services or increase the capability of the fire department and how those services are to be provided.

3. County Assessment

- A. In cases in which the County determines, upon review of the fire protection plan submitted by the developer, that existing improved property is, or a planned property improvement will be located in an area where there is an elevated risk from wild fires, provided the other requirements for approval of the application are met, the application shall be approved conditionally. One condition of the approval shall be that the County shall perform, or cause to be performed, a wildfire hazard assessment of each structure ignition zone in the development to determine relative risk, the extent of hazard, and applicable mitigation measures necessary.
- B. The assessment shall, at a minimum, include the following:
1. Identification and documentation of the fire hazards in the ignition zone(s) for each structure or piece of equipment within the development.
 2. Identification of water sources available for firefighting and, in the absence of an adequate municipal water source, an evaluation of whether the developer's plan for firefighting includes provision for necessary water resources for rural/woodland fire operations.
 3. Determination of mitigation measures for vegetation, other combustibles, and the structure or equipment, including the periodic maintenance associated with such measures.
 4. Establishment of priorities relative to mitigating the risks from fire.
 5. Evaluation of the site for conflagration hazards associated with the property to provide information for fire operations strategies should the site or surrounding properties become involved with fire.
 6. The fire hazard assessment shall be the basis for recommended mitigation measures relative to the vegetation, other combustibles, and structures on the site.
 7. No final approval shall issue until such assessment is complete and until such mitigations, if any, are met to the satisfaction of the County.
- C. As a minimum, the assessment shall cover elements and conditions indicated below:

Overview of the Surrounding Environment.

1. The assessment shall document the conditions of the surrounding environment, as they will place the structure in the most risk from ignition by a fire.
2. The assessment shall document the location of any structure or equipment in relation to predominant topographical features, such as flat open areas, ridges, saddles, steep slopes, natural chimneys like steep narrow draws, or small culverts, that will increase the ignition potential of the structure.
3. The assessment shall document local weather conditions, including wind, relative humidity, temperature, and fine fuel moisture content.
4. The assessment shall document any neighboring properties that could impact the ignition zone of the property being assessed.

From Chimney to Eaves.

1. The assessment shall document the conditions of construction and in the most risk of ignition of a fire.
2. The assessment shall document the type and construction of roofing materials.
3. The assessment shall document the condition of roofing materials and assemblies.
4. The assessment shall document all skylights in roof assemblies.
5. The assessment shall document the potential of roof gutters and areas where exterior walls meet roof or deck surfaces to collect litter on surfaces or in crevices.
6. The assessment shall document the construction materials of gutters, downspouts, and connectors.
7. The assessment shall document the materials and construction used in eaves of roof overhangs.

From Top of Exterior Wall to Foundation.

1. The assessment shall document the conditions of in the most risk of ignition of a fire.
2. The assessment shall document the materials and construction used in exterior walls and exterior siding.
3. The assessment shall document the materials used for gutter downspouts and connectors on exterior walls.
4. The assessment shall document the materials used in windows and other openings in vertical surfaces.
5. The assessment shall document the location, size, and screening of ventilation openings.
6. The assessment shall document all attached accessory structures as part of the primary structure.

7. The assessment shall document areas next to or under a structure where combustible materials that present a source of flame exposure to the structure might collect.

From Foundation to the Immediate Landscaped Area.

1. The assessment shall document all vegetative fuels and other combustible materials adjacent to and within 30 ft (9 m) of a structure for their potential to contribute to the intensity and spread of fire.
2. The assessment shall document the presence and location of all heat and flame sources within 30 ft (9 m) of any structure.
3. The assessment shall document all projections attached to a structure.
4. The assessment shall document detached structures within 30 ft (9 m) of any primary structure that might be ignited by flames, radiant heat, or firebrands from fires.
5. The assessment shall document vehicle parking areas within 30 ft (9 m) of any surface of any structure.

From the Immediate Landscaped Area to the Extent of the Structure Ignition Zone.

1. The assessment shall document vegetation within the area between the outer edge of the immediate landscaped area and the extent of any ignition zone as potential fuel that can convey fire to or from any structure.
2. The assessment shall document the species and location of trees and the separation of tree crowns within the area between the outer edge of the immediate landscaped area and the extent of any ignition zone.
3. The assessment shall document the presence and location of all heat and flame sources within the area between the outer edge of the immediate landscaped area and the extent of any ignition zone.
4. The assessment shall document detached structures within the area between the outer edge of the immediate landscaped area and the extent of any ignition zone that might be ignited by flames, radiant heat, or firebrands from fires.
5. The assessment shall document vehicle parking areas within the area between the outer edges of the immediate landscaped area and the extent of any ignition zone.
6. The assessment shall document all projections attached to the primary structure that extend beyond the immediate landscaped area.
7. The assessment shall document all other factors that can affect the risk of ignition or the spread of fire on improved property, including the risk of structure fires spreading to vegetation.

D. County Mitigation Plan

From the information gathered in each such assessment, the County shall require or cause to be developed a fire hazard mitigation plan and schedule to address the fire hazards identified in the assessment.

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The County shall work with applicable agencies and organizations to resolve any conflicts between recommended fire hazard mitigation measures and mitigation measures or objectives of other hazards and/or with the mitigation plan submitted by the developer.

Acceptance of the mitigation plan shall be a condition for final approval for the developer.

5. Noise Mitigation

If another Section of the SALDO requires a more stringent standard in a particular case, that section of the SALDO shall control with regard to this section.

Each developer of a Non-Residential Land Development shall limit noise generated by such developments as follows:

A. Pre-construction Acoustic Assessment

1. A qualified acoustic professional approved by the County shall perform an assessment and establish an ambient baseline for the subject property (day/night average) excluding precipitation and high winds.
2. This assessment shall be performed using commercially and professionally accepted industry standards.

B. Operational Sound Limits

1. Developers shall then submit a plan to be reviewed by the County to limit sounds from the subject property to a sustained 3 dB above the ambient baseline.
2. Operational Sound Limits shall be subject to periodic testing after final approval.

5. Liability Insurance.

Each Developer of a Non-Residential Land Development must submit a plan for operators to maintain adequate liability insurance, which shall at a minimum address the following points:

1. Minimum coverage limits shall be \$2 million per occurrence and \$5 million in the aggregate, but developers may seek a waiver to have other amounts identified for approval by submitting evidence of average coverage limits relevant to their industry. The County reserves the right to require higher limits in the conditional approval process for uses with a demonstrably higher risk.
2. Carrier Rating must be A- by A.M. best or equivalent/ better.
3. Pollution Liability shall be expressly included.
4. Coverage shall remain in place until decommissioning is completed, if applicable.
5. Policies must have effective dates no later than final approval date.

CHAPTER 8 Improvements, Performance Guarantees, and Decommissioning

8-11 Decommissioning and Restoration of Non-Residential, commercial or industrial Land Development sites

A. Financial Security

Prior to construction, developers of Non-Residential, commercial or industrial Land Development sites, must post financial security in the form of cash escrow equal to at least 110% of an independent, third party engineer's Decommissioning and Restoration Cost Estimate approved by the County and its Engineer. Salvage value shall not be used to reduce the posted security before decommissioning. The estimate shall be reviewed and updated at least every three (3) years and the security adjusted accordingly. Corporate guarantees and surety bonds are not acceptable.

- B. Upon abandonment or end of life, the developer must remove all equipment from the site including buildings or structures that would otherwise be abandoned, and including but not limited to: solar panels, racking, equipment foundations, battery energy storage system containers, inverters/ transformers, equipment pads, internal roads, fencing, cabling, and poles; must de-compact soils and regrade to pre-construction contours, restore drainage patterns, replace topsoils, reseed with native species and restore wetlands or streams where necessary. All components shall be removed from the site and recycled if possible. On site disposal is prohibited.

- C. Any of the foregoing provisions can be waived by agreement of the County Engineer with formal approval by the County Commissioners where the decommissioning

requirements stated are not appropriate to the industry or use developed on the property or because another, similar method has been agreed to between the parties.

- D. A non-residential commercial or industrial facility will be presumed to be abandoned where it has ceased operations or production for twelve (12) consecutive months, or where its owner fails to respond to County communications for sixty (60) days. In such event, the County may draw on the decommissioning security deposited in order to decommission the site.
- E. Where a developer is required by another local government to post decommissioning security, the developer may seek approval from the County Engineer to waive some or all of the security required by this Section, provided however, that such waiver will not be approved by the County Commissioners unless the developer and the other local government execute an agreement that the security deposited by the developer will be transferred to and inure to the benefit of the County in the event that the underlying property is transferred to the County Repository after the upset and judicial sale procedures (i.e. if the property is abandoned and ends up with no owner without having been decommissioned).

8-12 Identification and Mitigation of “Orphan” Wells.

- A. An Orphan Well is any inactive or unplugged oil or gas well that has no identifiable owner responsible for maintenance or safety.
- B. Developers of Non-Residential Land Development parcels or tracts over 10 acres must propose an Orphan Well Plan as part of their initial application, that addresses the following:
 - 1. A plan to use the DEP mapping tool and any available surveys to identify the location of wells on the subject property.
 - 2. A plan to walk the site to confirm the surveys and identify any previously unreported wells.
 - 3. A plan to identify and report previously unreported wells.
 - 4. A plan to leave reasonable space around and access to well sites.
 - 5. A plan to provide access for necessary heavy equipment.
 - 6. A plan to identify and plug wells in accordance with DEP regulations.
 - 7. A plan for stray gas and aquifer protection.
 - 8. A plan for posting adequate bond or security for decommissioning, plugging, or mitigating any well found to require such steps.

9. A plan for liability protection and indemnification of the County and future owners from future liability.
- C. Developers providing reasonable plans addressing each of the issues above will not have their applications denied for failure to meet specific standards. The County reserves the right to adopt specific standards in the future, which will be applicable to future development. The County reserves the right to deny applications that fail to address the issues above or that are manifestly unreasonable in their proposals.

8-13 RESERVED

8-14 Escrow Account for Actual Costs Incurred by County in the Application and Review Process

- A. Each Developer of a non-residential Subdivision or Land Development for parcels over 10 acres shall, prior to determining an Application is Complete, comply with the following:
 1. Deposit into an escrow account a minimum amount of \$10,000.00. This amount shall be replenished within 10 days each time it falls below \$3,000.00 and be maintained such until final approval is achieved.
 2. The County will be credited/ reimbursed from this account for actual reasonable costs incurred for its review (other than legal fees) of the Fire Protection, Orphan Well, Tree Clearing, and Fire Protection plans required during the approval process. Such costs in the aggregate shall not exceed \$100,000 in any event.
 3. The County shall submit costs to the Developer in advance of incurring them, and the Developer shall have 10 days to object. In the event of an objection, the Developer will be given an opportunity to present its objection at the next Planning Commission meeting if the dispute cannot be resolved sooner. In the event that no objection is lodged, the County may incur the expense and submit it to the account for reimbursement.
 4. Any monies left over in the account upon final approval will be returned to the developer.