EMERY COUNTY, UTAH

UTILITY-SCALE SOLAR ENERGY SYSTEMS ORDINANCE

DISCUSSION DRAFT — for Planning Commission and County Attorney review

Prepared: July 2026

This draft is a starting point for public hearing and legal review. It is not adopted law. Distances, percentages, and fee amounts are placeholders reflecting the drafter's policy input and should be confirmed against Emery County's General Plan, current zoning map, and Utah Code Title 17 (county land use, development, and management act) before adoption. Emery County retains local land-use authority over solar siting. Utah H.B. 16 (2026), Solar Power Plant Amendments, was enacted March 25, 2026 and took effect May 6, 2026; it does not preempt local setback, screening, or acreage standards, but it does impose state-level permitting, wildlife-consultation, and decommissioning requirements and provides that a local government may not unreasonably withhold approval of a compliant plan. This draft should be reviewed against H.B. 16 before adoption.

Section 1. Title, Purpose, and Authority

1.1 Title. This ordinance shall be known as the "Emery County Utility-Scale Solar Energy Systems Ordinance."

1.2 Purpose. The purpose of this ordinance is to establish clear, predictable, and enforceable standards for the siting, construction, operation, and decommissioning of Commercial and Utility-Scale Solar Energy Systems ("CSES") within unincorporated Emery County, in order to:

- Protect the health, safety, welfare, and property values of County residents, particularly those in or adjacent to residential and agricultural areas;
- Preserve the rural character, scenic viewsheds, dark night skies, and agricultural land base of Emery County;
- Ensure that project sponsors, not County taxpayers, bear the full cost of decommissioning and site restoration;
- Provide a fair, orderly, and predictable permitting process for responsible solar development that meets these standards.

1.3 Authority. This ordinance is adopted under the County's land use, zoning, and development authority pursuant to Utah Code Title 17, Chapter 27a, and other applicable state law. This ordinance is also intended to operate consistently with Utah H.B. 16 (2026 General Session), Solar Power Plant Amendments (codified at Utah Code §§ 54-17-1201 through 54-17-1206), which establishes state-level requirements for solar power plant permitting, wildlife-agency consultation, decommissioning plans, and financial assurance, and which provides that a local government may not unreasonably withhold approval of a compliant development plan or decommissioning plan. Where a provision of this ordinance is more protective than H.B. 16, the County intends for this ordinance to apply as a supplemental local standard, not a substitute for the state process.

1.4 Relationship to Other Ordinances. Where this ordinance conflicts with another provision of the Emery County Code, the more restrictive provision governs unless expressly stated otherwise.

Section 2. Definitions

- "Commercial/Utility-Scale Solar Energy System (CSES)" means a solar photovoltaic or concentrating solar power installation, together with associated equipment (inverters, transformers, collection lines, substations, battery energy storage, access roads, and fencing), designed to generate electricity for wholesale sale or transmission off-site, with a nameplate capacity of 2 megawatts (MW) AC or greater, or occupying 5 or more contiguous acres.
- "Non-Participating Landowner" means the owner of real property within the applicable setback distance who has not signed a lease, easement, or waiver agreement with the project applicant.
- "Participating Landowner" means a landowner who has voluntarily entered into a lease, easement, or written waiver with the project applicant.
- "Decommissioning" means the removal of all above- and below-grade CSES equipment (except as provided in §8) and restoration of the site to a condition capable of supporting its pre-project agricultural or natural use.
- "Project Boundary" means the outer perimeter of the parcel(s) leased, owned, or controlled by the applicant for the CSES, including access roads and collection infrastructure. All construction laydown yards, staging areas, and project offices, whether temporary or permanent, shall be located within the Project Boundary and shall comply with the setback standards of §5 to the same extent as CSES equipment.
- "Prime Farmland" has the meaning given by the USDA Natural Resources Conservation Service soil survey for Emery County.

Section 3. Applicability and Permit Required

3.1 No person or entity shall install, construct, expand, or operate a CSES within unincorporated Emery County without first obtaining a Conditional Use Permit (CUP) from the County Planning Commission, in addition to any state or federal approvals required.

3.2 This ordinance does not apply to residential rooftop, net-metered, or small agricultural solar installations under 2 MW AC serving on-site load, which remain governed by the County's general building and electrical permit process and by Utah's solar-access statutes.

3.3 Application Requirements. A complete CUP application shall include, at minimum:

1. A site plan showing the project boundary, all setbacks, access roads, fencing, and screening, and identifying all impacted non-participating landowners and any residences located within the applicable setback or notice area;
2. A decommissioning plan and third-party engineer's cost estimate per §8;
3. A glare/glint analysis for all receptors within 2 miles (residences, public roads, and the Emery County / Green River airstrips);
4. A stormwater and erosion control plan addressing flash-flood risk consistent with County floodplain standards;
5. A lighting plan demonstrating compliance with §6.4 (Dark Sky Standards);

6. A water-use plan demonstrating compliance with §6.6 (Water Use Restrictions);
7. Documentation of any participating-landowner waivers relied upon to reduce a setback under §5.2;
8. A road-use and haul-route agreement with the County Road Department, with a road-damage bond per §7.2;
9. Proof of general liability and decommissioning-related insurance coverage.
10. A current drone video of the project site depicting project scope and the full project boundary, together with maps showing the project boundary, adjacent parcels, and surrounding terrain.

3.4 Pre-Application County Briefing Required. Before any solar company or project applicant initiates communication, negotiation, or contact with any landowner regarding a potential CSES project within the County, the applicant shall first present the proposed project to the County Commission for review. No lease, easement, option, or waiver agreement solicited or executed prior to this required presentation shall be recognized by the County for purposes of this ordinance, including for purposes of the §5.2 waiver provision.

Section 4. Public Notice and Hearing

4.1 Notice shall also be published in a newspaper of general circulation in the County and posted on the County website.

4.2 The Planning Commission shall hold at least one public hearing and may hold additional hearings for projects exceeding 500 acres.

Section 5. Setback and Buffer Standards

5.1 Minimum setbacks are established as follows. Setbacks are measured from the nearest CSES equipment (panels, inverters, or fencing) to the receptor identified.

Adjacent Use / Receptor	Minimum Setback	Notes
Non-participating residential dwelling	1 mile (5,280 ft) from the dwelling structure	May be reduced only per §5.2 Waiver provision
Non-participating residential parcel line (vacant, platted residential)	2,640 ft (1/2 mile)	Applies where no dwelling yet exists but the parcel is zoned/platted residential
Participating landowner's own residence, with recorded waiver	300 ft minimum	Screening under §5.3 still mandatory
Public road right-of-way	150 ft	Measured from edge of ROW to nearest panel or equipment
Perennial stream, wash, or floodplain	100 ft, or per FEMA floodplain map, whichever is greater	Coordinate with County flood-control ordinance
Platted municipal boundary / city or town limit	1 mile (5,280 ft)	Not subject to the §5.2 waiver provision

5.2 Waiver Provision. The 1-mile residential dwelling setback in §5.1 may be reduced to no less than 300 feet where the affected homeowner executes a written, notarized waiver, recorded against the affected parcel, expressly acknowledging the reduced setback and its duration. A waiver is revocable only by mutual written agreement of the homeowner and the applicant and runs with the land only if the recorded instrument so states. The County shall retain a copy of all waivers in the permit file.

5.3 Mandatory Visual Barrier. Where any portion of a CSES is visible from a residential dwelling, platted residential lot, public road, or designated scenic byway, the applicant shall install and maintain a continuous, County-approved visual barrier (preferably vegetation) meeting all of the following:

- An approved visual barrier, which shall preferably consist of a double-staggered row of evergreen trees and/or shrubs, native or climate-adapted species suited to Emery County's arid climate, spaced to achieve visual opacity of at least 80% within 5 years of planting; a non-vegetative barrier (such as fencing, berming, or screening material) may be approved by the Planning Commission only where vegetation is demonstrated to be infeasible;
- Minimum installed height of 6 feet, with a mature height sufficient to screen the tallest CSES equipment (panels, inverters, or perimeter fencing) from the affected view;
- A maintenance and replacement guarantee for the life of the project, with dead or failing plantings replaced within one growing season;
- Irrigation sufficient to establish and sustain the screening in Emery County's climate, subject to §6.6 water-use restrictions.

5.4 Where topography, existing vegetation, or berming already achieves equivalent visual screening, the Planning Commission may approve an alternative screening plan achieving the same functional opacity.

5.5 Landowner and Dwelling Occupant Distinction. Where the record owner of a parcel is not the person who resides in a dwelling located on that parcel (for example, where the dwelling is occupied by a tenant, lessee, or family member who is not the record owner), a waiver or agreement executed by the landowner alone under §5.2 does not bind or waive the setback rights of the dwelling's occupant. In such cases, the applicant shall separately identify the occupant of record and obtain that occupant's written, notarized acknowledgment before any reduced setback under §5.2 applies to that dwelling. The County shall retain a copy of this acknowledgment, together with the underlying landowner waiver, in the permit file.

Section 6. Design, Operation, and Environmental Standards

6.1 Height Limit. No CSES structure, including single-axis tracking panels at maximum tilt, shall exceed 20 feet in height, except substations and transmission interconnection structures required by the interconnecting utility.

6.2 Fencing. Perimeter security fencing is required but shall be wildlife-permeable: a minimum 12-inch gap shall be maintained between the bottom of the fence and grade, or an equivalent wildlife-passage design approved by the Utah Division of Wildlife Resources, to allow passage of deer, pronghorn, and other native species. Notwithstanding §3.2 or any other provision of this ordinance, the wildlife-permeable fencing and mitigation requirements of this §6.2 shall apply to all solar energy installations sited within unincorporated Emery County, regardless of nameplate capacity, acreage, or otherwise-exempt status under this ordinance.

6.3 Noise. Operational noise (inverters, transformers, cooling equipment) shall not exceed 45 dB(A) at any non-participating property line, measured per a protocol approved by the County Engineer.

6.4 Dark Sky Standards. All exterior lighting shall be fully shielded, downward-directed, motion-activated, and limited to the minimum necessary for safety and security. Continuous dusk-to-dawn lighting is prohibited except at points of vehicular access, where lighting shall be the minimum required by the fire code.

6.5 Glare/Glint. The applicant shall demonstrate, through the glare analysis required in §3.3, that no hazardous glare will be produced toward any public roadway, airstrip approach, or residence. Anti-reflective panel coating or equivalent mitigation shall be required where the analysis identifies a hazard.

6.6 Water Use Restrictions. Panel cleaning shall use dry or waterless methods except where the applicant demonstrates no feasible alternative; in no case shall culinary water or agricultural water rights be used for CSES operation and maintenance without separate County and water-district approval.

6.7 Agricultural and Prime Farmland Protection. No more than 20% of a project's total acreage may consist of USDA-designated Prime Farmland that was in active agricultural production within the 5 years preceding application, unless the applicant demonstrates an agrivoltaic design (elevated racking, row spacing, and ground cover) that preserves continued grazing or crop use beneath and between panel rows.

6.8 Fire Protection. The applicant shall maintain a minimum 30-foot defensible-space clearance around all electrical equipment, comply with Emery County Fire District access and water-supply requirements, and submit an emergency response plan coordinated with the Fire District prior to operation. The applicant shall also supply fire retardant to the County, in a type and quantity determined by the Emery County Fire District, for the County's use in responding to any fire at or originating from the project site.

6.9 Stormwater and Erosion Control. Given Emery County's flash-flood-prone terrain, the applicant shall implement and maintain a stormwater management plan preventing any net increase in peak runoff or sediment discharge from the site, subject to County Engineer approval and periodic inspection.

6.10 Economic Impact Analysis. The applicant shall submit, as part of the CUP application, an analysis prepared by a qualified third party addressing the project's anticipated economic benefits and costs to the County, including projected local spending, projected property and other tax revenue to the County and other taxing entities, and anticipated local jobs to be created during construction and operation, including the extent to which those jobs are expected to be filled by Emery County residents.

Section 7. Project Scale, Spacing, and Roads

7.1 Countywide Acreage Cap. Total land committed to CSES projects in unincorporated Emery County shall not exceed a cumulative 4% of the County's total private land base at any time, to preserve agricultural and open-space character; provided, however, that additional CSES projects located on the East end of the County that have been approved by Green River City shall not count against this cap. The Planning Commission shall track cumulative acreage, tracking separately any acreage excepted under this section, and report annually to the County Commission.

7.2 Road Use and Damage Bond. Prior to construction, the applicant shall enter into a Road Use Agreement with the County Road Department identifying approved haul routes and shall post a separate road-damage bond, sized to the County Engineer's estimate of construction-related wear, to fund repair of any County roads damaged by project traffic.

Section 8. Decommissioning and Financial Assurance (Mandatory Prepayment)

8.1 Decommissioning Plan Required. Every CUP application shall include a decommissioning plan describing removal of all panels, racking, inverters, transformers, above-ground collection lines, fencing, and foundations to a depth of at least 36 inches, and restoration of the site's soil and drainage to a condition capable of supporting its pre-project agricultural or natural use. Below-grade cabling may remain in place only if removal would cause greater environmental disturbance than leaving it, as determined by the County Engineer.

8.2 Independent Cost Estimate. The decommissioning cost shall be estimated by a Utah-licensed professional engineer retained by the applicant, using gross (not salvage-offset) removal and restoration costs, and reviewed by a County-retained engineer at the applicant's expense.

8.3 Full Prepayment Before Construction. The applicant shall fully fund the decommissioning cost, before any construction begins, into one or a combination of the following mechanisms, at the County's election: (a) an irrevocable letter of credit, (b) a surety bond, or (c) a cash escrow account held by the County or a County-approved third-party trustee. Corporate guarantees or self-bonding by the applicant or its parent company are not acceptable forms of assurance.

8.4 Periodic Re-Evaluation. The decommissioning cost estimate shall be recalculated by a licensed engineer no less than every 5 years for the life of the project, and the financial assurance shall be increased ("topped up") within 90 days of any recalculation showing an increased cost, including for inflation, technology changes, and any project expansion.

8.5 County Draw Rights. If the applicant fails to complete decommissioning within 12 months of permanent cessation of operation (defined as 12 consecutive months of non-generation, other than for documented repairs or repowering with an approved amended CUP), the County may draw on the financial assurance and complete decommissioning directly, with any surplus returned to the applicant and any shortfall remaining the applicant's liability.

8.6 Site Restoration Warranty. The applicant shall warrant restored soil and drainage conditions for a period of 2 years following decommissioning.

8.7 Landfill Restriction. Panels, racking, equipment, construction debris, and any other materials removed during decommissioning, or generated during construction or operation of the CSES, shall not be disposed of in any Emery County landfill facility. The applicant shall identify, in the decommissioning plan required by §8.1, an approved off-County disposal or recycling destination for all such materials.

Section 9. Community Impact and Benefit Provisions

9.1 Host Community Fee. The applicant shall pay an annual host community fee of $100,000 per project, payable in addition to property taxes, for the County's use toward local infrastructure and recreation projects. This fee shall be adjusted for inflation every 5 years using the Consumer Price Index.

9.2 Local Hiring and Procurement. The applicant shall document good-faith efforts to use Emery County contractors, suppliers, and labor during construction and operation, to be included in the CUP application and annual compliance reports.

9.3 Annual Compliance Report. The permit holder shall submit an annual report to the Planning Department documenting compliance with screening maintenance, noise, lighting, water use, and financial assurance requirements.

9.4 Mountain Zone Prohibition. No CSES shall be sited, constructed, or operated within any County mountain zone, as designated on the County's zoning map and General Plan.

9.5 No Tax Incentives. Emery County shall not offer, grant, or provide any local property tax abatement, exemption, rebate, credit, or other tax incentive to any CSES project or applicant in connection with the siting, construction, or operation of a CSES under this ordinance.

Section 10. Enforcement and Penalties

10.1 Violation of any provision of this ordinance is a class B misdemeanor and/or a civil infraction, at the County's election, with each day of continuing violation constituting a separate offense.

10.2 In addition to criminal or civil penalties, the County may suspend or revoke a CUP for material non-compliance, following notice and an opportunity to cure of not less than 60 days, except where the violation presents an imminent safety hazard.

10.3 The County may seek injunctive relief, cost recovery, and attorney's fees for enforcement actions under this ordinance.

Section 11. Interconnection Agreement and Agency Consultation Required

11.1 Interconnection Agreement Required Before Application. Before submitting an application for a Conditional Use Permit under this ordinance, the applicant shall obtain an executed interconnection agreement with the utility (the "Power Company") responsible for the transmission or distribution system to which the CSES will connect, and shall submit proof of that executed agreement as part of the CUP application.

11.2 Purpose. Requiring an executed interconnection agreement before the CUP application is intended to:

- Ensure the technical and financial viability of the project before the County commits planning, staff, and public-hearing resources to its review;
- Confirm that adequate grid capacity exists to accept the project's output, reducing the risk that land is committed under this ordinance, including against the countywide acreage cap in §7.1, to a project that cannot ultimately deliver power;
- Reduce the risk that a permitted project is never built, or is built and cannot interconnect, leaving unused infrastructure, disturbed land, or an incomplete decommissioning scenario;
- Provide the County, the Planning Commission, and the public with a more accurate and reliable project scope, timeline, and capacity during CUP review and the public hearing process; and
- Avoid land being tied up in leases, options, or waivers for projects that cannot ultimately obtain interconnection.

11.3 State and Federal Agency Consultation Required Before Application. Before submitting an application for a Conditional Use Permit, the applicant shall consult with, and where applicable enter into an agreement with, all state and federal agencies with jurisdiction over the project or over the land, water, wildlife, or other resources the project affects, including but not limited to the Utah Division of Wildlife Resources, the Utah Division of Water Rights, the U.S. Fish and Wildlife Service, the Bureau of Land Management, and the U.S. Army Corps of Engineers, as applicable to the project. Documentation of this consultation, and of any resulting agreement, shall be submitted with the CUP application.

Section 12. County Policy on State and Federal Land Solar Development

12.1 Statement of Policy. Emery County strongly opposes and discourages the siting, leasing, or permitting of utility-scale solar energy development on land owned or administered by the Utah School and Institutional Trust Lands Administration (SITLA), the Bureau of Land Management, the U.S. Forest Service, or any other state or federal agency within Emery County's boundaries. The County finds that such development, even where sited on public land, imposes the same visual, water, wildlife, road, and community-character impacts on adjacent private landowners and residents as privately-sited projects, without the benefit of County zoning review, setback, screening, or decommissioning-assurance standards that apply to private land under this ordinance.

12.2 Acknowledgment of Limited County Authority. The County acknowledges that SITLA leasing decisions and federal land management decisions (including BLM Resource Management Plan amendments and rights-of-way grants) are not subject to County zoning jurisdiction under Utah Code Title 17. This Section 12 is a statement of County policy and formal position, not a zoning regulation, and does not purport to regulate land use on SITLA or federal land directly.

12.3 Formal Comment and Consultation. The County Commission and Planning Department shall, as a matter of policy:

- Submit formal written comment opposing utility-scale solar development in any SITLA lease notice, BLM Resource Management Plan revision, environmental review (NEPA), or rights-of-way application affecting land within Emery County;
- Request cooperating-agency or local-government-coordination status under NEPA and applicable SITLA public-input processes for any such proposal;
- Request that SITLA and federal agencies apply setback, screening, decommissioning-financial-assurance, and other standards no less protective than those in this ordinance to any solar project ultimately approved on public land within the County, notwithstanding the County's lack of direct zoning authority over that land;
- Decline to issue letters of local support for any SITLA or federal utility-scale solar lease or right-of-way application within the County, absent a future affirmative vote of the County Commission based on specific project circumstances.

12.4 Private Land Priority. Nothing in this Section shall be read to prohibit solar development on private land that complies with this ordinance. This Section addresses only development proposed on land owned or administered by SITLA or a state or federal agency.

12.5 Interconnection and Access on Private Land. Where a SITLA or federal-land solar project requires an access road, transmission line, or interconnection facility crossing private land or County right-of-way within Emery County, that crossing remains subject to the applicable provisions of this ordinance, including §7.2 (Road Use and Damage Bond) and §6 (Design, Operation, and Environmental Standards), regardless of the land status of the generating facility itself.

Section 13. Severability and Effective Date

13.1 If any provision of this ordinance is held invalid, the remaining provisions shall continue in full force and effect.

13.2 This ordinance shall take effect upon adoption by the Emery County Commission and publication as required by law.

Drafting Notes (remove before adoption)

The following items are flagged for County Attorney review and Commission discussion before this draft advances to a public hearing:

11. Confirm the 1-mile / waiver-to-300-ft structure in §5 against Utah case law on setback reasonableness; consider whether 1 mile should apply county-wide or be scaled to project size (e.g., larger MW capacity = larger setback).
12. The host community fee in §9.1 has been set at a flat $100,000/year per project — confirm with the County Attorney and Finance Department that a flat fee (rather than a per-acre or per-megawatt charge) is defensible and adequate across projects of varying size, and that it is consistent with any fee limitations under Utah H.B. 16 or other state law.
13. Confirm whether the 7% countywide acreage cap (§7.1), including the Green River City exception for East-County projects, and the 1-mile city/town limit setback (§5.1) are consistent with the County's General Plan and any existing utility-scale leases already in the pipeline. Note that the former §7.2 project-spacing rule (5-mile minimum spacing between CSES projects) has been removed from this draft; confirm the County intends to rely solely on the acreage cap and setback standards to manage project density. Also confirm the legal mechanism and criteria by which Green River City "approves" projects for purposes of the §7.1 exception, since Green River City has its own municipal boundary and land-use authority separate from the County's.
14. Coordinate §6.9 (stormwater) and §5.1 floodplain setback with the County's existing flood-control ordinance to avoid conflicting standards.
15. Verify the class of misdemeanor and civil infraction language in §10 against current Emery County Code enforcement provisions.
16. Consider whether battery energy storage systems (BESS) co-located with CSES need a dedicated fire-safety and thermal-runaway section beyond §6.8.
17. Review the entire ordinance against Utah H.B. 16 (2026), Solar Power Plant Amendments (Utah Code §§ 54-17-1201 to -1206), effective May 6, 2026, including its provision that a local government may not unreasonably withhold approval of a compliant development or decommissioning plan; confirm that the §7.1 acreage cap, §7.2 spacing rule, §3.4 pre-communication requirement, and §9.4 mountain-zone prohibition would not be found to constitute an unreasonable withholding of approval or an unlawful de facto ban under H.B. 16 or other state law.
18. The §3.4 requirement that applicants present projects to the County before contacting any landowner restricts private communication between landowners and third parties; have the County Attorney review this for enforceability and potential property-rights or free-speech challenges before adoption.
19. Lowering the CSES acreage threshold in §2 from 10 to 5 contiguous acres will bring smaller projects, potentially including some agricultural or community-scale solar, within the ordinance; confirm this is the intended scope relative to the 2 MW AC capacity threshold in the same definition.

20. Section 9.4 (mountain-zone prohibition) is a siting/zoning restriction placed within Section 9 (Community Impact and Benefit Provisions) per Commission direction; consider whether it belongs instead in Section 5 (Setback and Buffer Standards) or a new siting-restrictions section for clarity, and confirm "mountain zone" is a defined term on the County's zoning map.