

# Kingsbury Plantation

## MORATORIUM ORDINANCE ON COMMERCIAL SOLAR ARRAYS

**WHEREAS**, the Maine Legislature recently enacted several laws intended to encourage development of renewable energy projects in the State of Maine;

**WHEREAS**, as a result of these new laws, developers are proposing unprecedented numbers of commercial solar arrays throughout the state;

**WHEREAS**, the ordinances of the Kingsbury Plantation do not include any regulations related to commercial solar arrays, or site planning regulations generally; and

**WHEREAS**, the unregulated location and operation of commercial solar arrays within the Kingsbury Plantation raises legitimate and substantial concerns about environmental, health and safety impacts of such uses, as well as visual impacts and other considerations related to the appropriate siting of these arrays;

**WHEREAS**, the Plantation’s current ordinances are insufficient to prevent serious public harm that could be caused by the unregulated development of commercial solar arrays;

**WHEREAS**, a moratorium is necessary to allow the Plantation to analyze and plan properly for the increased development of commercial solar arrays; and

**WHEREAS**, the Board of Assessors, Planning Board and Code Enforcement Officer shall study the current Plantation ordinances to determine appropriate amendments to address commercial solar arrays; and

**WHEREAS**, it is anticipated that such a study, review, and development of recommended Ordinance, change will take at least one hundred and eighty (180) days from the date the Plantation enacts this Moratorium Ordinance;

**NOW, THEREFORE**, be it ordained by the Plantation meeting of Kingsbury Plantation, that the following Moratorium Ordinance on Commercial Solar Arrays be, and hereby is, enacted and, in operation or licensing of commercial solar arrays within the Plantation.

For the purposes of this Moratorium, “commercial solar array” is defined as a solar energy collection structure of any size that is primarily serves an offsite user such as the electric power grid or a use on a non-adjacent parcel.

This Moratorium Ordinance shall take effect once enacted by the Plantation meeting. The moratorium shall remain in effect for the one hundred and eighty (180) days from the effective of this Ordinance, unless extended, repealed, or modified by the Board of Assessors, for the express purpose of drafting an amendment or amendments to the current Plantation ordinances to protect the public from health and safety risks including, but not limited to, compatibility of commercial solar arrays with existing and permitted uses in residential, commercial and industrial zoning districts.

**BE IT FURTHER ORDAINED**, that this Moratorium Ordinance shall apply to commercial solar arrays that are proposed to be located within the Plantation on or after the effective date of this Ordinance; and

**BE IT FURTHER ORDAINED**, that notwithstanding the provisions of 1 M.R.S.A 302 or any other law to the contrary, this Moratorium Ordinance, when enacted, shall govern any proposed commercial solar array for which an application for a building permit, Certificate of Occupancy, shoreland zoning approval, site plan or any other required approval has not been submitted to and granted final approval by the Code Enforcement Officer, Planning Board or other Plantation officials or board prior to the effective date of this Moratorium Ordinance; and

**BE IT FURTHER ORDAINED**, that no person or organization shall develop or operate a commercial solar array within the Plantation on or after the effective date of this Moratorium Ordinance without complying with whatever ordinance amendment or amendments the Plantation meeting may enact as a result of this Moratorium Ordinance; and

**BE IT FURTHER ORDAINED**, that during the time this Moratorium Ordinance is in effect, no officer, official, employee, office, administrative board or agency of the Plantation shall accept, process, approve, deny, or in any other way act upon any application for a license, building permit or any other type of land use approval or permit and/or any other permits or licenses related to commercial solar array; and

**BE IT FURTHER ORDAINED**, that those provisions of current Plantation ordinances that are inconsistent or conflicting with the provisions of this Ordinance, are hereby repealed to the extent that they are applicable for the duration of the moratorium hereby ordained, and as it may be extended as permitted by law, but not otherwise; and

**BE IT FURTHER ORDAINED**, that if commercial solar arrays are established in contravention of this Moratorium, each day of any continuing violation shall constitute a separate violation of this Moratorium Ordinance, and the Plantation shall be entitled to all rights available to it in law and equity, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney's fees and costs in prosecuting and such violations; and

**BE IT FURTHER ORDAINED**, that should any section or provision of this Moratorium Ordinance be declared by any court of competent jurisdiction to be invalid, such as a declaration shall not invalidate any other section or provision.

Date of Enactment (Effective Date):

Kingsbury Plantation  
Solar Array Energy Systems Ordinance

**Article 1. Title, Authority, Purpose and Applicability**

**1.1 Title**

This Ordinance shall be known as, and may be cited as, the **Kingsbury Plantation Solar Array Energy Systems Ordinance**.

**1.2 Authority**

This Ordinance is enacted pursuant to the Home Rule Authority granted to Kingsbury Plantation in accordance with the provisions of M.R.S.A. Title 30-A, Chapter 141 3001-3014.

**1.3 Purpose**

The purpose of this Ordinance is to regulate the installation of solar energy systems by providing standards for the siting, design, construction, operation, monitoring, modification, and removal of such facilities, and to address public safety.

**1.4 Applicability**

**1.4.1** This Ordinance shall be applicable to all Solar Array Energy Systems, as defined herein, in Kingsbury Plantation. Solar Array Energy Systems shall be reviewed in accordance with the procedures and standards for the development review or use review, as applicable under any other Plantation Ordinance, as well as the applicable standards of this Ordinance. **Home Scale Solar Array Systems shall be exempt from all provisions of this Ordinance.** To the extent there is conflict between this Ordinance and any other ordinance, this Ordinance shall control.

**1.4.2** This Ordinance shall be effective immediately upon approval by the Kingsbury Plantation Annual Meeting and, notwithstanding 1 M.R.S. 302, shall be applicable to any MSAES or LSAES that has not been substantially started (defined as completion of actual physical improvements to and installations on the site totaling at least 15% of the total project cost of all physical improvements and installations). The provisions of Articles 4, 5 and 7 of this Ordinance shall apply to all MSAES and LSAES on an ongoing basis, regardless of the date of construction.

**Article 2- Definitions:**

**Solar Array Energy Systems:** installation of solar panels designed to generate electricity.

Solar Array Energy Systems shall be classified as follows: For the purpose of this classification, an array shall be measured base upon the total square footage of panels, not to include any areas between panels in the same array.

**Home Scale Solar Array Energy Systems (HSAES):** A solar array in which the total square footage of the panel(s) area combined does not exceed 1,000 sf. *With or without any electrical storage capabilities on site.*

**Medium Scale Solar Array Energy Systems (MSAES):** A solar array in which the total square footage on the panel(s) are combined does not exceed 15,000 sf., *with or without any electrical storage capabilities on site.*

**Large Scale Solar Array Energy Systems (LSAES):** A solar array in which the total square footage of the panel(s) area is in excess of 15,000 sf., *with or without any electrical storage capabilities on site.*

Electrical Storage Unit(s): Shall include, but not limited to, any battery types or similar designed electrical energy storage devices or units that store the electrical energy developed by the solar array and allows for the discharge of this electrical energy into an electric grid operated for the purpose of supplying electricity. Units of this type may be self-contained or constructed or placed within a building or container.

### **Article 3- Design and Construction Standards for all Medium Scale Solar Array Energy Systems (MSAES) and Large Scale Solar Array Energy Systems (LSAES):**

The following Design and Construction standards shall apply to all Medium and Large Scale Solar Array Energy Systems and shall be applied by the Planning Board in addition to standards applicable under any other Plantation Ordinance.

**3.1** In all cases, the solar arrays must be designed and engineered to meet the then current standards of the industry assuring that all components have been properly tested, certified, and approved for use in a solar array configuration including, but not limited to, newly designed and engineered components for the safe and efficient generation, storage, and transmission of solar power and its consumption.

**3.2** Any physical modification to any existing MSAES or LSAES, whether or not existing prior to the effective date of this section, that expands the MSAES or LSAES, shall require approval under this Ordinance. Routine maintenance or replacements do not require a permit.

**3.3** MSAES or LSAES layout, design, and installation shall conform to applicable industry standards, such the National Electric Code (NEC). Information regarding the key components of the system shall be submitted as part of the application.

**3.4** All on-site utility transmission lines and plumbing shall be placed underground. If, however, the applicant can demonstrate that this would not be technically feasible, or

allowable under applicable interconnection standards or agreements, then the applicant may be considered for a waiver of this requirement as determined by the Planning Board.

**3.5** The owner of a MSAES or LSAES shall provide the Code Enforcement Officer written confirmation that the public utility company to which the MSAES or LSAES will be connected has been informed of the customer's intent to install a grid connected system. The owner shall provide a copy of the final inspection report and connection approval from the utility company to the Code Enforcement Officer prior to the issuance of a certificate of use and occupancy for the MSAES or LSAES.

**3.6** If a MSAES or LSAES is being used as an accessory use to commercial/ industrial activity on another property, the application shall provide information on the intent of the MSAES or LSAES.

**3.7** Signage shall comply with the Plantation's applicable sign regulations.

**3.8** All MSAES or LSAES shall be situated to eliminate concentrated glare onto nearby structures or roadways.

**3.9** MSAES or LSAES shall be designed and located to ensure solar access without reliance on and/or interference from adjacent properties unless an easement or right of way has been obtained via a legal document.

**3.10** All energy storage units or facilities shall also comply with the same design standard as set forth in this section.

**3.11 Standards Specific to Ground-mounted MSAES and LSAES:** (A) The lot on which the MSAES or LSAES is located shall meet lot size requirements of the applicable zoning district.

(A) MSAES or LSAES shall be exempt from the applicable zoning district's lot frontage requirements and shall instead have minimum road frontage of 33 feet.

(B) The applicant must provide proof that the Owner/Operator has authorization to construct (if necessary), use and maintain the access drive for the life of the project, including decommissioning

(C) MSAES or LSAES shall be set back a minimum of 20 feet from all property lines (see specific standards for LSAES).

(D) Ground-mounted MSAES or LSAES shall comply with the building height restrictions for principal buildings of the applicable zoning district.

(E) Access drives shall be a minimum of 20 feet in width and designed to accommodate occasional heavy truck traffic.

(F) Ground-mounted MSAES and LSAES shall not be placed within any legal easement right-of-way location, or be placed within any stormwater conveyance system, or in any other manner that would alter or impede stormwater runoff from collecting in a constructed stormwater conveyance system. Exception: MSAES or LSAES may be placed within a legal easement that specifically provides for MSAES or LSAES.

(G) The Applicant shall submit a Stormwater Management Plan, certified by a licensed engineer, that demonstrates stormwater from the MSAES or LSAES will infiltrate into the ground beneath the MSAES or LSAES at a rate equal to that of the infiltration rate prior to the placement of the system. If this infiltration rate cannot be achieved for all of the MSAES/ LSAES, that area may be considered impervious.

(H) Ground-mounted MSAES/ LSAES shall be reasonably screened from view from any adjacent property, including property located across a public or private way from the MSAES/ LSAES, that is residentially zoned or used for residential purposes. The screen shall consist of a vegetation barrier which provides a visual screen. In lieu of a vegetation barrier, the Planning Board may permit use of a fence that provides screening and meets requirements of the controlling ordinance.

(I) All ground mounted MSAES/ LSAES shall be completely enclosed by 'Solid Lock Game Fences'. Such fencing would start w 8 by 12-inch openings at the bottom (ground) with progressively smaller openings at the top of the fence. This type of fencing meets the National Electric Code for human safety. Fences should be elevated by a minimum of 5 inches to allow for passage of small terrestrial animals. Five- inch or large diameter wood escape poles shall be placed in two or more corners of the perimeter fence as an alternative means for wildlife to escape the enclosed area. fencing shall consist of a minimum 8-foot-high fence with a locking gate, or as designated by the permitting authority.

(J) Lighting shall be consistent with local, state, and federal law. Lighting of other parts of the installation, such as accessory structures, shall be limited to that required for safety and operational purposes, and shall be shielded from interference with abutting properties. The lighting of the solar energy system shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

(K) Control of Noise. Inverters and Transformers must be at least 300 feet from any residence.

(L) Energy Storage Facilities shall comply with the same design and construction standard set forth in this Section 3.11.

### **3.12 Standard specific to ground mounted capital LSAES**

(A) LSAES shall have a 30' vegetative buffer from the property line inward. Fencing shall be a minimum of 20' from the property line inward, and there shall be an additional clear space of 20' to the solar panel from any fencing shielding any line-of-sight visibility from any home or roadway.

### **3.13 Standards specific to roof mounted MSAES and LSAES:**

(A) The owner shall provide evidence certified by an appropriately licensed professional engineer that the roof is capable of supporting the collateral load of the MSAES/LSAES.

(B) MSAES or LSAES mounted on roofs for any building shall be subject to the maximum height regulations specified for principle and accessory buildings within the applicable zoning district.

#### **Article 4- Performance Parameters for all Medium and Large-Scale Solar Array Energy Systems**

The following Performance Perimeters shall apply to all Medium and Large-Scale Solar Array Energy Systems. They shall be reviewed by the permitting authority for compliance during review of the initial request for approval and shall be considered ongoing performance requirements that must be met by all MSAES and LSAES throughout the life of the project and decommissioning. The Code Enforcement Officer shall review all MSAES and LSAES for compliance with these Performance Perimeters during each annual inspection.

**4.1** MSAES and LSAES shall be properly maintained, including but not limited to painting, structural repairs, and integrity of security measures. Facilities shall be kept free from all hazards including, but not limited to, faulty wiring, loose fastenings, being in an unsafe condition or detrimental to public health, safety or general welfare. The owner or operator shall be responsible for the cost of maintaining the solar energy system and any access road(s).

**4.2** Site access shall be maintained to a level acceptable to Plantation public safety officials. Access drives shall be maintained with adequate gravel base to allow for access by Emergency Management vehicles.

**4.3** A “Knox Box”, as approved by the Fire Chief, shall be provided and installed by the operator to be used to allow emergency service personnel continuous access. All means of shutting down the solar energy system shall be clearly marked. The owner, or operator, shall identify a responsible person for public inquiries throughout the life of the installation.

**4.4** A clearly visible warning sign shall be placed at the base of all pad mounted transformers and substations and on the fences surrounding the MSAES informing individuals of potential voltage hazards.

**4.5** All MSAES and LSAES shall eliminate concentrated glare onto nearby structures or roadways. The code of enforcement officer may require additional plantings or screening to avoid glare.

**4.6** If a ground mounted MSAES or LSAES, or any portion thereof, is removed, ANY earth disturbance must be graded and reseeded with native seedings, wildflowers, and meadow grasses.

**4.7** All energy storage units or facilities shall also comply with the same performance standards as set forth in this section.

**4.8** Any material modifications to a MSAES or LSAES made after issuance of the required Plantation permit(s) shall require approval by the Planning Board. The Code Enforcement Officer may approve minor modifications to a MSAES or LSAES if, in his

or her discretion they do not materially impact any of their approval or performance standards set forth in this ordinance.

**4.9 Permit Duration.** Planning Board issued permits for MSAES and LSAES, including those permits issued prior to the effective date of this Ordinance, will be valid for a two-year time period from the date of Planning Board approval. If substantial groundbreaking has not occurred within that two-year time period, request for an extension may be reviewed/ approved by the Planning Board if evidence is presented to the Planning Board showing reason(s) beyond the applicant's control for the project delay. Extension of the project beyond the two-year permitted timeframe may be allowed in one-year intervals, not to exceed a total of five years from the approval date, with an extension fee of half the Application Fee to be paid for each single year extension.

## **Article 5 Decommissioning**

**5.1 Decommissioning Plan.** All applicants seeking approval of an MSAES or LSAES shall submit a decommissioning plan that shall meet the requirements set forth in 35-A M.R.S. Sections 3491 through 3496, as may be amended, and pertinent regulations promulgated by the Maine Department of Environmental Protection. The decommissioning plan shall provide a statement by the owner of the real property that in the event the owner/ operator of the MSAES or LSAES does not perform its obligations under the plan, the owner of the real property shall be secondarily responsible to do so.

**5.2 Performance Guarantee.** The owner/ operator of MSAES or LSAES shall submit to Kingsbury Plantation a financial guarantee in the form of an escrow deposit, performance bond, surety bond, irrevocable letter of credit or other form of financial assurance acceptable to the Planning Board, to provide assurance to the Plantation that the facility will be properly removed and remediated upon abandonment or termination of production.

The amount of financial guarantee shall be 150% of the estimated decommissioning cost as of the anticipated end of the useful life of the system based upon information provided by a competent professional. If the term of an offered performance bond or letter of credit is not for the full operational life of the system, the bond or letter of credit shall be automatically renewable for successive terms to account for the full operational life of the system.

**5.3 Plantation as Named Beneficiary.** If a bond or letter of credit is provided as a financial guarantee, Kingsbury Plantation shall be listed as a co-beneficiary, and the Plantation Assessors shall be listed as a designated point of contact on behalf of the Plantation.

**5.4 Suspension or Termination of Financial Guarantee.** Failure of the owner/ operator to maintain any submitted performance guarantee, through nonpayment of premiums or otherwise, shall be evidence of a breach of the approval which, if not remedied within thirty (30) days shall require the project owner to notify the Maine Public Utilities Commission (MPUC), and any fiscally connected party, that they are in breach of their Plantation approval. Production from the MSAES or LSAES shall be suspended beginning on the 30th day following expiration or termination of a performance bond or



letter of credit and until the Plantation certifies that the guarantee has been properly reestablished. Any proceeds from solar production improperly generated during a required period of suspension shall be forfeited to Kingsbury Plantation as a penalty for noncompliance.

**5.5 Transfer of Ownership.** The financial guarantee shall be transferred to or replaced by any new owner/ operator of the MSAES or LSAES, and all relevant documents and signatures shall be updated within thirty (30) days of transfer. On or before the same date, the new owner/ operator shall provide information regarding that entity's financial and technical capacity to construct and/ or operate the MSAES or LSAES, which information shall be reviewed by the Code Enforcement Officer, who may submit the information for the Planning Board approval if, in his or her discretion, there is a material difference from the information provided by the original applicant.

**5.6 Removal, Abandonment and Decommissioning.** MSAES or LSAES that have failed to operate for more than one year shall be decommissioned by the owner/ operator in accordance with the approved decommissioning plan, or for MSAES or LSAES constructed before the effective date of this Ordinance, in accordance with standard requirements as enforced by the Maine Department of Environmental Protection. Decommissioning shall include:

- Physical removal of all components of the system, including structures, equipment, security barriers, and transmission lines;
- Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations; and
- Stabilization and revegetation of this site is necessary to minimize erosion. Native seed mixtures shall be used to the extent possible.

Failure of the owner operator to properly and fully decommission the MSAES or LSAES within one year of the last date of production shall entitle the Plantation to access any provided financial guarantee and to enter the property and conduct all the commissioning activities necessary. The deadline for decommissioning may be extended for no more than a one-year period, if the owner/ operator provides information to the Code Enforcement Officer certifying that the cease in production is temporary and will be resumed within that year.

## **Article 6-Application and Fee**

**6.1 Application.** Kingsbury Plantation, through its Code Enforcement Officer, shall provide each applicant with an application form designed to start the process of review of any proposed solar array and/ or storage facility. The applicant shall provide all materials required by any other Plantation ordinance, as well as any specific submission requirements of this ordinance.

**6.2 Fee.** The application fee is intended to cover the expenses to Kingsbury Plantation which include, but not limited to, the cost of advertisement, hiring of consultants to guide the review process by the Planning Board and/ or the Code Enforcement Officer, and administration and supervision of any approved project by the Consultant(s) as

authorized by the Code Enforcement Officer, in their administration and enforcement of this Ordinance, require expert assistance that exceeds the application fee, the cost of such assistance shall be borne by the Applicant or Owner/ Operator and shall be deposited into escrow upon request, with any balance to be promptly returned to the Applicant, Owner or Operator.

Application Fees:

**Medium Scale Solar Array Electrical Systems:** \$12,000

**Large Scale Solar Array Electrical Systems:** \$15,000 plus \$1.00 per sf above 15,000 square feet.

**Electrical Storage Unit(s):** \$5,000 plus \$1.00 per sf exceeding 1,000 square feet.

**Article 7-Annual Inspection and Permit**

**7.1 Annual Inspection.** All MSAES and LSAES shall be required to receive an annual inspection to confirm ongoing compliance with Articles four and five of this ordinance. This annual inspection requirement shall apply to all MSAES and LSAES, whether constructed or approved before or after the effective date of this ordinance.

**7.2 Inspection Fee.** An annual inspection fee shall be required. This fee is intended to account for the cost of providing the annual inspections by the Code Enforcement Officer and the Fire Chief, or their consultant. The inspection fee shall be submitted by April 1st of each calendar year.

Inspection Fees:

**Medium Scale Solar Array Electrical Systems:** \$2,500 plus \$600 per MW installed for Fire and Safety inspections by the CEO and the Fire Chief or their consultant.

**Large Scale Solar Array Electrical Systems:** \$4,000 plus \$1.00 per square foot above 15,000 sq ft plus \$600 per MW for Fire and Safety inspections by the CEO and the Fire Chief or their consultant.

**Electrical Storage Unit(s):** \$2,000 plus \$600 per MW of storage capacity for Fire and Safety inspections by the CEO and the Fire Chief or their consultant.

**Article 9- Enforcement**

Violations of this Ordinance shall be subject to all enforcement procedures, penalties and remedies as set forth in 30-A M.R.S 4452, as well as any other more specific penalties set forth in this Ordinance.

**Article 10-Separability**

Should any portion of this Ordinance be found to be in violation of any state or federal law, only that portion shall be deemed null and void and it shall not relieve the owner/operator(s) from the standards and requirements imposed by this ordinance on the Permittee(s) or Signatories to the Permit.

On \_\_\_\_\_, 2024, Kingsbury Plantation, by action of its Plantation Annual Meeting, approved and adopted this Ordinance as a matter of record.