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NAVIGATING LOCAL ENERGY DEVELOPMENT PLANNING

2023 Nebraska Power Association Conference
August 23, 2023
Kearney, Nebraska

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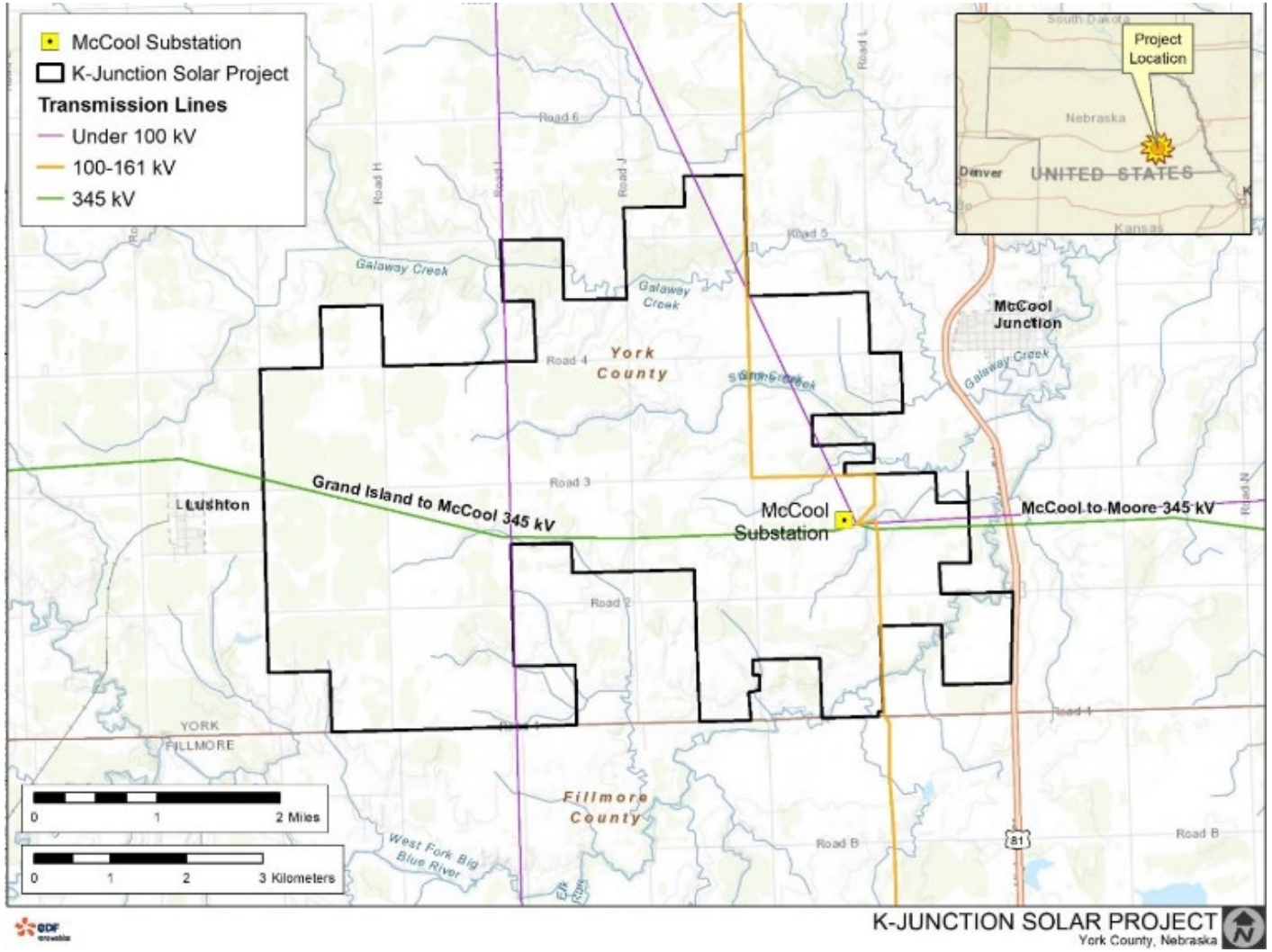
David C. Levy

Your Energy Partner®
OPPD
Omaha Public Power District

853,000	population
401,410	retail customers
16,083	miles of electric line
5,000	Square-mile service territory
2,671	megawatts of generating capability
1,872	employees
1946	founding year
36.4	percent renewables of retail sales in 2020
27.3	percent below national average retail rates
13	counties served
8	publicly elected board members
1	community

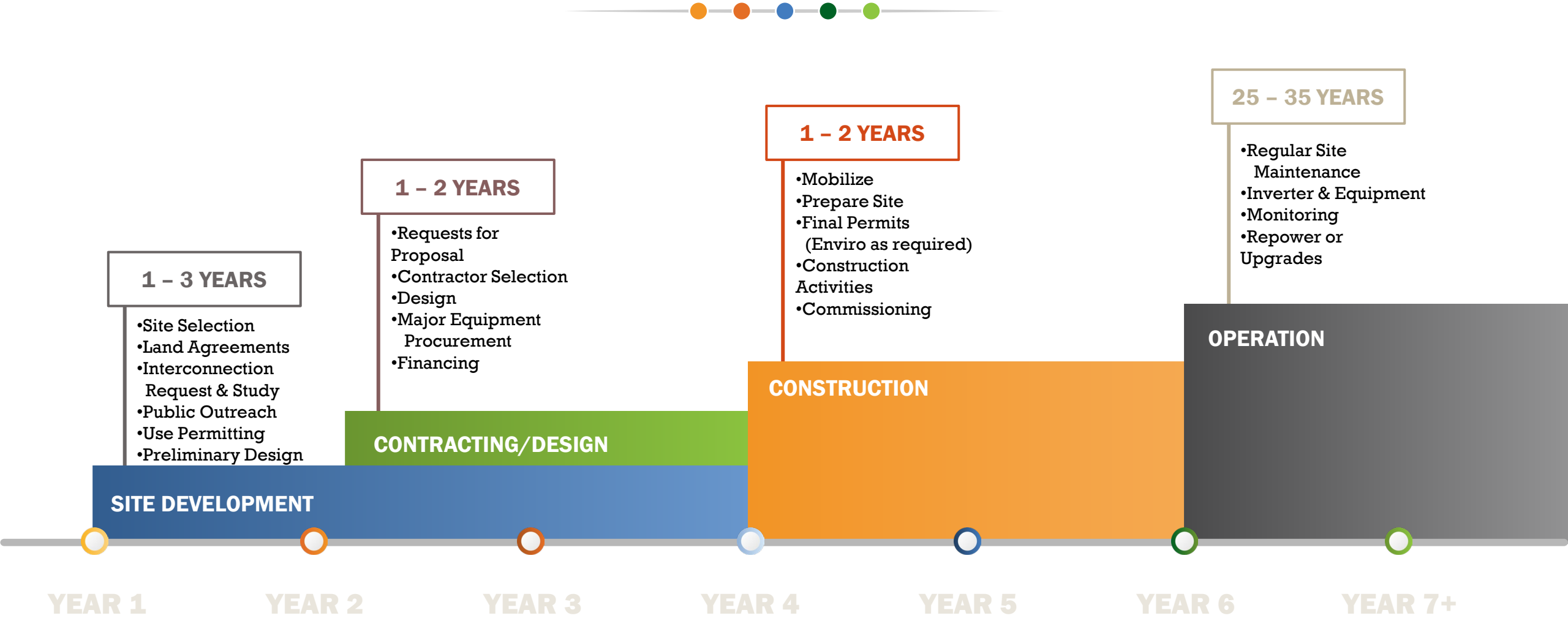
*2022 OPPD annual report


ILLUMINATE OUR FUTURE
Share our story:
OPPD is preparing now
to power the future.


McCool Substation
K-Junction Solar Project
Transmission Lines
Under 100 kV
100-161 kV
345 kV
Project Location
Nebraska
Denver
UNITED STATES
Kansas
South Dakota
McCool Junction
York County
Fillmore County
Grand Island to McCool 345 kV
McCool to Moore 345 kV
McCool Substation
Lushton
Galaway Creek
Road 6
Road 5
Road 4
Road 3
Road 2
Road 1
Road B
Road H
Road I
Road J
Road L
Road N
YORK
FILLMORE
West Fork Big Blue River
0 1 2 Miles
0 1 2 3 Kilometers
K-JUNCTION SOLAR PROJECT
York County, Nebraska

TYPICAL TIMELINE

UTILITY-SCALE SOLAR



TYPICAL TIMELINE

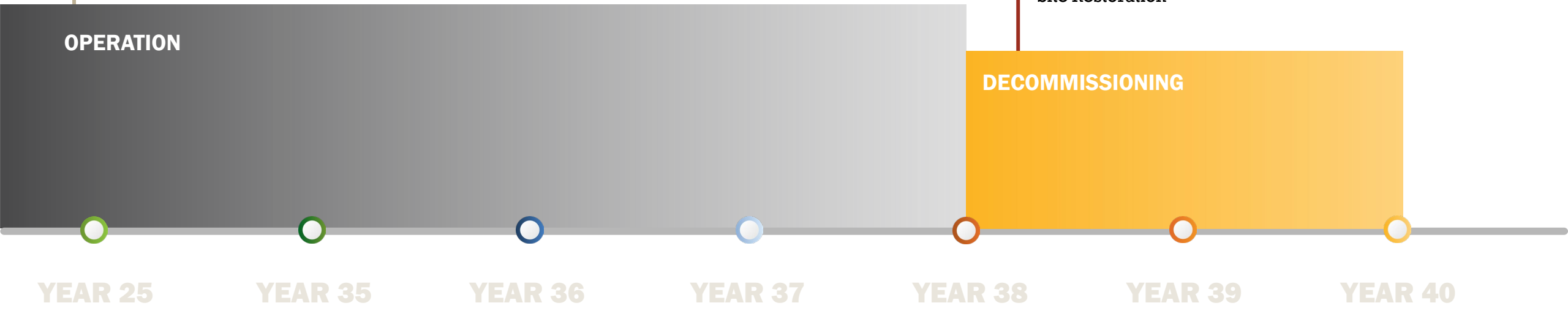
UTILITY-SCALE SOLAR

25 – 35 YEARS

- Regular Site Maintenance
- Inverter & Equipment
- Monitoring
- Repower or Upgrades

1 – 2 YEARS

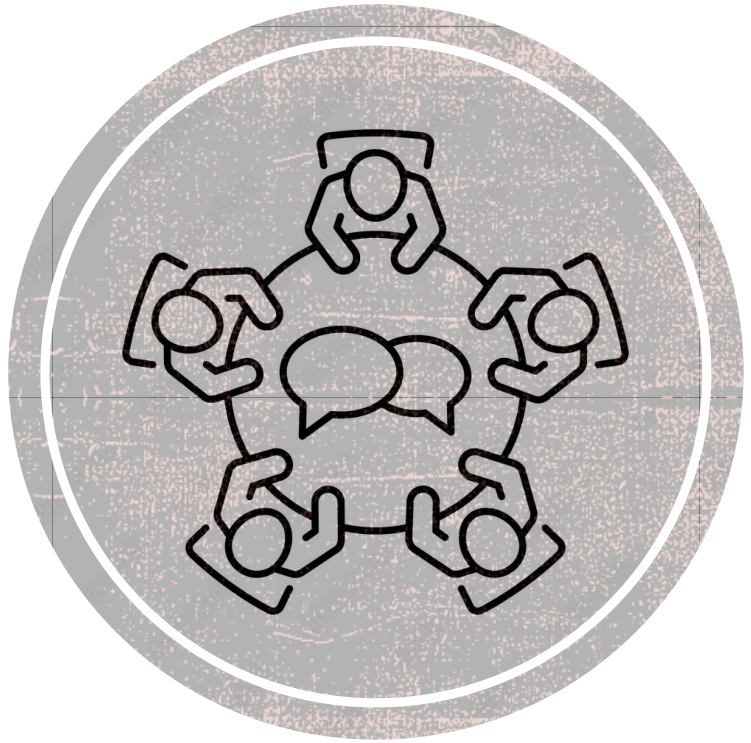
- Decommissioning
- Material Recycling & Disposal
- Site Restoration



YEAR 25 YEAR 35 YEAR 36 YEAR 37 YEAR 38 YEAR 39 YEAR 40

WHO TO ENGAGE EARLY AND OFTEN

- **Local economic developer**
- **Economic development district**
- **Local officials**
- **Local media**
- **Key landowners (visible/vocal supporters)**
- **Local opinion leaders who are pro-solar/pro-renewables**
- **Other peer local officials who have had a good experience working with the utility**



Generation

Board okays adding up to 2.5 gigawatts of new generation capacity.

Read more

Cass-to-Sarpy Transmission Project

OPPD is planning for an approximately 23-mile, 345kV transmission line from Cass to Sarpy County

Read more

Illuminate our Future

We're planning to power things that haven't been invented yet: Powering the Future to 2050

Read more

nitvconnect.com/cass-to-sarpy-transmission-project

OPPDCOMMUNITYCONNECT.COM

COMMON CONTENTION POINTS-REGULATIONS

- Prime Farmland
- Landowner Rights
- Property Values
- Noise (inverters), glare (FAA studies)
- Setbacks (from road, from adjacent land w/ solar, from residences)
- Decommissioning
- Screening (landscape/view shed)
- Fencing (why you need one)
- Fire response/adequate equipment
- Environmental-chemicals in panels, water runoff, birds, dirty panels, weather
- Liability insurance
- Do NOT require interconnection before/with application. NOT FEASIBLE.
- Pollinator/native grasses
- Agro-voltaic (sheep, produce crops); work w/ surrounding ag land
- Height of panels
- Spacing between panel (ground coverage ratio)
- Access/easement to land
- Road maintenance agreement
- Air rights/shading
- Permits from state & federal agencies
- Aligning CUP term with financing (IRA)

ISSUE DE JOUR

- Nameplate Capacity Tax

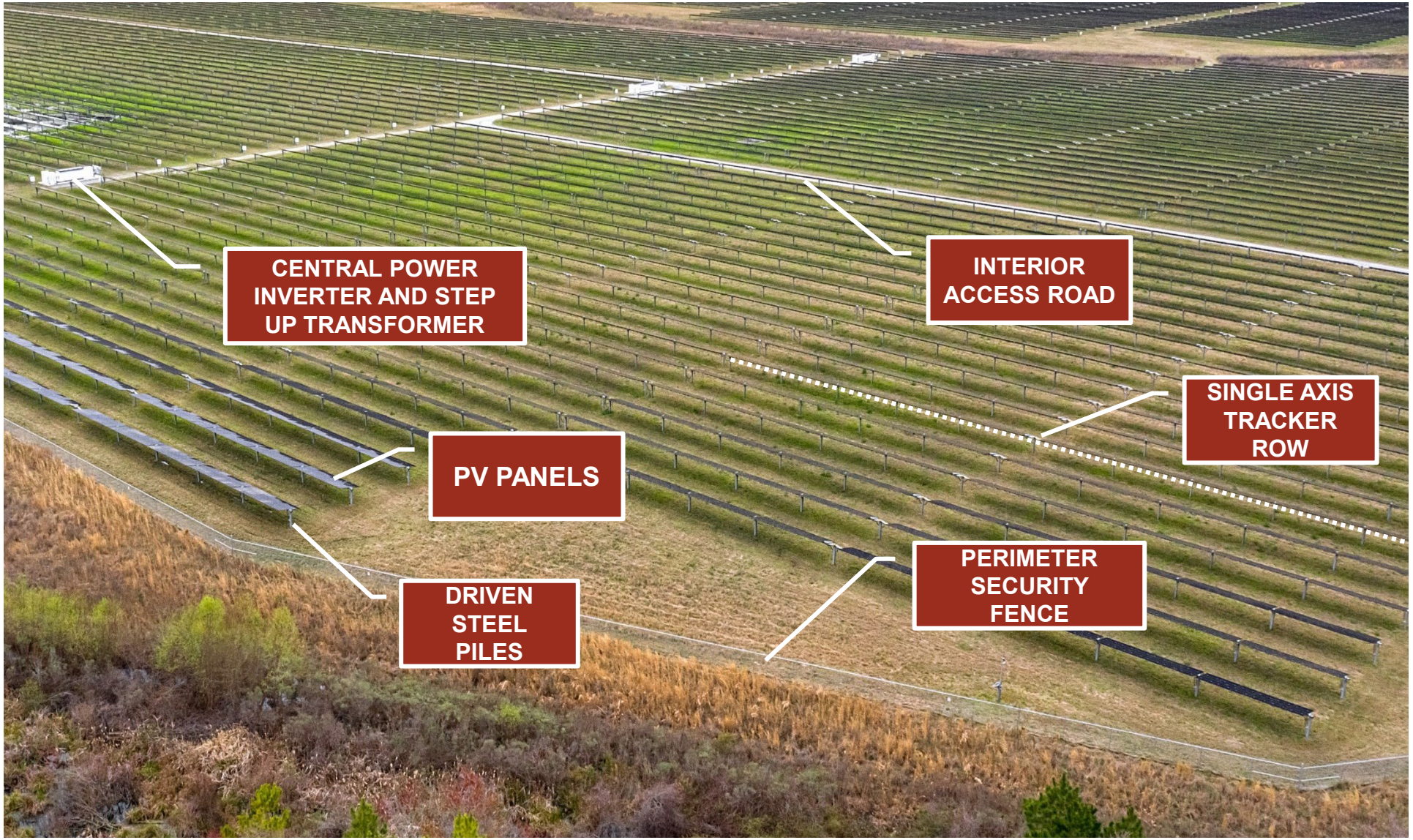
SOLAR REGULATION ASSISTANCE

OPPD can:

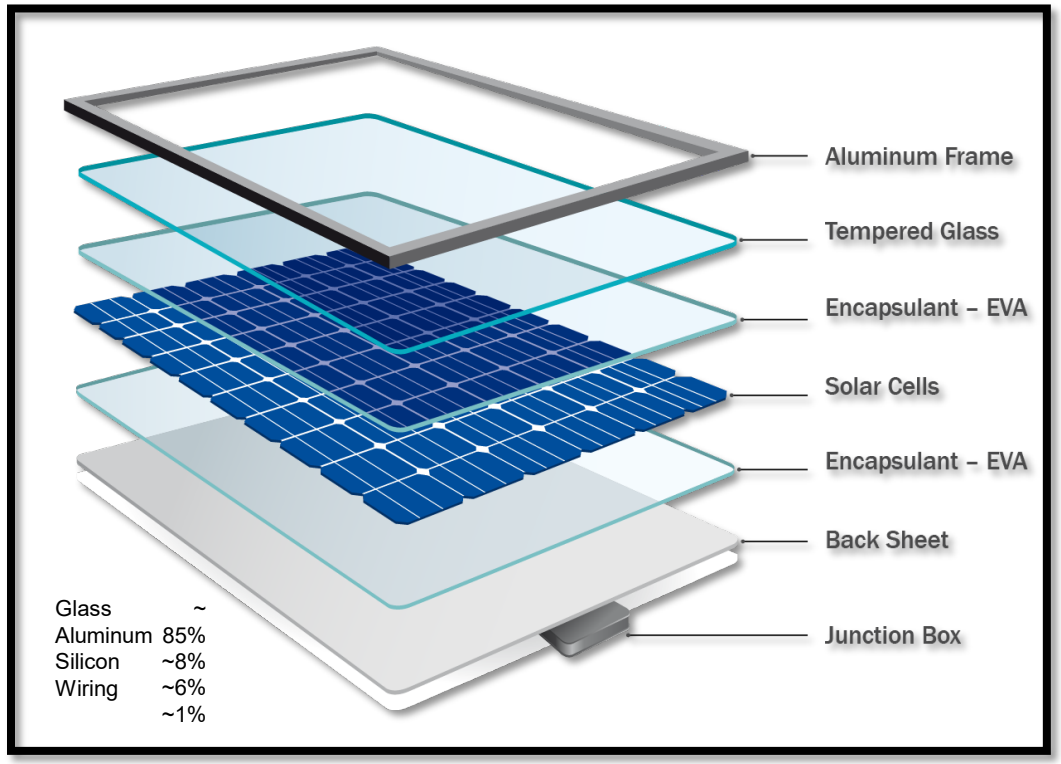
- Provide technical expertise when writing regulations
- Make presentations (Solar Energy 101)
- Explain infrastructure and project timeline
- Help answer constituent questions

BASIC CHARACTERISTICS OF SOLAR FARMS

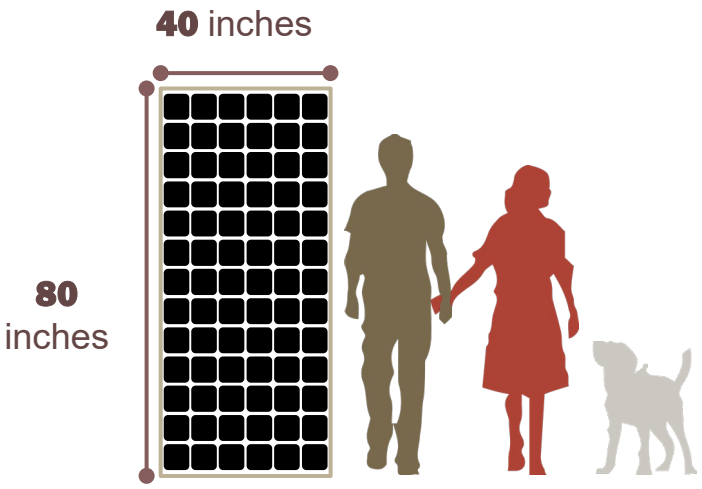
PHOTOVOLTAIC (PV) SOLAR TECHNOLOGY COMPONENTS



SOLAR PANELS



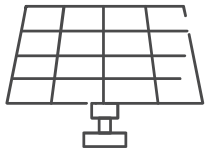
Photovoltaic (PV) Solar Panel



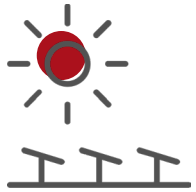
Solar Panel Size

LIFECYCLE

Operation



Development / Construction



25-40 years

- **No** operational waste
- **No** water discharge
- **No** air emissions

Decommissioning

Decommissioning plans are required

Panels are recycled

Site is restored

REGULATORY BEST PRACTICES

David C. Levy

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REGULATORY BODIES

SOLAR PROJECT REGULATORY APPROVALS

OPPD

- Interconnection Requirements
- Design Standards & Reviews

County

- Conditional Use Permitting
- Decommissioning
- Access or Driveway Permits
- Building Permit

State

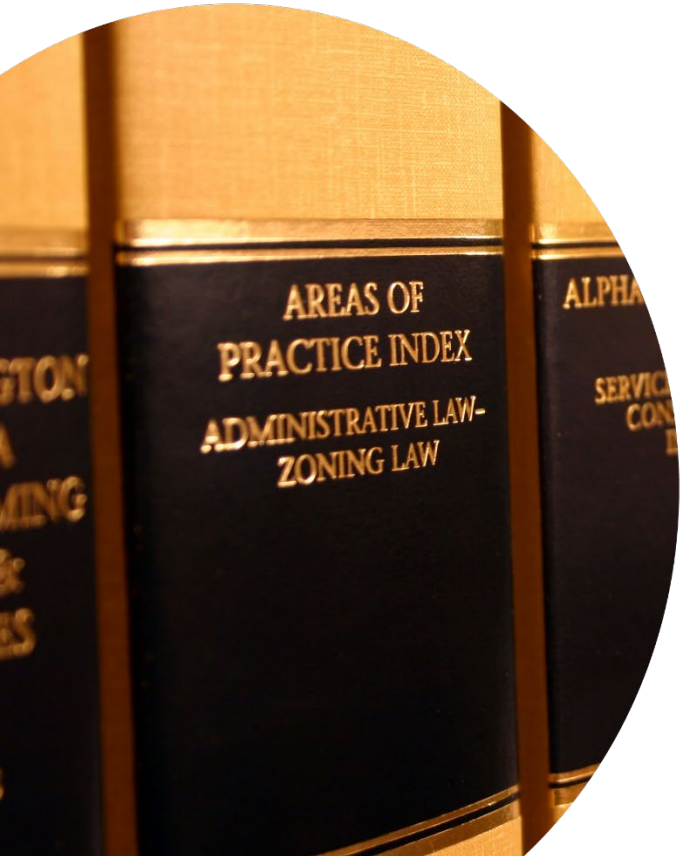
- Nebraska Power Review Board
- Stormwater
- Game & Parks
- Floodplain Permit

Federal

- FERC interconnection process (through SPP)
- National Standards
- Threatened & Endangered Species
- Wetlands
- Cultural

LOCAL ZONING REGULATIONS

- A MAJORITY OF REGULATION OCCURS AT THE LOCAL LEVEL
- WHAT ZONING REGULATIONS SHOULD MUNICIPALITIES HAVE?



PURPOSE

Well-written regulations should balance the interests of "participating" and "non-participating" landowners

- Participating landowners (landowners who entered into leases, easements, or other agreements with the solar developer)
- Non-participating landowners
- Developers (yes, developers too!)

Clear and concise regulations reduce landowner disputes and therefore reduce headaches for municipalities

MUNICIPALITIES HOLD THE KEYS

- Don't be scared!
- Any proposed project is subject to municipal approval of a conditional (or special) use permit
- Regulations provide a framework to evaluate individual conditional use permit applications

CONDITIONAL USE PERMIT & ZONING DISTRICTS

First, the municipality must decide where to allow commercial solar facilities

- Solar facilities typically require a conditional use permit
- Solar facilities are typically located in agricultural or transitional agricultural zoning districts, but are often a permitted conditional use in commercial and industrial zoning districts as well
- Best practice is to authorize broadly and rely on conditional use permit process to evaluate proposed projects

SETBACKS

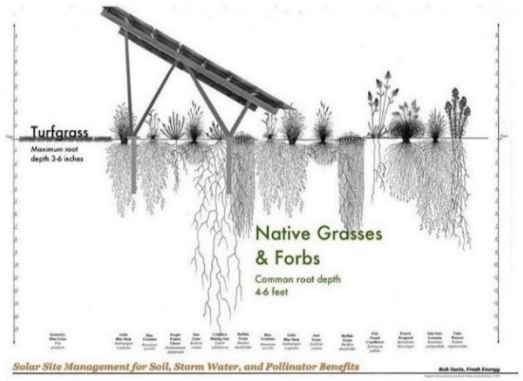
- Setbacks are an important tool to balance the interests of participating and non-participating landowners. Setbacks should not be so large that they infringe on landowners' rights to develop their property, if they wish to
- Municipalities should specify setbacks from the following:
  - Non-participating property lines and/or residences
  - Participating property lines and/or residences (typically no setback)
  - Public right of ways

VISUAL SCREENING

- Visual screening is the practice of using fences, walls, berms, or landscaping to obstruct the view of the solar facilities, typically from non-participating residences
- Regulations should authorize the use of natural features, topography, and vegetation for cost efficiency and aesthetics
- Be wary of the "property line" screening requirement
  - Agricultural parcels can have a property line of a half-mile, well beyond the residence to be screened
  - Limit screening requirement to necessary area
  - An overly burdensome screening requirement will disturb land and/or discourage development
- Speaking of land disturbance, a screening requirement should authorize adjacent landowners to waive the requirement, if they prefer

ADDITIONAL SITE CONSIDERATIONS

- Fencing
  - Chain link or wildlife fencing
- Revegetation after construction
  - Landscape architects and native plant palettes
  - Deep rooted grasses to stabilize soil long term
  - Pollinators



DECOMMISSIONING

- Decommissioning is the practice of removing the project at the end of its lifecycle and restoring the underlying land
- Basic decommissioning regulations:
- Regulations should define when a developer must decommission a project
  - Typically required after six months or a year without energy production
  - It is a good idea to allow extension of this time period at the municipality's discretion
- Regulations should define how long a developer has to decommission the project once required (again, typically a period of six months to a year)
- Regulations should require removal of project improvements (typically to a depth of four feet) and restoration of the underlying land

DECOMMISSIONING PLAN / DECOMMISSIONING AGREEMENT

- Regulations should require the developer to provide a "decommissioning plan" specifying the means of decommissioning the project
- The decommissioning plan should include a "decommissioning cost estimate" prepared by a licensed engineer or other qualified professional
  - The decommissioning cost estimate should be for the "net decommissioning cost" (i.e. the total cost less resale or salvage value of project components)
  - Regulations typically require the developer to provide an updated decommissioning cost estimate every five years
- The developer and municipality typically enter into a short "decommissioning agreement" incorporating the decommissioning plan and providing the municipality with financial security for the obligations therein

DECOMMISSIONING SECURITY

- Regulations should require a developer to provide financial security in the form of a bond, letter of credit, or other equivalent instrument for the cost to decommission the project
  - Typically, the decommissioning security requirement is delayed until a pre-determined period of time (15 years in Lancaster County, for example) following the commercial operation date of the project. The reason for this is that the net decommissioning cost is negative until well into the life of the project (i.e. the salvage value of the components significantly outweighs the cost to decommission the project)
  - Another approach is to require the decommissioning security upon the five-year interval when the decommissioning cost estimate is positive
  - Why not require decommissioning security right from the start? It discourages development. Developers pay expensive premiums which do not benefit the county
  - For context, the Nebraska Power Review Board requires decommissioning security 10 years following the commercial operation date of the project if a municipality does not have regulations in place

DECOMMISSIONING - THE THREE LAYERS OF PROTECTION

1) Landowner Agreements

2) Zoning Regulations

3) Nebraska Statutes - Neb. Rev. Stat. § 70-1014.02

ROAD USE AND MAINTENANCE

- The developer and municipality typically enter into a "road use and maintenance agreement" giving the developer authority to use or construct specified roads for equipment transport and construction
- The road use and maintenance agreement requires the developer to repair any damage done to municipal roads during the construction, operation, and maintenance of the project
- The road use and maintenance agreement may require a bond, letter of credit, or other equivalent instrument to guarantee availability of funds for any such repairs

You can't replace an old road with an old road.

NEW ROADS FOR THE MUNICIPALITY!

PERMITTING BEST PRACTICES

David C. Levy

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PRE-APPLICATION

- When possible, the municipality should encourage early-stage collaboration with the developer and conduct pre-application meetings to mutually determine:
  - Application content
  - Permitting procedure
- "Page turn" application
- Municipal attorney review

APPLICATION

- Developer will submit application
- Begin municipality's conditional use permit process
- Process governed by Nebraska Open Meetings Act
  - Planning Commission public hearing (recommendation only)
  - Municipal governing body public hearing
- Check your regulations for notice requirements (e.g., send notice to all landowners within 1-mile of the proposed project)

EDUCATION

- Solar technology is well-established, but it is new to many parts of Nebraska
- Thus, many people are unfamiliar with the technology or they may have received misinformation about it
- A large portion of the permitting process is educating municipal officials and the public
- Ask lots of questions and pass on questions from the public
- Developers have expertise and often have information on common questions at their fingertips
- They also have access to consultants to address a variety of issues (e.g., environmental experts to answer environmental questions from neighbors)

JUST MAKE SURE YOU HAVE GOOD INFORMATION!

OPPOSITION

- Most projects have varying degrees of opposition
- Expect parties to engage who did not participate in the zoning regulation process (“not in my backyard”)
- Often a vocal minority
- Do not abandon legal obligations to protect property rights to appease opposition

TEXT AMENDMENTS / MORATORIUMS

- Rely on your prior diligence and regulations
- Avoid mid-application text amendments and / or moratoriums
  - Time consuming
  - Increase exposure of municipal officials to contentious and repetitive hearings
- Improper forum to evaluate a potential project
- Reserve project-specific concerns or objections for conditional use permit process

CONDITIONAL USE PERMIT

- Address project-specific issues with conditions of approval rather than global zoning regulation amendments
- E.g., impose a setback to a special needs school near a proposed project area in the conditional use permit; do not impose a setback to all schools county-wide zoning regulations
- Narrowly-tailored solutions restrict private property rights only as minimally necessary to protect the public health safety and welfare
- After notice, hearing and any necessary conditions of approval, the municipality has discretion to approve the conditional use permit and realize project benefits
- Municipalities retain enforcement authority over conditions of approval

QUESTIONS?

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SIDEBAR: REAL PROPERTY TAXES

Municipalities often ask us about real property taxes for solar projects. They are taxed as follows:

- The landowner pays real property tax on the underlying parcel at the same rate and same valuation as before
- The developer pays a statutory tax called the "Nebraska nameplate capacity tax." Neb. Rev. Stat. § 77-6203 requires the developer to pay $3,518 per year, per megawatt of the project's energy producing or "nameplate" capacity
- The developer pays real property tax on project real property items such as roads, fences, inverter pads, and leasehold interests

A GOOD RULE OF THUMB: A SOLAR PROJECT WILL PAY APPROXIMATELY $4,000 PER YEAR IN TAXES FOR EACH MEGAWATT

REAL PROPERTY TAX ALLOCATION

- Nameplate capacity taxes and real property taxes from solar facilities are both allocated according to the local levy
- Approximately two-thirds of the taxes from solar facilities go to the school district(s) in which the project is located
- Below is a sample tax allocation from a real parcel in Nebraska for a hypothetical 200 MW solar project:

Taxing Entity	Levy Rate	Annual Tax Received (approx.)
County	0.364651	$178,377
School District	1.084362	$530,438
Fire Department	0.018645	$9,121
Fire Department Bond	0.019784	$9,678
Agricultural Society	0.006487	$3,173
Cemetery	0.002767	$1,354
Community College	0.093700	$45,835
Educational Service Unit	0.015000	$7,338
NRD	0.030024	$14,687
APPROX. TOTAL	**1.635420**	**$800,000**

OTHER ECONOMIC BENEFITS

- Landowner payments
- Economic growth through local spending and new jobs
- Energy diversification – particularly in response to increasing federal regulation and consumer demand