ENERGY STORAGE SYSTEM SITING ORDINANCE OF MENARD COUNTY

A Center of Lincoln's Illinois

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TITLE

This Ordinance shall be known, cited, and referred to as the Energy Storage System Siting Ordinance of Menard County.

AUTHORITY

This ordinance is adopted pursuant to Sections 5/5-12001 et al. and 5/5-12024 of the Illinois Counties Code (55 ILCS 5/5-12001 and 55 ILCS 5/5-12024).

PURPOSE

This ordinance is adopted to advance and protect the public health, safety, morals, comfort, and general welfare of Menard County and its residents by creating regulations for the installation and use of battery energy storage systems (energy storage system), with the following objectives:

A. To provide a regulatory framework for the designation of properties suitable for the location, construction, and operation of any energy storage system;
B. To ensure compatible land uses in the vicinity of the areas affected by any energy storage system;
C. To mitigate the impacts of any energy storage system on environmental resources such as important agricultural lands, forests, wetlands, wildlife, and other protected lands and resources; and
D. To create synergy between energy storage system development and other goals of Menard County and its comprehensive plan.
E. To comply with the requirements of 5/5-12024 of the Illinois Counties Code.

DEFINITIONS

"Applicant" means the entity who submits to Menard County a special use permit application for a Energy Storage System facility. All references to “applicant” in this ordinance shall include applicant's successors-in-interest and assigns, including the owner.

"Building Permit" means a permit necessary for the commencement of work performed toward the construction, erection, or installation of an approved Energy Storage System facility, Substation or operations and maintenance building in connection with a Energy Storage System facility project. A Energy Storage System facility Building Permit may be issued by Menard County after the proposed facility owners have obtained a Special Use Permit from the Menard County Board and the Menard County Zoning Office determines

that all conditions, if any, have been satisfied that are imposed by the Special Use Permit. The Energy Storage System Facility Building Permit shall require the applicant to deliver a written "Notice to Proceed" for the project to Menard County prior to commencement of construction of the Energy Storage System facility project. The term "commencement of construction" as used in this Ordinance, includes any site development work (e.g., demolition, grubbing, grading, excavation, road work, construction of Project-related structures and infrastructure improvements, etc.) regarding the Energy Storage System facility project.

“Energy Storage System” means a facility with an aggregate energy capacity that is greater than 1,000 kilowatts and that is capable of absorbing energy and storing it for use at a later time, including, but not limited to, electrochemical and electromechanical technologies. “Energy storage system” does not include technologies that require combustion. “Energy storage system” also does not include energy storage systems associated with commercial solar energy facilities or commercial wind energy facilities as defined in Section 5-12020.

“Excused service interruption” means any period during which an energy storage system does store or discharge electricity and that is planned or reasonably foreseeable for standard commercial operation, including any unavailability caused by a buyer; storage capacity tests; system emergencies; curtailments; including curtailment orders; transmission system outages; compliance with any operating restriction; serial defects; and planned outages.

“Facility owner” means (i) a person with a direct ownership interest in a Energy Storage System facility, regardless of whether the person is involved in acquiring the necessary rights, permits, and approvals or otherwise planning for the construction and operation of the facility, and (ii) at the time the facility is being developed, a person who is acting as a developer of the facility by acquiring the necessary rights, permits, and approvals or by planning for the construction and operation of the facility, regardless of whether the person will own or operate the facility. All references to “owner” in this ordinance shall mean facility owner.

"Financial assurance" means assurance from a credit worthy party, examples of which include a surety bond (e.g., performance and payment bond), trust instrument, cash escrow, or irrevocable letter of credit.

“Force majeure” means any event or circumstance that delays or prevents an energy storage system from timely performing all or a portion of its commercial operations if the act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control, whether direct or indirect, of, and without the fault or negligence of, a facility owner or operator or any of its assignees. “Force majeure” includes, but is not limited to:

1. fire, flood, tornado, or other natural disasters or acts of God;

2. war, civil strife, terrorist attack, or other similar acts of violence;
3. unavailability of materials, equipment, services, or labor, including unavailability due to global supply chain shortages;
4. utility or energy shortages or acts or omissions of public utility providers;
5. any delay resulting from a pandemic, epidemic, or other public health emergency or related restrictions; and
6. litigation or a regulatory proceeding regarding a facility.

“NFPA” means the National Fire Protection Association.

"Nonparticipating property" means real property that is not a participating property.

"Nonparticipating residence" means a residence that is located on nonparticipating property and that is existing and occupied on the date that a special use permit application for the Energy Storage System facility is filed with Menard County.

"Notice to Proceed" means a written document, named as such, stating that the Applicant expresses an intent to commence construction activities on a Energy Storage System facility Project which identifies the date on which the construction activities are scheduled to commence.

"Occupied community building" means any one or more of the following buildings that is existing and occupied on the date that a special use permit application for the Energy Storage System facility is filed with Menard County: a school, place of worship, day care facility, public library, or community center.

"Operator" means the person or entity responsible for the day-to-day operation and maintenance of the Energy Storage System facility, including any third-party subcontractors, successors-in-interest, and assigns.

"Participating property" means real property that is the subject of a written agreement between a facility owner and the owner of the real property and that provides the facility owner an easement, option, lease, or license to use the real property for the purpose of constructing an energy storage system or supporting facilities.

"Professional engineer" means a qualified individual who is licensed as a professional engineer in the State of Illinois.

“Project” means the Energy Storage System and supporting facilities.

"Protected lands" means real property that is: (i) subject to a permanent conservation right consistent with the Real Property Conservation Rights Act; or (ii) registered or designated

as a nature preserve, buffer, or land and water reserve under the Illinois Natural Areas Preservation Act.

"Public Conservation Lands" means land owned in fee title by County, state or federal agencies and managed specifically for conservation purposes including but not limited to County, state, and federal parks; state and federal wildlife management areas; state scientific and natural areas; and federal wildlife refuges and waterfowl protection areas. Public conservation lands do not include private lands upon which conservation easements have been sold to government agencies or non-profit conservation organizations. Public conservation lands also do not include private lands for which the owners have entered contractual relationships with government or non-profit conservation organizations for conservation purposes.

"Special Use Permit" means a permit approved by Menard County Board, after a public hearing, allowing a particular use at a specified location subject to compliance with certain specified special conditions as may be required by Menard County Board." Structural Engineer" means a qualified individual who is licensed as a professional engineer in the State of Illinois and will analyze, design, plan, and research structural components and structural systems to achieve design goals and ensure the safety and comfort of users or occupants. Their work takes account mainly of safety, technical, economic, and environmental concerns, but they may also consider aesthetic and social factors of the Energy Storage System facility project.

"Substation" means the apparatus that collects and connects the electrical collection system of the Energy Storage System facility and increases the voltage for connection with the utility's transmission lines.

“Supporting facilities” means the transmission lines, substations, switchyard, access roads, meteorological towers, storage containers, and equipment associated with the generation, storage, and dispatch of electricity by an energy storage system.

“Variation” A variation is a minor deviation from the bulk requirements of this ordinance where such variation will not be contrary to the public interest and where, due to conditions peculiar to the property and not the direct result of the actions of the owner, a literal enforcement of this ordinance would result in unnecessary hardship.

APPLICABILITY

A. The requirements of this ordinance shall apply to any energy storage system permitted, installed, or modified in the county after the effective date of this ordinance. Any energy storage system connected or integrated into a commercial

solar energy facility or commercial wind energy facility shall be governed by the requirements of the applicable solar or wind ordinances.

B. This ordinance shall apply to all areas in Menard County that are not within the zoning jurisdiction of a municipality.

PROHIBITION

A. No energy storage system governed by this ordinance shall be constructed, erected, installed, located, or operated within Menard County, unless:

1. A special use permit has been granted by the Menard County Board and a building permit has been issued for the energy storage system.

2. All road use agreements and decommissioning agreements have been entered into with each applicable governmental agency.

B. No energy storage system shall be constructed or operated except upon granting of a special use permit and building permit and only upon property zoned to allow agricultural or industrial uses.

C. A facility owner may undertake periodic augmentation to maintain the approximate original capacity of the energy storage system. Periodic augmentation shall not include adding additional properties or parcels to the energy storage system, or expanding the footprint of the energy storage system approved pursuant to the special use permit process.

GENERAL REQUIREMENTS

A. Building Permit Required. Following the granting of a special use permit by Menard County board, and compliance with any conditions, the applicant is eligible to apply for a building permit(s) for the project.

B. Expiration of Special Use Permit. A building permit must be issued, or actual on-site construction must have commenced prior to the expiration of three (3) years from the granting of the special use permit. If a building permit or actual on-site construction has not commenced within the applicable time period, then the special use permit shall be revoked without further action of Menard County. An extension of time to obtain the building permit or to commence actual on-site construction may be granted upon a showing of good cause.

C. Compliance with NFPA Standard. The energy storage facility must comply with NFPA 855 “Standard for the Installation of Stationary Energy Storage Systems” in effect on the date of the filing of the special use permit application.

D. Setbacks.

1. 150 feet from the nearest point of the outside wall of any occupied community building or nonparticipating residence.
2. 50 feet to the nearest point on the property line of the occupied community building or nonparticipating property.
3. 50 feet from the nearest edge of any right-of-way.
4. The setback provisions of this subsection (D) may be waived upon the written consent of the owner of each affected nonparticipating property or nonparticipating residence.

E. Fencing. The energy storage system’s perimeter must be surrounded by fencing of at least 7 feet and no more than 25 feet.

F. Sound limitation. The energy storage system must comply with the Illinois Pollution Control Board Standards, 35 Ill. Adm. Code Parts 900, 901, and 910. Within 1 year of the commercial operation date, the facility owner shall provide the octave band sound pressure level measurements from locations chosen by Menard County at the perimeter of the energy storage system to demonstrate compliance with this Section.

G. Farmland drainage plan. The facility owner shall file a farmland drainage plan with Menard County and impacted drainage districts that outlines how the surface and subsurface drainage of farmland will be restored during and following the construction or deconstruction of the energy storage system. The plan shall be created independently by the facility owner and shall include the location of any potentially impacted drainage district facilities to the extent the information is publicly available from Menard County or the drainage district and the plans to repair any subsurface drainage affected during the construction or deconstruction using procedures outlined in the decommissioning plan. All surface and subsurface damage shall be repaired as soon as reasonably practicable.

H. Crop loss or other agricultural damages. The facility owner shall compensate landowners for crop losses or other agricultural damages resulting from damage to a drainage system caused by the construction of an energy storage system. The facility owner shall repair or pay for the repair of all damage to the subsurface drainage system caused by the construction of the energy storage system. The

facility owner shall repair or pay for the repair and restoration of surface drainage caused by the construction or deconstruction of the energy storage facility as soon as reasonably practicable.

I. Decommissioning plan. The facility shall provide a decommissioning plan, including all requirements for decommissioning plans in NFPA 855 and the facility owner shall:

1. State how the energy storage system will be decommissioned, including removal to a depth of 3 feet of all structures that have no ongoing purpose and all debris and restoration of the soil and any vegetation to a condition as close as reasonably practicable to the soils and vegetation's preconstruction condition within 18 months of the end of project life or facility abandonment;
2. Include provisions related to commercially reasonable efforts to reuse or recycle equipment and components associated with the commercial offsite energy storage system;
3. Include financial assurance in the form of a reclamation bond or other commercially available financial assurance that is acceptable to Menard County, with Menard County or participating property owner as beneficiary;
4. Update the amount of the financial assurance at least every 5 years for the duration of the commercial operations. The amount shall be calculated by a professional engineer licensed to practice engineering in Illinois with expertise in decommissioning, hired by the facility owner;
5. Decommission the energy storage system, in accordance with the approved decommissioning plan, within 18 months after abandonment. An energy storage system that has not stored electrical energy for 12 consecutive months or that fails, for a period of 6 months, to pay a property owner who is party to a written agreement, including, but not limited to, an easement, option, lease, or license under the terms of which an energy storage system is constructed on the property, amounts owed in accordance with the written agreement shall be considered abandoned, except when the inability to store energy is the result of an event of force majeure or excused service interruption; and
6. Prior to the issuance of a building permit, Menard County shall require a decommissioning agreement to be entered into between Menard County and the facility owner.

J. Illinois Department of Natural Resources Ecological Compliance Assessment Tool. A facility owner shall provide the results and recommendations from the consultation with the Illinois Department of Natural Resources (IDNR) that are obtained through the Ecological Compliance Assessment Tool (EcoCAT) or a comparable successor tool.

K. Compliance with EcoCAT. The facility owner shall adhere to the recommendations provided by IDNR in any Agency Action Report under 17 Ill. Adm. Code 1075.

L. Protected lands. The facility owner shall (1) demonstrate avoidance of protected lands as identified by the Department of Natural Resources and the Illinois Nature Preserves Commission, or (2) consider the recommendations of the Department of Natural Resources for setbacks from protected lands, including areas identified by the Illinois Nature Preserves.

M. Illinois Historic Preservation Division. The facility owner shall provide evidence of consultation with the Illinois Historic Preservation Division to assess potential impacts on State-registered historic sites under the Illinois State Agency Historic Resources Preservation Act.

N. Commercial Operation Date. Prior to the commercial operation date, the facility owner shall:

1. Submit to Menard County a commissioning report meeting the requirements of NFPA 855 Sections 4.2.4, 6.1.3, and 6.1.5.5, as published in 2023, or the most recent version of NFPA 855;
2. Submit to Menard County a hazard mitigation analysis meeting the requirements of NFPA 855 Section 4.4 or the applicable Sections in the most recent version of NFPA 855;
3. The facility owner shall submit to Menard County an emergency operations plan meeting the requirements of NFPA 855 Section 4.3.2.1.4, published in 2023, or application Sections in the most recent version of NFPA 855; and
4. The facility owner shall offer to provide training for local fire departments and emergency responders in accordance with the facility emergency operations plan. A copy of the emergency operations plan shall be given to the facility owner, the local fire department, and the emergency responders. All batteries integrated within an energy storage system shall be listed under the UL 1973 Standard. All batteries integrated within energy storage systems shall be listed in accordance with UL 9540 Standard either from the manufacturer or by a field evaluation.

O. Warnings. The facility owner shall comply with the requirements of NFPA 855 Section 4.7.4, published in 2023, or applicable sections in the most recent version of NFPA 855.

P. Lighting. The energy storage system shall adhere to the principles of responsible outdoor lighting provided by the International Dark-Sky Association and shall limit outdoor lighting to that which is minimally required for safety and

operational purposes. Any outdoor lighting shall be reasonably shielded and downcast from all residences and adjacent properties.

Q. NFPA Fire and Safety Standards. If lithium-ion battery systems will be utilized, the energy storage system shall comply with the fire and safety standards and guidance established for the installation for lithium-ion battery energy storage systems set by the NFPA.

R. Road Use Agreement(s). Prior to the issuance of the building permit, the facility owner shall enter into road use agreements with any impacted road authority requiring the facility owner to be responsible for (1) the reasonable cost of improving, if necessary, roads used by the facility owner to construct the energy storage system and (2) the reasonable cost of repairing roads used by the facility owner during construction of the energy storage system so that those roads are in a condition that is safe for the driving public after the completion of the facility's construction. A roadway improved in preparation for and during the construction of the energy storage system shall be repaired and restored to the improved condition at the reasonable cost of the developer if the roadways have degraded or were damaged as a result of the construction-related activities.

S. Annual report. The facility owner of any energy storage system must submit, on an annual basis on or before February 1st of each calendar year following its commercial operation date, a report to Menard County zoning administrator containing the following information: (i) a general description of any physical repairs, replacements, or modifications to the energy storage system and/or its infrastructure; (ii) complaints pertaining to setbacks, noise, appearance, safety, lighting, and use of any public roads received by the owner or operation concerning the energy storage system and the resolution of such complaints; (iii) calls for emergency services; (iv) certificates of insurance; and (v) a general summary of service calls to the energy storage system facility. In addition to the annual report, the owner or operator of any energy storage system must also furnish such report upon direct request by Menard County. Failure to provide the annual report or report directly requested by Menard County (within 30 days) shall be considered a material violation of this ordinance subject to the remedies provision of this ordinance.

SPECIAL USE PERMIT APPLICATION

A. Complete application. An applicant must submit a complete special use permit application to Menard County zoning office for review, public hearing, and recommendation by Menard County's zoning board of appeals (ZBA) pursuant to

55 ILCS 5/5-12009.5. Approval or denial of all applications shall be made by Menard County board.

B. Material changes. Material changes to the application are not permitted once the notice of public hearing has been published, unless requested or otherwise permitted by Menard County.

C. Copies. Ten (10) paper copies and one (1) electronic copy of the application must be submitted to the Menard County's zoning office.

D. Special use permit fee. The facility owner shall submit application fees for an energy storage system which shall be the lesser of (i) $5,000 per each megawatt of nameplate capacity of the energy storage system or (ii) $50,000. The calculation of fees shall be based on the direct current nameplate capacity. The facility owner shall be responsible for any costs or fees that exceed the submitted application fee.

E. Application materials. The application shall contain or be accompanied by the following information (all technical submissions shall be compliant with state law):

1. A description of the property lines and physical features, including roads, for the facility site;
2. A description of the proposed changes to the landscape of the facility site, including vegetation clearing and planting, exterior lighting, and screening or structures; and
3. A description of the zoning district designation for the parcel of land comprising the facility site; and
4. All documents, reports, modeling, and studies demonstrating compliance with the requirements of this ordinance, state and federal law and regulation, including but not limited to the following:

    a. Detailed engineering drawings demonstrating compliance with all setback requirements;
    b. All applicable NFPA standards governing the facility and referenced in this ordinance and 55 ILCS 5/5-12024;
    c. Sound modeling showing compliance with sound requirements of the General Requirements Section of this ordinance, subsection (F).
    d. A farmland drainage plan and proof the farmland drainage plan has been provided to any impacted drainage district pursuant to the General Requirements Section of this ordinance, subsection (G).;
    e. A decommissioning plan with detailed cost estimations, and proposed financial assurance form pursuant to the General Requirements Section of this ordinance, subsection (I).;

f. IDNR EcoCAT pursuant to the General Requirements Section of this ordinance, subsection (J).;
g. Results of the IDNR consultation pursuant to 17 Ill. Adm. Code 1075 pursuant to the General Requirements Section of this ordinance, subsection (K).;
h. Demonstration of avoidance of protected lands and nature preserves or considerations of setbacks related thereto under the General Requirements Section of this ordinance, subsection (L).;
i. Evidence of consultation with the state historic preservation division pursuant to the General Requirements Section of this ordinance, subsection (M).; and
j. A lighting plan pursuant to the General Requirements Section of this ordinance, subsection (P).;

F. Decision on Special Use Permit Application:

1. The special use permit application shall be approved if the request complies with the standards and conditions imposed by 55 ILCS 5/5-12024, this ordinance, all other state and federal statutes and regulations.
2. The Menard County board may impose conditions upon the construction, operation or decommissioning of the facility.

BUILDING PERMIT

A. Building Permit Fees. Prior to the issuance of a building permit for the facility and/or supporting facilities, the facility owner must submit a fee equating to the lesser of (i) $5,000 per each megawatt of nameplate capacity of the energy storage system or (ii) $50,000. The calculation of fees shall be based on the direct current nameplate capacity. The facility owner shall be responsible for any costs or fees that exceed the submitted application fee

B. Building Permit Requirements. Prior to the issuance of a building permit, the facility owner must submit the following documents (all technical submissions must comply with the state law):

1. An electrical diagram detailing the energy storage system layout, associated components, and electrical interconnection methods, with all National Electric Code compliant disconnects and overcurrent devices;
2. An equipment specification sheet;
3. Engineer drawings demonstrating compliance with the requirements of this ordinance; and

4. All documents demonstrating compliance with this ordinance, state or federal law or regulation

C. Design Safety Certification.

1. The project shall conform to applicable industry standards, including
    i. American National Standards Institute (ANSI) (most recent edition)
    ii. National Electric Code (NEC) (most recent edition) and requirements of the public utility
    iii. National Fire Protection Agency (NFPA) (most recent edition)
    iv. Occupational Safety and Health Administration (OSHA)
    v. American Society of Testing and Materials (ASTM)
    vi. Institute of Electrical and Electronic Engineers (IEEE)
    vii. International Electrotechnical Commission (IEC)
    viii. American Society of Civil Engineers (ASCE)
    ix. American Concrete Institute ("ACI")
    x. United States Environmental Protection Agency (EPA)
    xi. National Electrical Testing Association (NETA)
    xii. Underwriter's Laboratories (UL)

2. Following the granting of siting approval under this Ordinance, a structural engineer shall certify, as part of the Energy Storage System facility building permit application process, that the foundation and design of the Energy Storage System facility is within accepted professional standards given local soil, subsurface and climate conditions.

C. Electrical Components

All electrical components of the Energy Storage System facility shall conform to applicable local, state, and national codes; and relevant national and international standards (e.g., **ANSI** and International Electrical Commission).

D. Aesthetics and Lighting.

1. Lighting: All Energy Storage System facility projects shall comply with responsible outdoor lighting provided by the International Dark-Sky Association and shall limit outdoor lighting to that which is minimally required for safety and operational purposes. Any outdoor lighting shall be reasonably shielded and downcast from all residences and adjacent properties.

2. Intra-Project Power and Communication Lines: All power lines used to collect power from solar panels and all communication lines shall be buried underground at a depth in accordance with the "Agricultural Impact Mitigation

Agreement" (AIMA) until same reach the property line or a substation adjacent to the property line.

3. Debris and Garbage: The project area shall be kept free of debris and garbage at all times during the life of the project.

E. Warnings.

1. A visible warning sign concerning voltage must be placed at all entrances to the facility, at the base of all pad-mounted transformers, substations, and other locations where high voltage is present and is reasonably accessible by others.

F. Setback Requirements.

1. Energy Storage System facilities (and all project supporting facilities) shall be setback with the setback distances measured from the nearest edge of any above-ground component of the facility, excluding fencing:

    1. 150 feet from the nearest point of the outside wall of any occupied community building or nonparticipating residence.
    2. 50 feet to the nearest point on the property line of the occupied community building or nonparticipating property.
    3. 50 feet from the nearest edge of any right-of-way.
    4. The setback provisions of this subsection (D) may be waived upon the written consent of the owner of each affected nonparticipating property or nonparticipating residence.

2. The project shall be enclosed by fencing having a height of at least 7 feet and no more than 25 feet.

G. Compliance with Additional Regulations.

1. Municipal Energy Storage System facilities that are proposed to be located on lands within the 1.5-mile radius of an incorporated municipality's zoning jurisdiction shall seek zoning and building approval from said municipality.

    a. Menard County municipalities may solely require pre-annexation/annexation agreements and shall regulate Energy Storage System facilities (65 ILCS 5/11-13-26) within the 1.5-mile planning jurisdiction.

b. Prior to the start of any construction or ground work, the facility owner must either:
    i. Present documentation that the proposed site is the subject of an approved pre-annexation agreement, and facilitate the creation of an Intergovernmental Agreement between the municipality and Menard County identifying that the municipality will be taking full jurisdiction over the project site and affected properties for the life of the project; or
    ii. Present documentation that the proposed site has been the subject of an annexation into the municipality.
    iii. Present documentation that the property owner maintains sole responsibility of "Brown-Site/EPA" issues should anything arise from contamination of the site at any point during the construction, utilization, or decommissioning of the project.

2. Nothing in this ordinance is intended to preempt any other applicable state and federal laws regulations.

H. Use of Public Roads.

1. An applicant proposing to use any county, municipality, township, or village roads, for the purpose of transporting Energy Storage System facility or supporting facility(s), infrastructure equipment for construction, operation, or maintenance shall follow the Menard County Road Use Agreement executed with the Menard County Engineer and applicable Road District Commissioner.

    a. The Applicant shall: notify the Menard County Engineer of need to use roads and associated infrastructure when performing replacement of infrastructure and:
    b. Identify all such public roads;
    c. Obtain applicable weight and size permits from relevant government agencies prior to construction
    d. Conduct a preconstruction baseline survey to determine existing road conditions for assessing potential future damage;
    e. Any proposed public roads that will be used for construction purposes shall be identified and approved in writing by the respective Road District Commissioner and Menard County Engineer prior to the granting of the Special Use Permit. Traffic for construction purposes shall be limited to these roads. All overweight and/or oversized loads to be transported on public roads may require a permit from the respective highway authority. Any road damage caused by the transport of the facility's equipment, the installation, maintenance, or removal must be completely repaired to the reasonable satisfaction of the Road District Commissioner and Menard

County Engineer. The Road District Commissioner and County Engineer may choose to require either remediation of road repair upon completion of the Energy Storage System facility Project or are authorized to collect fees for overweight and/or oversized load permits. Further, financial assurance in an amount to be fixed by the Road District Commissioner and/or Menard County Engineer to ensure the Road District or Menard County that future repairs are completed to their reasonable satisfaction shall be provided. Applicant shall submit a draft form of said financial assurance with application for Special Use Permit with the Menard County Zoning Office.

2. Enter into a road use agreement with Menard County and each affected road district that includes the following provisions, at a minimum:

    a. Project layout map;
    b. Transportation impact analysis;
    c. Notification procedures for road closures and/or lane restrictions;
    d. Preconstruction plans;
    e. Project traffic map;
    f. Project scope of repairs;
    g. Post-construction repairs;
    h. Insurance; and
    i. Financial assurance in forms and amounts acceptable to Menard County.

3. The road use agreement shall require applicant to be responsible for the reasonable cost of improving roads used to construct the project and the cost of repairing roads used by the facility owner during construction of the project. Roadways improved in preparation for and during the construction of the project shall be repaired and restored to the improved condition at the cost of the developer if the roadways have degraded or were damaged as a result of construction-related activities.

4. Any road not shown as being initially utilized for hauling and/or construction traffic, but is noted to have hauling and/or construction traffic on it during construction for a total of two (2) offenses, will then be included into the schedule of initially noted haul routes scheduled for repair and maintenance.

5. All repairs and improvements to Menard County and Road District public roads and roadway appurtenances shall be subject to the prior approval of the Menard County Board of Commissioners before being made and shall also be subject to inspection and acceptance by the Menard County Engineer and Road District Commissioner after such repairs and improvements are completed. The Menard County and Road District's Road Use Agreement, and any further agreements

contemplated therein, regarding the maintenance and repair of Menard County and Road District public roads and highways, must be approved by the Menard County Board of Commissioners and respective Road Commissioner prior to the Board's approval of any Energy Storage System facility Building Permit applications related to the construction of the proposed Energy Storage System facility project.

I. Site Assessment

1. To ensure that the subsurface conditions of the site will provide proper support for the project and soil restoration, the applicant, at its expense, shall provide soil and geotechnical boring reports to Menard County with respect to each solar array and any energy storage system, as part of its building permit. The applicant shall follow the guidelines for conservation practices impact mitigation submitted by Menard County's soil and water conservation district (or equivalent regulatory agency). The applicant shall submit grading plans for the project for review and comment by Menard County's soil and water conservation district (or equivalent regulatory agency) and shall submit said plans to Menard County prior to the issuance of any building permit.

J. As-Built Map and Plans.

1. Within 60 calendar days of completion of construction of the project, the owner or operator shall deliver to Menard County "as-built" maps, a final site plan and engineering plans that have been signed and stamped by a professional engineer and surveyor licensed in the State of Illinois.

K. Engineer's Certificate.

1. Prior to the issuance of a building permit, applicant must submit a certification from a structural engineer registered in the State of Illinois that the project design is compatible with and appropriate given the specific soil, subsurface and climate conditions. The engineer's certificate shall be submitted as part of the building permit application.

L. Conformance with Approved Application and Plans.

1. The owner shall construct and operate the project in conformance with the special use permit and any conditions, building permit requirements, this ordinance and all applicable state, federal and local laws, regulations, and permits.

2. The Applicant shall be bound by any and all proposals and representations made under oath at the public hearing before the Menard County Board of Commissioners, which shall be considered supplementary conditions of the Special Use Petition granted by the Menard County Board of Commissioners, even if not directly specified herein.

M. Additional Terms and Conditions.

1. All technical submissions, as defined by the Illinois Professional Engineering Practice Act of 1989 (225 ILCS 325/4(w)), contained in the special use permit application and the building permit application shall be prepared and signed by a professional engineer for the relevant discipline.

2. Menard County may retain a qualified, independent code inspector or professional engineer both to make inspections of the project during and after construction and to consult with Menard County to confirm that the construction, substantial repair, replacement, repowering and/or decommissioning of the project is performed in compliance with applicable ordinance, conditions, electrical and building codes, state and federal law and regulation. The cost and fees so incurred by Menard County in retaining said inspector or engineer shall be promptly reimbursed by the applicant.

3. The special use permit granted to the applicant shall bind and inure to the benefit of the applicant, its successors-in-interest, and assigns. If any provision in this ordinance or conditions of approval is held invalid, such invalidity shall not affect any other provision of this ordinance or conditions that can be given effect without the invalid provision and, to this end, the provisions in this ordinance and any conditions are severable.

4. The Applicant shall provide an executed road use agreement to the Menard County Board of Commissioners between the Applicant and the appropriate governing road and highway jurisdictions or the Illinois Department of Transportation to Menard County and Road District showing approved entrances, construction access, and haul routes prior to the issuance of any Energy Storage System Facility Building Permit or prior to construction of the Energy Storage System facility Project.

5. The Applicant shall provide from U.S. Environmental Protection Agency (EPA) a completed Spill Prevention Control and Countermeasures (SPCC Plan). The Applicant shall submit the executed SPCC Plan to the Menard County Board of Commissioners as part of the Special Use Permit application

to be implemented in coordination and at the time of Issue for Construction design documents.

6. The Applicant shall notify Menard County of any material changes to the information provided in subsections that occur prior to the issuance of a building permit.

    a. The Applicant shall not commence construction activity associated with the Energy Storage System facility Project before 6:00 A.M. nor continue past 9:00 P.M. on any day of the week within one-quarter (¼) of a mile of any non-participating landowner unless a waiver is obtained from such landowner.
    b. Prior to issuance of a building permit, the Applicant shall provide documentation to the Menard County Zoning Administrator specifications for the Energy Storage System facility equipment chosen for the Project.
    c. The Applicant shall commence construction of the Energy Storage System facility Project within thirty-six (36) months of the date of the Special Use Petition approval by the Menard County Board of Commissioners. After construction is complete, the Petitioner shall provide certified "as-built" drawings to the Menard County Zoning Administrator and the Menard County Assessor showing the locations of the Energy Storage System facility panels and a legal description of the land utilized for the improvements. The Special Use Permit shall thereafter automatically be modified to limit the legal description of the area of the Special Use Petition to the land utilized for the improvements.

OPERATION

A. Maintenance.

1. Annual Report: The applicant must submit, on an annual basis on the anniversary date of the special use permit approval, an operation and maintenance report to Menard County. The report shall contain the following information:

    a. A general description of any physical repairs, replacements, or modifications to the project;
    b. Complaints pertaining to setbacks, noise, appearance, safety, lighting, and use of any public roads received by the applicant concerning the project and the resolution of such complaints;

c. Calls for emergency services;
d. Relevant certificates of insurance; and
e. A general summary of service calls to the project. Failure to provide the annual report shall be considered a material violation of this ordinance.

2. Within ninety (90) days of the receipt of this annual report, the department of zoning shall review it, conduct an on-site field review of the Energy Storage System facility project, and within one hundred twenty (120) days of the receipt of the report, provide a summary of the report and its on-site field review to the Menard County Board of Commissioners.

3. The department of zoning shall charge a fee for this annual review in the amount of no more than two hundred fifty dollars ($250.00) per Energy Storage System facility project area. This fee shall be provided to the department of zoning by the Energy Storage System facility applicant, owner and/or operator at the time of annual report submission. Failure to provide the annual report and required fee shall be considered a cessation of operations.

4. The applicant, owner and/or operator of a Energy Storage System facility project shall provide that the Menard County Department of Zoning have access to the Energy Storage System facility project site for the purposes described in [OPERATION] (A)(2) above. Failure to provide access shall be deemed a violation of the Special Use Permit.

5. Repower/Modifications: Any modification to an existing project or a project that has received a special use permit that increases the nameplate capacity, adds additional properties or parcels, increases the sound impacts to nonparticipating properties or nonparticipating residences, shall submit to Menard County an application for an amendment to the special use permit which shall be subject to a public hearing and all procedural requirements of a special use permit request under the Illinois Counties Code.

B. Coordination with Emergency Responders.

1. The applicant shall submit to all local emergency responders a copy of the site plan and standard operating procedures and guidelines for the project so that the local law enforcement, fire protection district and rescue units, emergency medical service providers and emergency management service providers having jurisdiction over the project may evaluate and coordinate emergency response plans with the applicant. Such materials shall be provided prior to the filing of the special use permit application.

2. The owner, at its own expense, shall provide annual training for, and the necessary equipment to, the operator and local emergency response authorities

and their personnel so that they can properly respond to a potential emergency at the project.

3. The owner and operator shall cooperate with all local emergency responders to develop an emergency response plan. The plan shall include, at a minimum, 24-hour contact information (names, titles, email addresses, cell phone numbers) for the owner and the operator, at least three designated facility representatives (a primary representative with two alternate representatives, that are on-call 24 hours per day/7 days per week/365 days per year. Any change in the designated facility representative and contact information shall be promptly communicated to Menard County. The content of the emergency response plan, including the 24-hour contact information, shall be reviewed, and updated on an annual basis.

4. Nothing in this section shall alleviate the need to comply with all other applicable life safety, fire and emergency laws and regulations.

5. Any emergency work or response required in direct response to the Energy Storage System facility project, will be billed directly to the developer outside of the scope of the Special Use Permit pursuant to (70 ILCS 705/11f) for local responders. Any specialized operation requiring municipal responders, response will be billed per their standard base rate of their agency.

LIABILITY INSURANCE AND INDEMNIFICATION

A. The owner or operator of the energy storage system shall maintain a current general liability policy covering bodily injury, pollution liability, and property damage with limits of at least $10,000,000 million per occurrence and $20 million in the aggregate, with an annual certificate of insurance being provided to Menard County zoning office, with Menard County being added as an additional insured, with the designation of primary and non-contributory.

B. The applicant shall promptly increase such liability insurance if such amount is increased in the energy storage system ordinance and the applicant is notified in writing of same by Menard County. The applicant shall provide evidence of such increased insurance to Menard County zoning office.

C. Insurance coverage shall be maintained without interruption from the date of issuance of the building permit through the lifetime of the energy storage system. Certificates of insurance acceptable to Menard County and in compliance with this ordinance shall be filed with Menard County prior to the commencement of any work on the energy storage system and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies

required under this ordinance shall contain a provision that coverages afforded under the policies shall not be cancelled or allowed to expire until at least sixty (60) days written notice has been given to Menard County.

D. The applicant, owner and/or operator of the energy storage system energy shall defend, indemnify, and hold harmless Menard County and its officers, appointed and elected officials, employees, attorneys, engineers and agents (collectively and individually, the "indemnified parties") from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses, and liabilities whatsoever, including attorney's fees relating to or arising out of the issuance of the special use permit, other permits, or the construction, operation, maintenance and removal of the energy storage system and affiliated equipment, including, without limitation, liability for property damage or personal injury (including death or illness), whether said liability is premised on contract or on tort (including without limitation strict liability or negligence) or any acts or omissions of the applicant, owner, or operator under this ordinance or the special use permit/other permits, except to the extent any such claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities arise from the negligence or intentional acts of such indemnified parties. This general indemnification shall not be construed as limiting or qualifying Menard County's other indemnification rights available under the law.

DECOMMISSIONING AND SITE RECLAMATION PLAN

A. Applicant must submit a decommissioning plan with cost estimation to Menard County as part of the special use permit application and provide testimony supporting the calculation of costs provided in said plan during the public hearing on the special use permit application.

B. Prior to receiving any building permit for the project, the owner shall enter into an agreed upon decommissioning agreement with Menard County to be approved by Menard County board. That plan shall include:

1. A Memorandum of Understanding with property owners of each Energy Storage System facility tower and all accompanying infrastructure, that if decommissioning fees exceed what has been assured through the decommissioning financial plan, property owners shall be liable for remaining costs.
2. Provisions for the removal of structures, debris, and cabling on the surface and at least five (3) feet below the surface, and the sequence in which removal is expected to occur;
3. Provisions for the restoration of the soil and vegetation;

4. An estimate of the decommissioning costs certified by a professional engineer in current dollars. The engineer providing this estimate shall be engaged under contract by the Menard County Engineer and all costs associated with this engagement shall be borne by the applicant;
5. A financial plan approved by The Menard County Board of Commissioners to ensure funds will be available for decommissioning and land restoration. The applicant shall provide Menard County with a new estimate of the cost of decommissioning the Energy Storage System facility project every five (5) years under the same conditions as set forth in the Agricultural Impact Mitigation Agreement. Upon receipt of this new estimate, Menard County may require, and the applicant, owner and/or operator of the Energy Storage System facility project shall provide, a new financial plan for decommissioning acceptable to Menard County. Failure to provide an acceptable financial plan shall be considered a cessation of operations;
6. A provision that the terms of the decommissioning plan shall be binding upon the owner or operator and any of their successors, assigns, or heirs; and
7. A provision that Menard County shall have access to the site and to the funds outlined above to effect or complete decommissioning one (1) year after cessation of operations.

C. The owner shall periodically submit an updated estimation, and all accompanying infrastructure decommissioning plan, decommissioning cost estimate and updated financial assurances-based debris, on the agreed upon schedule with Menard County.

DEFAULTS AND REMEDIES

A. Any energy storage system declared to be unsafe by Menard County by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, damage, or abandonment is hereby declared a public safety issue and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedures set forth in this ordinance and decommissioning agreement or plan.

B. Failure by the applicant, owner, or operator to comply with any provisions of this ordinance, provisions under the special use permit, other permits, any conditions imposed on the project, and/or failure to comply with any law or regulation shall constitute a default under this ordinance and shall be grounds for revocation of any special use permit or other permits granted by Menard County board or Menard County.

C. Prior to implementation of the existing county procedures for the resolution of such default(s), the appropriate county body shall first provide written notice to the

owner and operator, setting forth the alleged default(s). Such written notice shall provide the owner and operator a reasonable time period, not to exceed thirty (30) days, for good faith negotiations to resolve the alleged default(s).

D. If Menard County determines that the parties cannot resolve the alleged defaults within the good faith negotiation period, Menard County shall make application to the circuit court for an injunction requiring conformance with this ordinance or make such other order as the court deems necessary to secure compliance with the ordinance.

E. Any violation of this ordinance shall be an offense punishable by a fine of $1,000.00. Each violation shall be a separate offense. Each day a violation occurs or continues shall be a separate offense, subject to a $1,000.00 fine for each additional day the violation is not corrected. A court may set any additional and appropriate per day fine for each day the infraction exists or until such infraction is remedied. It is the goal of this ordinance to promote structural safety to protect the public. The court has the authority to set any additional appropriate fines and will consider the nature of the offense, the degree of public safety involved, and the efforts of Menard County and responsible owner or applicant to resolve quickly and safely any and all infractions. It is the intent that any dispute between the parties be resolved promptly and where possible by informal discussions as outlined elsewhere in this ordinance.

F. After the effective date of this ordinance, any persons who, being the owner or agent of the owner of any land, or project developer, located within the territorial jurisdiction of this ordinance, thereafter, proceeds with development of a energy storage system prior to being approved under the terms of this ordinance shall be fined as stated herein.

G. Menard County reserves the right to hire outside counsel to enforce this ordinance or determine compliance with this ordinance. The owner/operator is liable for payment of reasonable attorney's fees in this regard.

H. Nothing herein shall prevent Menard County from taking such other lawful action to prevent or remedy violations. All costs connected therewith shall accrue to the applicant, owner, or operator responsible for the project.

FEE SCHEDULE AND PERMITTING PROCESSES.

A. Special Use Permit Application Fees.

1. Prior to processing any special use permit application for a Energy Storage System facility and supporting facilities, the applicant must submit payment to Menard County Menard Zoning Office equal to $5,000 per megawatt of nameplate capacity, up to a maximum fee of $125,000. Nameplate capacity shall include any energy storage system capacity. Nameplate capacity shall be calculated in terms of direct current nameplate capacity.

2. Should the actual costs to Menard County exceed the special use permit application fee paid, the applicant shall be responsible for those additional costs and shall remit additional funds to Menard County within 15 days of receipt of a request from Menard County with any funds not utilized to be refundable. No hearings on an application shall be conducted nor decisions rendered on any items related to the special use or decisions on any agreements with Menard County if outstanding fees remain due to Menard County.

B. Building Permit Application Fees.

1. Prior to the issuance of a building permit, the owner must submit a certified check to the Menard County Zoning Office for a building permit fee equating to $5,000 per megawatt of nameplate capacity, up to a maximum fee of $75,000. Nameplate capacity shall include any energy storage system capacity. Nameplate capacity shall be calculated in terms of direct current nameplate capacity.

2. Should the actual costs to Menard County exceed the building permit application fee paid, the applicant shall be responsible for the additional costs and shall remit additional funds to Menard County within 15 days of receipt of a request from Menard County. No building permit shall be issued upon outstanding fees remaining due to Menard County.

C. All Costs Paid by Applicant or Owner.

1. The applicant or owner shall pay all costs incurred by Menard County, those costs associated with all offices, boards and commissions of Menard County, and third-party costs incurred by Menard County, including but not limited to, direct or indirect costs associated with the hearing, permitting, operations, inspections, decommissioning, litigation, disputes, and/or negotiations.

2. Due to the complexity of the project and the information submitted, it shall be reviewed by a committee consisting of one or more representatives from:

   i. Menard County Departments of Zoning
   ii. Menard County Planning Commission;

iii. Menard County Engineer;
iv. Menard County Road Commissioner affected
v. Menard County Drainage District Commissioner affected
vi. Menard County Emergency Telephone System;
vii. Menard County Coordinator;
viii. Menard County State's Attorney;
ix. Applicable Fire Protection District;

VARIATIONS

1. The Menard County Zoning Office and The Menard County Board of Commissioners may permit variations to the regulations of this ordinance but shall do so only when the granting of such a variation would be in harmony with the ordinance's general purpose and intent and may vary them only in specific instances where there would be practical difficulties or hardships in the way of carrying out the strict letter of the regulations of this ordinance.

HEARING FACILITATOR

A. Menard County may engage the services of a hearing facilitator. The hearing facilitator shall be an independent contractor who shall conduct a hearing in accordance with all applicable rules of Menard County but has no adjudicatory responsibility other than ruling on requests for continuances, procedural matters, admissibility of evidence and the propriety of any arguments.

B. The hearing facilitator shall be an attorney, licensed to practice in the State of Illinois. The applicant shall reimburse Menard County for the fees and costs charged by the facilitator.

HEARING FACTORS

A. Menard County board may approve a special use permit application for a Energy Storage System facility any supporting facilities if it finds the evidence complies with state, federal and local law, and regulations, and with the standards of this ordinance including the factors listed below. The factors listed below shall be applied as a balancing test rather than individual requirements to be met.

1. The establishment, maintenance, or operation of the Energy Storage System facility will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare;

2. The Energy Storage System facility will not be injurious to the uses and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values of surrounding properties;

3. The establishment of the Energy Storage System facility will not impede the normal and orderly development and improvement of the surrounding properties;

4. Adequate public utilities, access roads, drainage and/or necessary facilities have been or will be provided;

5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets;

6. The Energy Storage System facility is not contrary to the objectives of the current comprehensive plan of Menard County (if any); and

7. The Energy Storage System facility will, in all other respects, conform to the applicable regulations of this ordinance and the zoning district in which it is located, except as such regulations may, in each instance, be modified pursuant to the recommendations of and approved by Menard County board.

SPECIAL USE PERMIT CONDITIONS AND RESTRICTIONS

A. Conditions

1. As part of its approval of a special use permit, Menard County board may stipulate conditions, guarantees, and restrictions upon the establishment, location, construction, maintenance, and operation of the facility as deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements of this ordinance.

B. Revocation.

1. In any case where a special use permit has been approved for a Energy Storage System facility, the applicant shall apply for a building permit from Menard County, and all other permits required by other government or regulatory agencies to commence construction and commence and actively pursue construction of facility within five years from the date of the granting of the special use permit. If the applicant fails to apply for a building permit from Menard County and all other permits required by other government or

regulatory agencies prior to construction and/or fails to commence and actively pursue construction of the facility within this five-year period, then without further action by Menard County, the special use permit for the facility shall be automatically terminated, revoked and void. Upon written request supported by evidence that the applicant has diligently pursued issuance of all necessary permits for the facility required to commence construction and that any delay in commencement of construction of the facility is due to conditions out of its control, Menard County may allow for a reasonable extension of time.

2. A special use permit shall be automatically terminated, revoked and void if the applicant dissolves or ceases to do business, abandons the facility, or the facility ceases to operate for more than 12 consecutive months.

3. Subject to the provisions of this section, a special use permit may be revoked by Menard County if the facility is not constructed, installed, and/or operated in substantial conformance with Menard County-approved plans, the regulations of this ordinance and the special use permit, conditions and restrictions, or failure to comply with any county, state or federal permits, laws, or regulations.

C. Modification

1. Any modification of a Energy Storage System facility project that alters or changes the essential character or operation of the Energy Storage System facility project in a way not intended at the time the Special Use Permit was granted, or as subsequently amended, shall require a new Special Use Permit. The Applicant or authorized representative, shall apply for an amended Special Use Permit prior to any modification of the Energy Storage System facility project.

D. Transferability

1. Owner shall provide written notification to Menard County at least 30 days prior to a change in ownership of the project. A change in ownership shall include any assignment, sale, lease, transfer or other conveyance of ownership or operating control of the applicant, the project, or any portion thereof. The owner or successors-in-interest or assignees of the special use permit shall remain liable for compliance with all conditions, restrictions and obligations contained in the special use permit and any conditions, building permit, the provisions of this ordinance and applicable county, state, and federal permits, laws and regulations.

E. Permit Effective Date.

1. A special use permit granted under this ordinance shall become effective upon the date of approval of the special use permit by Menard County board.

INTERPERTATION

A. The provisions of this ordinance shall be held to the minimum requirements adopted for the promotion and preservations of public health, safety, and general welfare of Menard County. These regulations are not intended to repeal, abrogate, annual, or in any manner interfere with existing regulations or laws of Menard County nor conflict with and laws of the State of Illinois.

SEVERABILITY

A. If any section, clause, or provision of the ordinance is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the validity of the remainder of the ordinance as a whole or any part thereof, other than the part so declared to be unconstitutional or invalid.

EFFECTIVE DATE

A. This Ordinance shall become effective upon passage by Menard County board.