MACON COUNTY CODE OF ORDINANCES
TITLE XV: LAND USAGE

- **CHAPTER 157: BATTERY ENERGY STORAGE SYSTEMS (BESS) SITING**

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§ 157.01 – AUTHORITY.

This ordinance is adopted pursuant to Section 5/5-12001 of the Illinois Counties Code (55 ILCS 5/5-12001), which authorizes Macon County to adopt zoning provisions that advance and protect the public health, safety, morals, comfort, and general welfare of the community.

§ 157.02 – PURPOSE.

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

A. To provide a regulatory scheme for the designation of properties suitable for the location, construction, and operation of any BESS;
B. To ensure compatible land uses in the vicinity of the areas affected by any BESS;
C. To mitigate the impacts of any BESS on environmental resources such as important agricultural lands, forests, wetlands, wildlife, and other protected lands and resources; and
D. To create synergy between BESS development and other goals of Macon County and its comprehensive plan.

§ 157.03 – DEFINITIONS.

As used in this ordinance, the following terms shall have the meaning indicated:

ANSI*: means the American National Standards Institute.*

***APPLICANT**: means the entity who submits to the county a special use permit application for the siting and operation of any battery energy storage system (BESS).*

***AUTHORIZED AGENT:** means personnel authorized by the county board.*

***BATTERY(IES):** means a single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically or otherwise. For the purposes of this ordinance, batteries utilized in consumer products are excluded from these requirements.*

***BATTERY ENERGY STORAGE MANAGEMENT SYSTEM:** means an electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.*

***BATTERY ENERGY STORAGE SYSTEM(S) (BESS):** means an energy storage system that can store and deploy generated energy, typically a group of batteries that charge (i.e., collect energy) and store electrical energy from the grid or energy generation facility and then discharge that energy at a later time to provide electricity or other grid services when needed. BESS generally consist of batteries, battery storage containers, racking systems, on-site switchyards, inverters, associated interconnection transmission lines, and supervisory control and data acquisition systems.*

***(1) TIER 1** – an energy storage system that has an aggregate energy capacity less than or equal to 600 kWh (kilowatt hours) and, if in a room or enclosed area, consists of only a single energy storage system technology, which is a rechargeable BESS used to provide standby or emergency power and/or uninterruptable power supply, load shedding, load sharing, or similar capabilities relating to the energy consumed by a residence on site, farm operation on site, or other business on site.*

***(2) TIER 2** – an energy storage system that has an aggregate energy capacity greater than 600 kWh (kilowatt hours) or is comprised of more than one battery storage system technology in a room or enclosed area.*

***CAPABILITY:** means the ability, knowledge, experience, resources, and financial viability to complete the project.*

***CELL:** means the basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.*

***COMMISSIONING:** means the systematic process that provides documented confirmation that a BESS functions according to the intended design criteria and complies with applicable code requirements.*

***DECOMMISSIONING:** means to return the property or site back to its pre-installation state or better as approved by a decommissioning plan entered into with the county.*

***DEDICATED-USE BUILDING:** means a building that is built for the primary purpose of housing BESS equipment, and complies with the following:*

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(1) The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.
(2) No other occupancy types are permitted in the building.
(3) Occupants in the rooms and areas containing a BESS are limited to personnel that operate, maintain, service, test, and repair the BESS and other energy systems.
(4) Administrative and support personnel are permitted in areas within the buildings that do not contain a BESS, provided the following:
    a. The areas do not occupy more than 10% of the building area of the story in which they are located.
    b. A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing a BESS or other energy system equipment.

DISTANCE: *means the extent or amount of space between points, measured in the unit of feet and on a level plane.*

ELECTRIC GRIP OPERATOR: *means a company that owns and maintains the infrastructure used to transmit electricity at voltages above 69 kV.*

ENERGY CODE: *means the Illinois Power Agency Act (20 ILCS 3855/1-1 et seq.), as currently in effect and as hereafter amended from time to time.*

FINANCIAL ASSURANCE: *means reasonable assurance from a credit worthy party satisfactory to the county, and in the form of an irrevocable letter of credit, that any and all damages due to construction, operation, maintenance, and/or commissioning related to the BESS project will be repaired and/or that the project will be fully decommissioned.*

FIRE CODE: *means the fire code as adopted by the State of Illinois, as currently in effect and as hereafter amended from time to time.*

HEARING FACILITATOR: *means a hearing facilitator, not affiliated with any pro-BESS or anti-BESS group, which the county may unilaterally engage the services of to preside over any required hearings resulting from an application related to the siting of a BESS.*

LICENSED PROFESSIONAL ENGINEER: *means a qualified individual who is licensed as a professional engineer in the State of Illinois.*

LICENSED STRUCTURAL ENGINEER: *means a qualified individual who is licensed as a structural engineer in the State of Illinois.*

LIKE-KIND REPLACEMENT: *means a BESS or associated equipment which meets or exceeds the standards and specifications of the BESS or equipment being replaced and complies with the applicable terms and conditions of this ordinance.*

LOCAL ELECTRIC COOPERATIVE/UTILITY: *means an organization or company that transmits electricity at or below 69kV and distributes electricity to customers within its respective service territory.*

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MIDCONTINENT INDEPENDENT SYSTEM OPERATORS (MISO): *means an interstate electric grid operator for the central United States that facilitates the wholesale buying and selling of electricity within its operational territory through partnerships with various independent Electric Grid Operators.*
NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL): *means a United States Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry Occupational Safety and Health Administration (OSHA) electrical standards.*

NEC: *means the National Electric Code.*

NFPA: *means the National Fire Protection Association.*

NON-PARTICIPATING PROPERTY: *means any property that is not a participating property.*

NON-PARTICIPATING RESIDENCE: *means any residence located on non-participating property and that is existing and occupied on the date that a special use permit application is filed with the county.*

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 is filed with the county: a school, place of worship, day care facility, public library, or community center.*

OPERATING PERMIT: *means a permit that must be issued (according to approval by the county's zoning administrator) after the construction of any BESS is substantially complete and prior to the commercial operation date of the BESS, in order to store and sell energy.*

OPERATOR: *means the entity responsible for the day-to-day operation and maintenance of the BESS and associated equipment, including any third-party subcontractors.*

OWNER: *means an entity with an equity interest in the BESS, including respective successors and assignees, or an entity that becomes an owner through foreclosure. Owner does not mean the property owner from which land is leased for locating the BESS unless the property owner has an equity interest in the BESS, or any person holding a security interest in the BESS solely to secure an extension of credit.*

PARTICIPATING PROPERTY: *means a BESS host property or any real property that is the subject of a written agreement that provides the BESS owner an easement, option, lease, or license to use the real property for the purpose of constructing a BESS or associated equipment/supporting facilities on the property.*

PRIMARY STRUCTURE: *means, for each property, the structure that one or more persons occupy the majority of time on that property for either business or personal reasons, including, but not limited to, structures such as residences, commercial buildings, hospitals, churches, day care facilities, schools, and agricultural buildings/structures.*

SPECIAL USE PERMIT: *means a permit approved by the county board, after public hearing on a complete written application, allowing a particular use at a specified location subject to compliance with certain specified special conditions as may be required by the county board.*

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UNDERWRITERS LABORATORIES (UL): *means an independent safety and testing organization that provides globally recognized safety listings certifications and criteria for both individual components and integrated systems.*

§ 157.04 – APPLICABILITY.

The requirements of this ordinance shall apply to any BESS permitted, installed, or modified in the county after the effective date of this ordinance. Any BESS connected or integrated into a commercial solar energy facility or commercial wind energy facility shall be governed by the requirements of all applicable solar or wind ordinances.

Modifications to, retrofits, or replacements of an existing BESS that increase the total designed discharge duration or power rating shall be subject to this ordinance. Any BESS that intends to modify, retrofit, or replace any existing equipment which increases the designed discharge duration or power rating must apply for an amended special use permit prior to modifying, retrofitting, or replacing said equipment.

Tier 1 BESS. Tier 1 BESS are permitted in all zoning districts. Tier 1 BESS must apply for and be issued a building permit prior to installation/construction. Prior to operation of any Tier 1 BESS, a safety inspection must be completed at the owner's expense and performed by a contractor selected by the county. ***Tier 1 BESS are subject to the requirements of this ordinance only as specifically stated herein.***

Tier 2 BESS. Tier 2 BESS are only permitted in agricultural or industrial-zoned districts. Tier 2 BESS must apply for and be issued a special use permit, a building permit prior to construction, and an operating permit prior to commercial operation. ***Tier 2 BESS are subject to all requirements of this ordinance except as specifically stated herein.***

§ 157.05 – PROHIBITION.

No BESS governed by this ordinance shall be transported, constructed, erected, installed, located, or operated within the county, unless:

A. A special use permit has been granted by the county board and a building permit has been issued for each individual BESS or for a group of BESS under a joint siting application pursuant to this ordinance.

B. All road use agreements and decommissioning agreements have been entered into with each applicable governmental agency and all required financial assurances have been posted and provided to the county/applicable governmental agency.

§ 157.06 – GENERAL REQUIREMENTS.

Following the granting of a special use permit by the county board, and compliance with any and all conditions is met, the applicant is eligible to apply for a building permit(s) for the project.

An interconnection agreement must be completed with MISO and/or the Electric Grid Operator, and the local electric cooperative/utility in whose service territory the project is located prior to the issuance of any building permit(s).

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Actual on-site construction must commence within one (1) year of the granting of a special use permit; if not completed or otherwise, any permit(s) previously issued will no longer be valid.

The failure to obtain the required building permit(s) or other permit(s) shall be a violation of this ordinance. A building permit shall be issued only after an application is submitted for the building permit and approval has been granted by the county's zoning administrator.

§ 157.07 – SPECIAL USE PERMIT APPLICATION.

A. An applicant must submit a special use permit application to the county zoning office for review, public hearing, and recommendation by the 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 the county board.

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

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

D. Financial assurance in the form of an irrevocable letter of credit to assure the construction, installation and completion of the project or improvements. Such financial assurance (irrevocable letter of credit) shall be provided by the applicant prior to application of and issuance of a building permit for the BESS and shall be in such amount as is determined to be 110% of the estimated project cost.

E. The application shall contain or be accompanied by the following information:

1. A site plan for the BESS showing the planned location of the BESS and all related components, including legal descriptions for each site, participating and non-participating residences, primary structures, occupied community buildings, parcel boundary lines (including identification of adjoining properties), setback lines and layout of all structures within the geographical boundaries of any applicable setback, public and private access roads and turnout locations, railroad mainline and/or proposed railroad siding(s), the location of any construction staging areas including concrete batch plants, substation(s), operations and maintenance buildings, ancillary equipment, electrical cabling to substation(s) and/or energy generation facility, guy lines and anchor bases, any above or below ground transmission lines, third party transmission lines, the location of any wetlands, flood plain, drainage structures (including surface ditches and subsurface drainage features and a drain tile survey), active or abandoned water/oil/natural gas/or any other type of wells and boreholes, lakes, ponds, streams, archaeological sites, underground mines, and scenic and natural areas within one thousand five hundred (1,500) feet of the proposed project.

2. A project summary, including, to the extent available:

    a. A general description of the project, including, but not limited to:

i. The approximate total power capacity, energy capacity, and discharge duration of the BESS.
ii. The type(s) of battery(ies) used and their potential manufacturer(s).
iii. A preliminary equipment specification sheet that documents the proposed BESS components, inverters and associated electrical equipment to be installed.
iv. The maximum height of any battery storage container, racking system, or dedicated-use building.
v. An electrical diagram detailing the BESS layout, associated components, and electrical interconnection methods, with all NEC compliant disconnects and over current devices.
vi. A project site plan, project phasing plan, and project construction plan.
vii. The general location of the project.

b. A description of the applicant, owner(s), and operator, including their respective business structures.

c. The names, addresses, and phone numbers of the applicant, owner(s), and operator, and all property owners who have signed a lease agreement; and information as to whether the applicant is acting for itself or as an agent, alter ego, or representative of a principal and the name and address of the principal; whether the applicant is a corporation and of all stockholders or shareholders owning any interest in excess of 20% of all of the outstanding stock or shares of the corporation; whether the applicant, or its principal, is a business or entity doing business under an assumed name, and if so, the name and residence of all actual owners of the business or entity; whether the applicant, or its principal, is a partnership, joint venture, syndicate or unincorporated voluntary association, and if so, the names and addresses of all partners or members of the partnership, joint venture, syndicate or unincorporated voluntary association.

d. Prior to filing an application with the county, the applicant must hold an in-person, public meeting at a location within the township of the planned BESS, or if no sufficient location is available within the township, a location in the county to inform the public of the proposed BESS project. In its application, applicant shall provide sufficient documentation showing that a public meeting has been held and that all landowners and residents within 1.5 miles of the project footprint and within the project footprint have been properly notified of said public meeting.

e. Individual inventory designations for each BESS and substation for reference in building permits.

f. All required studies, reports, certifications, waivers, and approvals demonstrating compliance with the provisions of this ordinance.

g. A proposed decommissioning plan.

h. An Agricultural Impact Mitigation Agreement (AIMA) executed between the applicant and the Illinois Department of Agriculture, if available.

i. Results and recommendations from the Illinois Department of Natural Resources (IDNR) obtained through the Ecological Compliance Assessment Tool (EcoCAT) or a comparable successor tool.

j. Results of any United States Fishing and Wildlife Service's Information for Planning and Consulting environmental review or a comparable successor tool that is consistent with applicable United States Fish and Wildlife Service Energy Development wildlife guidelines.

k. Information demonstrating the BESS will avoid protected lands.

l. An electrical diagram detailing the BESS layout, associated components, and electrical interconnection methods, with all NEC compliant disconnects and over current devices.

m. A preliminary equipment specification sheet that documents the proposed BESS components, inverters, and associated electrical equipment to be installed. A final equipment specification sheet shall be submitted prior to the issuance of any building permit.

n. A fire safety compliance plan documenting and verifying that the BESS and its associated equipment, controls, and safety systems are in compliance with all state and federal codes.

o. An operation and maintenance manual which describes continuing BESS maintenance and property upkeep, as well as design, construction, installation, testing, and commissioning information which meets all requirements set forth in this ordinance.

p. Erosion and sediment control, storm water, and effluent management plans, prepared to Illinois Environmental Protection Agency (IEPA) and Illinois Department of Natural Resources (IDNR) standards, if applicable, and to such standards as may be established by the county.

q. A noise modeling report demonstrating compliance with Illinois Pollution Control Board (IPCB) standards.

r. A preliminary emergency management plan.

s. A drain tile survey.

t. If applicable, any waivers from setback requirements executed by occupied community building owners and/or non-participating property owners,

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bearing a file stamp from the county recorder's office, confirming the waiver has been recorded against the title to the affected real property.

u. Sufficient documentation that the applicant, owner, company, and parent company have the capability to complete the BESS project as proposed.

v. Any good neighbor plan, property value guarantee plan, or other financial incentive plans associated with the proposed project, and a copy of such plan(s).

w. Any other information normally required by the ZBA as part of its permitting requirements.

x. Any other information requested by the ZBA or county consultants necessary to evaluate the application and proposed project, and to demonstrate that the proposed project meets all applicable regulations.

§ 157.08 – DESIGN AND INSTALLATION.

A. Setbacks. Setbacks shall be:

1. 200 feet from the parcel line;
2. 200 feet from any public right-of-way; and
3. 500 feet from any non-participating residential structure or occupied community building.

B. Height.

BESS and its associated equipment, including containers, racking systems, and dedicated-use buildings, shall be restricted to thirty-five (35) feet in height.

C. Fencing Requirements.

BESS and its associated equipment shall be enclosed by a fence at least ten (10) feet in height with a locking gate to prevent unauthorized access unless housed in a dedicated-use building.

D. Screening and Visibility.

BESS shall have views minimized from all residences and adjacent properties using architectural features, earth berms, landscaping, or other screening methods.

E. Safety.

Emergency Management. Applicant shall submit a preliminary emergency management plan as part of its application for a special use permit. Applicant shall submit a final emergency management plan with its building permit application, which must be approved by the county prior to the issuance of a building permit.

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System Certification. Any BESS and its associated equipment shall be listed by a Nationally Recognized Testing Laboratory to meet or exceed UL 1973, UL 9540(A), UL 1741SA, and IEEE 1547 (current standard for BESS and equipment) or approved equivalent, with subcomponents also meeting nationally recognized standards, certified under the applicable electrical, building, and fire prevention codes as required.

Furthermore, field evaluation by an approved testing laboratory for compliance with UL 9540 and NFPA 855 (or approved equivalent) and applicable codes, regulations, and safety standards may be used to meet system certification requirements.

All electrical components of any BESS shall conform to applicable local, state, and national codes and to relevant national and international standards (e.g., ANSI and International Electrical Commission). Utility lines connecting to energy sources, substations, etc., shall be placed underground where practical. All electrical wire and lines connecting a BESS to another BESS or substation must be installed no less than six (6) feet deep. The owner/operator of the BESS shall be a member of J.U.L.I.E (Joint Utility Locating Information for Excavators) and follow its rules and regulations. During the installation and before wires and lines are covered, there must be an inspection for compliance by an independent inspector chosen by the county and paid for by the owner/operator.

If there is damage to any battery component(s), the damaged material(s) must be segregated from other batteries to halt any potential thermal runaway.

F. Signage.

1. All signage shall be made with letters and numbers at least three (3) inches in height with a light reflective surface. Faded/damaged/missing signs shall be replaced when necessary for the duration of BESS site operations.

2. Warning signs concerning voltage must be placed at all entrances of the BESS.

3. An emergency sign listing the 9-1-1 address shall be placed and maintained by the owner/operator at the entrance to each BESS access road from a public road. A sign or posting no more than four (4) square feet in area shall be placed, and maintained, with a toll-free telephone number answered by a live operator twenty-four hours a day seven days per week, for emergency calls.

4. A non-emergency phone number for the operator shall also be displayed for informational inquiries.

5. These phone numbers shall remain active with all calls being voice recorded for verification purposes and with comments and complaints logged and reported to the county zoning office on a monthly basis.

6. The recorded calls shall be maintained for at least twelve (12) months.

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7. Current phone numbers shall be maintained. Local agency response shall be reimbursed by the project owner(s).

8. Upon completion of the construction of an approved BESS project, a reasonable visible sign to warn people to not approach while operating must be placed at the entrance of each access road.

9. Warning signs identifying underground wire locations shall be placed at all road crossings, creek, waterway, and ditch crossings, and all underground wire locations shall be GPS mapped and given to the local GIS Office and J.U.L.I.E. (Joint Utility Locating Information for Excavators).

G. Lighting.

Lighting of the BESS shall comply with the provisions/guidance provided by the International Dark-Sky Association and shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from all residences and adjacent properties.

H. Vegetation and Tree Cutting.

Areas within twenty (20) feet on each side of a BESS shall be cleared of combustible vegetation and other combustible growth.

Noxious weeds and other invasive plant species shall be eliminated and strictly controlled during the construction, operation, and decommissioning of the entire BESS site. This is pursuant to the "Illinois Noxious Weed Law" 505 ILCS 100/1-24. The list of noxious wees are found in "Illinois Exotic Weeds Act," 525 ILCS 10/3. In addition, Amaranthus tuberculatus (commonly known as "waterhemp") shall be proactively controlled at all times.

I. Noise.

Noise generated from the BESS, components, and associated ancillary equipment shall not exceed Illinois Pollution Control Board (IPCB) limits.

J. Site Access.

1. BESS shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if applicable, the local ambulance district.

2. BESS, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for exposure in compliance with NFPA 70E.

K. Agriculture Damage Repair.

All damages to waterways, drainage ditches, field tiles, or any other infrastructures caused by the construction, maintenance, operation, or decommissioning of the BESS must be completely repaired or replaced to an acceptable state within a reasonable amount of time determined by the property owner. All investigation and repairs shall be in accordance with applicable law. If the BESS is within a Drainage District organized pursuant to Illinois law, the BESS shall adhere to all requirements of the Drainage District. Prior to receipt of Building Permit(s) for the BESS, the owner shall provide proof of consultation with any applicable Drainage District. Prior to receipt of an operating permit the owner shall provide proof of compliance with all Drainage District requirements.

L. Water Usage and Water Wells.

Prior to application for the Special Use Permit, The applicant shall perform an investigation to determine the existing of any water wells on the parcel hosting the BESS. Any water well that is discovered or otherwise known to exist within in the parcel hosting the BESS shall be mapped on the site plans and reported to the Macon County Environmental Services office, the Illinois State Geological Survey, and the Macon County Zoning Office within three (3) business days of its discovery. Any wells on the parcel must be filled according to local, state and federal law and/or regulation prior to the commissioning or operations of the BESS site. The utilization of any underground publicly used aquifer at the BESS site is prohibited

During operation the emergency water supply available to the BESS for providing fire suppression shall be 150% of the estimated capacity necessary for controlling a fire at the BESS. Prior to the issuance of a Building Permit, the BESS owner and the County shall confer and agree upon any required infrastructure improvements necessary to provide adequate emergency response or fire suppression (such as water supply volume and pressure). If any infrastructure improvements are required, the BESS owner shall be responsible for any costs necessary for such improvements. The BESS owner and County shall memorialize such requirements in the form of a written agreement prior to the issuance of any Building Permit(s) related to the BESS.

M. Use of Public Roads.

An applicant, owner, or operator proposing to use any county, municipality, township, or village roads for the purpose of transporting BESS or substation parts and/or equipment for construction, operation, or maintenance of the BESS or substation/supporting facilities shall:

1. In its special use permit application identify all such public roads intended for use including a site layout plan showing the applicable BESS sites, public road network used, access road entrances, underground collection system and power transformer sites. The application and construction shall include multiple points of access for emergency response purposes. All access points shall be sufficient to accommodate firefighting vehicles.

2. Identify all public agencies involved.

3. Enter into a road use agreement with each of the affected jurisdictions and relevant government agencies prior to the receipt of a building permit.

4. Obtain applicable weight and size permits from relevant government agencies prior to construction and/or maintenance activities.

5. To the extent an applicant, owner, or operator must obtain a weight or size permit from the local agency of jurisdiction, the legal agreement shall:

    a. Provide a pre-construction and/or pre-maintenance baseline survey to determine existing road conditions and right of way conditions and assess for potential future damage;
    b. Identify necessary heavy and oversized equipment and materials over roads which may in certain cases be in excess of the design limits of the roads;
    c. Widen, modify and/or improve roads including culverts, bridges, road shoulders and other related fixtures to permit such equipment and materials to pass;
    d. Outline exact routes intended for construction and/or maintenance use;
    e. Detail maintenance responsibility and method of reimbursement if it is deemed the responsibility of a local governmental entity;
    f. Expectations of the local governmental entity when road reconstruction is involved;
    g. Easement on private property will be the sole responsibility of the applicant, owner, or operator;
    h. Outline of time schedule including any and all provisions during seasonal road postings;
    i. Outline any and all permits required for entrance off the public roads;
    j. Provide financial assurance in the form of a sufficient cash escrow to be held by the county treasurer's office for the purpose of repairing any damage to public roads caused by constructing, operating, or maintaining the BESS and its included equipment. This estimate will be determined by a licensed Illinois professional engineer chosen by the county and paid for by the applicant, owner, or operator;
    k. Provide county's zoning office with a signed copy of any agreements pertaining to the use of public roads prior to the issuance of a building permit; and
    l. Identify any special issues which may affect the public health, safety, and welfare.

N. Utility Lines and Electrical Circuitry.

All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.

O. Compliance.

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1. BESS must comply with site assessment that is intended to protect agricultural soils.

2. BESS developer(s) shall be required to initiate a natural resource review consultation with the IDNR (Illinois Department of Natural Resources) through the department's online, Ecological Compliance Assessment Tool (EcoCAT) program. Areas reviewed through this process will be reviewed for endangered species and wetlands. The cost of the EcoCAT consultation will be borne by the developer(s).

3. BESS are subject to the State of Illinois Storm Water Management regulations, erosion and sediment control provisions if adopted, and NPDES permit requirements.

§ 157.09 – OPERATION.

A. Operating Permit. An operating permit shall be obtained from the county prior to start of the commercial operation of any BESS.

B. Ownership Changes. If the owner or operator of a BESS changes, a new operating permit fee shall be paid to the county for the county's evaluation of the change in ownership. The successor owner or operator must assume in writing all obligations of the original BESS special use permit (including conditions), building permit, operating permit, site plan approval, road use agreements, decommissioning agreements, and any other agreements entered into with the county. The successor owner or operator of the BESS shall notify the county's zoning administrator in writing of the ownership or operator change and written proof that it has assumed all obligations required by this ordinance within thirty (30) days of the ownership or operator change. The BESS operating permit and all other permits/approvals for the BESS shall be void if the new owner or operator fails to fulfill these requirements. Reinstatement of a void special use permit, building permit, or operating permit shall be subject to the same review and approval processes for new applications under this ordinance.

C. Maintenance/Annual Report. The owner or operator of any BESS must submit, on an annual basis on or before February 1st of each calendar year following its commercial operation date, a report to the county zoning administrator containing the following information: (i) a general description of any physical repairs, replacements, or modifications to the BESS 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 BESS and the resolution of such complaints; (iii) calls for emergency services; (iv) status of liability insurance; and (v) a general summary of service calls to the BESS facility. In addition to the annual report, the owner or operator of any BESS must also furnish such report upon direct request by the county. Failure to provide the annual report or report directly requested by the county (within 30 days) shall be considered a material violation of this ordinance subject to the remedies provision of this ordinance.

D. Coordination with Emergency Management Agencies.

1. The applicant, owner, or operator shall submit to any local emergency management agency (EMA) a copy of the site plan. In addition to the site plan, a plan pertaining to

the planning, response, recovery, and mitigation of any natural or manmade hazard that may affect the BESS development must be negotiated.

2. Owner or operator shall cooperate with the local fire department/adjacent fire departments/districts/EMA to develop an emergency response plan. In addition, at no cost to the local fire departments, the owner or operator shall provide to the local fire department/adjacent fire departments/districts/EMA, any and all specialized and necessary rescue or retrieval equipment occasioned by the use of the particular BESS being used at the project (i.e., fire retardant, tanks, respirators, etc.). All equipment shall become of the property of the emergency response agency.

3. As part of its special use permit application, the applicant must submit an emergency management plan.

4. Nothing in this ordinance shall alleviate the need to comply with all other applicable fire laws and regulations.

5. The applicant, owner, or operator shall annually coordinate with the local emergency response agencies and the Macon County Emergency Management Agency, situational onsite training and practice drills.

E. Materials Handling, Storage, and Disposal.

1. All solid and liquid wastes related to the construction, operation, and maintenance of the BESS shall be removed from the site promptly and disposed of in accordance with all federal, state, and local laws.

2. A list of all hazardous solids and/or liquids that may be used on site shall be provided to the local fire departments and adjacent fire departments/districts/EMA, and the county zoning administrator All hazardous materials both liquid and solid related to the construction, operation and maintenance of the BESS shall be handled, stored, transported, and disposed of in accordance with all applicable laws.

§ 157.10 – LIABILITY INSURANCE AND INDEMNIFICATION.

The owner or operator of the BESS shall maintain a current general liability policy covering bodily injury and property damage with limits of at least $10 million per occurrence and $40 million in the aggregate, with an annual certificate of insurance being provided to the county zoning office, with the county being added as an additional insured, with the designation of primary and non-contributory.

The applicant shall promptly increase such liability insurance if such amount is increased in the BESS ordinance and the applicant is notified in writing of same by the county. The applicant shall provide evidence of such increased insurance to the county zoning office.

Insurance coverage shall be maintained without interruption from the date of permitting through the lifetime of the BESS project. Certificates of insurance acceptable to the county and in compliance with this

ordinance shall be filed with the county prior to the commencement of any work on the BESS 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 the county.

The applicant shall also, to the fullest extent permitted by law, indemnify, and hold the county, its employees, board members, and agents harmless for any action due to or arising out of the construction, maintenance, decommissioning, deconstruction, and/or operation of the BESS, including the payment of any attorney's fee and costs arising out of any action due to or arising out of the construction, maintenance, decommissioning, and/or operation of the BESS.

The applicant, owner and/or operator of the BESS shall defend, indemnify, and hold harmless the 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 BESS 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 the county's other indemnification rights available under the law.

After the effective date of this ordinance, no proposed BESS, as defined in this ordinance and within the county's jurisdiction, shall proceed with construction until it has been submitted to and approved by the county board and/or its authorized agent in accordance with the provisions of this ordinance.

§ 157.11 – DECOMMISSIONING.

Decommissioning will apply to all BESS projects and its equipment/components. Prior to receiving special use permit approval, the applicant and/or owner/operator must enter into and agree upon a decommissioning plan and decommissioning agreement with the county that ensures the BESS project will be properly decommissioned upon the end of project life or facility abandonment.

A. Decommissioning Plan. The applicant shall submit with its special use application a proposed decommissioning plan that includes the following:

1. The anticipated life expectancy of the BESS project;

2. The funding method(s), for the decommissioning and restoration of the project site to its original, natural condition prior to the BESS development;

3. The method of ensuring that funds will be available for decommissioning and restoration;

4. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;

5. The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the BESS, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning, and confirmed as being acceptable after the system is removed; and

6. A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.

7. Prior to receiving a special use permit under this ordinance, the county, the applicant, owner, and/or operator must agree to a written decommissioning agreement that ensures the BESS project is properly decommissioned and deconstructed upon the end of project life or facility abandonment.

8. If the site is damaged or nonfunctioning for any reason, the BESS project operator shall notify the county zoning office within twenty-four (24) hours and then shall have six (6) months to bring the project back to its operational capacity. If for any reason the BESS is not operational or able to store or manage electricity after six (6) months, the operator/owner shall have six (6) months to complete decommissioning of the BESS and its equipment.

9. In the event of abandonment of the project or its equipment/components, the project site property owner/leaseholder shall bear ownership of the BESS and all of its equipment/components located on the property. The property owner of the project site shall bear the decommissioning costs in excess of any funds the county is able to access to ensure proper decommissioning of the project.

10. In the event of bankruptcy or similar financial default of the BESS project, the county shall use the decommissioning funds to the greatest extent possible. There may remain unresolved site issues beyond the scope of the county's ability to fund the decommissioning of the BESS. To the extent the financial assurance provided to the county is insufficient to fund the complete decommissioning of the BESS, the property owner, the BESS owner, any parent entity of the BESS owner, any person or entity holding a greater than 20% interest in the BESS or parent entity of the BESS, any financial creditor or any other person/entity holding an equity interest in the BESS shall be responsible for the decommissioning costs of the BESS. Prior to receipt of a building permit, the above responsible entities shall execute an agreement with the county agreeing to fund the decommissioning of the BESS should the decommissioning financial assurance provided to the county be insufficient to fund the complete decommissioning of the BESS.

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11. A provision that the terms of the decommissioning agreement shall be binding upon the applicant and any of their successors, assigns, or heirs.

12. The county may sell any salvage material to reduce the county's expenses related to decommissioning of any project site and shall be granted access to each site to affect or complete decommissioning. The county may, but is not required to, allow a reduction of the decommissioning financial assurance in an amount equal to the salvage value of the BESS.

13. The plan shall include provisions for removal of all structures, BESS, transmission equipment, buildings, fences, cabling, debris, foundations, and physical material pertaining to the project, including the cost for disposal of all materials associated with the BESS. The plan shall also include provisions for restoration of soil and vegetation and a plan ensuring financial resources will be available to fully decommission the site.

14. All solid and liquid wastes shall be disposed of in accordance with all local, state, and federal laws.

15. All hazardous materials shall be handled, stored, transported, and disposed of in accordance with all applicable local, state, and federal laws. EMA and HAZMAT officials shall be notified of the handling, storage, transportation, and disposal of any and all hazardous materials.

B. Decommissioning Fund.

1. The cost estimate of decommissioning will be completed by a licensed Illinois professional engineer chosen by the county at the applicant's expense. Payment for said engineer's fee and any other third-party costs to prepare decommissioning cost estimates or negotiate decommissioning agreement(s) is not included in the initial application fee.

2. The decommissioning cost estimate will be reviewed at a minimum every three (3) years, by the county's chosen Illinois licensed professional engineer, and revised, if necessary, at the owner/operator's expense. The review and revised agreement are subject to the approval of the county board.

3. The county reserves the right to require more frequent decommissioning estimates and cash escrow requirements based on changing economic conditions.

4. At the conclusion of the project lifespan or when the project has failed to be commercially operable for greater than six (6) months, the BESS project's owner/operator shall notify the county zoning office and then has twelve (12) months from the date of notification to decommission the site(s).

§ 157.12 – HEARING FACILITATOR.

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A. The 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 the ZBA and the 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 the county for fees and costs charged by the hearing facilitator.

§ 157.13 – HEARING FACTORS.

A. The county board may approve a BESS special use permit application if it finds the evidence complies with federal and state law/regulations and with the standards of the county's zoning code and this ordinance, including the factors listed below. The following factors are applied as a balancing test, not individual requirements to be met.

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

2. The BESS 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 BESS 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 proposed BESS is not contrary to the objectives of the current comprehensive plan of the county; and

7. The BESS shall, 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 the county board.

B. The county board may also stipulate conditions, guarantees and restrictions, upon the establishment, location, construction, maintenance, operation, and other aspects of the BESS as are deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements of this ordinance.

§ 157.14 – FEE SCHEDULE AND PERMITTING PROCESSES.

A. Application Fees.

1. Prior to processing any special use permit application for a BESS, the applicant must submit a certified check to the county for the application fee equal to $2,500.00 per megawatt (MW) of proposed nameplate capacity, up to a maximum fee of $250,000.00. If the total nameplate capacity is below 1 MW, the application fee shall be reduced pro rata based on kilowatt (kW) capacity. These funds shall be placed in an FDIC insured account and will be used to cover the county's cost incurred in processing the application.

2. Should the actual costs to the county exceed the submitted application fee, the applicant shall be responsible for those additional costs and shall remit additional funds to the county within fifteen (15) days of receipt of a request from the county. No hearings on an application shall be conducted nor final decisions rendered on an application if there are application fees due to the county.

3. Any unused amounts of the application fee shall be refunded to the applicant within six (6) months of the county board rendering a final decision on the matter, unless any pending litigation, disputes or negotiations involving the county exist regarding the BESS, in which case any amounts owed to the applicant shall be refunded within six months of the conclusion of the litigation, disputes or negotiations. An applicant may request any unused application fee be applied toward building permit fees for the facility.

B. Building Permit Fees.

Building permit fees shall be based on the total construction cost of the BESS project. Prior to the issuance of a building permit, applicant must deposit a building permit fee equating to $7.50 per $1,000.00 of construction cost. With its building permit application, applicant must provide to the county zoning administrator an affidavit showing the total construction cost. If requested, an itemized affidavit of construction costs shall also be provided to the county zoning administrator.

C. Operating Permit Fees.

Applicant shall pay to the county an operating permit fee of $2,500.00 per megawatt (MW). If the total nameplate capacity is below 1 MW, the operating permit fee shall be reduced pro rata based on kilowatt (kW) capacity. Applicant or owner/operator shall not begin commercial operation until such time as the operating permit fee has been paid. If the owner/operator of the BESS changes, a new operating permit fee shall be paid to the county for the county's evaluation of ownership or operator.

D. All Costs Paid by Applicant/Owner.

In addition to all fees noted above, the applicant or owner shall pay all costs incurred by the county, including but not limited to, those costs associated with all offices, boards and commissions of the county, and third-party costs incurred by the county. This includes, but is not

limited to, the direct or indirect costs associated with the hearing, permitting, operations, inspections, decommissioning, litigation, disputes, and/or negotiations.

§ 157.15 – DEFAULTS AND REMEDIES.

A. Any BESS declared to be unsafe by the 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.

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 the county board or the 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 the county determines that the parties cannot resolve the alleged defaults within the good faith negotiation period, the 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 the 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 BESS prior to being approved under the terms of this ordinance shall be fined as stated herein.

G. The 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 the 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.

§ 157.16 – INTERPRETATION.

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 the county. These regulations are not intended to repeal, abrogate, annual, or in any manner interfere with existing regulations or laws of the county nor conflict with and laws of the State of Illinois.

§ 157.17 – SEVERABILITY.

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.

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