



COUNTY OF KANE

DEVELOPMENT & COMMUNITY SERVICES DEPARTMENT

Kane County Government Center
719 S. Batavia Ave, Geneva, IL 60134 - Building A | (630) 232-3485

ZONING PETITION SUMMARY

MTG DATE: August 4, 2026

TO: Kane County Zoning Board of Appeals

FROM: Natalie Zine, *Building & Zoning Division Manager*
P: 630-232-3494 | E: zinenatalie@kanecountyil.gov

SUBJECT: Zoning Petition No. 5008

GENERAL INFORMATION

APPLICANT

Kane County

PURPOSE

This memo explains the proposed text amendments to Kane County Code Chapter 25, Zoning Ordinance, Section 25-5-4-9 (Commercial Solar Energy Facilities), and the proposed new Section 25-5-4-10 (Energy Storage Systems), attached as Exhibit A to the accompanying resolution. Staff recommends adoption of these amendments to bring the County's regulations into compliance with recent changes to state law.

BACKGROUND

On January 8, 2026, Governor Pritzker signed the Clean and Reliable Grid Affordability Act into law as Public Act 104-0458 ("PA 104-0458" or "the Act"), effective June 1, 2026. Among other things, the Act amended the Counties Code (55 ILCS 5/5-12020) governing county authority to regulate commercial solar energy facilities and, for the first time, added a new provision (55 ILCS 5/5-12024) directing counties to establish siting standards for standalone energy storage systems ("ESS").

PA 104-0458 sets both minimum and maximum requirements that county zoning ordinances must follow for these facility types; counties may not impose standards that are more restrictive, or less restrictive, than what the state now specifies for several key provisions (e.g., fencing height, setback measurement method, construction-commencement deadlines, and vegetative screening limits). Because Kane County's existing Section 25-5-4-9 predates these changes, several of its provisions are now out of conformance with state law and must be revised. The Act also requires counties to adopt siting standards for standalone energy storage systems, which the County's ordinance does not currently address.

Staff worked through Section 25-5-4-9 line by line against the new statutory language to identify every provision affected by PA 104-0458, and coordinated with the Kane County State's Attorney's Office, Kane County Division of Transportation (KDOT), and the Kane County Department of Environmental & Water Resources on the changes. The redlined ordinance text (Exhibit A) shows each proposed insertion and deletion; this memo summarizes the substantive changes and the reasoning behind them.

PROPOSED TEXT AMENDMENT

The draft amendment is available for review on the [Zoning Petitions](#) page of the Kane County Website.

PUBLIC NOTICE

Notice of a public hearing at the Kane County Zoning Board of Appeals was published in the Daily Herald newspaper on July 18, 2026.



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ZONING PROCESS

ZONING BOARD OF APPEALS (PUBLIC HEARING)

This Petition will be considered by the Zoning Board of Appeals at its meeting currently scheduled for Tuesday, August 4, 2026 at 7:00 p.m., at the Kane County Government Center, Building A, 719 S. Batavia Ave., Geneva, IL, in the first floor Auditorium room. All interested parties are invited to attend the public hearing to ask questions and/or to present testimony for or against the petition.

DEVELOPMENT COMMITTEE

This Petition will be considered by the Development Committee at its meeting currently scheduled for Tuesday, August 18, 2026, at 10:30 a.m., at the Kane County Government Center, Building A, 719 S. Batavia Ave., Geneva, IL, in the first floor Auditorium room. Persons in favor of or in opposition to this petition who wish to speak before the Development Committee should register to speak by submitting a [Request to Speak Form](#) on the Kane County website no later than 12:00pm on the day prior to the meeting.

KANE COUNTY BOARD

This Petition will be considered by the full Kane County Board at its meeting currently set for Tuesday, September 8, 2026, at 9:45 a.m., at the Kane County Government Center, Building A, 719 S. Batavia Ave., Geneva, IL, in the first floor Auditorium room. Persons in favor of or in opposition to this petition who wish to speak before the County Board should register to speak by submitting a [Request to Speak Form](#) on the Kane County website no later than 12:00pm on the day prior to the meeting.

SUMMARY OF PROPOSED AMENDMENTS

(Revised) Section 25-5-4-9 Commercial Solar Energy Facilities

1. Definitions

- Professional Engineer: Revised to track PA 104-0458's definition, which ties licensure to the Professional Engineering Practice Act of 1989 and, where a structural engineer is required, the Structural Engineering Practice Act of 1989, rather than the County's prior, broader "licensed in any state" language.
- Special Use: Deleted as a standalone definition. The Zoning Ordinance already defines "Use, Special" in its general definitions, so a duplicate, section-specific definition is unnecessary and creates a risk of inconsistent language over time.
- Supporting Facilities: A sentence is added clarifying that "supporting facilities" includes energy storage systems (batteries and other electrochemical/electromechanical technology), and that any such system proposed as part of a solar facility is subject to new Section 25-5-4-10, with the more restrictive standard controlling in the event of a conflict between the two sections. This is the amendment's primary link between the solar section and the new energy storage section.

2. Special Use Application Requirements

- Ecological Compliance Assessment Tool: The prior reference to a U.S. Fish and Wildlife Service Information for Planning and Consulting (IPaC) review is replaced with a requirement for results from the Illinois Department of Natural Resources' Ecological Compliance Assessment Tool (EcoCAT) or a comparable successor tool, consistent with the state review process actually used for these applications.
- New landscape plan submittals: Two new application requirements are added — a Landscape Screening & Ground Cover Plan and a Landscape Establishment & Maintenance Plan — that require applicants to show the design, plant materials, and long-term maintenance approach for required vegetative screening. These give staff a concrete basis for reviewing compliance with the new screening standards described below, rather than relying on general narrative descriptions.
- Copies of application: Reduced from twelve (12) paper copies to one (1) copy submitted electronically, reflecting the division's preference for digital submissions and removing an administrative burden on applicants that no longer serves a practical purpose.



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3. Vegetative Screening Standards

- The prior screening standard (a general requirement for “a continuous line of native evergreen foliage...”) is replaced with a more detailed, itemized standard consistent with PA 104-0458, which caps required screening height at five (5) feet at installation and directs that screening requirements be commercially reasonable and account for factors such as site visibility, plant compatibility, and industry best practices. The revised language specifies:
 - Screening is required between the facility and nonparticipating residences, located between the security fencing and the participating parcel's property line (unless the County approves an alternate location for site-specific reasons);
 - Plant material must be commercially available, adapted to northern Illinois conditions, and native to the region to the extent practicable;
 - A five (5) foot minimum height at installation, consistent with the state's cap on what the County may require;
 - Design for effective, year-round visual screening without materially reducing the facility's energy output; and
 - A list of factors the screening design must consider (facility configuration, topography, visibility, plant compatibility, long-term maintenance, cost, and industry standards).
- This standard is the maximum the County may require under PA 104-0458 (a county may not require taller screening than 5 feet at installation, and may not require earthen berms), so this section is drafted at the outer limit of what state law now allows.

4. Fencing and Setbacks

- Fencing height: The minimum required perimeter fence height is reduced from eight (8) feet to six (6) feet, matching PA 104-0458's specific language on facility fencing (maximum remains twenty-five (25) feet).
- Setback measurement: Setback distances are now expressly measured from the nearest edge of any above-ground component of the facility, excluding fencing. The public road right-of-way setback adds a reference to the County's adopted Roadway Functional Classifications standards.

5. Use of Public Roads / Road Use Agreements

- This subsection was substantially reorganized in coordination with KDOT to align the County's road-use provisions with PA 104-0458's framework, which speaks in terms of “highway authority” review rather than County-specific review by the Road District Commissioner and County Engineer. Key changes include:
 - Replacing references to the “Road District Commissioner and County Engineer” with “highway authority,” the term used in the statute, and having the relevant highway authority (rather than only the County) approve road use agreements and set any required financial assurance;
 - Requiring an access permit and/or road use agreement (rather than only a road use agreement) to reflect that some roads are governed by permit rather than a negotiated agreement;

6. Public Hearing and Review Standards

- The hearing-scheduling provision is simplified to reference the applicable statutes governing Special Use hearings (Section 25-4-8 of the Zoning Ordinance and 55 ILCS 5/5-12020) rather than restating specific procedural details in the ordinance text. This keeps the ordinance from becoming outdated if the state hearing timeline changes again, since it will automatically follow the referenced statute.
- The standard the County Board applies in approving a Special Use application is revised to expressly track PA 104-0458's approval standard: an application must be approved if it complies with the standards and conditions in 55 ILCS 5/5-12020, Section 25-5-4-9 of the Zoning Ordinance, and applicable state and federal law. This replaces a more general, discretionary “finds the evidence complies” standard.



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7. Construction Commencement Deadline

- The deadline for an Applicant to commence and actively pursue construction after a Special Use is granted is extended from thirty-six (36) months to five (5) years. PA 104-0458 sets a five-year floor for this deadline and requires the County to allow extension requests for reasonable cause, so this change is required to bring the ordinance into conformance (the extension-request language elsewhere in this subsection already meets that second requirement).

(New) Section 25-5-4-10 Energy Storage Systems

PA 104-0458 added 55 ILCS 5/5-12024, which for the first time directs counties that have adopted formal zoning to establish siting standards for standalone energy storage systems (facilities with an aggregate capacity greater than 1,000 kilowatts). Kane County's Zoning Ordinance currently has no provisions addressing ESS as a stand-alone use, so this is an entirely new section, not an amendment to existing text.

- Applicability: Section 25-5-4-10 applies to standalone energy storage systems. Energy storage proposed as part of a commercial solar energy facility continues to be reviewed under Section 25-5-4-9, with a cross-reference added in both sections so that whichever standard is more restrictive governs in the event of a conflict.
- New Section 25-5-4-10 mirrors the structure and, where applicable, the specific standards of Section 25-5-4-9 (definitions, Special Use application requirements, design and installation standards, setbacks, road use, noise, remedies, fees, and review procedures), modified for ESS-specific requirements, including:
 - Design and safety standards tied to NFPA 855, the national fire-safety standard for stationary energy storage installations, including commissioning reports, hazard mitigation analysis, and emergency operations plans;
 - A decommissioning plan and phased financial assurance schedule (25% before commercial operation, 50% by year five, 100% by year ten) consistent with the statute;
 - Fencing (7–25 feet), lighting (dark-sky compliant), setbacks, and noise standards adapted from the solar section but specific to ESS equipment; and
 - A three (3) year construction-commencement deadline following Special Use approval — shorter than the five (5) year solar deadline, consistent with the statute's differing treatment of the two facility types.

Staff drafted this new section using language taken either directly from the state statute or mirrored from the existing, familiar solar facility standards in Section 25-5-4-9, so that the review process and applicant expectations remain consistent across both facility types wherever the statute does not require otherwise.

RECOMMENDATION

Staff recommends that the Zoning Board of Appeals recommends approval of the amendments to Kane County Code Chapter 25, Section 25-5-4-9, and adopting new Section 25-5-4-10, as set forth in Exhibit A.

These amendments are necessary to bring the County's Zoning Ordinance into conformance with Public Act 104-0458 and to establish siting standards for energy storage systems, an area not previously addressed in the County Code.

Staff is available to answer questions or walk through the redlined ordinance text (Exhibit A) in further detail.

ATTACHMENTS

- Exhibit A

“Exhibit A”

**Proposed Text Amendments to the Kane County Zoning Ordinance
Revised Section 25-5-4-9 & New Section 25-5-4-10**

25-5-4-9: COMMERCIAL SOLAR ENERGY FACILITIES:

A. Definitions:

APPLICANT: The entity who submits to the County an application for the siting and operation of any Commercial Solar Energy Facility or Substation. All references to Applicant in this division shall include Applicant's successors-in-interest and assigns, which includes a Commercial Solar Energy Facility Permittee (as defined herein).

COMMERCIAL SOLAR ENERGY FACILITY or COMMERCIAL SOLAR ENERGY SYSTEM: Any device or assembly of devices that is ground installed and uses solar energy from the sun for generating electricity for the primary purpose of wholesale or retail sale and not primarily for consumption on the property.

COMMERCIAL SOLAR ENERGY BUILDING PERMIT: A permit necessary for the commencement of work performed toward the construction, erection or installation of an approved Commercial Solar Energy Facility, Substation, Supporting Facilities, or operations and maintenance building in connection with a Commercial Solar Energy Facility. A Commercial Solar Energy Building Permit may be issued by the county after a Commercial Solar Energy Facility has obtained a Special Use Permit from the County Board and the Building Officer determines that all conditions, if any, have been satisfied that are imposed by the approved Special Use, and that all required and related permits for road access locations and a Kane County Stormwater Permit have been applied for and issued. The Commercial Solar Energy Building Permit shall require the Applicant to deliver a written "Notice to Proceed" for the Commercial Solar Energy Facility to the County prior to commencement of construction of the Commercial Solar Energy Facility. The term "commencement of construction", as used in this division, includes any site development work (e.g., demolition, grubbing, grading, excavation, road work, construction of Project-related structures and infrastructure improvements, etc.) regarding the Commercial Solar Energy Facility.

COMMERCIAL SOLAR ENERGY FACILITY PERMITTEE: An Applicant who applies for and receives a Special Use under this division for the siting and operation of any Commercial Solar Energy Facility or Substation. All references to a Commercial Solar Energy Facility Permittee in this division shall include a Commercial Solar Energy Facility Permittee's successors-in-interest and assigns.

COMMERCIAL OPERATION DATE: The calendar date on which the Commercial Solar Energy Facility produces power for commercial sale, not including test power.

FINANCIAL ASSURANCE or FINANCIAL SECURITY or DECOMMISSION SECURITY: 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.

NONPARTICIPATING PROPERTY: 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 an application for a permit to develop the Commercial Solar Energy Facility is filed with the County.

NOTICE TO PROCEED: A written document, named as such, stating that the Applicant expresses an intent to commence construction activities on a Commercial Solar Energy Facility and identifying the date on which the construction activities are scheduled to commence.

OCCUPIED COMMUNITY BUILDING: Any one or more of the following buildings that is existing and occupied on the date that the application for a permit to develop the Commercial Solar Energy Facility is filed with the County: a school, place of worship, day care facility, public library, or community center.

OPERATOR: The person or entity responsible for the day-to-day operation and maintenance of a Commercial Solar Energy Facility, including any third-party subcontractors. The Operator must be a qualified solar power professional. All references to Operator in the Ordinance shall include Operator's successors-in-interest and assigns.

OWNER: The person or entity or entities with an equity interest in a Commercial Solar Energy Facility, including their respective successors-in-interest and assigns. The Owner does not mean (i) the property owner from whom land is leased for locating a Commercial Solar Energy Facility (unless the property owner has an equity interest in a Commercial Solar Energy Facility); or (ii) any person holding a security interest in a Commercial Solar Energy Facility solely to secure an extension of credit, or a person foreclosing on such security interest, provided that after foreclosure, such person seeks to sell a Commercial Solar Energy Facility at the earliest practicable date. This definition includes the definition of Facility Owner as defined in 55 ILCS 5/5-12020.

PARTICIPATING RESIDENCE: A residence that is located on participating property and that is existing and occupied on the date that an application for a permit to develop the Commercial Solar Energy Facility is filed with the County.

PARTICIPATING PROPERTY: Real property that is the subject of a written agreement between a facility owner and the owner of the real property that provides the facility owner an easement, option, lease, or license to use the real property for the purpose of constructing a Commercial Solar Energy Facility or supporting facilities. "Participating property" also includes real property that is owned by a facility owner for the purpose of constructing a Commercial Solar Energy Facility or supporting facilities.

PROFESSIONAL ENGINEER: ~~A qualified individual who is licensed as a professional engineer in any state in the United States. Where a structural engineer is required to take some action under terms of this division, a Professional Engineer may serve as the structural engineer if he or she has the appropriate structural engineering certification. An individual who is licensed in accordance with the Professional Engineering Practice Act of 1989 (225 ILCS325/). Where a structural engineer is required to take some action under terms of this division, an individual who is licensed in accordance with the Structural Engineering Practice Act of 1989 (225 ILCS 340/).~~

Commented [ZN1]: Revised by KDOT.

PROTECTED LANDS: Real property that is subject to a permanent conservation right consistent with the Real Property Conservation Rights Act or registered or designated as a nature preserve, buffer, or land and water reserve under the Illinois Natural Areas Preservation Act.

PUBLIC CONSERVATION LANDS: 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 into contractual relationships with government or non-profit conservation organizations for conservation purposes.

~~**SPECIAL USE:** A petition for a special use approved by the 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 the County Board in accordance with ARTICLE IV. ADMINISTRATION AND ENFORCEMENT, Section 25-4-8: Special Uses.~~

Commented [ZN2]: Delete this, it's unnecessary. The Zoning Ordinance has a definition for "Use, Special" in its general definitions.

SUBSTATION: The apparatus that collects and connects the electrical collection system of the Commercial Solar Energy Facility and increases the voltage for connection with the utility's transmission lines.

SUPPORTING FACILITIES: ~~The transmission lines, substations, access roads, storage containers, and equipment associated with the generation and storage of electricity by the Commercial Solar Energy Facility. "Supporting facilities" includes energy storage systems capable of absorbing energy and storing it for use at a later time, including, but not limited to, batteries and other electrochemical and electromechanical technologies or systems. Any energy storage system proposed as a supporting facility for a Commercial Solar Energy Facility shall be subject to the requirements of this Section 25-5-4-10. In the event of a conflict between the provisions of this Section and Section 25-5-4-10, the more restrictive requirement shall apply.~~

Commented [ZN3]: PA 104-0458 added a second sentence to definition of "Supporting facilities":

"Supporting facilities" includes energy storage systems capable of absorbing energy and storing it for use at a later time, including, but not limited to, batteries and other electrochemical and electromechanical technologies or systems."

B. Applicability: This section governs the siting of Commercial Solar Energy Facilities and Substations that generate electricity to be sold to wholesale or retail markets.

C. Prohibition: No Commercial Solar Energy Facility or Substation governed by this section shall be constructed, erected, installed, or located within the County, unless prior siting approval has been obtained for each individual Commercial Solar Energy Facility or for a group of Commercial Solar Energy Facilities under a joint siting application pursuant to this section.

D. Special Use Application: To obtain siting approval, the Applicant must first submit a Special Use application to the County.

1. The Special Use application shall contain or be accompanied by the following information:

a. A Commercial Solar Energy Facility Summary, including, to the extent available:

(1) A general description of the project, including:

- (a) Its approximate overall name plate generating capacity;
- (b) The potential equipment manufacturer(s);
- (c) Type(s) of solar panels, cells and modules;
- (d) The number of solar panels, cells and modules;
- (e) The maximum height of the solar panels at full tilt;
- (f) The number of Substations;
- (g) A project site plan, project phasing plan and project construction timeline plan; and
- (h) The general location of the project; and

(2) A description of the Applicant, Owner and Operator, including their respective business structures;

b. The name(s), address(es), and phone number(s) of the Applicant(s), Owner and Operator, and all property owner(s), if known, and documentation demonstrating land ownership or legal control of the property;

c. A site plan for the Commercial Solar Energy Facility showing the planned location of solar panels, including legal descriptions for each site, Participating and Non-participating Residences, Occupied Community Buildings, parcel boundary lines (including identification of adjoining properties), setback lines, public access roads and turnout locations, Substation(s), operations and maintenance buildings, electrical cabling to the Substation(s), ancillary equipment, third party transmission lines, the location of any wetlands, flood plain, drainage structures including surface ditches and subsurface drainage lines, underground mines, scenic and natural areas within one thousand five hundred (1,500) feet of the proposed Commercial Solar Energy Facility, and the layout of all structures within the geographical boundaries of any applicable setback;

d. A proposed Decommissioning Plan for the Commercial Solar Energy Facility;

e. All required studies, reports, certifications, and approvals demonstrating compliance with the provisions of this section;

f. An Agricultural Impact Mitigation Agreement (AIMA) executed between the Applicant and the Illinois Department of Agriculture;

g. The topographic map shall include the Commercial Solar Energy Facility site and the surrounding area;

h. Any other information normally required by the County as part of its permitting requirements for siting and construction of buildings or other structures including conformance with Chapter 9 Stormwater Management;

i. Waivers from the setback requirements executed by the occupied community building owners and/or the non-participating property owners bearing a file stamp from the County Recorder of Deeds Office confirming that the waiver was recorded against title to the affected real property;

j. Results and recommendations from the Illinois Department of Natural Resources obtained through the Ecological Compliance Assessment Tool or a comparable successor tool;

~~k. Results of any United States Fish and Wildlife Service's Information for Planning and Consulting environmental review or a comparable successor tool that is consistent with any applicable United States Fish and Wildlife Service's solar wildlife guidelinesReserved;~~

l. Information demonstrating that the Commercial Solar Energy Facility will avoid protected lands;

m. Any other information requested by the County or the County consultants that is necessary to evaluate the siting application and operation of the Commercial Solar Energy Facility and to demonstrate that the Commercial Solar Energy Facility meets each of the regulations in this division, including the Special Use standards set forth below.

~~n. Landscape Screening & Ground Cover Plan that illustrates the location, design, and composition of all proposed vegetative screening and ground cover associated with the Commercial Solar Energy Facility; the plan shall demonstrate compliance with applicable zoning requirements, provide sufficient detail for plan review, and identify the plant materials, spacing, and site conditions necessary to establish effective visual screening, support pollinator habitat, and ensure long-term compatibility with the proposed facility.~~

~~o. Landscape Establishment & Maintenance Plan that describes the procedures for establishing, inspecting, maintaining, and replacing all required vegetative screening and ground cover throughout the operational life of the Commercial Solar Energy Facility; the plan shall identify the methods, schedules, and long-term management practices necessary to promote healthy vegetation, control weeds and invasive species, and ensure continued compliance with approved landscape and ground cover requirements.~~

2. Material changes to the application are not permitted once the notice of the public hearing has been published, unless requested or permitted by the County; and

~~3. The Applicant shall submit one (1) copytwelve (12) copies of the Special Use application to the County, and at least one (1) copy in electronic format.~~

E. Design And Installation:

1. Design Safety Certification:

a. Commercial Solar Energy Facilities shall conform to applicable industry standards, including those of the American National Standards Institute ("ANSI"). Applicants shall submit certificates of design compliance that equipment manufacturers have obtained from Underwriters Laboratories ("UL"), or an equivalent third party. All solar panels, cells and modules; solar panel mounts and racking, including any helical piles, ground screws, ballasts, or other anchoring systems shall be new equipment commercially available; no used or experimental equipment shall be used without the approval of a variance by the County Board.

b. Following the granting of siting approval under this division, a structural engineer shall certify, as part of the Commercial Solar Energy Facility Building Permit application process, that the design of the Commercial Solar Energy Facility is within accepted professional standards, given local soil, subsurface and climate conditions.

2. Electrical Components: All electrical components of the Commercial Solar Energy Facility shall conform to applicable local, state, and national codes, and relevant national and international standards (e.g. ANSI and International Electrical Commission).

3. Height: No component of a solar panel, cell or modules may exceed twenty (20) feet in height above the ground at full tilt.

4. Aesthetics and Lighting:

~~a. Vegetative Screening: A vegetative screen shall be provided for any part of the Commercial Solar Energy Facility that is visible to Non-participating Residence(s). The landscaping screen shall be located between the required fencing and the property line of the participating parcel upon which the facility sits. The vegetative screening shall include a continuous line of native evergreen foliage and/or~~

Commented [ZN4]: Delete this. PA 104-0458 removed this from the State Statute.

Commented [ZN5]: New language added. PA 104-0458 "(r) To maximize community benefits, including, but not limited to, reduced stormwater runoff, flooding, and erosion at the ground mounted solar energy system, improved soil health, and increased foraging habitat for game birds, songbirds, and pollinators, a county MAY (1) require a commercial solar energy facility owner to plant, establish, and maintain for the life of the facility vegetative ground cover, consistent with the goals of the Pollinator-Friendly Solar Site Act and (2) require the submittal of a vegetation management plan that is in compliance with the agricultural impact mitigation agreement in the application to construct and operate a commercial solar energy facility in the county if the vegetative ground cover and vegetation management plan comply with the requirements of the underlying agreement with the landowner or landowners where the facility will be constructed."

Commented [ZN6]: We do not need paper copies of the application, digital only is preferred.

Commented [ZN7]: Delete and replace with new language. PA 104-0458 "A county may require certain vegetative screening between a surrounding a commercial wind energy-facility or commercial solar energy facility and nonparticipating residences. A county but may not require earthen berms or similar structures. Vegetative screening requirements shall be commercially reasonable and limited in height at full maturity to avoid reduction of the productive energy output of the commercial solar energy facility. A county may not require vegetative screening to exceed 5 feet in height when first installed or prior to commercial operation date. The screening requirements shall take into account the size and location of the facility, visibility from nonparticipating residences, compatibility of native plant species, cost and feasibility of installation and maintenance, and industry standards and best practices for commercial solar energy facilities."

native shrubs and/or native trees and/or any existing wooded area and/or plantings of tall native grasses and other native flowering plants.

i. Vegetative screening shall be provided between a Commercial Solar Energy Facility and nonparticipating residences.

ii. Vegetative screening shall be located between the required security fencing and the property line of the participating parcel on which the Commercial Solar Energy Facility is located, unless an alternative location is approved by the County due to site-specific conditions.

iii. Vegetative screening shall consist of commercially available plant material that is adapted to northern Illinois growing conditions and, to the greatest extent practicable, native to Kane County or the surrounding region.

iv. Plant material shall be a minimum of five (5) feet in height at the time of installation.

v. Plantings shall be designed to provide an effective, year-round visual screen through the use of appropriate species selection, planting density, spacing, and arrangement.

vi. Vegetative screening shall be designed so that mature plant height and location do not substantially reduce the productive energy output of the Commercial Solar Energy Facility.

vii. The screening design shall consider:

- a. The size, configuration, and location of the facility;
- b. Existing topography and vegetation;
- c. Visibility from adjacent nonparticipating residences and public rights-of-way;
- d. Compatibility of proposed plant species with existing soils and site conditions;
- e. Long-term survivability and maintenance requirements;
- f. Installation and maintenance costs; and
- g. Generally accepted industry standards and best management practices for utility-scale solar facilities.

b. Lighting: If lighting is provided at the Commercial Solar Energy Facility, lighting shall be shielded and downcast such that the light does not spill onto the adjacent parcel(s).

c. Intra-project Power and Communication Lines: All power lines used to collect power and all communication lines shall be buried underground at a depth in accordance with the Agricultural Impact Mitigation Agreement until same reach the property line or a substation adjacent to the property line.

5. Fencing: A fence of at least six (6) feet (8) feet and not more than twenty-five (25) feet in height shall enclose and secure the Commercial Solar Energy Facility.

6. Warnings

a. A reasonably visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and Substations.

b. Visible, reflective, colored objects, such as flags, plastic sleeves, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of fifteen (15) feet from the ground.

7. Setback Requirements:

a. The Commercial Solar Energy Facility shall be sited as follows, with setback distances measured from the nearest edge of any above-ground component of the facility, excluding fencing:

(1) Occupied Community Buildings and Dwellings on Nonparticipating Properties: one hundred fifty (150) feet to the nearest point on the outside wall of the structure.

(2) Boundary Lines of Participating Property: None.

Commented [ZN8]: PA 104-0458 "a commercial solar energy facility to be sited so that the facility's perimeter is enclosed by fencing having a height of at least 6 feet and no more than 25 feet;"

Commented [ZN9]: PA 104-0458 "a commercial solar energy facility to be sited as follows, with setback distances measured from the nearest edge of any above-ground component of the facility, excluding fencing"

(3) Boundary Lines of Nonparticipating Property: fifty (50) feet to the nearest point on the property line of the nonparticipating property.

(4) Public Road Rights-of-Way: fifty (50) feet to the nearest edge of the public road right-of-way and consideration of the County's adopted Roadway Functional Classifications minimum right-of-way standards that protect anticipated roadway corridors.

Commented [ZN10]: Added by KDOT.

b. The setback requirements for Nonparticipating properties may be waived by the written consent of the owner(s) of each affected Nonparticipating property.

The Applicant does not need to obtain a variance from the County upon waiver by the property owner of any of the above setback requirements. Any waiver of any of the above setback requirements shall run with the land and be recorded with the Recorder of Deeds of the County.

8. Compliance with Additional Regulations: Nothing in this division is intended to preempt other applicable state and federal laws and regulations.

9. Use of Public Roads:

Commented [ZN11]: Changes to this section provided by KDOT.

a. An Applicant proposing to use any County, municipality, township or village road(s), for the purpose of transporting Commercial Solar Energy Facility or Substation parts and/or equipment for construction, operation, or maintenance of the Commercial Solar Energy Facility or Substation(s), shall:

(1) Identify all such public roads and applicable access permit and/or road use agreement requirements; and

(2) Obtain applicable weight and size permits from relevant government agencies prior to construction and prior to transportation of any such equipment or materials.

b. To the extent an Applicant must obtain a weight or size permit from the County, municipality, township or village, the Applicant shall:

(1) Conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage;

(2) Any proposed public roads that will be used for construction purposes shall be identified and approved in writing in an applicable access permit and/or road use agreement by the respective highway authority ~~Road District Commissioner and the County Engineer prior to the granting of the Special Use. 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 the County Engineer~~ highway authority. The Road District Commissioner and County Engineer may choose to require ~~either remediation of road repair upon completion of the Community Solar Energy Facility 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~~ highway authority to ensure the ~~Road District or the 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;~~

(3) Enter into a road use agreement and/or access permit with the County and each affected Road District that includes the following provisions, at a minimum:

- (a) Project layout map;
- (b) Transportation impact analysis;
- (c) Pre-construction plans;
- (d) Project traffic map;
- (e) Project scope of repairs;
- (f) Post-construction repairs;

(g) Insurance;

(h) Financial assurance (Security) in forms and amounts acceptable to the County highway authority;

~~—The road use agreement shall require Applicant to be responsible for the reasonable cost of improving roads used to construct Commercial Solar Energy Facility and the reasonable cost of repairing roads used by the facility owner during construction of the Community Solar Energy Facility so that those roads are in a condition that is safe for the driving public after the completion of the Commercial Solar Energy Facility construction. Roadways improved in preparation for and during the construction of the Community Solar Energy Facility 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 construction-related activities.~~

~~—c. All repairs and improvements to public roads and roadway appurtenances shall be subject to the prior approval of the County before being made and shall also be subject to inspection and acceptance by the County after such repairs and improvements are completed. The County's road use agreement, and any further agreements contemplated therein, regarding the maintenance and repair of public roads and highways, must be approved by the County Board prior to the Board's approval of any Commercial Solar Energy Facility Building Permit application(s) related to the construction of the proposed Commercial Solar Energy Facility.~~

10. Site Assessment: To ensure that the subsurface conditions of the site will provide proper support for the Commercial Solar Energy Facility and soil restoration, the Applicant, at its expense, shall provide soil and geotechnical boring reports to the Building Officer as part of its Commercial Solar Energy Facility Building Permit. The Applicant shall follow the guidelines for Conservation Practices Impact Mitigation submitted by the Kane-DuPage Soil and Water Conservation District (or equivalent regulatory agency). Also, the Applicant shall submit grading plans for the proposed Substations for review and comment by the Kane-DuPage Soil and Water Conservation District prior to the issuance of any Commercial Solar Energy Facility Building Permit for the construction of said substations.

11. Noise Levels: Noise levels from Commercial Solar Energy Facilities shall be in compliance with applicable Illinois Pollution Control Board (IPCB) regulations. The Applicant shall submit manufacturer's sound power level characteristics and other relevant data regarding noise characteristics necessary for a competent noise analysis. The Applicant, through the use of a qualified professional, shall appropriately demonstrate compliance with the applicable noise requirements in its Special Use application.

12. Agricultural Impact Mitigation: Pursuant to 505 ILCS 147/15(a), the Applicant, at its expense, shall enter into an Agricultural Impact Mitigation Agreement with the Illinois Department of Agriculture prior to any public hearing required before a siting decision on the Commercial Solar Energy Facility application. All impacted agricultural land, whether impacted during construction, operation, or decommissioning activities, must, at a minimum, be remediated by the Applicant pursuant to the terms of the Agricultural Impact Mitigation Agreement with the Illinois Department of Agriculture. The Applicant shall submit the executed Agricultural Impact Mitigation Agreement to the County as part of the Special Use application.

13. As-Built Map and Plans: Within sixty (60) calendar days of completion of construction of the Commercial Solar Energy Facility, the Applicant or Operator shall deliver "as-built" maps, site plan and engineering plans for the Commercial Solar Energy Facility that have been signed and stamped by a Professional Engineer and a licensed surveyor.

14. Engineer's Certificate: The Commercial Solar Energy Facility engineer's certificate shall be completed by a structural engineer registered in the State of Illinois or by a Professional Engineer with a certification from a structural engineer registered in the State of Illinois and shall certify that the specific soils and subsurface conditions at the site can support the apparatus, given local soil, subsurface and climate conditions. The Commercial Solar Energy Facility engineer's certificate shall be a public record and shall be submitted as part of the Special Use application.

15. Conformance with Approved Application and Plans: The Applicant shall construct and operate the Commercial Solar Energy Facility in substantial conformance with the construction plans contained in a County- approved submitted Special Use application(s), conditions placed upon the operation of the Facility, the Kane County Stormwater Management Ordinance, this division and all applicable state, federal and local laws and regulations.

16. Additional Terms and Conditions:

a. All technical submissions as defined in the Professional Engineering Practice Act of 1989 (225 ILCS 325/4(w)) and contained in the Special Use Permit Application shall be prepared and signed by an Illinois Professional Engineer (or structural engineer) for the relevant discipline.

b. The County may retain a qualified, independent code inspector or professional engineer both to make appropriate inspections of the Commercial Solar Energy Facility during and after construction and to consult with the County to confirm that the construction, substantial repair, replacement, repowering and/or decommissioning of the Commercial Solar Energy Facility is performed in compliance with applicable electrical and building and Stormwater codes. The cost and fees so incurred by the County in retaining said inspector or engineer shall be promptly reimbursed by the Applicant of the Commercial Solar Energy Facility.

c. The Special Use 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 section, or conditions placed upon the operation of the Commercial Solar Energy Facility is held invalid, such invalidity shall not affect any other provision of this section that can be given effect without the invalid provision and, to this end, the provisions in this section are severable.

d. The Applicant shall provide an executed road use agreement and/or access permit between the Applicant and the appropriate governing road and highway jurisdictions or the Illinois Department of Transportation, to the County showing approved entrances prior to the issuance of any Commercial Solar Energy Facility Building Permit.

Commented [ZN12]: Added to mirror the language above.

F. Operation:

1. Maintenance:

a. Annual Report. The Applicant must submit, on an annual basis on the anniversary date of the Special Use application, an operation and maintenance report to the County. The report shall contain the following information: (i) a general description of any physical repairs, replacements or modification(s) to the Commercial Solar Energy Facility and/or its infrastructure; (ii) complaints pertaining to setbacks, noise, appearance, safety, lighting and use of any public roads received by the Applicant concerning the Commercial Solar Energy Facility 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 Commercial Solar Energy Facility. Failure to provide the annual report shall be considered a material violation of this section and subject to subsection I (Remedies).

b. Re-Certification. Any physical modification to the Commercial Solar Energy Facility that alters the mechanical load, mechanical load path, or major electrical components shall require re-certification under Section VI(A)(1) of this division. Like-kind replacements and modifications that are made in the ordinary course of operations, including expected repairs and warranty items, shall not require re-certification. Prior to making any physical modification (other than a like-kind replacement or other modifications made in the ordinary course of operations), the Applicant shall confer with a relevant third-party certifying entity identified in Design and Safety Certification section, paragraph 1, of this section to determine whether the physical modification requires re-certification.

2. Coordination with Emergency Responders:

a. The Applicant shall submit to the local emergency responders a copy of the Site Plan, Standard Operating Procedures (SOPs) and Standard Operating Guidelines (SOGs), and any amendments to such documents, for the Commercial Solar Energy Facility so that the local law enforcement, fire protection district and rescue units, emergency medical service providers and emergency management service providers that have jurisdiction over each tower site may evaluate and coordinate their emergency response plans with the Applicant of the Commercial Solar Energy Facility.

b. The Applicant, at its 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 Commercial Solar Energy Facility.

c. The Applicant and the 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 Applicant and the Operator and at least three (3) designated Commercial Solar Energy Facility representatives (a primary representative with two (2) alternate representatives, each of whom are on-call "24 hours per day / 7 days per week / 365 days per year"). Any change in the designated Commercial Solar Energy Facility representative or his/her contact information shall be promptly communicated to the County. The content of the emergency response plan, including the 24-hour contact information, shall be reviewed and updated on an annually basis.

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

3. Water, Sewer, Materials Handling, Storage and Disposal:

a. All solid wastes related to the construction, operation and maintenance of the Commercial Solar Energy Facility shall be removed from the site promptly and disposed of in accordance with all federal, state and local laws.

b. All hazardous materials related to the construction, operation, and maintenance of the Commercial Solar Energy Facility shall be handled, stored, transported, and disposed of in accordance with all applicable local, state and federal laws.

c. The Commercial Solar Energy Facility shall comply with existing septic and well regulations as required by the County Health Department and the State of Illinois Department of Public Health.

4. Signage: Signage regulations are to be consistent with ANSI standards. A reasonably visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations, and at all entrances to the Commercial Solar Energy Facility.

5. Drainage Systems: The applicant will make application to Kane County for a Stormwater permit and comply with the Kane County Stormwater Management Ordinance in accordance with CHAPTER 9 STORMWATER MANAGEMENT, of the Kane County Code. The Applicant, at its expense, will repair, in a prompt and timely manner, all waterways, drainage ditches, agricultural drainage systems, field tiles, or any other private and public infrastructure improvements damaged during construction, maintenance and operation phases of the Commercial Solar Energy Facility in accordance with the Agricultural Impact Mitigation Agreement.

G. Liability Insurance: Commencing with the issuance of a Commercial Solar Energy Facility Building Permit, the Applicant shall maintain a current general comprehensive liability policy and automobile liability coverage covering bodily injury, death and illness, and property damage with limits of at least Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate; and, shall further maintain the above-stated lines of insurance from delivery of the Notice to Proceed by the Applicant for the Commercial Solar Energy Facility, in coverage amounts of at least Five Million Dollars (\$5,000,000.00) per occurrence and Twenty Million Dollars (\$20,000,000.00) in the aggregate during the life of the Commercial Solar Energy Facility. The Applicant shall file the original certificate of insurance upon commencement of project construction prior to the issuance of a Commercial Solar Energy Facility Building Permit, corresponding policies and endorsements to be provided within sixty (60) days of issuance, and at each subsequent renewal, at least annually thereafter. Applicant shall notify the County of any changes in the insurance coverage.

H. Decommissioning And Site Reclamation Plan Required: The Applicant must formulate a Decommissioning and Site Reclamation Plan to ensure that the Commercial Solar Energy Facility is properly decommissioned. The Decommissioning and Site Reclamation Plan shall be binding upon the Applicant and its successors-in-interest and assigns and shall apply to all participating parcels in the Commercial Solar Energy Facility, irrespective of the owner of title to such parcels. A signed Decommissioning and Site Reclamation Plan must be submitted to the County prior to the granting of the Special Use Permit. The Applicant shall ensure that the Commercial Solar Energy Facility is properly decommissioned within twelve (12) months of the end of the Commercial Solar Energy Facility life. The Applicant shall include removal of all physical material of the project improvements to a depth of sixty (60) inches beneath the soil surface and the restoration of the area in accordance with the Agricultural Impact Mitigation Agreement.

1. A Decommissioning and Site Reclamation Plan shall be prepared by an independent Illinois Certified Professional Engineer and shall include:

- a. A description of the methodology and cost to remove all above ground and below ground Commercial Solar Energy Facility equipment of the approved Special Use Permit;
 - b. Provisions for the removal of all above ground and below ground Commercial Solar Energy Facility equipment of the approved Special Use Permit;
 - c. Methodology and cost to restore all areas used for construction, operation and access to a condition equivalent to the land prior to the Commercial Solar Energy Facility construction;
 - d. A work schedule and a permit list necessary to accomplish the required work;
 - e. Methodology to identify and manage any hazardous or special materials;
 - f. Submission of a draft form of Financial Security to the County in the form of a surety bond (performance and payment bond), irrevocable letter of credit or a cash escrow account that names the County as the beneficiary, or other type of Financial Security that is approved by the County. If an irrevocable letter of credit or surety bond (performance and payment bond) is selected, the original of the irrevocable letter of credit or surety bond shall be held by the County. If a cash escrow is selected, the cash escrow shall be held and managed by an independent third party (e.g., escrow agent or title company) on behalf of the County, subject to escrow instructions that incorporate the applicable decommissioning and repair/replacement/restoration obligations of this Agreement as executed by the County and the Applicant.
 - g. The amount of Financial Security shall be equal to the total cost of all decommissioning and restoration work minus the salvage value of the Commercial Solar Energy Facility equipment. To determine that amount, the Applicant shall:
 - (1) Obtain bid specifications provided by a professional structural engineer;
 - (2) Request estimates from construction/demolition companies capable of completing the decommissioning of the Commercial Solar Energy Facility; and
 - (3) Certification of the selected estimate by a professional structural engineer.An independent engineer of the County's choosing, and the Building Officer will review all estimates and make a recommendation to the County Board for an acceptable estimate. The County reserves the right to pursue other estimates. All costs to secure the estimates will be funded by the Applicant.
 - h. A provision that the terms of the Decommissioning and Site Reclamation Plan shall be binding upon the Applicant including any of its successors-in-interest and assigns;
 - i. Confirmation by affidavit that the obligation to decommission the Commercial Solar Energy Facility is included in the lease agreement for every parcel included in the Special Use Permit application. A list of all landowners should be kept current, and affidavits shall be secured from Applicant and landowners stating their financial understanding;
 - j. A provision that allows for the County to have the legal right to transfer applicable Commercial Solar Energy Facility material to salvage firms;
 - k. Identification of and procedures for the County to access the Financial Assurances; and
 - l. A provision that the County shall have access to the site, pursuant to reasonable notice to affect or complete decommissioning. A portion of the Decommission Security will be required to be held for one (1) year past the decommissioning to settle any potential disputes.
2. Provisions triggering the decommissioning of any portion of the Commercial Solar Energy Facility:
- a. If Applicant has not paid landowners an amount owed in accordance with their lease agreements for a period of six (6) consecutive months.
 - b. The Applicant dissolves or abandons the Commercial Solar Energy Facility without first transferring the Commercial Solar Energy Facility to a successor-in-interest or assign.
 - c. If any part of the Commercial Solar Energy Facility falls into disrepair or creates any other health and safety issue as determined by the County.

3. Provisions for the removal of structures, debris and cabling; both above and below the soil surface:

a. Items required to be removed include but are not limited to: solar panels, cells and modules; solar panel mounts and racking, including any helical piles, ground screws, ballasts, or other anchoring systems; solar panel foundations, if used, to a depth of 60 inches; transformers, inverters, energy storage facilities, or substations; overhead collection system components; operations/maintenance buildings, spare parts buildings and substations/switching gear buildings; access roads; operation/maintenance yard/staging area; debris and litter; underground cables, fencing, access roads and culverts. A landowner must sign an agreement if they wish for operations/maintenance buildings, spare parts buildings and substations/switching gear buildings; operation/maintenance yard/staging area; access roads or culverts to remain.

4. Provisions for the restoration of soil and vegetation:

a. A Kane County Stormwater Management permit is required prior to beginning any decommissioning work.

b. All affected areas shall be inspected, thoroughly cleaned and all construction related debris shall be removed.

c. All affected areas must be remediated pursuant to the terms of the Agricultural Impact Mitigation Agreement with the Illinois Department of Agriculture.

d. Items required to be restored include but are not limited to: windbreaks, waterways, site grading, drainage tile systems and topsoil to former productive levels.

(1) In work areas involving decommission from widening access roads or any other work areas, the topsoil must be first removed, identified and stored separate from other excavated material for later replacement as applicable.

(2) The sixty (60)-inch below-surface excavation area shall be filled with clean sub-grade material of similar quality to that in the immediate surrounding area.

(3) All sub-grade material will be compacted to a density similar to surrounding grade material.

(4) All unexcavated areas compacted by equipment used in decommissioning shall be de-compacted in a manner that adequately restores the topsoil and sub-grade material to the proper density consistent and compatible with the surrounding area.

(5) Where possible, the topsoil shall be replaced at a minimum of the original depth and surface contours.

(6) Any topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of the effected site.

e. Items required to be repaired after decommissioning include but are not limited to: roads, bridges and culverts.

f. An independent drainage engineer shall be present to ensure drainage tiles, waterways, culverts, etc. are repaired as work progresses.

g. A soil erosion control plan shall be approved by the County Soil and Water Conservation District.

h. All applicable stormwater management, floodplain and other surface water rules, regulations and ordinances shall be followed including CHAPTER 9 STORMWATER MANAGEMENT, of the Kane County Code.

5. Estimating the costs of decommissioning:

a. Costs shall include but not be limited to engineering fees, legal fees, accounting fees, insurance costs, decommissioning and site restoration minus the salvage value of the Commercial Solar Energy Facility.

b. Adjustments to the financial assurance amount that reflect changes in the decommissioning costs shall be submitted every five (5) years after the initial ten (10) years of operation and shall be adjusted for inflation and other factors. The amount of the Decommission Security shall be adjusted accordingly within six (6) months of receiving the updated information as determined by an Illinois professional engineer. Failure to provide financial assurance as outlined herein shall be considered a cessation of operation.

6. Financial assurance:

a. Financial Security shall be phased in and provided to the County over the first eleven (11) years of the project as follows:

(1) On or before the first anniversary of the Commercial Operation Date, the Applicant shall provide the County with Financial Security to cover ten (10) percent of the estimated costs of decommissioning the Commercial Solar Energy Facility as determined in the Decommissioning and Site Reclamation Plan.

(2) On or before the sixth anniversary of the Commercial Operation Date, the Applicant shall provide the County with Financial Security to cover fifty (50) percent of the estimated costs of decommissioning the Commercial Solar Energy Facility as determined in the Decommissioning and Site Reclamation Plan.

(3) On or before the eleventh anniversary of the Commercial Operation Date, the Applicant shall provide the County with Financial Security to cover one hundred (100) percent of the estimated costs of decommissioning the Commercial Solar Energy Facility as determined in the Decommissioning and Site Reclamation Plan.

b. The County shall have immediate access, upon written notice to the Applicant, to use the Decommission Security if:

(1) After abandonment of the Commercial Solar Energy Facility, the Applicant, upon a reasonable determination by the County Board, fails to address a health and safety issue in a timely manner; or

(2) The Applicant fails to decommission the abandoned Commercial Solar Energy Facility in accordance with the Decommissioning and Site Reclamation Plan.

c. If possible for the type of Decommission Security provided, the Applicant shall grant perfected security in the Decommission Security by use of a control agreement establishing the County as an owner of record pursuant to the Secured Transit Article of the Uniform Commercial Code, 810 ILCS 9/ et seq.

d. The County Board or its escrow agent shall release the Decommission Security when the Applicant has demonstrated and the County concurs that decommissioning has been satisfactorily completed, or upon written approval of the County to implement the decommissioning plan. Ten percent (10%) of the Decommission Security shall be retained one (1) year past the date to settle any outstanding concerns.

e. Any interest accrued on the Decommission Security that is over and above the total value as determined by the Illinois professional structural engineer shall go to the Applicant.

f. The Applicant shall identify procedures for the County to assess the financial assurances, particularly if it is determined that there is a health and/or safety issue with the Commercial Solar Energy Facility and the principal company fails to adequately respond as reasonably determined by the County Board.

g. The County shall be listed as a debtor in connection with any proceeding in insolvency or bankruptcy but shall not be responsible for any claims against the Applicant.

h. The Applicant shall agree that the obligations and liabilities under a Special Use Permit shall be binding upon the Applicant (which, for the avoidance of doubt, includes its successors-in-interest and assignees) and the Operator. The Applicant further shall agree that the sale, assignment in fact or at law, or other transfer of the Applicant's financial interest in the Commercial Solar Energy Facility shall in no way effect or change the Applicant's obligation to continue to comply with the terms, covenants and obligations of a Special Use Permit unless such successor-in-interest or assignee agrees to assume all obligations of

the Special Use Permit, including but not limited to the decommissioning obligations associated with the Commercial Solar Energy Facility.

i. The County and its authorized representatives have the right of entry onto the Commercial Solar Energy Facility premises for the purpose of inspecting the methods of reclamation or for performing actual reclamation if necessary.

I. Remedies:

1. The Applicant's failure to materially comply with any of the provisions under the Special Use, any conditions imposed on the project, and/or failure to comply with any law or regulation shall be a default and shall be grounds for revocation of the Special Use Permit by the County Board.

2. Prior to implementation of the applicable County procedures for the resolution of default(s), the County Board must first provide written notice to the Applicant and Operator, setting forth the alleged default(s) and provide an opportunity for the Applicant or the Operator to cure the default(s) within a thirty (30) calendar day period from the date of the notice. Should the Applicant commence the cure within that 30-day cure period, and diligently pursues a cure, then the Applicant shall receive an additional sixty (60) days to continue to pursue the cure before the County pursues procedures for the resolution of default. If the default relates to a life safety issue or interference with local, government public safety (police, fire, emergency medical services, emergency management services, 911 dispatch) communications, the Applicant or the Operator shall take all necessary and available commercial measures to immediately cure the default. If the Applicant or Operator cannot cure the default(s) or resolve the alleged default(s) within the cure period, then applicable County ordinance provisions addressing the resolution of such default(s) shall govern.

J. Fee Schedule And Permitting Processes:

1. Application Fees:

a. Prior to processing any Application for a Commercial Solar Energy Facility, the Applicant must submit a certified check to the County for the Application Fee per Chapter 16-1: ZONING ORDINANCE FEE SCHEDULE. 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.

b. 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 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.

c. Any unused amounts of the Application Fee shall be refunded to the Applicant within six 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 Commercial Solar Energy Facility, 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 the Building Permit Fees for the Facility.

2. Building Permit Fees:

a. Prior to the issuance of building permits, the Building Permit Applicant must deposit a Building Permit Fee per Chapter 6-12: FEE SCHEDULE.

3. Stormwater Permit Fees:

a. Prior to the issuance of a Stormwater permit, the Permit Applicant shall pay the fee per the Stormwater Management Fee Schedule for Unincorporated Kane County.

4. All Costs to be Paid by Applicant or Owner:

a. 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.

K. Review And Consideration Of Special Use Permit Application:

1. The Zoning Enforcing Officer shall review the application for completeness with the requirements of this division in a preliminary investigation.

2. Upon completion of this preliminary investigation, the Zoning Enforcing Officer shall schedule a date for a public hearing before the Zoning Board of Appeals ~~to be held within forty-five (45) days and in accordance with ARTICLE IV. ADMINISTRATION AND ENFORCEMENT Section 25-4-8: Special Uses and section 5-12020 of the Counties Code (55 ILCS 5/5-12020).~~

L. Hearing Facilitator: 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 board 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.

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

M. Hearing Factors: The County Board may approve a Commercial Solar Energy Facility Special Use Permit application, ~~if the request is in compliance with the standards and conditions imposed in section 5-12020 of the Counties Code (55 ILCS 5/5-12020), Kane County Zoning Ordinance Section 25-5-4-9, and the conditions imposed under State and federal statutes and regulations, if it finds the evidence complies with state and federal law and regulations, and with the standards of this zoning code including the factors listed in ARTICLE IV. ADMINISTRATION AND ENFORCEMENT Section 25-4-8: Special Uses.~~

1. Special Use Permit Conditions and Restrictions. The County Board may stipulate conditions, guarantees and restrictions, upon the establishment, location, construction, maintenance, and operation of the Commercial Solar Energy Facility Project as are deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements of this division.

2. Revocation.

a. In any case where a Special Use has been approved for a Commercial Solar Energy Facility Project, the Applicant shall apply for a Commercial Solar Energy Facility Building Permit and a Stormwater Permit from the County and all other permits required by other government or regulatory agencies to commence construction, and commence and actively pursue construction of the Project within ~~thirty-six (36) months~~five (5) years from the date of the granting of the Special Use. If the Applicant fails to apply for a Commercial Solar Energy Facility Building Permit and a Stormwater Permit from the 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 Project within the ~~thirty-six (36) month~~five (5) year period, then without further action by the County Board, the Special Use authorizing the construction and operation of the Commercial Solar Energy Facility Project shall be automatically revoked and void. Upon written request supported by evidence that the Applicant has diligently pursued issuance of all necessary government and regulatory permits for the Project required to commence construction and that any delay in commencement of construction of the Project is due to conditions out of his/her/its control, the County Board, in its sole discretion, may extend the above ~~thirty-six (36) month~~five (5) year period by passage of an ordinance that amends the Special Use.

b. The Special Use shall be subject to revocation if the Applicant dissolves or ceases to do business, abandons the Commercial Solar Energy Facility Project or the Commercial Solar Energy Facility ceases to operate for more than twelve (12) consecutive months for any reason.

c. Subject to the provisions of subsection I (Remedies), a Special Use may be revoked by the County Board if the Commercial Solar Energy Facility Project is not constructed, installed and/or operated in substantial conformance with the County-approved Project plans, the regulations of this division and the stipulated Special Use conditions and restrictions.

3. Transferability; Owner or Commercial Solar Energy Facility Permittee. The Applicant shall provide written notification to the County Board at least thirty (30) days prior to any change in ownership of a Commercial Solar Energy Facility. The phrase "change in ownership of a Commercial Solar Energy Facility" includes any kind of assignment, sale; lease, transfer or other conveyance of ownership or operating control of the Applicant, the Commercial Solar Energy Facility or any portion thereof. The Applicant or successors-in-interest or assignees of the Special Use Permit, as applicable, shall remain liable for compliance with all

Commented [ZN13]: PA 104-0458 provides: "The public hearing shall be conducted in accordance with the Open Meetings Act and shall conclude not more than 60 days after the filing of the application for the facility."

This paragraph has been simplified so that it just references the applicable codes in case future changes are made again.

Commented [ZN14]: PA 104-0458 "A request for siting approval or a special use permit for a commercial wind energy facility or a commercial solar energy facility, or modification of an approved siting or special use permit, shall be approved if the request is in compliance with the standards and conditions imposed in this Act, the zoning ordinance adopted consistent with this Act, and the conditions imposed under State and federal statutes and regulations."

Commented [ZN15]: PA 104-0458 "A siting approval or special use permit shall not be subject to any time deadline to start construction or obtain a building permit of less than 5 years from the date of siting approval or special use permit approval. A county shall allow an applicant to request an extension of the deadline based upon reasonable cause for the extension request. The exemption shall not be unreasonably withheld, conditioned, or denied."

conditions, restrictions, and obligations contained in the Special Use, the provisions of this section and applicable County, state, and federal laws.

4. **Modification.** Any modification of a Commercial Solar Energy Facility that alters or changes the essential character or operation of the Commercial Solar Energy Facility in a way not intended at the time the Special Use was granted, or as subsequently amended, shall require a new Special Use. The Applicant or authorized representative, shall apply for an amended Special Use prior to any modification of the Commercial Solar Energy Facility.

5. **Special Use Effective Date:** The Special Use shall become effective upon approval of the ordinance by the County Board.

N. **Interpretation:** The provisions of these regulations shall be held to the minimum requirements adopted for the promotion and preservation of public health, safety and general welfare of Kane County. These regulations are not intended to repeal, abrogate, annul or in any manner interfere with existing regulations or laws of the Kane County nor conflict with any statutes of the State of Illinois.

O. **Severability:** If any section, paragraph, clause, phrase or part of this division is for any reason held invalid by any court or competent jurisdiction, such decision shall not affect the validity of the remaining provisions of these regulations. (Ord. 23-178, 5-9-2023)

25-5-4-10: **ENERGY STORAGE SYSTEMS:**

A. Definitions:

ENERGY STORAGE SYSTEM: 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 55 ILCS 5/5-12020.

EXCUSED SERVICE INTERRUPTION: any period during which an energy storage system does not 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: (i) a person with a direct ownership interest in an energy storage system, 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) a person who, at the time the facility is

Commented [ZN16]: *NEW ZONING ORDINANCE SECTION*****

PA 104-0458

(55 ILCS 5/5-12024 new)

Sec. 5-12024. Energy storage systems.

****Note:** This section applies only to **STANDALONE** energy storage systems; ESSs associated with a Solar Facility are considered part of the solar project and subject to the same zoning requirements.

****Note:** all language is either the same as the commercial solar facility ordinance language OR taken directly from the state statute.

"(b)Notwithstanding any other provision of law, if a county has formed a zoning commission and adopted formal zoning under Section 5-12007, then a county may establish standards for energy storage systems in areas of the county that are not within the zoning jurisdiction of a municipality. The standards may include all of the requirements specified in this Section but **may not include requirements for energy storage systems that are more restrictive than specified in this Section or requirements that are not specified in this Section.**

"A county **may not adopt zoning regulations that disallow, permanently or temporarily, an energy storage system from being developed or operated in any district zones to allow agricultural or industrial uses.**"

being developed, 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.

FORCE MAJEURE: 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: the National Fire Protection Association.

NONPARTICIPATING PROPERTY: real property that is not a participating property.

NONPARTICIPATING RESIDENCE: a residence that is located on nonparticipating property and that exists and is occupied on the date that the application for a permit to develop an energy storage system is filed with the county.

OCCUPIED COMMUNITY BUILDING: a school, place of worship, day care facility, public library, or community center that is occupied on the date that the application for a permit to develop an energy storage system is filed with the county in which the building is located.

PARTICIPATING PROPERTY: 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.

PROTECTED LANDS: 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.

SUPPORTING FACILITIES: 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.

- B. Applicability: This section governs the siting of Energy Storage Systems 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.

Any Energy Storage System proposed as a supporting facility for a Commercial Solar Energy Facility shall be subject to the requirements of this Section. In the event of a conflict between the provisions of this Section and Section 25-5-4-9, Commercial Solar Energy Facilities, the more restrictive requirement shall apply.

- C. Prohibition: No Energy Storage System governed by this section shall be constructed, erected, installed, or located within the County, unless prior siting approval has been obtained for each

Commented [ZN17]: Adds a cross-reference to clarify that Energy Storage Systems serving as supporting facilities for Commercial Solar Energy Facilities must also comply with the Energy Storage Systems regulations. Where the ESS standards are more restrictive, those standards govern.

individual Energy Storage System or for a group of Energy Storage Systems under a joint siting application pursuant to this section.

D. Special Use Application: To obtain siting approval, the Applicant must first submit a Special Use application to the County.

1. The Special Use application shall contain or be accompanied by the following information:

1) An Energy Storage System Project Narrative, including:

- i. A general description of the project, and
- ii. A description of the Applicant, Owner and Operator, including their respective business structures;
- iii. The name(s), address(es), and phone number(s) of the Applicant(s), Owner and Operator, and all property owner(s), if known; and
- iv. documentation demonstrating land ownership or legal control of the property;

2) A site plan for the Energy Storage System including:

- a. a description of the property lines and physical features, including roads, for the facility site;
- b. 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
- c. a description of the zoning district designation for the parcel of land comprising the facility site.

3) A proposed Decommissioning Plan for the Energy Storage System that shall:

- a. include all requirements for decommissioning plans in NFPA 855
- b. state how the Energy Storage System will be decommissioned, including removal to a depth of three (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 soil's and vegetation's preconstruction condition within eighteen (18) months of the end of project life or facility abandonment;
- c. include provisions related to commercially reasonable efforts to reuse or recycle of equipment and components associated with the commercial offsite Energy Storage System;
- d. include financial assurance in the form of a reclamation or surety bond or other commercially available financial assurance that is acceptable to the County, with the County or participating property owner as beneficiary. The amount of the financial assurance shall not be more than the estimated cost of decommissioning the Energy Storage Facility, after deducting salvage value, as calculated by a professional engineer licensed to practice engineering in this State with expertise in preparing decommissioning estimates, retained by the applicant. The financial assurance shall be provided to the County incrementally as follows:
 - i. 25% before the start of full commercial operation;
 - ii. 50% before the start of the 5th year of commercial operation; and
 - iii. 100% by the start of the tenth year of commercial operation;

- e. update the amount of the financial assurance not more than every five (5) years for the duration of commercial operations. The amount shall be calculated by a professional engineer licensed to practice engineering in this State with expertise in decommissioning, hired by the facility owner; and
 - f. decommission the Energy Storage System, in accordance with an approved decommissioning plan, within eighteen (18) months after abandonment. An energy storage system that has not stored electrical energy for twelve (12) consecutive months or that fails, for a period of six (6) consecutive 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.
- 4) The results and recommendations from consultation with the Department of Natural Resources that are obtained through the Ecological Compliance Assessment Tool (EcoCAT) or a comparable successor tool.
 - 5) The results and recommendations from consultation with the Department of Natural Resources that are obtained through a Natural Resources Inventory Report and written commitment to adhere to the Agency's recommendations.
 - 6) Documented evidence of avoidance of protected lands as identified by the Department of Natural Resources and the Illinois Nature Preserves Commission.
 - 7) The results and recommendations from 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.
 - 8) Waivers from the setback requirements executed by the occupied community building owners and/or the non-participating property owners bearing a file stamp from the County Recorder of Deeds Office confirming that the waiver was recorded against title to the affected real property;
 - 9) Any other information normally required by the County as part of its permitting requirements for siting and construction of buildings or other structures including conformance with Chapter 9 Stormwater Management;
 - 10) Any other information requested by the County or the County consultants that is necessary to evaluate the siting application and operation of the Energy Storage System and to demonstrate that the Energy Storage System meets each of the regulations in this division, including the Special Use standards set forth below.
- 2. Material changes to the application are not permitted once the notice of the public hearing has been published, unless requested or permitted by the County; and
 - 3. The Applicant shall submit one (1) copy of the Special Use application to the County in electronic format.
- E. Design And Installation:
- 1. Energy Storage Systems shall comply with the version of NFPA 855 "Standard for the Installation of Stationary Energy Storage Systems" in effect on the effective date of PA 104-0458 or any successor standard issued by the NFPA in effect on the date of siting or special use permit approval.
 - 2. Electrical Components: All electrical components of the Energy Storage System shall conform to applicable local, state, and national codes, and relevant national and international standards (e.g., ANSI and International Electrical Commission).

3. **Lighting:** If lighting is provided at the Energy Storage System, lighting shall adhere to the principles for 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.
4. **Fencing:** An Energy Storage System shall be sited so that the facility's perimeter is enclosed by fencing having a height of at least seven (7) feet and no more than twenty-five (25) feet. This Section does not exempt or excuse compliance with electric facility clearances approved or required by the National Electrical Code, the National Electrical Safety Code, the Illinois Commerce Commission, the Federal Energy Regulatory Commission, and their designees or successors.
5. **Warnings:** Warning signs that comply with requirements in NFPA 855 Section 4.7.4, published in 2023, or applicable sections in the most recent version of NFPA 855, shall be placed at the base of all pad-mounted transformers and substations as well as on security fencing gates.
6. **Setback Requirements:**
 - 1) The Energy Storage System shall be sited as follows, with setback distances measured from the nearest edge the nearest battery or other electrochemical or electromechanical enclosure:
 - a. Occupied Community Buildings and Dwellings on Nonparticipating Properties: one hundred fifty (150) feet to the nearest point on the outside wall of the structure.
 - b. Boundary Lines of Participating Property: None.
 - c. Boundary Lines of Nonparticipating Property: fifty (50) feet to the nearest point on the property line of the nonparticipating property.
 - d. Public Road Rights-of-Way: fifty (50) feet to the nearest edge of the public road right-of-way.
 - 2) The setback requirements for Nonparticipating properties may be waived by the written consent of the owner(s) of each affected Nonparticipating property.
 - 3) The Applicant does not need to obtain a variance from the County upon waiver by the property owner of any of the above setback requirements. Any waiver of any of the above setback requirements shall run with the land and be recorded with the Recorder of Deeds of the County.
7. **Compliance with Additional Regulations:** Nothing in this section is intended to preempt other applicable state and federal laws and regulations.
8. **Use of Public Roads:**
 - 1) If a Facility Owner enters into a road use agreement with the Department of Transportation, a road district, or other unit of local government relating to an Energy Storage System, then the road use agreement shall require the Facility Owner to be responsible for (i) the reasonable cost of improving, if necessary, roads used by the facility owner to construct the energy storage system and (ii) 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 construction-related activities. The road use agreement shall not require the facility owner to pay costs, fees, or charges for road work that is not specifically and uniquely attributable to the construction of the Energy Storage System. No road district or other unit of local government may request or

require a fine, permit fee, or other payment obligation as a requirement for a road use agreement with a Facility Owner unless the amount of the fine, permit fee, or other payment obligation is equivalent to the amount of actual expenses incurred by the road district or other unit of local government for negotiating, executing, constructing, or implementing the road use agreement. The road use agreement shall not require the Facility Owner to perform or pay for any road work that is unrelated to the road improvements required for the construction of the Energy Storage System or the restoration of the roads used by the facility owner during construction-related activities.

9. Noise Levels: Noise levels from Energy Facilities shall be in compliance with applicable Illinois Pollution Control Board (IPCB) regulations. The Applicant shall submit manufacturer's sound power level characteristics and other relevant data regarding noise characteristics necessary for a competent noise analysis. The Applicant, through the use of a qualified professional, shall appropriately demonstrate compliance with the applicable noise requirements in its Special Use application. After commercial operation, the Facility Owner shall provide octave band sound pressure level measurements from a reasonable number of sampled locations at the perimeter of the energy storage system to demonstrate compliance with this Section.

F. Remedies:

1. The Applicant's failure to materially comply with any of the provisions under the Special Use, any conditions imposed on the project, and/ or failure to comply with any law or regulation shall be a default and shall be grounds for revocation of the Special Use Permit by the County Board.
2. Prior to implementation of the applicable County procedures for the resolution of default(s), the County Board must first provide written notice to the Applicant and Operator, setting forth the alleged default(s) and provide an opportunity for the Applicant or the Operator to cure the default(s) within a thirty (30) calendar day period from the date of the notice. Should the Applicant commence the cure within that 30-day cure period, and diligently pursues a cure, then the Applicant shall receive an additional sixty (60) days to continue to pursue the cure before the County pursues procedures for the resolution of default. If the default relates to a life safety issue or interference with local, government public safety (police, fire, emergency medical services, emergency management services, 911 dispatch) communications, the Applicant or the Operator shall take all necessary and available commercial measures to immediately cure the default. If the Applicant or Operator cannot cure the default(s) or resolve the alleged default(s) within the cure period, then applicable County ordinance provisions addressing the resolution of such default(s) shall govern.

G. Fee Schedule And Permitting Processes:

a. Zoning Application:

- a. Prior to processing any Application for an Energy Storage System, the Applicant must submit a certified check to the County for the Application Fee per Chapter 16-1: ZONING ORDINANCE FEE SCHEDULE. 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.
- b. 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.
- c. 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 Energy Storage System, 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 the Building Permit Fees for the Facility.

2. Building Permit Application:

- a. Prior to the issuance of building permits, the Building Permit Applicant must deposit a Building Permit Fee per Chapter 6-12: FEE SCHEDULE.
- b. A Building Permit shall include: 1) an electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices; and 2) an equipment specification sheet.
- c. The Facility Owner shall submit to the 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 applicable Sections in the most recent version of NFPA 855, prior to the facility's commercial operation.
- d. The Facility Owner to submit to the 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, prior to the facility's commercial operation.
- e. The Facility Owner to submit to the County an emergency operations plan meeting the requirements of NFPA 855 Section 4.3.2.1.4, published in 2023, or applicable Sections in the most recent version of NFPA 855, prior to commercial operation.
- f. This Section does not exempt compliance with fire and safety standards and guidance established for the installation of lithium-ion battery energy storage systems set by the NFPA.
- g. A Facility Owner shall file a farmland drainage plan with the County and impacted drainage districts that outlines how 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 the County or the drainage district and plans to repair any subsurface drainage affected during construction or deconstruction using procedures outlined in the decommissioning plan. All surface and subsurface damage shall be repaired as soon as reasonably practicable.
- h. 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 System as soon as reasonably practicable.
- i. Prior to commencement of commercial operation, 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 emergency responders. All batteries integrated within an energy storage system shall be listed under the UL 1973 Standard. All batteries integrated within an energy storage system shall be listed in accordance with UL 9540 Standard, either from the manufacturer or by a field evaluation.

3. Stormwater Permit Application:

- a. Prior to the issuance of a Stormwater permit, the Permit Applicant shall pay the fee per the Stormwater Management Fee Schedule for Unincorporated Kane County.

4. All Costs to be Paid by Applicant or Owner:

- a. 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.

H. Review And Consideration Of Special Use Permit Application:

1. The Zoning Enforcing Officer shall review the application for completeness with the requirements of this section in a preliminary investigation.
2. Upon completion of this preliminary investigation, the Zoning Enforcing Officer shall schedule a date for a public hearing before the Zoning Board of Appeals in accordance with ARTICLE IV. ADMINISTRATION AND ENFORCEMENT Section 25-4-8: Special Uses. The public hearing shall be conducted in accordance with the Open Meetings Act and shall conclude not more than 60 days after the filing of the application for the facility and the county shall make its siting and permitting decisions not more than 30 days after the conclusion of the public hearing.

- I. Hearing Facilitator: 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 board 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.

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

- J. Hearing Factors: The County Board may approve an Energy Storage System Special Use Permit application, if the request is in compliance with the standards and conditions imposed in section 5-12024 of the Counties Code (55 ILCS 5/5-12024), Kane County Zoning Ordinance Section 25-5-4-9, and the conditions imposed under State and federal statutes and regulations.

1. Special Use Permit Conditions and Restrictions. The County Board may stipulate conditions, guarantees and restrictions, upon the establishment, location, construction, maintenance, and operation of the Energy Storage System as are deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements of this division.
2. Revocation.
 - a. In any case where a Special Use has been approved for an Energy Storage System, the Applicant shall apply for a Energy Storage System Building Permit and a Stormwater Permit from the County and all other permits required by other government or regulatory agencies to commence construction, and commence and actively pursue construction of the Project within three (3) years from the date of the granting of the Special Use. If the Applicant fails to apply for an Energy Storage System Building Permit and a Stormwater Permit from the 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 Project within the three (3) year period, then without further action by the County Board, the Special Use authorizing the construction and operation of the Energy Storage System shall be automatically revoked and void. Upon written request supported by evidence that the Applicant has diligently pursued issuance of all necessary government and regulatory permits for the Project required to commence construction and that any delay in commencement of construction of the Project is due to conditions out of his/her/its control, the County Board, in its sole discretion, may extend the above three (3) year period by passage of an ordinance that amends the Special Use.

- b. The Special Use shall be subject to revocation if the Applicant dissolves or ceases to do business, abandons the Energy Storage System or the Energy Storage System ceases to operate for more than twelve (12) consecutive months for any reason.
 - c. Subject to the provisions of subsection F (Remedies), a Special Use may be revoked by the County Board if the Energy Storage System is not constructed, installed and/or operated in substantial conformance with the County-approved Project plans, the regulations of this division and the stipulated Special Use conditions and restrictions.
- 3. Transferability; Owner or Energy Storage System Permittee. The Applicant shall provide written notification to the County Board at least thirty (30) days prior to any change in ownership of an Energy Storage System. The phrase "change in ownership of an Energy Storage System" includes any kind of assignment, sale; lease, transfer or other conveyance of ownership or operating control of the Applicant, the Energy Storage System or any portion thereof. The Applicant or successors-in-interest or assignees of the Special Use Permit, as applicable, shall remain liable for compliance with all conditions, restrictions, and obligations contained in the Special Use, the provisions of this section and applicable County, state, and federal laws.
- 4. Modification. Any modification of an Energy Storage System that alters or changes the essential character or operation of the Energy Storage System in a way not intended at the time the Special Use was granted, or as subsequently amended, shall require a new Special Use. The Applicant or authorized representative, shall apply for an amended Special Use prior to any modification of the Energy Storage System.
- 5. Special Use Effective Date: The Special Use shall become effective upon approval of the ordinance by the County Board.
- K. Interpretation: The provisions of these regulations shall be held to the minimum requirements adopted for the promotion and preservation of public health, safety and general welfare of Kane County. These regulations are not intended to repeal, abrogate, annul or in any manner interfere with existing regulations or laws of the Kane County nor conflict with any statutes of the State of Illinois.
- L. Severability: If any section, paragraph, clause, phrase or part of this section is for any reason held invalid by any court or competent jurisdiction, such decision shall not affect the validity of the remaining provisions of these regulations. (Ord. 23-178, 5-9-2023)